

TOWN OF POMFRET ZONING BOARD OF ADJUSTMENT

Minutes of Meeting April 8, 2025

MEMBERS PRESENT: Benjamin Brickner, Susan Burgess, Kyle Hansen, Lindsay Hyde and Shaun Pickett

MEMBERS ABSENT: Michael Schmell and Seth Westbrook

OTHERS PRESENT: Christopher and Bailey Markwell (“Appellant”), Antoinette Hunt, Clint Hunt, Sarah Yetter, and Jack Willey (each an officer of Abracadabra Holding Co. (“Permittee”)), Cy Benoit (Permittee’s arborist), Preston Bristow (zoning administrator (“ZA”)), Dana Pape, Doug Tuthill, Emily Grube, John Moore, William Emmons, Cathy Emmons, Sandra Filliaut, “iPhone”

A hearing was held regarding the following matter:

Appeal by Christopher and Bailey Markwell of the Certificate of Compliance (the “Certificate”) issued by the Pomfret Zoning Administrator on February 17, 2025, to Abracadabra Holding Co., in respect of Pomfret zoning permit ZP23-30 (35 Wayside Road, Parcel No. 4802).

CALL TO ORDER

Chair Benjamin Brickner called the meeting to order at 7:00 pm. The hearing was recorded.

AGENDA REVIEW

None.

APPOINTMENT OF OFFICERS

Susan Burgess moved and Shaun Pickett seconded that Cynthia Hewitt be appointed clerk of the Zoning Board of Adjustment (“ZBA”). Unanimous.

HEARING ON APPLICATION #ZP24-20

Mr. Brickner then announced the hearing and described the matter to be heard.

Mr. Brickner then asked if anyone on the ZBA wished to disclose any conflicts of interest or ex parte communications relevant to the proceeding. Mr. Brickner disclosed that he had purchased coffee at Permittee’s place of business on several occasions. Ms. Burgess disclosed that she had met with Cy Benoit of ArborScape, Inc. in South Pomfret (Permittee’s arborist) on site before the site visit to view the Screening Trees (as defined below). No other members disclosed a conflict of interest or ex parte communication.

The ZBA then afforded any persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to identify themselves. Christopher and Bailey Markwell (Appellant) and Preston Bristow (ZA) were sworn in. Antoinette Hunt, Clint Hunt, Sarah Yetter, and Jack Willey (each an officer of Permittee) were sworn later in the hearing, prior to giving testimony.

The subject property is a +/- 2.19-acre parcel located at 35 Wayside Road in the Town of Pomfret (Parcel No. 4802).

Prior to the hearing the following materials were received by the ZBA:

1. Memorandum from Cy Benoit of ArborScape, Inc., Permittee's arborist, describing the planting of screening trees ("Screening Trees") along a portion of the southeast boundary of permittee's property, which abuts appellant's property (the "ArborScape Memo"); and
2. Letter dated April 7, 2025, from Christopher and Bailey Markwell attaching (a) a Notice of Alleged Violation from the Vermont Department of Environmental Conservation Agency of Natural Resources dated November 6, 2024 (the "NOAV"), (b) an annotated version of the ArborScape Memo, (c) quotations and scopes of work for screening trees from two area contractors, (d) two aerial photographs of Permittee's property, and (e) several ground level photos of the Screening Trees.

During the hearing the following testimony was heard by the ZBA:

1. Ms. Markwell thanked the ZBA for hearing her appeal; she also described concerns with how the town has approached zoning enforcement historically in regard to the present matter;
2. Ms. Markwell explained her position that Permittee had not complied with the conditions of the ZBA's April 2024 decision (the "Prior Decision"), in particular with the (a) adequacy of screening and (b) compliance with applicable law conditions.
3. Ms. Markwell described the Screening Trees as inadequate, noting that they do not provide a sufficient or substantial visual screening as required by the Prior Decision.
4. Ms. Markwell also referred to the NOAV stating that Permittee's emissions from its coffee roasting were uncontrolled and therefore in violation of state air quality regulations. Ms. Markwell expressed particular concern for formaldehyde emissions and odor resulting from these activities.
5. The ZA explained that he had been in communication with Ms. Markwell during the process leading to issuance of the Certificate, he felt Permittee had made a reasonable attempt to comply with the Prior Decision, and he therefore issued the Certificate. The ZA explained his approach to the role is not to issue notices of violation as an initial step because compliance can be achieved with less significant measures.
6. Mr. Benoit described the Screening Trees and their anticipated growth habits. While there are gaps between the Screening Trees today, these will eventually merge into an unbroken vegetative screen once the trees are established.

7. Mr. Benoit explained that the choice of American arborvitae (*Thuja occidentalis* 'Nigra'), their number and arrangement was made by Permittee, with consideration of budget and site specific issues including an adjacent swale and rock wall along the property line. Soil conditions and long term growth habits ruled out other choices such as Norway spruce and white pine.
8. Mr. Benoit offered that additional screening could be provided now by planting additional trees, with stockade fencing, or a combination of both.
9. Jack Willey testified that Permittee believed that it was in compliance with applicable law upon being licensed by the Vermont Department of Health as no issues of non-compliance with air quality regulations were raised at that time.
10. Mr. Willey stated there had been no direct testing of emissions at Permittee's location; rather, the state based its NOAV determination by reference to modeling done on similar equipment located in California.
11. Clint Hunt stated that since receiving the NOAV, Permittee hired engineers to study the problem and Permittee will install a thermal oxidizer within about six weeks. Thermal oxidizers have been determined by the state to reduce coffee roasting emissions to acceptable levels.
12. Mr. Hunt stated that once installed and operating, Permittee will be deemed in compliance with state air quality regulations without on-site testing because the thermal oxidizer technology is already approved by the state.

Ms. Burgess moved and Kyle Hansen seconded that the hearing be closed. Unanimous. The hearing was closed at 7:54 pm.

APPROVAL OF MINUTES

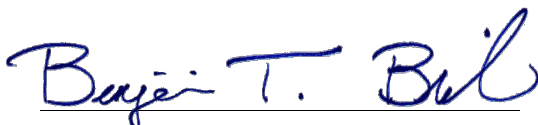
Mr. Hansen moved and Mr. Pickett seconded that the December 5, 2024 meeting minutes be approved as presented. Unanimous.

ADJOURNMENT AND DELIBERATIVE SESSION

Mr. Pickett moved and Mr. Hansen seconded that the meeting be adjourned. Unanimous. The meeting was adjourned at 7:56 pm.

The board thereafter entered into a non-public deliberative session pursuant to 1 V.S.A. 312(e).

These minutes approved at Pomfret, Vermont, this 24th day of June, 2025, 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, reading "Benjamin T. Brickner". The signature is written in a cursive, flowing style.

Benjamin Brickner, Chair