

**TOWN OF POMFRET
Zoning Board of Adjustment**

Conditional Use Review of Pond

Minutes, Findings and Decision

In re: Hillary D. White
Permit Application #ZP19-12

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for conditional use review of a pond submitted by Hillary D. White under the Pomfret Zoning Ordinance.
2. The application was received by the Administrative Officer on June 7, 2019.
3. On June 20, 2019, notice of a public hearing was published in the Vermont Standard.
4. On June 20, 2019, notice of a public hearing was posted at the following places:
 - Town Clerk's Office
 - North Pomfret Post Office
 - Teago General Store
5. A copy of the notice of a public hearing was mailed by the Administrative Officer to the following owners of properties adjoining the property subject to the application:
 - Robert A. Purdy
 - Alan and Kristina Graham
 - Andrew and Kathy Mann
 - B. Everett and Jacqueline Westa
 - Alden and Emily Anderson
 - Marie and Anthony Borelli
 - John Peters

HEARING

6. Application #ZP19-12 by Hillary D. White is for conditional use approval of a pond to be constructed on parcel #3918-A at 195 Dinsmoor Road, Pomfret.
7. The application was considered by the Zoning Board of Adjustment at a public hearing on July 10, 2019 at 6:15pm following a site visit at 5:30pm

8. Present at the site visit were the following members of the Zoning Board of Adjustment (ZBA): Alan Blackmer (Chair), Michael Reese, Shaun Pickett and Benjamin Brickner. Also present were Karen Hewitt (Zoning Administrator), Hillary D. White (Applicant), Phil Dechert, and Harry Bumps (the applicant's Excavator and Contractor). Missing was ZBA member: Loie Havill.
9. Present at the hearing were the following members of the ZBA: Alan Blackmer (Chair), Michael Reese, Shaun Pickett, and Benjamin Brickner. Karen Hewitt (Zoning Administrator and Clerk for the ZBA), Hillary D. White (Applicant) and Phil Dechert (Interested Party). Missing was ZBA member: Loie Havill.
10. At the outset of the hearing, the ZBA afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. Phil Dechert was sworn in as an interested person.
11. The subject property is a 12.29± acre parcel located at 195 Dinsmoor Road in the Town of Pomfret (parcel ID #3918-A).
12. The application requires review under the section 7.1.1 of the Pomfret Zoning Ordinance.
13. During the course of the hearing the following testimony was heard from the Hillary D. White, the applicant; and Phil Dechert. Hillary D. White and Phil Dechert were sworn in.
 - The pond will be located approximately fifteen (15) feet from the adjacent property line.
 - The pond is designed with an emergency overflow which will be directed to the pond on the neighboring property, to be used as a catch basin.
 - Applicant stated that Mr. Purdy was aware and supportive of applicant's construction plans.
 - Read into record was the Pomfret Zoning Ordinance section 4.14: "Setback" the distances between any structure, or any part thereof, and the side property lines of the parcel on which said structure stands; also, the distance from a public road or public right-of-way to or past said structure.
 - Read into record was the Pomfret Zoning Ordinance section 4.16: "Structure" an assembly of materials for occupancy or use, including without limitation. a building, mobile home, camper-trailer, sign, or immobile operating equipment such as a gasoline pump. For the purposes of this ordinance the term does not include pond dams, stone walls, fences, mobile operating equipment.
 - The pond will be constructed more than two hundred (200) feet away from the well and septic.
 - The perforated pipe that currently collects water from the upper water shed and is one of the suppliers of water to the adjacent property's pond will be removed.

- The pond being constructed will be collecting any water from the upper water shed.
 - There is no deeded easement to the adjacent property for the collection of water to feed their pond.
 - It was stated that the underground PVC pipe does not usually collect water, unless the water table is at a high level.
 - A revised drawing of a map of the pond construction was submitted to the Zoning Board of Adjustment for their consideration at the site visit (while the revised drawing shows the spillway off the southwest side of the pond, applicant stated that the spillway would actually be constructed off the southeast side of the pond).
14. Michael Reese moved that the hearing be closed to testimony. Benjamin Brickner seconded the motion. The hearing closed at 6:50pm. The ZBA went into deliberation session immediately after.

FINDINGS

Based on the application, testimony, site visit, and other evidence the ZBA makes the following findings with regard to application #ZP19-12 under section 7.1.1 of the Pomfret Zoning Ordinance:

15. All Procedural steps leading to the decision herein were properly taken, including notification of adjoining property owners, including the Robert A. Purdy, owner of the adjacent pond. Mr. Purdy did not attend the ZBA hearing or submit testimony before the hearing.
16. The pond as proposed conforms to the requirements of section 7.1.1 of the Pomfret Zoning Ordinance.
17. Pursuant to section 11.3 of the Pomfret Zoning Ordinance, the uses proposed in application #ZP19-12 are non-conforming uses under Section 7.1 of the Pomfret Zoning Ordinance. As required by Section 11.3 of the Pomfret Zoning Ordinance, before authorizing a permit for the proposed uses, the ZBA must find that the uses conform with the Pomfret Town Plan and the Pomfret Zoning Ordinance, and further find that the proposed uses will not:
 - a. Unreasonably burden the town to provide the site municipal services, including, but not limited to: highway maintenance, fire and police protection, and school bus service.
 - b. Create a health hazard because of inadequacy of water supply and sanitary facilities or for other reasons.
 - c. Create a pedestrian or vehicular hazard or congestion because of inadequate parking, loading or storage facilities or other factors.
 - d. Lead to or be subject to flooding, ponding, or soil erosion at the proposed site.
 - e. Create a public nuisance or adversely affect the character of the area as well as the

comfort, convenience and general welfare of the community.

DECISION AND CONDITIONS

Based upon these findings, the ZBA **grants conditional use approval** for permit application #ZP19-12 by Hillary D. White for a pond on parcel #3918-A at 195 Dinsmoor Road.

Applicant's proposed uses shall conform to its submissions, plans and representations, including those described in the Minutes and these Findings and Decision, except as modified by the conditions provided for in this Decision.

This decision of the ZBA regards only the application for the activities referenced herein on the subject parcel. The conformity of any other uses or activities on Applicant's property was not considered or addressed in this decision.

These minutes, findings and decision approved at Pomfret, Vermont, this 19 day of JULY, 2019.



Alan Blackmer, Chair, Zoning Board of Adjustment

Members Alan Blackmer, Benjamin Brickner, and Shaun Pickett voted in the affirmative. Member Michael Reese voted in the negative.

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.