

TOWN OF POMFRET
Zoning Board of Adjustment

Minutes and Memorandum of Decision

Permit Applications: #ZP23-03
 #ZP23-04
 #ZP23-05

Property Address: 935 Dana Road, Pomfret
Parcel No.: 2804
Parcel Size: 277 +/- acres

Property Owner: Susan A. Sundstrom Revocable Trust of 2018
935 Dana Road
North Pomfret, Vermont

Applicant: Susan Sundstrom and Matthew Foley
935 Dana Road
North Pomfret, Vermont

I. Introduction and Procedural History

A. Application

Susan Sundstrom and Matthew Foley are seeking conditional use approval for a waiver of Dimensional Requirements in the Rural District (RD) in regards to Minimum Setback from Centerline of a Public Right-of-Way of 65 feet in order to (1) replace an existing house with a new house (the House) by shifting its location approximately 15 feet north (ZP23-03); (2) install a 3-sided utility shed (the Utility Shed) for farm equipment with a lean-to (ZP23-04); and (3) replace an existing barn with new run-in shed (the Run-In Shed) barn moving back from existing location (ZP23-05). The work described in the Applications are depicted on the Topographic Site Plan (the Site Plan) dated November 28, 2022, prepared by Brad M. Ruderman & Associates, Inc., as annotated by the Applicant, a copy of which is on file with the ZA.

The Zoning Permit Applications ZP23-03, ZP23-04 and ZP23-05 (collectively, the Applications), each dated April 3, 2023, were referred to the Zoning Board of Adjustment (ZBA) for conditional use review by the Zoning Administrator (ZA) on April 10, 2023 after each Application was deemed complete by the ZA on April 10, 2023. The Applications and all supporting documents are on file with the ZA.

On April 12, 2023, notice of a public hearing was posted at the Town Clerk's Office, Teago General Store, the North Pomfret Post Office, and within view from the public right-of-way most nearly adjacent to the property pursuant to 24 V.S.A. § 4464(a)(1)(B). On April 13, 2023, notice was published in *The Vermont Standard*. The ZA notified the property abutters of the

site visit and hearing.

B. Related Applications Not Before the ZBA

Reference is made to Applicant's separate (1) Application for Town Highway Right-of-Way Crossing Permit and (2) Application for Town Highway Access Road Permit, each dated February 21, 2023 and referred to the Selectboard for review. The proposed work described in the Applications before the ZBA are part of the same project.

C. Site Visit and Public Hearing

Following a site visit at the property on May 2, 2023 at 6:00 pm, the ZBA considered the Applications at a public hearing at the Town Office and via Zoom on May 2, 2023 at 7:00 pm.

- Present at the site visit were all members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, Shaun Pickett, Susan Burgess and Seth Westbrook. Also present were Karen Hewitt Osnoe (ZA), Susan Sundstrom (Applicant), Matthew Foley (Applicant), and William Emmons.
- Present at the hearing were all members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, Susan Burgess, Shaun Pickett, and Seth Westbrook. Also present were Karen Hewitt Osnoe (ZA) and Susan Sundstrom (Applicant). Present at the hearing via zoom were Meg St. John Gally (abutter), Biria St. John (abutter), Christian Randles (abutter), John Moore, William Emmons and Cathy Emmons.
- The meeting was opened at 7:10pm by ZBA chair Alan Blackmer.
- Alan Blackmer spoke in appreciation to Phil Dechert of his tenure on the Zoning Board of Adjustment and welcomed Susan Burgess to the board.
- At the outset of the hearing, the ZBA afforded those persons wishing to achieve status as an interested party an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. Susan Sundstrom (applicant) and Meg St. John Gally (abutter) were sworn in by Alan Blackmer (ZBA Chair).
- During the hearing the following testimony was heard from the Applicant:
 - In regards to ZP23-03:
 - The House will be relocated 5-10 feet north to be away from existing maple tree to better assist in preserving its longevity. This differs slightly from the ZP23-03 submission, which indicated the House would be located 15 feet north of the existing structure. The House would be no closer to the road than the current house is presently, which is approximately 50 feet from centerline of the Dana Road right-of-way.

- The House will not use the existing foundation. The House will be on a slab on grade.
 - Shaun Pickett asked if the House could be moved back farther from the road. The Applicant stated that there is a steep drop off and ledge that limits the placement area.
 - Biria St. John stated that the very large and old maple tree is at risk of being further damaged.
- In regards to ZP23-04:
 - The Utility Shed will be 26'x40' and used for storage of a horse trailer and other farm machinery with a small lean-to for a trail groomer attached on the Dana Road side of the new structure.
 - The Applicant stated that they cannot move the Utility Shed farther back as they need to be able to back the horse trailer past the retaining wall and the land behind the shed slopes up.
 - Biria St. John stated that there was a previous pole barn in the vicinity of the proposed location of the Utility Shed that had fallen down 30-35 years ago. A picture was shown to the ZBA and members of the public. Biria emailed the photo to the ZA to be entered into record of evidence.
 - In regards to ZP23-05:
 - The original run-in shed was in the Dana Road right-of-way. This structure was torn down and will be replaced with the Run-In Shed, which will be back an additional 30 feet from Dana Road. The Applicant will remove ledge to minimize encroachment upon the setback, but will need a fenced in area on three sides (including on the side opposite from Dana Road) for a dry paddock for the Icelandic horses.
 - The dry paddock will be using old board fencing.
 - Power lines will be buried underground, and under Dana Road (pursuant to approval granted by the Selectboard in the Application for Town Highway Right-of-Way Crossing Permit referenced above).

II. Applicable Regulations

- Under the Pomfret Zoning Ordinance (the Zoning Ordinance), 2.2.2.2 Dimensional Requirements for minimum Setback from Centerline of a Public Right-of-Way is 65 feet in the Rural District (RD). Some dimensional/size requirements may be reduced by waivers as specified in Article 3.

- The dimensional/size requirements are neither exempt from the Zoning Ordinance nor eligible for an administrative waiver from ZA. Therefore, a waiver by the ZBA is required.
- Section 3.2 of the Zoning Ordinance states that “in all zoning districts, waivers under this section for alterations in dimensional requirements may be granted by the ZBA using the same notice and hearing process used for conditional use approval. Before granting a waiver the ZBA shall make written findings for each review criteria including the rationale for each finding. Waivers may be granted by the ZBA as long as they do not result in a greater than 50% decrease in any zoning district dimensional requirement, provided that no development shall encroach on the public right-of-way; the proposed development is at least 10 feet from the edge of the travelled way; and the development is found to satisfy criterion (1) and at least one other criterion (2-6):
 - 1) The proposed development is consistent with the Town Plan
 - 2) The proposed development is consistent with existing development patterns of the zoning district or of neighboring properties;
 - 3) The proposed development will cluster development and more effectively preserve open land, forestland, or protect water quality or natural areas in perpetuity;
 - 4) The proposal will result in permanently affordable housing units;
 - 5) In the VD, reductions of lot size to 1 acre is appropriate to enable greater density where potable water supply and wastewater permits allow.
 - 6) In all zoning districts, locating more than one principal structure per lot may be allowed by the ZBA by waiver if the placement of the structures could not be subdivided in a manner compliant with Section 4.6, provided the entire lot contains the otherwise required total area for all principal structures, all setbacks are met, the fire department approves the building layout, and that the proposal will cluster development and more effectively preserve open land, forestland, or protect water quality or natural areas. Undeveloped lands used in the density calculation will be precluded from future development by a permit condition.”

III. Findings and Conclusions

A. Pomfret Zoning Ordinance

- Subject to the conditions and limitations provided in Section V below and the

Dimensional Requirement waiver granted herein, the House, Utility Shed and Run-In Shed, each as described in the Applications and as depicted on the Site Plan, will meet the applicable general standards in Section 4.1 of the Zoning Ordinance, including setbacks, maximum height, signs, parking, outdoor lighting and reflection, and access to the public right-of-way.

- Subject to the conditions and limitations provided in Section V below, the House, Utility Shed and Run-In Shed, each as described in the Applications and as depicted on the Site Plan, will meet the applicable conditional use approval standards in Section 4.2 of the Zoning Ordinance.
- As all other uses are lawfully existing as of the date hereof, the provisions of Section 4.4 of the Zoning Ordinance are applicable and may continue indefinitely subject to the conditions provided in Section 4.4.2 of the Zoning Ordinance.
- Criterion (1) of Section 3.2 of the Zoning Ordinance has been met. The House, Utility Shed and Run-In Shed, each as described in the Applications and as depicted on the Site Plan, are consistent with the Town Plan. In particular the Town Plan's general land use policies of encouraging preservation of the town's working rural landscape and allowing low intensity residential, agricultural and forestry projects; and the specific land use goal of maintaining a rural living environment. See pages 35 and 38 of the Pomfret Town Plan adopted August 17, 2016.
- Criterion (2) of Section 3.2 of the Zoning Ordinance has also been met. The House, Utility Shed and Run-In Shed, each as described in the Applications and as depicted on the Site Plan, are consistent with existing development patterns of neighboring properties, specifically the subject property. The Applications on balance do not change the development pattern that existed on the subject property prior to commencement of the work described therein.
- As Criteria (1) and (2) of Section 3.2 of the Zoning Ordinance have both been met, the ZBA may grant the requested waivers from the minimum setback required in the RD.

IV. Decision

Based on information presented to the ZBA, the findings and conclusions described above, and subject to the conditions and limitations specified in Section V below, the ZBA makes the following decisions:

- A. A Dimensional Requirement waiver for ZP23-03 is **granted** for the placement of the House as described in the associated Application and as depicted on the Site Plan. No part of the House (including eaves, overhangs and other projections) shall be less than 50 feet from the centerline of the Dana Road right-of-way.

- B. Conditional use approval is **granted** for ZP23-03 for the House at a location no farther than 15 feet north of its present location and a permit is **authorized** for such use in the location described herein.
- C. A Dimensional Requirement waiver for ZP23-04 is **granted** for the placement of the Utility Shed as described in the associated Application and as depicted on the Site Plan. No part of the Utility Shed (including eaves, overhangs and other projections) shall be less than 45 feet from the centerline of the Dana Road right-of-way.
- D. Conditional use approval is **granted** for ZP23-04 for the Utility Shed and a permit is **authorized** for such use in the location described herein.
- E. A Dimensional Requirement waiver for ZP23-05 is **granted** for the placement of the Run-In Shed as described in the associated Application and as depicted on the Site Plan. No part of the Utility Shed (including eaves, overhangs and other projections) shall be less than 35 feet from the centerline of the Dana Road right-of-way.
- F. Conditional use approval is **granted** for ZP23-05 for the Run-In Shed and a permit is **authorized** for such use in the location described herein.


V. Conditions and Limitations

This Decision is subject to the following conditions and limitations:

- A. The House, Utility Shed and Run-In Shed shall conform in all material respects with the Application materials including the Applications and the Site Plan, the Applicant's submissions, plans, written representations to the ZBA, and testimony as reflected in the Minutes, except as expressly modified herein. Any change to the foregoing shall require further review and approval by the ZBA under the then applicable regulations.
- B. Any exterior lighting shall comply with Section 4.1(14) of the Zoning Ordinance.
- C. Applicant shall ensure runoff and drainage from the House, Utility Shed and Run-In Shed does not flow onto or otherwise adversely impact the Dana Road or Old Kings Highway right-of-way.
- D. The uses approved by this Decision shall conform to all applicable federal, state and local laws, ordinances and regulations, whether or not the same have been expressly referenced herein.
- E. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses or activities with the applicable zoning bylaws was not considered and is not addressed in this Decision.

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This Decision approved at Pomfret, Vermont, as of this 9th day of May, 2023, and signed by the chair of the Pomfret Zoning Board of Adjustment on its behalf pursuant to 24 V.S.A. 1141.


Alan Blackmer, chair
Zoning Board of Adjustment

ZBA members Alan Blackmer, Benjamin Brickner, Susan Burgess, Shaun Pickett and Seth Westbrook voted in the affirmative.

NOTICE: This Decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this Decision, pursuant to 24 V.S.A. 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.