

TOWN OF POMFRET
Zoning Board of Adjustment

Memorandum of Decision

Permit Application: ZP24-02
Property Address: 90 Wild Apple Road, Pomfret
Parcel No.: 3302
Parcel Size: 0.49 +/- acres

Property Owner: Robert Crean
90 Wild Apple Road
Pomfret, Vermont

Applicant: Robert Crean
90 Wild Apple 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 ZP24-02 (the “Application”) by Robert Crean (“Applicant”).

The Application seeks a waiver of dimensional requirements pursuant to Section 3.2 of the Zoning Ordinance adopted on May 6, 2020 (the “Zoning Ordinance”) with respect to the minimum setback from the centerline of a public right-of-way (in this case, Wild Apple Road) on Parcel 3302 located at 90 Wild Apple Road (the “Property”). The Application also proposes development that is subject to conditional use review under the Pomfret Flood Hazard Area Regulations adopted May 2, 2007 (the “Flood Regulations”).

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

I. Procedural History

A. Application¹

Applicant seeks to construct a new residential garage (the “Garage”) that will be connected to his existing dwelling via a breezeway. The Garage footprint will be 28’ x 24’ and will come within 40 feet of the centerline of Wild Apple Road at its northern end and within 53 feet of the centerline of Wild Apple Road at its southern end. The Property is located in the Rural District where the minimum

¹ Applicant has received approval from the ZBA to build a garage on the Property at least twice before. See Zoning Permit Application 07-14 and the related decision, which approved construction of an attached garage south of the existing dwelling. That decision also notes Applicant “had previously been issued a permit to build a garage on the opposite [north] side of the house within the front setback . . . that would not have been attached to the house”. The foregoing records are on file at the Town Office. Because construction of the garage was not timely commenced following either approval, the authorization to do so expired.

setback from the centerline of a public right-of-way is 65 feet pursuant to Section 2.2.2.2 of the Zoning Ordinance. The Property is also located in the special flood hazard area (Zone A) of an unnamed tributary of Barnard Brook, as depicted in FEMA's flood insurance rate map (FIRM) 50027C0330E, effective September 28, 2007.

The Application, dated January 22, 2024, was referred by the ZA to the ZBA on March 5, 2024, for conditional use review. The Application and all supporting documents are on file with the ZA.

On March 7, 2024, notice of a public hearing was posted at the Town Office, North Pomfret Post Office, and Teago General Store. On March 7, 2024, notice of the same was published in *The Vermont Standard*, a newspaper of general circulation in Pomfret. The ZA also timely notified the Property abutters of the site visit and hearing as required by 24 V.S.A. 4464.

B. Site Visit and Public Hearing

Following a site visit at the Property on March 27, 2024 at 5:30 pm, the ZBA considered the Application at a public hearing on March 27, 2024 at 6:30 pm at the Town Office. Present at the site visit were ZBA members Benjamin Brickner, Susan Burgess, Kyle Hansen, Lyndsay Hyde, Shaun Pickett and Seth Westbrook. Also present were Karen Hewitt Osnoe (ZA), and Applicant.

Proceedings related to the public hearing are more particularly described in the hearing minutes approved on April 23, 2024, which are available on the ZBA's page² on the Town of Pomfret's website and are incorporated by reference herein. These minutes identify those persons who participated in the hearing.

II. Applicable Regulations

A. Pomfret Zoning Ordinance

Section 2.2.2.2 of the Zoning Ordinance provides that the minimum setback from the centerline of a public right-of-way is 65 feet in the Rural District, where Applicant's parcel is located.

Certain dimensional and size requirements of the Zoning Ordinance may be waived by the ZBA under certain circumstances as more particularly described in Section 3.2 of the Zoning Ordinance. Waivers for alterations in dimensional requirements may be granted by the ZBA only following conditional use review and approval.

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):

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

- (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.”

B. Pomfret Flood Hazard Area Regulations

A permit is required by the Flood Regulations for all proposed development, including filling, grading and excavation in a special flood hazard area. [Section IV]

If the proposed development is neither exempt from the Flood Regulations under Section IV.A, nor eligible for an administrative permit from ZA under Section IV.B, conditional use approval by the ZBA is required under Section IV.C, which directs the ZBA to ensure the applicable standards in Section VII have been met and that potential flood damage has been minimized. Of particular relevance here, these standards provide that proposed development:

- Must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood. [Section VII.B.1.a]
- Must be constructed with materials resistant to flood damage. [Section VII.B.1.b]
- Must be constructed by methods and practices that minimize flood damage, including the provision of adequate drainage to reduce exposure to flood hazards. [Section VII.B.1.c]
- Must be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. [Section VII.B.1.d]

In addition, development of accessory structures such as the Garage:

- Shall not have a footprint of more than 576 square feet.³ [Section VII.B.7]
- Shall not be used for human habitation and may only be used for parking or storage. [Section VII.B.7.a]
- Shall be designed to have low flood damage potential and constructed using flood resistant materials below the base flood elevation.⁴ [Section VII.B.7.b]
- Shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters including any required openings to allow floodwaters in and out. [Section VII.B.7.c]
- Shall be firmly anchored to prevent flotation, collapse, and lateral movement. [Section VII.B.7.d]
- Shall have service facilities such as electrical and heating equipment elevated or floodproofed. [Section VII.B.7.e]

If no regulatory floodway has been designated, Section VI.C also requires that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development cannot increase the water surface elevation of the base flood at any point within the community.

The ZBA may grant variances under the Flood Regulations in accordance with Section IX.

III. Findings and Conclusions

A. Pomfret Zoning Ordinance

Subject to the conditions and limitations provided in Section V below and the waiver granted herein, the Garage 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 Garage will meet the applicable conditional use approval standards in Section 4.2 of the Zoning Ordinance.

Criterion (1) of Section 3.2 of the Zoning Ordinance has been met. The Garage is consistent with the Town Plan. In particular, the Town Plan’s general land use policy of encouraging “pockets of small and concentrated residential settlements” and “[v]ery low intensity residential . . . projects”; and the specific land use goal of maintaining a rural living environment. See pages 35 and 38 of the Town Plan adopted August 17, 2016.

Criterion (2) of Section 3.2 of the Zoning Ordinance has also been met. The Garage is consistent with existing development patterns of neighboring properties, specifically the Property and neighboring properties on Wild Apple Road and the adjacent segment of Stage Road. On balance

³ This requirement has been varied by this Decision. See Section IV below.

⁴ The base flood elevation has not been determined at the Garage location. As such, it must be assumed that the lower portion of the Garage is below this elevation.

the Garage does not change the development pattern that existed on the Property or neighboring properties prior to commencement of the work described therein.

As Criteria (1) and (2) of Section 3.2 of the Zoning Ordinance have been met, the requested waiver would not result in a greater than 50% decrease in any dimensional requirement, the proposed development would not encroach on the public right-of-way, and the proposed development would be at least 10 feet from the edge of the travelled way, the ZBA may grant the requested waiver.

B. Pomfret Flood Hazard Area Regulations

The Garage will be located in a special flood hazard area. The ZBA notes that Applicant provided a letter of map amendment (LOMA) dated July 20, 1992. However, this document relates only to the existing dwelling and expressly states that “any future construction or substantial improvement on this property remains subject to Federal, State, and local regulations for floodplain development.” The Garage constitutes such development and thus is subject to the Flood Regulations.

The Garage is neither exempt from the Flood Regulations nor eligible for an administrative permit from ZA. Therefore, conditional use approval by the ZBA is required and the applicable provisions of the Flood Regulations apply, including the requirements of Section VI.C as no regulatory floodway has been designated in the Town of Pomfret. These requirements are summarized in Section II.B above.

Subject to the conditions and limitations provided in Section V below and the variance granted herein, the Garage will meet the applicable provisions of the Flood Regulations, including the requirement in Section VI.C that the cumulative effect of the Garage, when combined with all other existing development and anticipated development not increase the water surface elevation of the base flood at any point within the community.

A variance of the 576 square foot footprint limitation in Section VII.B.7 of the Flood Regulations is appropriate as the variance is minor and will not result in increased flood heights, increased susceptibility to flooding or erosion, additional threats to public safety or infrastructure (including emergency services during flood events), or extraordinary public expense as contemplated by Section IX of the Flood Regulations.

In addition, due to the small size (0.49 +/- acres) and narrow shape of the Property, the ZBA also finds there is virtually no possibility the Property can be developed in strict conformity with the provisions of the Flood Regulations, and that the authorization of the variance described above is therefore necessary to enable reasonable use of the Property.

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, conditional use approval for construction of the Garage is **granted**, a waiver of the minimum setback from the centerline of a public right-of-way in Section 2.2.2.2 of the Zoning Ordinance is **granted**, and a variance of the 576 square foot footprint limitation in Section VII.B.7 of the Flood Regulations is **granted**. The ZA is directed to issue a permit consistent with this Decision.

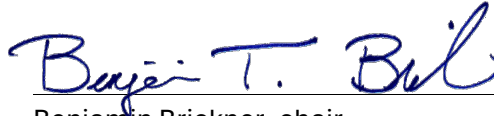
V. Conditions and Limitations

To ensure the Garage meets the applicable development standards in the Zoning Ordinance and applicable provisions of the Flood Regulations, this Decision is subject to the following conditions and limitations:

- A. The development approved by this Decision shall conform in all material respects with the 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. The Garage (including eaves, overhangs and other projections) shall not come within 40 feet from the centerline of Wild Apple Road at its northern end, nor within 53 feet from the centerline of Wild Apple Road at its southern end.
- C. The Garage shall have a footprint of not more than 672 square feet.
- D. The Garage shall be constructed consistent with applicable requirements of the Flood Regulations, except as the same have been varied herein. The applicable requirements are described in Section II.B above.
- E. Any exterior lighting shall comply with Section 4.1(14) of the Zoning Ordinance.
- F. Applicant shall ensure runoff and drainage from the Garage does not flow onto or otherwise adversely impact the right-of-way of Wild Apple Road.
- G. Applicant shall maintain the existing vegetation between the Garage and Wild Apple Road to provide visual screening and a physical barrier between Wild Apple Road and the Garage.
- H. The Garage shall conform to all applicable federal, state, and local laws, ordinances, and regulations, whether or not the same have been expressly referenced herein.
- I. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses, or activities with applicable zoning bylaws was not considered by the ZBA and is not addressed by this Decision.
- J. By acceptance of this Decision and the permit authorized herein, Applicant for itself, its successors, assigns and affiliates agrees to be bound by this Decision and the conditions and limitations described herein.

* * * * *

This Decision approved at Pomfret, Vermont, as of this 29th 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.

A handwritten signature in blue ink that reads "Benjamin T. Brickner". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin Brickner, chair
Zoning Board of Adjustment

ZBA members Benjamin Brickner, Susan Burgess, Kyle Hansen, Lindsay Hyde, Shaun Pickett, and Seth Westbrook voted in the affirmative. ZBA member Jeffry White did not participate in this Decision.

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.