

**TOWN OF POMFRET  
Zoning Board of Adjustment**

Memorandum of Decision

Permit Application: #ZP20-02  
Property Address: 2286 Pomfret Road, South Pomfret  
Parcel No.: 0122  
Parcel Size: 2.25 acres

Property Owner: William and Kate Overbay  
2286 Pomfret Road  
South Pomfret, Vermont 05067

Applicant: Geobarns  
923 Kings Hwy  
White River Junction, Vermont 05001  
ryan@geobarns.com

**I. Procedural History**

**A. Application**

Geobarns, on behalf of William and Kate Overbay, is seeking approval for an addition to an existing garage at 2286 Pomfret Road.

The Application dated December 18, 2019 was referred to the Zoning Board of Adjustment (ZBA) for conditional use review by the Zoning Administrator (ZA) on January 10, 2020. The Application and all supporting documents are on file with the ZA.

On January 20, 2020, notice of a public hearing was posted at the Town Clerk's Office, North Pomfret Post Office and Teago General Store. On January 23, 2020, notice was published in the *Vermont Standard*. The ZA mailed the notice to the following property owners abutting the Property: Robert & Geraldine Frenchman, Joann Webb, Trust One Realty Trust, and Pomfret Farm Realty Trust.

**B. Site Visit and Public Hearing**

Following a site visit at the property, the ZBA considered the Application at a public hearing on February 11, 2020 at the Pomfret Town Offices. Minutes of the hearing were approved February 18, 2020.

The ZBA moved to recess the hearing pending further information from the State of Vermont Regional Flood Plain Manager and the existing Letter of Map Amendment (LOMA) showing that the existing buildings are above the Base Flood Elevation (BFE) requirement.

On March 5, 2020, The ZBA reconvened, reviewed documents received since the first hearing and closed the evidentiary portion of its proceedings at a duly noticed hearing.

C. Proposed Revision of Zoning Ordinance

On December 12, 2019, the Pomfret Selectboard issued a public notice for a first public hearing on a proposed revision to the Pomfret Zoning Ordinance (Proposed Ordinance). For a period of 150 days following such notice, 24 V.S.A. 4449(d) requires that “the administrative officer . . . shall review any new application filed after the date of the notice under the proposed bylaw or amendment and applicable existing bylaws and ordinances.” Accordingly, the ZBA is reviewing the Application under the current Pomfret Zoning Ordinance (Current Ordinance), the Pomfret Flood Hazard Area Regulations (Flood Ordinance), and the Proposed Ordinance.

**II. Findings of Fact**

A. Special Flood Hazard Area

The proposed structure would be located in a special flood hazard area (Zone A) based upon flood maps as described in correspondence from John Broker-Campbell, Regional Floodplain Manager, Department of Environmental Conservation, State of Vermont, and Kevin Geiger, Senior Planner, Two Rivers-Ottawaquechee Regional Commission.

B. Riparian Buffer

As shown on Applicant’s plans dated 12/18/2019, entitled “Proposed Enclosed Shed,” and “Proposed vs. Permitted Elevations,” the enclosed 14’x39’ storage shed would be attached to an existing garage and placed on a six-foot concrete slab with crushed stone beneath. The Applicant’s estimated measurements of the distance from the top of the brook’s bank to the existing structure would result in an encroachment of a maximum of three feet into the fifty-foot riparian buffer by the proposed structure. The Applicant acknowledged the measurements are an estimate, because snow obstructed the exact location of the top of the bank of the brook.

**III. Applicable Regulations**

A. The Current Ordinance

Accessory uses and structures are conforming uses requiring a permit by the ZA.

B. Pomfret Flood Hazard Area Regulations

The Flood Ordinance requires conditional use approval by the ZBA for the construction of new buildings in a special flood hazard area. All development must be reasonably safe from flooding and be designed and constructed to withstand flooding. Small accessory buildings need not be elevated one foot above the base flood elevation.

### C. The Proposed Ordinance

Accessory structures are permitted uses in the Rural District (Section 2.2.2.4.4) that may be approved by the Zoning Administrator. "Accessory Use or Structure" is defined as a use or structure that is customarily incidental and subordinate to the principal use or structure on the same lot (Section 8.2).

United States Geological Survey mapped streams are required to have a minimum building setback of 50 feet from top of bank, and no ground disturbance is allowed within 35 feet (measured horizontally) from top of bank (Section 4.1.4). The ZBA may approve waivers for alterations in dimensional requirements so long as they do not result in a greater decrease than 50%, the proposal is consistent with the Town Plan, and the proposal satisfies at least one of the five additional criteria (Section 3.2).

## IV. Conclusions of Law

### A. Flood Ordinance Requirements

The proposed structure is subject to ZBA review of the flood protection requirements of the Flood Ordinance, except that it need be not elevated above base flood elevation. The proposed structure is an accessory structure because:

1. It will be less than 576 square feet;
2. It represents a minimal investment; and
3. It shares a wall with an existing accessory structure that is not used for human habitation.

### B. Waiver from Riparian Buffer Under Proposed Ordinance

Although it is unclear whether the proposed structure will be located within the fifty-foot riparian buffer, the estimated three-foot intrusion is nominal and appropriate for waiver of the distance requirement. The nominal nature of the intrusion is important, because the ZBA acknowledges the extremely important role that riparian buffers have in enhancing the town's water quality and protection of property from flood damage (Town Plan, pages 23-24).

However, the Town Plan allows "new modest accessory structures" in flood hazard areas (Town Plan, page 95). Additionally, the Town Plan encourages residential development in the South Pomfret village area (Town Plan, page 76). The proposed structure is consistent with existing development pattern of neighboring properties where attached accessory structures are common and promotes cluster development.

## 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**, the ZBA makes the following decision:

- A. Special Flood Hazard Area: locating the proposed structure in the special flood hazard area is hereby approved as a conditional use.
- B. Waiver of Riparian Buffer: the requirement that the proposed structure be located at least fifty feet from the top of the bank of the brook is hereby waived by up to three feet (measured horizontally) closer to the top bank of the brook.

**VI. Conditions and Limitations**

This Decision is subject to the following conditions and limitations:

- A. The Project and related work shall conform in all material respects with the application materials including the Applicant's submissions, plans, written representations to the ZBA, and testimony as reflected in the Minutes, except as expressly modified herein.
- B. The structure may not be located closer than three feet into the fifty-foot (measured horizontally) riparian buffer. The ground shall not be disturbed within thirty-five feet (measured horizontally) from the top of bank of the brook.
- C. Applicant shall comply with applicable development standards and certification requirements set forth in the Flood Ordinance, which are incorporated by reference herein, and include the following:
  - 1. All development shall be reasonably safe from flood and:
    - a. designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure during the occurrence of the base flood,
    - b. constructed with materials resistant to flood damage,
    - c. constructed by methods and practices that minimize flood damage, including the provision of adequate drainage to reduce exposure to flood hazards, and
    - d. 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.
  - 2. As an accessory structure, the structure:
    - a. shall not be used for human habitation and may only be used for

parking or storage,

- b. shall be designed to have low flood damage potential and constructed using flood resistant materials below the Base Flood Elevation,
  - c. 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,
  - d. shall be firmly anchored to prevent flotation, collapse, and lateral movement, and
  - e. shall have service facilities such as electrical and heating equipment elevated or floodproofed.
3. **A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plan, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection. (Flood Ordinance: VII. Development Standards; Section B Floodway Fringe Areas; Subsection 3. Non-Residential Development; Part c on Page 4-5).**

This Decision approved at Pomfret, Vermont, as of this 31 day of March, 2020.



Alan Blackmer, chair  
Zoning Board of Adjustment

ZBA members Alan Blackmer, Shaun Pickett and Michael Reese voted in the affirmative. ZBA members Benjamin Brickner and Loie Havill did not participate in this Decision.

**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.