

TOWN OF POMFRET
Zoning Board of Adjustment

Minutes and Memorandum of Decision

Permit Application: #ZP23-10
Property Address: 284 Hewitt Hill Road, North Pomfret
Parcel No.: 2407
Parcel Size: 3.04 +/- acres

Property Owner: Cory Swingle and Melissa Tabas
284 Hewitt Hill Road
North Pomfret, Vermont

Applicant: Cory Swingle and Melissa Tabas
284 Hewitt Hill Road
North Pomfret, Vermont

I. Introduction and Procedural History

A. Application

Cory Swingle and Melissa Tabas are seeking conditional use approval for a waiver of Dimensional Requirements in the Rural District (RD) in regards to Minimum Setback from Centerline of a Public Right-of-Way of 65 feet in order to construct an addition at the back of the existing dwelling consisting of a kitchen and a porch (the Proposed Addition).

The Zoning Permit Application ZP23-10 (the Application) dated April 3, 2023 was referred to the Zoning Board of Adjustment (ZBA) for conditional use review by the Zoning Administrator (ZA) on April 14, 2023 after the Application was deemed complete by the ZA on April 14, 2023. The Application and all supporting documents are on file with the ZA.

On May 4, 2023, notice of a public hearing was posted at the Town Clerk's Office, Teago General Store and the North Pomfret Post Office. On May 4, 2023, notice was published in *The Vermont Standard*. The ZA notified the property abutters of the site visit and hearing.

B. Site Visit and Public Hearing

Following a site visit at the property on May 19, 2023 at 6:00 pm, the ZBA considered the Application at a public hearing on May 19, 2023 at 6:30 pm.

- Present at the site visit were all members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, Shaun Pickett, and Susan Burgess. Also present were Karen Hewitt Osnoe (ZA), Cory Swingle (Applicant) and Melissa Tabas (Applicant).

- Present at the hearing were the following members of the ZBA: Alan Blackmer (Chair), Benjamin Brickner, Shaun Pickett, and Susan Burgess. Also present were Karen Hewitt Osnoe (ZA), Cory Swingle (Applicant) and Melissa Tabas (Applicant).
- The meeting was opened at 6:30 pm by ZBA chair Alan Blackmer. The hearing was recorded.
- At the outset of the hearing, the ZBA afforded those persons wishing to achieve status as an interested party an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. Cory Swingle and Melissa Tabas were sworn in by Alan Blackmer (ZBA Chair). No members of the public were present nor were any requests made by any interested parties.
- During the hearing the following testimony was heard from Cory Swingle and Melissa Tabas:
 - A waiver for setback from the public road is requested as the Proposed Addition measured 62 feet from the center traveled portion of the road. A waiver of three feet is needed and requested.
 - Cory Swingle stated the Proposed Addition wouldn't be seen from the road and they may possibly be enclosing the existing structure.
 - Alan Blackmer stated that the proposed construction fits the character of the neighborhood.

II. Applicable Regulations

- Under the Pomfret Zoning Ordinance (the Zoning Ordinance), 2.2.2.2 Dimensional Requirements for minimum Setback from Centerline of a Public Right-of-Way is 65 feet in the RD. Some dimensional/size requirements may be reduced by waivers as specified in Article 3.
- The dimensional/size requirements are neither exempt from the Zoning Ordinance nor eligible for an administrative waiver from ZA. Therefore, a waiver by the ZBA is required.
- 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):

- 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.”

III. Findings and Conclusions

A. Pomfret Zoning Ordinance

- Subject to the conditions and limitations provided in Section V below and the Dimensional Requirement waiver granted herein, the Proposed Addition 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 Proposed Addition will meet the applicable conditional use approval standards in Section 4.2 of the Zoning Ordinance.
- As all other uses and the existing dwelling itself are lawfully existing as of the date hereof, the provisions of Section 4.4 of the Zoning Ordinance are applicable and may continue indefinitely subject to the conditions provided in Section 4.4.2 of the Zoning Ordinance.

- Criterion (1) Section 3.2 of the Zoning Ordinance has been met. The Proposed Addition 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 Pomfret Town Plan adopted August 17, 2016.
- Criterion (2) of Section 3.2 of the Zoning Ordinance has also been met. The Proposed Addition as described in the Application is consistent with existing development patterns of neighboring properties, specifically the subject property and neighboring properties on Hewitt Hill Road. The Proposed Addition is on the far side of the existing dwelling from Hewitt Hill Road and on balance does not change the development pattern that existed on the subject 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 both been met, the ZBA may grant the requested waiver from the minimum setback required in the RD.

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, the ZBA makes the following decision:

- A. A Dimensional Requirement waiver is **granted** for the Proposed Addition (including eaves, overhangs and other projections) no less than 62 feet from Centerline of a Public Right-of-Way (Hewitt Hill Road).
- B. Conditional use approval is **granted** for the Proposed Addition and a permit is **authorized** for such use in the location described herein.

V. Conditions and Limitations

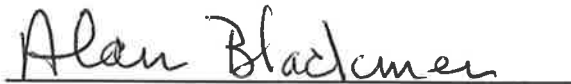
This Decision is subject to the following conditions and limitations:

- A. The Proposed Addition shall conform in all material respects with the Application materials including the Application, the Applicant’s other submissions, plans, written representations to the ZBA (if any), and testimony as reflected in the Minutes, 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. Any exterior lighting shall comply with Section 4.1(14) of the Zoning Ordinance.

- C. The 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.
- D. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses or activities with the applicable zoning bylaws was not considered and is not addressed in this Decision.

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This Decision approved at Pomfret, Vermont, as of this 24th day of May, 2023, and signed by the chair of the Pomfret Zoning Board of Adjustment on its behalf pursuant to 24 V.S.A. 1141.



Alan Blackmer, chair
Zoning Board of Adjustment

ZBA members Alan Blackmer, Benjamin Brickner, Shaun Pickett and Susan Burgess voted in the affirmative. ZBA member Seth Westbrook 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.