

**TOWN OF POMFRET**  
**Zoning Board of Adjustment**

Memorandum of Decision

Property Address: 6150 Broad Brook Road  
South Pomfret, Vermont

Parcel No.: 5605

Parcel Size: +/- 38.74 acres

Property Owner: Michael C. Zube and  
Callie M. Brusegaard  
6150 Broad Brook Road  
South Pomfret, Vermont

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This Memorandum of Decision (this “Decision”) is issued by the Pomfret Zoning Board of Adjustment (the “ZBA”), in connection with the appeal by Michael C. Zube and Callie M. Brusegaard (the “Landowners”) of the Notice of Violation dated March 23, 2023 (the “NOV”), issued by the Pomfret Zoning Administrator (the “ZA”).

The NOV asserts that the Landowners are “in violation of Sections 6.4.1 and 2.2.3.3 of the Town of Pomfret Zoning Ordinance . . . requiring a Zoning Permit for a change in use and land development and requiring a Flood Hazard Permit prior to the issuance of a Zoning Permit in areas covered by the Town of Pomfret Flood Hazard Area Regulations.” The NOV is attached as Exhibit D.

For the reasons discussed below, the ZBA affirms the NOV as issued, refers this matter to the Pomfret Selectboard for potential enforcement pursuant to Section 6.9 of the Pomfret Zoning Ordinance, and remands to the ZA for further action pursuant to Part XIII of the Flood Hazard Area Regulations.

**I. Procedural History**

**A. Subject Development**

The development at issue in this Decision is the conversion of an existing garage to a dwelling unit. The garage is located at 6150 Broad Brook Road and is situated within the setback of Broad Brook Road and within the special flood hazard area of Broad Brook, namely Zone A as depicted on FEMA’s current Flood Insurance Rate Map for the area, panel 50027C0335E, effective September 28, 2007.

Based on information provided by Landowner Zube, the development commenced in July 2019 and was substantially complete by April 2020. As of December 2020, the framing, insulation, rough wiring and plumbing of the development were complete.

#### B. Landowners Correspondence

On December 11, 2020, the ZA contacted the Landowners by mail informing them that “a change in use and substantial improvements were made on your existing garage,” explaining that these activities required a land use permit, and encouraging the Landowners to apply for a permit to bring the development into compliance with Pomfret’s land use regulations. The letter also informed the Landowners that because the garage was located “in the special flood hazard area of Broad Brook (Zone A) . . . a permit [was] also required under Pomfret’s Flood Hazard Area Regulations.” This letter is attached as Exhibit A.

On January 3, 2021, Landowner Zube responded to the ZA by email asserting that no change of use permit was needed as the Prior Ordinance (as defined below) was still in effect when the improvements were completed in April 2020. Landowner Zube also maintained that no approval was necessary under Pomfret’s Flood Hazard Area Regulations because the construction did not meet the definition of “substantial improvement” under those regulations. This email is attached as Exhibit B.

On January 18, 2023, the ZA contacted the Landowners again by mail explaining that the Prior Ordinance had been superseded by the Current Ordinance (as defined below) when the improvements were completed in April 2020, that a permit was still required under the Flood Hazard Area Regulations, and encouraging the Landowners to seek the required permits. This letter is attached as Exhibit C.

On March 23, 2023 and on the ZA’s behalf, Stitzel, Page & Fletcher P.C., outside counsel to the Town of Pomfret, sent the Landowners the NOV by first class and certified mail. The NOV alleged that the Landowners’ property was in violation of (1) the Current Ordinance for failure to obtain a permit for a change in use, and (2) the Flood Hazard Area Regulations failure to obtain a permit for development occurring in a special flood hazard area. The certified mail version of this notice and completed return receipt are attached as Exhibit D.

On April 2, 2023, the Town of Pomfret received a letter from the Landowners to the ZA dated March 29, 2023, appealing the NOV and requesting a hearing by the ZBA. This letter is attached as Exhibit E.

#### C. Site Visit and Public Hearing

On April 13, 2023, notice of a site visit and public hearing in this matter was published in *The Vermont Standard*. On April 20, 2023, the same notice was posted at the Town Clerk’s Office, Teago General Store and the North Pomfret Post Office. Abutters of the Landowners’ property also were timely notified of the site visit and hearing.

A site visit at the Landowners' property occurred on May 11, 2023 at 6:00 pm. Present at the site visit were ZBA members Alan Blackmer (chair), Susan Burgess and Seth Westbrook. Also present was Karen Hewitt Osnoe (the ZA) and both Landowners.

The ZBA considered this appeal at a public hearing on May 11, 2023 at 7:00 pm. Present at the hearing in person were ZBA members Alan Blackmer (chair), Susan Burgess and Seth Westbrook. ZBA member Benjamin Brickner was present by Zoom. Also present in person were Karen Hewitt Osnoe (the ZA), both Landowners and Pomfret resident John Moore.

The hearing minutes were posted to the Town of Pomfret website on May 16, 2023, are attached as Exhibit E, and are incorporated by reference herein.

The ZBA closed the hearing on May 11, 2023, held a non-public deliberative session on May 19, 2023, and thereafter reached this Decision.

## **II. Applicable Regulations**

### **A. Pomfret Zoning Ordinance**

#### **1. May 2020 Amendments**

The current Pomfret Zoning Ordinance (the "Current Ordinance") was adopted on May 6, 2020. One hundred forty-seven days earlier, on December 12, 2019, the Pomfret Selectboard issued a public notice for a first public hearing on the draft document that would become (with minor revisions not relevant here) the Current Ordinance.

For a period of 150 days following such notice, 24 V.S.A. 4449(d) requires that "the administrative officer . . . review any new application filed after the date of the notice under the proposed bylaw or amendment". The ZBA understands this provision to mean that development occurring between notice and adoption of a new or amended bylaw is subject to the proposed rules (provided the same are adopted before the end of the 150-day period), even where a development application should have been filed but was not.

The Landowners in their correspondence described in Section I above disagree with this conclusion, arguing the Pomfret Zoning Ordinance as amended on March 4, 1975 (the "Prior Ordinance") was still in effect when the development in question occurred.

For the avoidance of doubt, and recognizing that some work associated with the subject development may have commenced before the December 12, 2019 hearing notice date, this Decision reviews the violations alleged in the NOV under the Current Ordinance and the Prior Ordinance and reaches the same conclusion in both cases: a permit was required prior to commencing such work.

## 2. Current Ordinance

Section 6.4.1 of the Current Ordinance requires a zoning permit for any “[c]hange in the use of any building or other structure”. The conversion of a garage into a dwelling unit constitutes a change in use.

Section 2.2.3.3 of the Current Ordinance states that before any zoning permit is issued for development in a special flood hazard area, a permit must be obtained under the Flood Hazard Area Regulations, or a determination obtained from the ZA that no such permit is required.

The Current Ordinance seeks to promote the creation of additional housing in Pomfret through the availability of waivers [Section 3.2] and by making accessory dwelling units a permitted use. [Section 2.2.2.4] These uses still require review and a permit, however, to ensure other development standards are met in the process, including those that protect the health, safety and welfare of others.

## 3. Prior Ordinance

Under the Prior Ordinance, all “Non-Conforming Uses” required a permit following a ZBA hearing. A Non-Conforming Use was anything other than a “Conforming Use”. [Section 4.6] Conforming Uses were limited to “single, one-family or two family residence[s], agricultural buildings [and] home business[es].” [Section 4.5]

The Landowners argue that the subject development “[changes] a non-conforming use to a conforming use” and therefore is exempted from permitting under Section 5.8. The ZBA disagrees. The subject development did not change a Non-Conforming Use into a Conforming Use as a dwelling already existed on the same parcel. Under the Prior Ordinance, multiple dwellings on a single parcel were a Non-Conforming Use and construction of the same was not to be commenced without a zoning permit first being issued.<sup>1</sup>

### B. Flood Hazard Area Regulations

Pomfret’s Flood Hazard Area Regulations are derived from the minimum federal standards that enable communities to participate in the National Flood Insurance Program. *See* 44 CFR Parts 59, 60, 65 and 70. This program makes federally-backed flood insurance available to all property owners in participating communities, insurance that often is required when financing property located in a flood zone.

Pomfret’s failure to adhere closely to its flood regulations would jeopardize the town’s continued participation in the National Flood Insurance Program, thereby risking all Pomfret

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<sup>1</sup> The Prior Ordinance also required a variance to locate any structure within the greater of 60 feet from the edge of a public right-of-way and 85 feet from the center of the traveled portion of a public right-of-way. [Section 7.4] The garage where the development occurred is located entirely within this setback and the change in use likely would have triggered a review of whether the criteria for variance had been met as to the changed use.

property owners' ability to obtain flood insurance. For this reason, the town must carefully and consistently review all development in flood zones in accordance with its flood regulations.

The Pomfret Flood Hazard Area Regulations require that any construction or development in a special flood hazard area receive a permit from the ZA before work commences. In addition, development constituting a "substantial improvement" is subject to conditional use approval following a ZBA hearing. [Part IV] A "substantial improvement" is one where the total cost exceeds fifty percent (50%) of the pre-improvement value of the structure being improved. [Part XIV]

The Landowners argue that the subject development does not constitute a "substantial improvement" because the out-of-pocket cost of the development did not exceed 50% of the pre-improvement value of the garage. While the ZBA is skeptical of this position as it omits the fair value of the Landowner's extensive labor on the project, we need not address this particular issue.

The Flood Hazard Area Regulations state that "[a] permit is required . . . for *all* proposed construction or other development . . . in areas of special flood hazard." [Part IV, emphasis added] This requirement applies regardless of whether the work constitutes a "substantial improvement". The substantiality of the improvement is relevant only to how the required permit may be issued: by the ZA acting alone (not substantial), or by ZA following review by the ZBA (substantial). [Parts IV.B and IV.C, respectively]

Flood zones in Pomfret were mapped several decades ago using topographic surveys with large contour intervals. As a result, mapped zones may not precisely align with areas of actual flooding risk. To address these possible discrepancies, Landowners may seek a Letter of Map Amendment from FEMA to administratively remove their property from the flood zone. Or they may demonstrate that the proposed development will be situated at or above the elevation required by Pomfret's flood regulations. This can be achieved with a hydraulic study of the area or in some cases by applying the so-called "contour interpolation method" to determine the location's actual base flood elevation. See FEMA Publication 265, Section V.

Until one of these processes is completed, however, landowners must obtain a permit for all development occurring in the mapped flood zone before work commences, and the town must ensure such development complies with its flood regulations and meets the minimum standards required for continued participation in the National Flood Insurance Program.

### **III. Conclusions of Law**

#### **A. Current Ordinance**

The conversion of the garage into a dwelling unit constitutes a change in the use of that structure requiring a permit pursuant to Section 6.4.1 of the Current Ordinance.

B. Prior Ordinance

The conversion of the garage into a dwelling unit would constitute a Non-Conforming Use requiring a permit pursuant to Part 7 of the Prior Ordinance, were that ordinance applicable to the subject development.<sup>2</sup>

C. Flood Hazard Area Regulations

The conversion of the garage into a dwelling unit constituted construction or development in a special flood hazard area requiring a permit pursuant to Part IV of the Flood Hazard Area Regulations, regardless of whether such construction or development constituted a “substantial improvement”. A permit for these activities was also required by Section 2.2.3.3 of the Current Ordinance.

**IV. Decision**

Based on its review of the materials submitted, exhibits attached, testimony of witnesses, applicable regulations and conclusions of law described above, the ZBA **affirms** the NOV as issued.

The ZBA also refers this matter to the Pomfret Selectboard for potential enforcement pursuant to Section 6.9 of the Pomfret Zoning Ordinance, and remands to the ZA for further action pursuant to Part XIII of the Flood Hazard Area Regulations.

\* \* \* \* \*

This Decision approved at Pomfret, Vermont, as of this 16th day of June, 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 and Seth Westbrook voted in the affirmative. ZBA member Shaun Pickett did not participate in this Decision.

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<sup>2</sup> In September 1984, the Landowners’ predecessor-in-interest obtained approval from the ZBA and a permit from the ZA for a non-conforming use of the garage as a home business, namely as a “small auto body repair shop”. The related application (as approved by the ZBA) is attached as Exhibit G. As the development at issue in this Decision is the creation of a second dwelling unit on a single parcel (a Non-Conforming Use under the Prior Ordinance), the September 1984 approval does not alter the conclusion that subject development was not exempt from permitting under Section 5.8 of the Prior Ordinance.

**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.

# Exhibit A

## Town of Pomfret

5218 Pomfret Road  
North Pomfret, VT 05053

December 11, 2020

Michael Zube & Callie Brusegaard  
6150 Broad Brook Road  
South Pomfret, VT 05067

### **Re: Land Use Violations (Change in Use of Garage)**

Dear Mr. Zube & Ms. Brusegaard

It has come to my attention that a change in use and substantial improvements were made on your existing garage on your property at 6150 Broad Brook Road in Pomfret (parcel ID #5605). You may not have been aware that a zoning permit is required for such activities in Pomfret.

Although you are in violation of the Pomfret Zoning Ordinance, you may still apply for a permit which, if granted, will bring you into compliance, subject to any conditions or requirements in such permit. The application forms you will need to complete are enclosed. I have also enclosed a copy of the Pomfret Zoning Ordinance and the Flood Hazard Area Regulations for your reference.

Installation of water and waste water facilities may also require a permit from the Agency of Natural Resources Department of Environmental Conservation. Please contact Terry Shearer- Regional Engineer at [terry.shearer@vermont.gov](mailto:terry.shearer@vermont.gov) or 1-802-591-0338 for more information.

For new or improved structures, the required setback from the centerline of a public right of way is 65 feet. Since the garage is only approximately 21.6 feet from the center traveled portion of a public right of way (Broad Brook Road) as taken from an existing 1984 Zoning Board of Adjustment (ZBA) application to convert the garage to a home business, and by creating an Accessory Dwelling Unit (ADU) in the existing building (a change in use), both a setback waiver and conditional use approval is required from the ZBA. The garage is also in the special flood hazard area of Broad Brook (Zone A), for which a permit is also required under Pomfret's Flood Hazard Area Regulations. While the existing garage was permitted in 1984, the change of use of the garage is beyond the scope of the existing permit and a new permit is required. The application fee is \$135.00 for the ZBA hearing, \$66.32 for the Accessory Dwelling Unit, and \$50.00 for the Access Permit which is required for any dwelling, for a total of \$251.32, made payable to the Town of Pomfret.

May I hear from you within three weeks of the date of this letter, that is, by January 4<sup>th</sup>, 2021? If I do not hear from you by January 4<sup>th</sup>, 2021, I would be required to issue and file in the land records a Notice of Violation. See Section 6.9 of the Zoning Ordinance and Section XIII of the Flood Hazard Area Regulations.

Please call me at my cell phone at 802-299-8211 or email me at [karen.hewitt@pomfretvt.us](mailto:karen.hewitt@pomfretvt.us) if you have any questions.

Thank you for your prompt attention to this matter.

Sincerely,

Karen Hewitt Osnoe, Zoning Administrator



# Exhibit B

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**From:** mike zube <[REDACTED]>  
**Sent:** Sunday, January 3, 2021 3:51:31 PM  
**To:** Karen Hewitt Osnoe <[karen.hewitt@pomfretvt.us](mailto:karen.hewitt@pomfretvt.us)>  
**Subject:** 6150 Broad Brook Rd.

Dear Karen,

I hope you had a good Holiday.

This email is in response to the letter sent to us on December 11, 2020 in which you outlined three separate possible violations: Change of use, "Significant Changes" to a structure in a Flood Zone, and an ADU requirement for an access of driveway. I will try to explain best I can what my understanding of the rules.

We were under the assumption that we did not need a change of use permit based on the previous Zoning Ordinance:

5. Not Needing a Permit: 5.8 Change from a non-conforming to a conforming use or occupancy or location,

These changes to our building were completed in April 2020, before the May 6th adoption of the new zoning ordinances, thus we did not believe we needed to pull a change of use permit as it meets all previously stated town Zoning Ordinances. Also, there is no, "change of use" application only a "Zoning Permit Application" which doesn't have any applicable sections for "change of use".

In your letter you stated we need a permit because we have made "substantial improvements" to the garage. We see in the Flood Hazard Regulations that "substantial improvements" are defined as:

"improvements of a structure, the cost of which cumulatively equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement."

I don't have the appraised tax value from Pomfret, but our insurance company had it appraised at \$58,150 (please see attachment). I assure you we did not pay more than \$30,000 for the improvements, as I did all of the work and the majority of the materials used were either leftovers from other projects or salvage. Thus, we believe we do not meet the requirements for needing a Flood Zone permit. On a secondary note, I have started the process with FEMA to amend the flood zone map, as the location of the garage is clearly above flood possibility, and it is proving quite difficult.

As for the driveway or approach access permit, again, running under the 1989 Zoning Ordinances where there are no requirements for access we did not believe a permit was necessary. However, after discussion with Callie, having a designated parking area would be in our best interest. We believe there will be no issue in meeting the necessary requirement for said permit and will file the appropriate paperwork promptly.

Thank you for the NRD information but I have already been in contact with them and had a site visit from one of their agents. Fingers crossed everything will go well.

Just some backstory, when the pandemic started, coupled with the pending zoning ordinances change, we needed to move my mother over there quickly as she is a nurse at the VA and in the “High-risk” age group. She was being exposed to COVID often and we needed her to quarantine safely away from us. The interior work was completed before the deadline and since the building already had siding I was able to push that off until later in the year. We aren’t trying to “get away” with anything, we just knew that with the new zoning regulations there was no way we could have fiscally done this project and hence the frantic pace at which I made it happen. Now with Callie and I expecting our first child and the pandemic still surging It has been very comforting having her in a safe space.

I look forward to hearing from you as we want to keep everything above board.

Best,

Mike & Callie

Cell: [REDACTED]

# Town of Pomfret

5218 Pomfret Road  
North Pomfret, VT 05053

January 18, 2023  
Michael Zube & Callie Brusegaard  
6150 Broad Brook Road  
South Pomfret, VT 05067

**Re: Land Use Violations (Change in Use of Garage) at 6150 Broad Brook Road in Pomfret (parcel ID #5605).**

Dear Mr. Zube & Ms. Brusegaard

While the new zoning ordinance was officially adopted on May 6th, 2020, the new zoning ordinance had been applicable since the first Selectboard hearing which was warned in December 2019 [see 24 V.S.A. 449(d)]. A permit would have been required and reviewed under 5.3 Accessory Dwelling Unit. However, since the original ZBA permitted a non-conforming use permit on August 23, 1984, for a garage as a new home business for a small auto body repair shop, changing this use would require a new ZBA permit. The 1984 ZBA permit also stated that there was no sewerage system connected to the garage and the water system was Spring fed.

Installation of water and waste water facilities may also require a permit from the Agency of Natural Resources Department of Environmental Conservation. Please contact Terry Shearer- Regional Engineer at [terry.shearer@vermont.gov](mailto:terry.shearer@vermont.gov) or 1-802-591-0338 for more information.

For new or improved structures, the required setback from the centerline of a public right of way is 65 feet. Since the garage is only approximately 21.6 feet from the center traveled portion of a public right of way (Broad Brook Road) as taken from an existing 1984 Zoning Board of Adjustment (ZBA) application to convert the garage to a home business, and by creating an Accessory Dwelling Unit (ADU) in the existing building (a change in use), both a setback waiver and conditional use approval is required from the ZBA. The garage is also in the special flood hazard area of Broad Brook (Zone A), for which a permit is also required under Pomfret's Flood Hazard Area Regulations.

Although you are in violation of the Pomfret Zoning Ordinance, you may still apply for a permit which, if granted, will bring you into compliance, subject to any conditions or requirements in such permit. The application form you will need to complete is enclosed.

I am required to issue and file in the land records a Notice of Violation after seven (7) days upon receipt of this letter. See Section 6.9 of the Zoning Ordinance and Section XIII of the Flood Hazard Area Regulations.

Please email me at [karen.hewitt@pomfretvt.us](mailto:karen.hewitt@pomfretvt.us) if you have any questions.

Thank you for your prompt attention to this matter.

Sincerely,



Karen Hewitt Osnoe  
Zoning Administrator

cc: Terry Shearer- Regional Engineer  
Pomfret Selectboard  
EEO Dan Mason

# Exhibit D

## Town of Pomfret

Zoning Administrator  
5218 Pomfret Road  
North Pomfret, VT 05053

March 23, 2023

Michael Zube and Callie Brusegaard  
6150 Broad Brook Road  
South Pomfret, VT 05067

✓ **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**  
**Tracking No. 7022 0410 0001 2739 1283**

**AND VIA FIRST-CLASS MAIL**

## NOTICE OF VIOLATION

Re: 6150 Broad Brook Road  
Parcel #5605

Dear Mr. Zube and Ms. Brusegaard:

Please be advised that, based on information available to the Town of Pomfret (“the Town”), your property is in violation of Sections 6.4.1 and 2.2.3.3 of the Town of Pomfret Zoning Ordinance (“Ordinance”) requiring a Zoning Permit for a change in use and land development and requiring a Flood Hazard Permit prior to the issuance of a Zoning Permit in areas covered by the Town of Pomfret Flood Hazard Area Regulations.

Specifically, you have initiated the following activity on the above-described property:

**Began land development on the above-described property by changing the use of a garage to an accessory dwelling unit, and excavating without permits.**

Though you have been previously advised that such actions required permits, you have yet to apply for one. You have (7) days from the date of this letter to discontinue this violation and comply with the Ordinance or be subject to fines of

Michael Zube and Callie Brusegaard

March 23, 2023

Page 2

\$200 per day for each day the violation continues. Specifically, you must accomplish the following:

1. **Stop any continued work on the structure and any excavation (for a septic system or otherwise), and**
2. **Obtain a Flood Hazard Permit and a Zoning Permit from the Town for a change of use, and all land development (this may require State certification of any existing or planned septic system).**

If you do not accomplish the actions directed in this letter within seven (7) days of the date of this letter the Town of Pomfret will take appropriate action to enforce its regulations.

If the violation described in this letter occurs again within twelve (12) months of the date of this letter, you will not be entitled to receive a further Notice of Violation from the Town before the Town commences further enforcement proceedings.

You may appeal this Notice of Violation to the Pomfret Zoning Board of Adjustment by filing a written notice of appeal with the requisite \$300 appeal fee within fifteen (15) days of the date of this letter with the Pomfret Zoning Board of Adjustment in care of the Zoning Administrator at 5218 Pomfret Road, North Pomfret, VT 05053.

Failure to file an appeal within fifteen (15) days of the date of this letter will render this **NOTICE OF VIOLATION** the **Final Decision** on the violation addressed in this notice.

Sincerely,

**Karen Hewitt Osnoe**  
*Zoning Administrator*

STITZEL, PAGE & FLETCHER, P.C.  
 ATTORNEYS AT LAW  
 171 BATTERY STREET  
 P.O. BOX 1507  
 BURLINGTON, VERMONT 05402-1507

**CERTIFIED MAIL®**



7022 0410 0001 2739 1283



Michael Zube and Callie Brusegaard  
 6150 Broad Brook Road  
 South Royalton, VT 05068

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael Zube + Callie  
 Brusegaard  
 6150 Broad Brook Road  
 South Royalton, VT 05068



9590 9402 8026 2305 2178 95

2. Article Number (Transfer from service label)

7022 0410 0001 2739 1283

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X**

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

fail  
 fail Restricted Delivery  
 0)

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postmark Here

Certified Mail Fee \$ 4.15

Extra Services & Fees (check box and fee as appropriate)

<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 3.35
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage \$ .84

Total Postage and Fees \$ 8.34

Sent To Michael Zube + Callie Brusegaard  
 Street and Apt. No., or PO Box No. 6150 Broad Brook Road  
 City, State, ZIP+4® South Royalton, VT 05068

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7022 0410 0001 2739 1283

7022 0410 0001 2739 1283

U.S. Postal Service™  
CERTIFIED MAIL® RECEIPT  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

OFFICIAL USE

Certified Mail Fee

\$ 4.15

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ 3.35
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage

\$ .84

Total Postage and Fees

\$ 8.34



Sent To

Michael Zube + Callie Brusegaard

Street and Apt. No., or PO Box No.

6150 Broad Brook Road

City, State, ZIP+4®

South Royalton, VT 05068



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael Zube + Callie  
 Brusegaard  
 6150 Broad Brook Road  
 South Royalton, VT 05068



9590 9402 8026 2305 2178 95

2. Article Number (Transfer from service label)

7022 0410 0001 2739 1283

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

MAR 28 2023

STITZEL, PAGE & FLETCHER, P.C.

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

fail  
 fail Restricted Delivery  
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# Exhibit E

## APPEAL LETTER

Michael Zube & Callie Brusegaard Zube  
6150 Broad Brook Rd  
Pomfret, VT 05053

March 29, 2023

Karen Hewitt Osnoe  
Zoning Administrator  
5218 Pomfret Rd  
North Pomfret, VT 05053

Re: Notice of Violation, 6150 Broad Brook Rd, Parcel #5605

Dear Ms. Hewitt Osnoe,

This appeal letter is in response to the notice of violation of sections 6.4.1 and 2.2.3.3 reported in a letter dated March 23, 2023, in which you note that we “began land development on the property by changing the use of a garage to an accessory dwelling unit and excavating without permits.”

We were first notified on December 11, 2020 and responded to this violation on January 3, 2021. The following is our response sent to karen.hewitt@pomfretvt.us:

Dear Karen,

I hope you had a good Holiday.

This email is in response to the letter sent to us on December 11, 2020 in which you outlined three separate possible violations: Change of use, “Significant Changes” to a structure in a Flood Zone, and an ADU requirement for an access of driveway. I will try to explain best I can what my understanding of the rules.

We were under the assumption that we did not needed a change of use permit based on the previous Zoning Ordinance:

5. Not Needing a Permit: 5.8 Change from a non-conforming to a conforming use or occupancy or location,

These changes to our building were completed in April 2020, before the May 6th adoption of the new zoning ordinances, thus we did not believe we needed to pull a change of use permit as it meets all previously stated town Zoning Ordinances. Also,

there is no, "change of use" application only a "Zoning Permit Application" which doesn't have any applicable sections for "change of use".

In your letter you stated we need a permit because we have made "substantial improvements" to the garage. We see in the Flood Hazard Regulations that "substantial improvements" are defined as:

"improvements of a structure, the cost of which cumulatively equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement."

I don't have the appraised tax value from Pomfret, but our insurance company had it appraised at \$58,150 (please see attachment). I assure you we did not pay more than \$30,000 for the improvements, as I did all of the work and the majority of the materials used were either leftovers from other projects or salvage. Thus, we believe we do not meet the requirements for needing a Flood Zone permit. On a secondary note, I have started the process with FEMA to amend the flood zone map, as the location of the garage is clearly above flood possibility, and it is proving quite difficult.

As for the driveway or approach access permit, again, running under the 1989 Zoning Ordinances where there are no requirements for access we did not believe a permit was necessary. However, after discussion with Callie, having a designated parking area would be in our best interest. We believe there will be no issue in meeting the necessary requirement for said permit and will file the appropriate paperwork promptly.

Thank you for the NRD information but I have already been in contact with them and had a site visit from one of their agents. Fingers crossed everything will go well.

Just some backstory, when the pandemic started, coupled with the pending zoning ordinances change, we needed to move my mother over there quickly as she is a nurse at the VA and in the "High-risk" age group. She was being exposed to COVID often and we needed her to quarantine safely away from us. The interior work was completed before the deadline and since the building already had siding I was able to push that off until later in the year. We aren't trying to "get away" with anything, we just knew that with the new zoning regulations there was no way we could have fiscally done this project and hence the frantic pace at which I made it happen. Now with Callie and I expecting our first child and the pandemic still surging It has been very comforting having her in a safe space.

I look forward to hearing from you as we want to keep everything above board.

After two years without a response, on January 28, we received a letter stating the same issues which we have previously responded to with the addition of the zoning of the garage. This letter asked us to email if we had any questions, which we did. On February 9, 2023 we wrote another email to karen.hewitt@pomfretvt.us stating:

Good Morning,

I've been combing through my original purchase of this property and haven't come across anything about the building in question being zoned as an auto repair shop. When purchased, it was " NT Carpentry & Painting" which I'm assuming would have been in compliance or you would have surely informed them of the violation. I've reached out to my lawyer for clarification on whether this was provided or was missed.

I'm also having trouble finding the definitions and regulations of a "home auto body repair shop" circa 1984. If you could provide me with such details it would be helpful as it provides an interesting business opportunity (Broad Brook could use an auto shop). In particular if this allows for the sale of used cars and parts.

Thank you for your time,

We never received a response from either email that we sent trying to understand the violations and how to best proceed. Clearly the town has not responded to us in our attempt to understand and respond to the violations.

After researching our closing documents, and reaching out to the lawyer involved, this zoning was not disclosed during the discovery process in purchasing the home in 2017.

This letter is an appeal for the cited violations, as well as a request for more information on the appeal process and the regulations on the building as it is currently zoned (home business).

Sincerely,

Michael Zube  
Dr. Callie Brusegaard Zube



Michael Zuke  
6150 Broad Brook Rd  
S. Huntington VT 05068



7022 2410 0000 3740 9867

WHITE RIV JCT VT 050  
MAR 2023 PM 2 L

Pomfret Zoning Board of Adjustment  
CO: Zoning Administrator  
5218 Pomfret Rd.  
W. Pomfret, VT 05053

RETURN RECEIPT  
REQUESTED

RDC 99



05053



R2305K131309-02

\$8.13

U.S. POSTAGE PAID  
FORM LETTER  
BETHEL, VT  
05032  
MAR 30, 23  
AMOUNT

05053



# Exhibit F

## TOWN OF POMFRET ZONING BOARD OF ADJUSTMENT

Meeting Minutes  
May 11, 2023

MEMBERS PRESENT: Alan Blackmer (Chair), Susan Burgess, Seth Westbrook, and Benjamin Brickner (via Zoom)

MEMBERS ABSENT: Shaun Pickett

OTHERS PRESENT: Karen Hewitt Osnoe (Zoning Administrator), Michael Zube and Callie Brusegaard Zube (appellants), and John Moore.

This meeting of the Zoning Board of Adjustment (ZBA) is to hear an appeal by Michael and Callie Brusegaard Zube of the Notice of Violation (NOV) dated March 23, 2023, issued by Karen Hewitt Osnoe, Zoning Administrator (ZA), alleging violations of the Town of Pomfret Zoning Ordinance (Ordinance) and Flood Hazard Area Regulations (Flood Regulations).

The hearing was called to order by Alan Blackmer at 7:02 PM.

At the outset of the hearing, the ZBA afforded those persons wishing to achieve status as an interested person pursuant to 24 V.S.A. § 4465 an opportunity to demonstrate that the relevant criteria have been met. Abutters Sarabeth Hurst and Payton Hurst were granted interested person status based on their email request dated May 5, 2023.

Michael Zube, Callie Brusegaard Zube and Karen Hewitt Osnoe were sworn in.

ZBA Chair Blackmer explained that the NOV reflects the town's effort to enforce its land use regulations. The ZA described the Notice of Violation and the alleged violations of the Ordinance and Flood Regulations described therein.

The development in question is the conversion of a garage into an accessory dwelling unit, the structure of which is entirely within the Special Flood Hazard Area of Broad Brook and the setback required by the Ordinance, and partially within the town right-of-way along Broad Brook Road.

The appellants explained their understanding of the Ordinance and Flood Regulations, in particular that the prior Pomfret Zoning Ordinance was still in effect at the time the alleged violations occurred, and that the work constituting the alleged violations did not constitute a "substantial improvement" under the Flood Regulations. For these reasons, the appellants did not believe a zoning permit was necessary.

The ZBA asked the appellants to provide additional information regarding the timing and cost of the improvements that were made.

Alan Blackmer moved and Seth Westbrook seconded that the meeting be adjourned. The motion carried unanimously. The meeting was adjourned at 9:18 PM.

TOWN OF POMFRET, VERMONT  
APPEAL OR APPLICATION TO BOARD OF ADJUSTMENT

(Type or Print 6 Copies)

The undersigned hereby requests a zoning permit for the following use, to be issued on the basis of the representations contained herein. Permit voided in the event of misrepresentation, substantial inaccuracy or failure to undertake construction within one year of approval. If more space needed, attach additional sheets.

Appellant NEIL T. ALLEN, JR. Phone 763-7123

Address Rt. #2 - S. Royalton, Vermont Zip Code 05068

Landowner (where appellant is lessee or agent) \_\_\_\_\_

Location of Property North Pomfret, Vermont

Type of application or appeal (check one)

- Application for a non-conforming use permit under Part 7 of Ordinance
- Appeal from decision of Administrative Officer. ( a copy of this appeal must be filed with the Administrative Officer.)
- Appeal for a variance.

Nature of work (check) New Construction \_\_\_ Accessory Bldg. \_\_\_ Other \_\_\_  
Structural Alteration \_\_\_ Agricultural \_\_\_ New Home Business X

Existing use and occupancy Garage Proposed use and Occupancy Small Auto Body Repa Shop

Lot size 52.4 Acres Frontage on public road 972 ft.

Building length 26' 4" Width 28 feet No. of stories Two

Setback from center of road 21' 6"

Setback from property line at rear 3,000' side 440' side 532'

Type of water system Spring fed Type of sewerage system None

An accurate plot plan showing the location of the property and buildings or work areas must be attached to each copy of this application.

Reason for appeal Want to use existing garage as New Home Business; garage does not meet set back requirements from road.

The applicant (appellant) should provide a brief accurate description, including the location of the property; dimensions of new construction, if any; type of construction, as frame, concrete, brick, etc; area of lot; setback from road and nearest property line; lot frontage on road; proposed use of land and/or structures; and any other information Applicant (appellant) believes would help the Board of Adjustment to a clear and complete understanding of just what the applicant wishes to do. A precise plan of the developed plot must be submitted. If new buildings are to be constructed or old ones altered, sketches must show both ground plan and elevation.

Date 7-18-84 Signature of Applicant (Appellant) Neil T. Allen Jr.

FOR USE BY BOARD OF ADJUSTMENT

Date of Hearing 9/16/84 Fee Paid yes Notices of Hearing Mailed to \_\_\_\_\_

Approved yes Denied \_\_\_\_\_ on the basis of the following determinations or conditions: no employees, no more than three cars in yard.

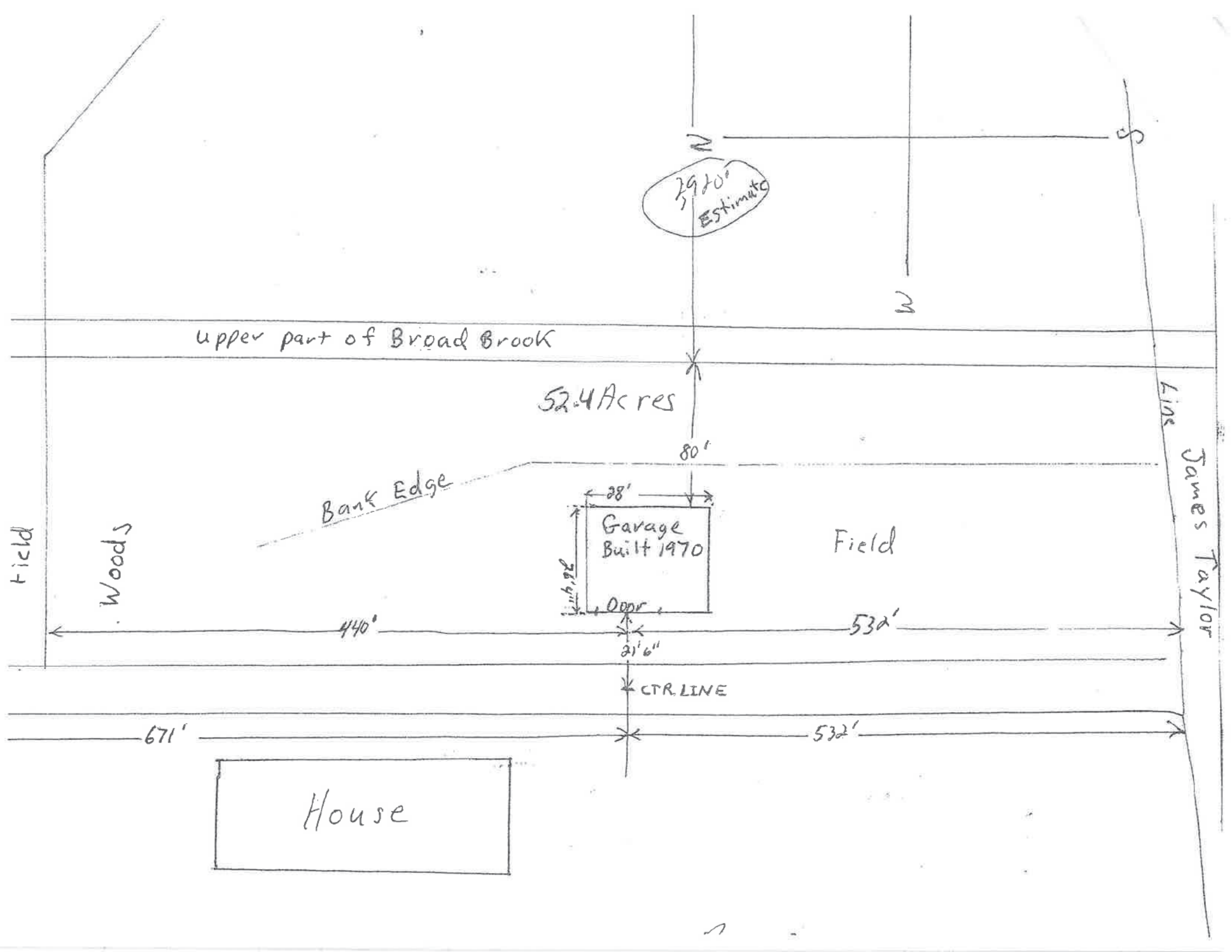
Date of Entry 9/16/84 Secretary, Board of Adj. Francis R. Manning

FOR USE BY ADMINISTRATIVE OFFICER

Date Posted 8/23/84 Permit No. 472 Date Issued 8-23-84

Effective Date of Permit (unless appeal is filed with county court) 9-15-84

Signed Dea C. Lewis  
Administrative Officer



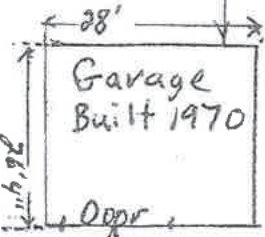
$2920'$   
Estimate

upper part of Broad Brook

52.4 Acres

80'

Bank Edge



Field

Line James Taylor

440'

532'

21' 6"

CTR. LINE

671'

532'

