

TOWN OF POMFRET
Zoning Board of Adjustment

Memorandum of Decision

Permit Application: ZP23-30
Property Address: 35 Wayside Road, Pomfret
Parcel No.: 4802
Parcel Size: 2.19 +/- acres

Property Owner: ABRA LLC
35 Wayside Road
Pomfret, Vermont

Applicant: Abracadabra Holding Co.
35 Wayside Road
Pomfret, Vermont

This Memorandum of Decision (this “Decision”) is issued by the Pomfret Zoning Board of Adjustment (the “ZBA”), in connection with zoning permit application ZP23-30 (the “Current Application”), by Abracadabra Holding Co., a Vermont corporation (“Applicant”).¹

The Current Application seeks to amend existing zoning permit ZP22-05 (as previously amended by zoning permit ZP22-35) to allow additional conditional uses on Parcel 4802 located at 35 Wayside Road (the “Property”), both within and outside of the building located there (the “Building”).

For the reasons discussed below, and subject to the substantial conditions and limitations specified below, the ZBA approves the Current Application and directs the Zoning Administrator (the “ZA”) to issue a zoning permit consistent with this Decision.

I. Procedural History

A. Prior Applications and Decisions

1. Zoning Permit Application ZP22-05

ABRA LLC, a Vermont limited liability company (the “Property Owner”), affiliate of Applicant and owner of the Property, submitted a zoning permit application (ZP22-05) dated April 4, 2022 (the “First Application”). In the First Application, the Property Owner requested approval to convert the Property (formerly owned and operated by the River Bend Home and Garden Supply Company (the “Prior Owner”)) into a facility for roasting and packaging of wholesale and retail coffee and for cold

¹ The Current Application was submitted in the name of “Abracadabra Coffee Co.,” which does not correspond to any business registered with the Corporations Division of the Vermont Secretary of State. “Abracadabra Coffee” is an assumed business name registered by Abracadabra Holding Co. The ZBA understands Abracadabra Holding Co. to be the operating company of the business associated with the Contemplated Uses (as defined below) and thus deems the Current Application to have been submitted by that company.

brewing coffee for kegs and wholesale coffee. The Property Owner also sought approval for a kitchen to supply baked goods for sale at its specialty coffee shop then located in Woodstock.

The First Application was conditionally approved on May 5, 2022, in a decision (the “First Decision”) that was limited to the uses described in the preceding paragraph. The First Decision noted that “[a]ll future uses as detailed on [the First Application] (of a small café to serve the community, seasonal events with live music, and serving of baked goods and small plates prepared on site)” were neither reviewed nor authorized by the ZBA, and that the Property Owner would need to apply for a permit amendment before undertaking those uses.

Proceedings related to the First Application are more particularly described in the First Decision and the hearing minutes included therein, which are available on the on the ZBA’s page (the “ZBA Webpage”)² on the Town of Pomfret’s website and are incorporated by reference herein.

2. Zoning Permit Application ZP22-35

The Property Owner submitted a second zoning permit application (ZP22-35) dated October 10, 2022 (the “Second Application”). In the Second Application, the Property Owner requested approval to sell prepared coffee, baked goods, retail coffee and related merchandise to the public between the hours of 7 am to 5 pm, 7 days a week at the Property (“Normal Business Hours”). The Property Owner also requested approval for two business signs in the same locations as the Prior Owner’s business signs and limited outdoor and indoor events for private functions.

The Second Application was conditionally approved on December 1, 2022, in a decision (the “Second Decision”) that was limited to the uses described in the preceding paragraph. The Second Decision limited the combined indoor and outdoor seating to 30 patrons during Normal Business Hours, and to 65 patrons during special events (“Special Events”) that in turn were limited to 12 per calendar year, with all activity associated with such events to cease no later than 9 pm.

Proceedings related to the Second Application are more particularly described in the Second Decision and the hearing minutes included therein, which are available on the ZBA Webpage and are incorporated by reference herein.

Applicant and the Property Owner are now operating under the permit issued pursuant to the First Decision, as amended pursuant to the Second Decision.

B. Current Application

Applicant has applied to amend its existing zoning permit to allow up to 70 patrons during Normal Business Hours and up to 300 patrons during Special Events. Applicant also seeks to serve prepared food for on-site consumption during breakfast and lunch hours. Applicant also seeks to serve alcohol with those meals on weekends and during Special Events, which are held on the rear lawn during fair weather and inside the Building during inclement weather. The new uses described in this paragraph, collectively, are referred to herein as the “Contemplated Uses.”

The Current Application, dated November 10, 2023, was referred by the ZA to the ZBA on December 10, 2023, for conditional use review. Applicant amended the Current Application on January 3,

² See Town of Pomfret, Zoning Board of Adjustment, *available at* <https://pomfretvt.us/index.php/dep/planning-zoning/zo>.

2024, to clarify the Contemplated Uses. The Current Application and all supporting documents are available on the ZBA Webpage. On December 21, 2023, notice of a public hearing was published in *The Vermont Standard*. On December 28, 2023, notice of the same was posted at the Town Clerk's Office, North Pomfret Post Office, and Teago General Store. The ZA also timely notified the abutters of the site visit and hearing as required by 24 V.S.A. 4464. Notice also was given via Vital Communities' Community Discussion List for Pomfret (commonly known as the "listserv") on January 8, 2024.

1. Site Visit and First Hearing

Following a site visit at the Property on January 9, 2024, at 5:30 pm, the ZBA considered the Current Application at a public hearing (the "First Hearing") on January 9, 2024, at 6:30 pm at the Pomfret Town Office and via Zoom. Present at the site visit were ZBA members Benjamin Brickner, Kyle Hansen, Lindsay Hyde, and Shaun Pickett. Also present were Antoinette Hunt, Clint Hunt, and Sarah Yetter (each a corporate officer of Applicant), Jack Willey (Applicant's baker and parent of a corporate officer), Bailey Markwell (abutter), Gerry Hawkes, Jen Moses, and the ZA.

Near the conclusion of the First Hearing, the ZBA determined it could not reach a decision on the Current Application without additional information and adjourned the hearing to January 30, 2024, to allow Applicant time to prepare and submit the same. The ZBA sent Applicant a letter dated January 12, 2024, detailing the additional information sought. By email to ZBA member Benjamin Brickner on January 23, 2024, Applicant requested a further adjournment to late February to allow additional time to gather the requested information.

Proceedings related to the First Hearing are more particularly described in the hearing minutes approved on January 14, 2024, which are available on the ZBA Webpage and are incorporated by reference herein. These minutes identify those persons who participated in the First Hearing.

2. Second Hearing

The ZBA reconvened the public hearing (the "Second Hearing") on January 30, 2024, at 6:30 pm at the Pomfret Town Office and via Zoom. During the Second Hearing, ZBA member Benjamin Brickner described Applicant's request for a further adjournment. The ZBA then further adjourned the hearing to February 29, 2024.

Proceedings related to the Second Hearing are more particularly described in the hearing minutes approved on March 4, 2024, which are available on the ZBA Webpage and are incorporated by reference herein. Applicant submitted additional materials to the ZBA on February 23, 2024, which are available on the ZBA Webpage and are incorporated by reference herein.

3. Third Hearing

The ZBA reconvened the public hearing (the "Third Hearing") on February 29, 2024, at 6:00 pm at the Pomfret Town Office and via Zoom. Proceedings related to the Third Hearing are more particularly described in the hearing minutes approved on March 27, 2024, which are available on the ZBA Webpage and are incorporated by reference herein. These minutes identify those persons who participated in the Third Hearing.

At the conclusion of the Third Hearing, the ZBA closed the hearing, held multiple non-public deliberative sessions, and thereafter reached this Decision.

II. Findings of Fact

The ZBA received written submissions and heard testimony from more than a dozen parties on a variety of subjects related to the Current Application. The ZBA evaluated the parties' submissions and testimony; the findings of fact described below reflect the evidence the ZBA found most relevant and compelling. All submissions and testimony are available on the ZBA Webpage.

A. Septic System

The Property Owner holds a Wastewater System and Potable Water Supply Permit (No. WW-3-0228-1) issued November 28, 2023 by the Agency of Natural Resources, Department of Environmental Conservation, for a septic system corresponding to a 70 seat café with 5 employees (the "New Septic System").³ The New Septic System is expected to be completed imminently and will be located on the northwest side of the Building.

B. Occupancy

While Applicant has requested for zoning purposes an increase in occupancy to 70 patrons during Normal Business Hours, the evidence suggests that this level of occupancy will occur only occasionally, during peak periods of business.

In connection with the Second Application, Applicant submitted architectural plans dated October 17, 2022, for the Building. These plans specify a maximum occupancy of 48 persons on the first floor and 22 persons on the still unfinished second floor, for a total indoor occupancy of 70 persons when the second floor is finished. This was the basis of the New Septic System design. However, approximately 22 persons can be accommodated seasonally in the covered seating area attached to and outside of the Building. This was the basis for its 70-person occupancy request during Normal Business Hours, despite the second floor still being unfinished.

C. Parking

Applicant recently expanded its parking area located southeast of the Building. The expanded parking area measures approximately 200 feet by 50 feet, which Applicant estimates can accommodate up to 40 standard size vehicles. This estimate is supported by Section 4.2.19 of the Zoning Ordinance adopted on May 6, 2020 (the "Zoning Ordinance"), which requires parking spaces to be at least 9 feet wide and 18 feet long.

Applicant expanded its parking area in response to concerns raised in 2023 regarding Special Events, during which patrons parked in the traveled way of Wayside Road and on the shoulder of State Route 12. Applicant also entered into verbal agreements with the owners of two properties within one-quarter mile of the Property for overflow parking on their lands. Employee parking will be provided in a smaller area located northwest of the Building once the New Septic System is complete.

³ See Agency of Natural Resources, Department of Environmental Conservation, Wastewater Regional Office Permit Search, Scanned documents for Project ID: WW-3-0228-1, *available at* <https://anrweb.vt.gov/DEC/WWDocs/DirectoryDisplay.aspx?P=147008>.

D. Traffic

Applicant's Property is located on Wayside Road, an unpaved Class 3 town highway, across a town bridge over Gulf Stream and approximately 150 feet from State Route 12.

Applicant's existing business creates more traffic along this 150-foot segment than the businesses previously located at the Property. One witness submitted a spreadsheet-based model calculating anticipated vehicles per day making different assumptions about patron turnover and patrons per vehicle, but in each case assuming maximum occupancy during all Normal Business Hours. As noted in Section II.B above, maximum occupancy will occur only during peak periods of business, not at all times. As a result, traffic impacts will be more modest than suggested by the model.

Following concerns raised regarding Special Events at which traffic conflicts occurred, Applicant utilized parking attendants during later events to manage traffic and parking. Applicant stated it will continue to utilize parking attendants for future Special Events.

E. Rural Character

The Property is located in Pomfret's rural district as defined in the Zoning Ordinance (the "Rural District") and is surrounded by a mix of residential and farm properties engaged in moderate intensity agricultural uses. The Property has been in non-exclusive agricultural commercial use for several decades, is located within 150 feet of a state highway, and is one-quarter mile from another property engaged in non-exclusive agricultural commercial use.

The ZBA received two petitions from members of the public. The first included 51 unique signatures of Pomfret residents and Applicant's neighbors. Petitioners stated that the Contemplated Uses "[do] not fit" the rural residential area and would "set a dangerous precedent" for future development. Similar concerns were expressed in public comments that the proposed expansion would adversely affect development patterns in the Rural District at large. The second petition included 92 unique signatures of area residents (about one-third being Pomfret residents or Applicant's neighbors) expressing general approval of the Contemplated Uses.

Applicant's business offers products produced locally and does so from within a converted farm building that has retained its farm-era exterior appearance, in keeping with the rural aesthetic of the area.

F. Public Safety

One witness raised safety concerns around alcohol service, traffic conflicts, and adherence to occupancy limits. Alcohol was served at Special Events in 2023 and the ZBA is not aware of any safety incidents occurring as a result. Applicant stated it will install directional signage to reduce the incidences of U-turns on Wayside Road and has applied to the Agency of Transportation for business directional signage in both directions on State Route 12. Applicant also stated it will develop a plan to limit and monitor event attendance using such methods as ticketed attendance, hiring parking managers and crowd monitors.

G. Changed Circumstances

One witness questioned whether the ZBA should entertain the Current Application at all, noting that Section 6.6.4 of the Zoning Ordinance limits the circumstances in which permit amendments are appropriate, and stating that none of the enumerated circumstances were present.

Applicant responded that the New Septic System should be considered a change in technology contemplated by Section 6.6.4. Applicant also noted that the ZA and ZBA previously indicated to Applicant it could return later for permit amendments.⁴

As explained in Section IV.A below, it is not necessary for the ZBA to determine whether the New Septic System constitutes a change in technology or whether any other circumstance described in Section 6.6.4 has occurred.

III. Applicable Regulations

A. Pomfret Zoning Ordinance

Section 2.2.2.5 of the Pomfret Zoning Ordinance provides that any land use in the Rural District that is not exempt, permitted, or prohibited is a conditional use requiring ZBA approval following a public hearing.⁵

The Property is located in the Rural District and, as explained in Section IV.B.1 below, the Contemplated Uses do not come within any of the exempt, permitted, or prohibited uses listed in the Zoning Ordinance for that district. As a result, these are conditional uses requiring approval following a ZBA hearing and are subject to all applicable development standards in Article 4 of the Zoning Ordinance, including those discussed in Section IV.C below.

B. Pomfret Town Plan

Section 4.2.1 of the Zoning Ordinance requires that conditional uses be “consistent with applicable mandatory provisions of the Pomfret Town Plan” adopted August 17, 2016 (the “Town Plan”).⁶

Chapter 4 of the Town Plan sets forth land use goals and policies intended to “guide land use decisions in a manner that balances existing and future uses” and “[p]romote economic development while balancing the Town’s preservation goals.” To the extent these goals and policies are described with mandatory language in the Town Plan, conditional uses must be consistent with the same.

⁴ See email from the ZA to Applicant dated April 4, 2022 (explaining that “the ZBA will just be ruling [in its First Decision] on phase 1 of the project of roasting and packaging of retail and wholesale coffee. With the other phases, when you are ready to start, we can do an amendment of the original permit”) and Section V.E of the First Decision (noting that “Applicant must amend the permit authorized by this [First] Decision or apply for a new permit before undertaking [additional] uses”).

⁵ See Pomfret Zoning Ordinance, adopted May 6, 2020, *available at* https://pomfretvt.us/index.php/download_file/view/1280/225/.

⁶ See Pomfret Town Plan, adopted August 17, 2016, *available at* https://pomfretvt.us/index.php/download_file/view/418/225/.

IV. Conclusions of Law

A. Amendment Preclusion

Section 6.6.4 of the Zoning Ordinance enumerates the circumstances in which amendments to material terms and conditions of prior permits are appropriate. These circumstances include changes in factual or regulatory circumstances, changes in the project not reasonably foreseeable to Applicant, and changes in technology. The purpose of this section is to balance the competing policies of flexibility and finality in the local permitting process.

The record includes communications between Applicant and the ZA informing Applicant it could develop its permit “in phases.” Similar language was included in the ZBA’s First Decision. The ZBA understands that Applicant relied on this language when preparing the Current Application. We conclude Applicant’s reliance here was reasonable under the circumstances and that to preclude the Current Application from consideration on the merits would be inequitable.

For this reason, the ZBA need not resolve the questions of whether the New Septic System constitutes a change in technology or whether any other circumstance described in Section 6.6.4 has occurred. Now that this issue has been raised to Applicant’s attention, however, the ZBA anticipates that any future permit amendment will require a resolution of these questions as the inequity described above will no longer be present and the need for finality will be more pressing.

B. Contemplated Uses Analysis

1. Conditional Uses

The Contemplated Uses are a mix of retail (sale of food for on-site consumption) and industrial (preparation of food) uses. The former also are commercial uses and, in the Rural District, all of the foregoing are conditional uses.

Section 2.2.2.3 of the Zoning Ordinance prohibits primary retail and heavy industrial uses in the Rural District. Primary retail is defined as “a use whose primary use is the supply of merchandise . . . for use off site. . . . Primary retail does not include . . . restaurants.”

“Heavy Industrial” is defined as “[t]he processing or assembly of . . . products where such activity generally results in off-site impacts, such as noise, and where such activity and storage of materials or products are typically not fully enclosed inside a building or screened from the abutting properties.” By contrast, “Light Industrial,” which is not prohibited in the Rural District, is defined as “involving . . . assembly, processing, manufacturing, packaging of products, or storage and warehousing of materials or goods, conducted primarily within a building with few off-site impacts other than trucking.”

“Commercial” uses also are not prohibited in the Rural District and are defined to include “[a]ny building, structure, or land which is used for business or service and is conducted for financial gain, but excluding a home occupation, home business, or industrial.”

The Contemplated Uses include some features of a restaurant, which is explicitly excluded from the definition of “primary retail” (a prohibited use in the Rural District), and others that are “light industrial” due to their limited off-site impacts. The examples given in the Zoning Ordinance for “light industrial” and “heavy industrial” uses bolster this conclusion. The Contemplated Uses are

closer in nature to food processing (an example of light industrial use) than they are to concrete production or solid waste transfer (examples of heavy industrial use).

Accordingly, the Contemplated Uses do not come within the definitions of “primary retail” or “heavy industrial,” either of which would be prohibited in the Rural District. Sale of food and beverages prepared on-site for consumption and related Special Events do, however, come within the definitions of “light industrial” and “commercial,” which are conditional uses in the Rural District.

2. Comparable Uses

The ZBA is aware of only one other business in the Rural District that prepares and sells food for on-site consumption: the restaurant at Cloudland Farm. In 2009, this business was deemed exempt from permitting under Act 250 pursuant to 10 V.S.A. 6001 and from local zoning pursuant to 24 V.S.A. 4413 as the restaurant was determined to be a farming or agricultural practice on the subject property.⁷

No such exemptions are available here as the Contemplated Uses are neither farming nor agricultural practices. This shifts the analysis to whether these uses are permitted or prohibited. As explained in Section IV.B.1 above, the Contemplated Uses are neither permitted nor prohibited and thus are conditional uses subject to applicable development standards.

Bolstering this conclusion is the existing approved commercial use about one-quarter mile from the Property. On the Edge farmstand located at 49 State Route 12 was approved by the ZBA in 2005 “to sell home and garden non-agricultural related items.” The related ZBA decision made the following findings of fact:

1. The Town Plan suggests more small businesses related to the rural and agricultural landscape.
2. Traffic and parking concerns have been addressed; thus no increase in Town services.
3. Town needs more craft and agriculturally related small businesses to provide local economic opportunity and employment.⁸

These findings apply to the Contemplated Uses with similar force. While the Town Plan has been revised since On the Edge’s application, the current plan continues to “[e]ncourage the development of small businesses . . . in a manner that conforms to overall goals of keeping Pomfret rural and residential and which will not require Town expenditures on infrastructure.”

While Applicant’s business is not agriculturally related, it is “small” and “craft” and already provides local economic opportunity, including employment of Pomfret residents and hiring of Pomfret-based businesses. Moreover, as described in Sections II.C and II.D above, Applicant has

⁷ See Agency of Natural Resources and Environmental Board, Project Review Sheet signed by the District Coordinator on June 1, 2009, *and* Zoning Permit Application 09-11, dated June 23, 2009, and approved June 29, 2009, both on file at the Pomfret Town Office.

⁸ See Zoning Permit Application 05-15, dated May 18, 2005, and approved June 28, 2005, *and* the related decision of the ZBA dated July 6, 2005, both on file at the Pomfret Town Office.

taken (and will be required to continue taking in accordance with Section VI below) steps to address parking and traffic concerns created by its business.

The factual and geographical proximity of On the Edge and its permitted uses reinforce the ZBA's conclusion that the Contemplated Uses are allowable in the Rural District as conditional uses, subject to all applicable development standards in Article 4 of the Zoning Ordinance.

C. Development Standards

Subject to the conditions and limitations specified in Section VI below, the Contemplated Uses will meet the applicable general standards in Section 4.1 of the Zoning Ordinance and the applicable general conditional use approval standards in Section 4.2 of the Zoning Ordinance. The standards most pertinent to this Decision are discussed below.

As all other uses and the Building itself are lawfully existing as of the date hereof, the provisions of Section 4.4 of the Zoning Ordinance apply and those uses may continue indefinitely subject to the conditions provided in Section 4.4.2 of the Zoning Ordinance.

1. Parking (Section 4.1.12)

As noted in Section II.C above, Applicant recently expanded its parking area to accommodate up to 40 standard size vehicles. Pursuant to Section 4.1.12 of the Zoning Ordinance, this is sufficient for up to 120 patrons. Parking for employees will be provided in a separate lot located northwest of the Building.

While the ZBA appreciates that Applicant's neighbors have offered overflow parking on their lands, we need not consider these arrangements as parking available on the Property already exceeds the amount required to accommodate the increased occupancies allowed by Section VI.B below.

2. Consistency with Town Plan (Section 4.2.1)

As noted in Section IV.B.2 above, the Town Plan continues to encourage the development of small businesses, particularly those that are "appropriately scaled . . . with a secondary retail component." The Town Plan also prohibits "new commercial or industrial activities not associated with home-based businesses . . . in the rural areas," but provides exceptions in these areas for "new home-based businesses, secondary retail, [and] existing commercial or industrial activities."

While the Zoning Ordinance does not define "secondary retail" it does define "primary retail," which explicitly excludes restaurants, suggesting that restaurant-type retail uses should be considered "secondary retail." The Town Plan defines neither term but does describe "primary retail" as having "high intensity land uses" akin to "commercial-scale utility projects [and] large warehouses."

The Contemplated Uses are not akin to commercial-scale utility projects or large warehouses. Nor are they new commercial or industrial activities. They are extensions of Applicant's existing commercial and light industrial activities – the sale of food and roasting of coffee – and follow from a longer history of commercial and light industrial activities at the Property by the Prior Owner (a home and garden supply company) and the Prior Owner's predecessor (a small engine servicing and repair shop).

3. Character of Area (Section 4.2.3)

The ZBA appreciates petitioners' concerns that the Contemplated Uses are incompatible with the character of Applicant's neighborhood. When subject to the conditions and limitations specified in Section VI below, however, these uses are neither unprecedented nor out of character for the immediate area.

Thirty-three years ago, the Building (then described as an "old barn" owned by the Lewis family)⁹ was sold and converted to commercial use. Since then, the Building and Property have changed owners and uses multiple times, housing a small engine servicing and repair shop at one point and more recently a home and garden supply retail business.

With this history and context in mind, the ZBA concludes that subject to the conditions and limitations specified in Section VI below, the Contemplated Uses will fit in with and will not have an undue adverse effect on the rural character of the immediate area. The exterior aesthetic of the Building in which these uses will occur is consistent with neighboring structures and the retail aspects of the Contemplated Uses are similar to those historically present at the Property and those currently present at another nearby commercial property.

The ZBA also appreciates the concerns expressed about the Contemplated Uses' effect on the predominantly rural residential and agricultural character of Pomfret itself. These concerns are mitigated by the distinctive characteristics of Applicant's immediate neighborhood. The Property's location is uncommon for Pomfret in that it is adjacent to a state highway, has been in non-exclusive agricultural commercial use for decades, and is located near another non-exclusive agricultural commercial use property. Beyond the segment of State Route 12 near the Property, there are no other areas of Pomfret located adjacent to a state highway. Outside the South Pomfret village area, there are no other areas of Pomfret with multiple non-exclusive agricultural commercial use properties. As a result, any precedent for future development created by this Decision will be strictly limited in its geographic reach.

4. Traffic (Section 4.2.4)

The Property's proximity to State Route 12 – less than 150 feet away – will limit traffic impacts to one town bridge and a short segment of one town road. During Normal Business Hours, traffic impacts will be modest. The middle case scenario presented in the traffic model described in Section II.D above calculates 110 vehicles per weekday and 128 vehicles per weekend day, but this assumes maximum occupancy during all Normal Business Hours. The actual vehicle count will be less.

Traffic impacts during Special Events will be more concentrated in time but otherwise comparable to Normal Business Hours. The total vehicle count at a Special Event – when adjusted to reflect the occupancy allowed in Section VI.B below – is modeled to be only about one-third of a normal business day, albeit occurring over only about half as many hours. Even still, this impact, occurring on average once per month, will not create an undue adverse effect on the town highway infrastructure, nor undue safety hazards.

⁹ See Deed by Gordon Lewis Farm, Inc., grantor, to Prosper Lawn and Garden, grantee, dated November 18, 1991, and recorded November 18, 1991, in Book 40, Page 382 of the Pomfret Land Records.

5. Impacts on Surrounding Uses (Section 4.2.15)

The ZBA appreciates the concerns raised by Applicant's immediate neighbor to the southeast regarding the Contemplated Uses' impact on the use of their property. The ZBA has taken these concerns into account when fashioning the conditions and limitations described in Section VI below. Taken together, they substantially reduce the scope of the Contemplated Uses approved by this Decision. Subject to these conditions and limitations, these uses will not create dangerous, injurious, or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties.

6. Emergency Service Access (Section 4.2.16)

The Property's proximity to State Route 12 will facilitate emergency service access to the Property during Normal Business Hours. Subject to the conditions and limitations specified in Section VI below, in particular the planning requirement in Section VI.H, the ZBA expects that emergency service access will be satisfactory to town emergency services during Special Events as well.

7. Visual Impacts (Section 4.2.20)

Subject to the conditions and limitations specified in Section VI below, in particular the screening requirement in Section VI.I below, the Contemplated Uses will not have an undue adverse visual effect as viewed from public rights-of-way or adjoining properties. The ZBA is particularly mindful of these uses' visual impact on the residential property located immediately southeast of the Property and has tailored the screening requirement accordingly.

V. Decision

Based on information presented to the ZBA, the findings and conclusions described above, and subject to the conditions and limitations specified in Section VI below, conditional use approval is **granted** for the Contemplated Uses and a zoning permit is **authorized** for such uses on the Property. The ZA is directed to issue a permit consistent with this Decision.

VI. Conditions and Limitations

To ensure the Contemplated Uses meet the applicable development standards in Article 4 of the Zoning Ordinance, this Decision is subject to the following conditions and limitations:

- A. The Contemplated Uses approved by this Decision shall conform in all material respects with the Current Application materials including Applicant's submissions, plans, written representations to the ZBA and testimony, 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. Combined indoor and outdoor occupancy at the Property is not to exceed seventy (70) patrons during Normal Business Hours or Special Events.

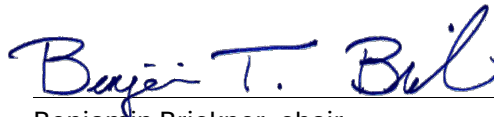
The foregoing occupancy increases shall become effective upon completion of the New Septic System and installation of sanitary facilities necessary to accommodate such number of patrons and shall remain in effect even if the second floor of the Building is later finished.

- C. All activity associated with Special Events shall cease no later than the earlier of 9:00 pm and one-half hour after sunset.
- D. The sale and service of beer, wine and/or spirits is regulated by the Department of Liquor and Lottery's Division of Liquor Control and the Pomfret Selectboard members sitting as local liquor control commissioners. Should Applicant be granted a license to sell or serve any of the same at the Property, such sale and service shall be limited to the hours of 7 am to 2 pm on Saturdays, Sundays and state or federal declared holidays and during Special Events.
- E. The sale and service of food and beverages for consumption on the Property shall be limited to the hours of 7 am to 2 pm. This limitation does not apply to the coffee or baked goods approved by the Second Decision.
- F. All parking during Normal Business Hours and during Special Events shall be located on the Property. Overflow parking on the traveled way of any town or state highway, or the shoulder of any state highway is not permitted.
- G. Applicant shall reimburse the Town of Pomfret for contracted emergency services required for Special Events patrons if not reimbursed by the patron. Reimbursement by Applicant to the Town of Pomfret shall be within three months of the date on which payment for such amounts is due from the Town of Pomfret.
- H. Prior to commencing the Contemplated Uses, to facilitate Applicant's compliance with the conditions and limitations described herein, Applicant shall develop, submit to the ZA, and thereafter maintain one or more plans to address public safety, traffic, and parking during Special Events. Such plan(s) shall include provisions for (1) crowd monitoring, (2) safe and orderly traffic flow to and from the Property, (3) emergency vehicle access, (4) limitation of patronage to the occupancies permitted herein, and (5) prevention of parking in areas described in Section VI.F above or that interfere with entry to or egress from other properties. Applicant shall consider utilizing crowd monitors, parking/traffic attendants, and ticketed attendance for Special Events to ensure occupancy limits are met and public safety is maintained.
- I. Prior to commencing the Contemplated Uses, Applicant shall plant trees or other native vegetation sufficient to provide year-round visual screening for the benefit of the residential property located immediately southeast of the Property. Such trees and vegetation shall be integrated into the surrounding landscape and sufficient to substantially screen the parking area and rear lawn but need not fully screen the Building.
- J. Prior to commencing the Contemplated Uses, Applicant shall install non-illuminated directional signage consistent with Section 1.4.8(b) of the Zoning Ordinance for the purpose of maintaining safe and orderly traffic flow to and from the Property.
- K. All conditions and limitations described in the First Decision and the Second Decision remain in full force and effect, except as expressly modified herein.

- L. The Contemplated 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.
- M. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses, or activities (including, without limitation, any finishing of the Building's second floor) with applicable zoning bylaws was not considered by the ZBA and is not addressed by this Decision.
- N. By acceptance of this Decision and the permit authorized herein, Applicant for itself, its successors, assigns and affiliates (including, without limitation, the Property Owner), agrees to be bound by this Decision and the conditions and limitations described herein.

* * * * *

This Decision approved at Pomfret, Vermont, as of this 2nd day of April, 2024, and signed by the chair of the Pomfret Zoning Board of Adjustment on its behalf pursuant to 24 V.S.A. 1141.



Benjamin Brickner, chair
Zoning Board of Adjustment

ZBA members Benjamin Brickner, Susan Burgess, Kyle Hansen, Lindsay Hyde, and Seth Westbrook voted in the affirmative. ZBA member(s) Shaun Pickett and Jeffry White voted in the negative.

NOTICE: This Decision may be appealed to the Environmental Division of the Superior Court by an interested person who participated in the proceedings 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.