

**TOWN OF POMFRET**  
**Zoning Board of Adjustment**

Memorandum of Decision

Permit Application: ZP24-04  
Property Address: 1799 Pomfret Road  
Parcel No.: 010B  
Parcel Size: 48.89 +/- acres

Property Owner: Joseph T. and Cara L. DeFoor  
1799 Pomfret Road  
South Pomfret, Vermont 05067

Applicant: Joseph T. and Cara L. DeFoor  
1799 Pomfret Road  
South Pomfret, Vermont 05067

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This Memorandum of Decision (this “Decision”) is issued by the Pomfret Zoning Board of Adjustment (the “ZBA”), in connection with Zoning Permit Application ZP24-04 (the “Application”) by Joseph T. and Cara L. DeFoor (“Applicant”).

The Application seeks the construction of a new bridge and relocation of an existing access road (driveway) to Applicant’s residence through the special flood hazard area of Barnard Brook. As such, the proposed development is subject to conditional use review under the Pomfret Flood Hazard Area Regulations (the “Flood Regulations”).<sup>1</sup>

For the reasons discussed below, the ZBA is unable to approve the Application and encourages Applicant to submit a new application that can be approved under the Flood Regulations.

**I. Procedural History**

**A. Application**

Applicant seeks to construct a new bridge to their residence to replace the existing bridge. The new bridge is proposed to be located downstream of the existing bridge, thereby requiring a significant portion of the existing access road (driveway) to Applicant’s residence be rerouted. The new route is located predominantly in the special flood hazard area (Zone A) of Barnard Brook, as depicted on FEMA’s flood insurance rate map (FIRM) 50027C0345E, effective September 28, 2007.

The Application, dated April 17, 2023, was referred by the ZA to the ZBA on March 5, 2024, for conditional use review.<sup>2</sup> The Application and all supporting documents are on file with the ZA,

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<sup>1</sup> See Pomfret Flood Hazard Area Regulations, adopted May 2, 2007, *available at* [https://pomfretvt.us/index.php/download\\_file/view/229/225/](https://pomfretvt.us/index.php/download_file/view/229/225/).

<sup>2</sup> After submission of the Application, consideration of the same was postponed at Applicant’s request as the proposed development was not immediately ready to proceed.

including the site plan (the “Site Plan”), dated March 19, 2024, prepared by Harrington Civil Engineers, Inc. (project number 22-32), and provided by Applicant to the ZBA.

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 6:00 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 Cyrus Benoit (Applicant’s contractor).

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 page on the Town of Pomfret’s website<sup>3</sup> and are incorporated by reference herein. These minutes identify those persons who participated in the hearing.

### II. Applicable Regulations

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

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 as a result of the proposed development has been minimized.

Of particular relevance here, Section VII.B.11 requires that “any access road to habitable structures . . . be at least one foot above base flood elevations and able to withstand a 100-year flood event without failing.” The ZBA may grant variances under the Flood Regulations in accordance with Section IX.

### III. Findings and Conclusions

The proposed new bridge and a significant portion of the relocated driveway will be located in a special flood hazard area as shown on the Site Plan. The existing bridge will be physically blocked from and no longer accessible by vehicular traffic. As such, the relocated driveway will become the sole means of entry to and egress from Applicant’s residence.

The proposed development 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

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<sup>3</sup> See Town of Pomfret, Zoning Board of Adjustment, *available at* <https://pomfretvt.us/index.php/dep/planning-zoning/zo>.

applicable provisions of the Flood Regulations apply, including the requirement of Section VII.B.11 that the relocated driveway be at least one foot above base flood elevation.

While the Site Plan depicts the proposed new bridge at exactly one foot above base flood elevation, it also shows that a significant portion of the relocated driveway will be below this level, in one location as much as 1.5 feet below. The ZBA appreciates the low level of the relocated driveway is deliberate and intended to minimize fill and impedance of flood waters in the special flood hazard area. The ZBA also appreciates that to build the relocated driveway to the required elevation likely would create additional hazards downstream.

Nonetheless, the ZBA cannot grant Applicant a variance from the requirement of Section VII.B.11. Variances may be granted only if the several stringent criteria of Section IX are met, including, for example, that the variance be the minimum necessary to afford relief and that the affected property cannot be developed or reasonably used without one.<sup>4</sup>

Unfortunately, the ZBA cannot make these findings. The necessary variance is substantial and the property can be (and already has been) developed and reasonably used without one. In a recent case of an access road (driveway) in Pomfret that was approved with a variance in a flood zone, the subject parcel was landlocked, could not otherwise be accessed from a public highway, and alternative means of access were inferior for floodplain management and public safety purposes.<sup>5</sup>

Similar circumstances are not present here and thus it would be inappropriate for the ZBA to approve with a variance a driveway that will become Applicant's sole vehicular access to their residence, access that likely will be impaired, including for emergency responders, during 100-year flooding events.

The existing driveway is at or above the necessary elevation and alternatives may exist over a renovated existing bridge or adjacent new bridge that do not require routing a significant portion of the existing driveway below base flood elevation. We encourage Applicant to consider these alternatives as they may be exempt from the Flood Regulations under Section IV.A, eligible for an administrative permit from ZA under Section IV.B, or subject to conditional use approval by the ZBA under Section IV.C without requiring a variance.

#### **IV. Decision**

Based on information presented to the ZBA, the findings and conclusions described above, conditional use approval for the proposed development is **denied**.

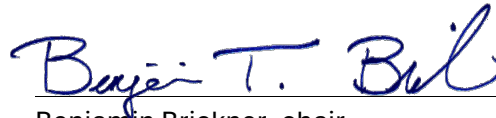
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<sup>4</sup> In addition to the criteria specified in Section IX of Pomfret's Flood Regulations, applicable criteria of the Vermont Planning and Development Act and National Flood Insurance Program regulations must also be met. See 24 V.S.A. 4469 and 44 C.F.R. 60.6, respectively.

<sup>5</sup> See Minutes and Memorandum of Decision, approved December 6, 2020, in regard to Permit Application ZP20-32, available at [https://pomfretvt.us/index.php/download\\_file/view/1456/242/](https://pomfretvt.us/index.php/download_file/view/1456/242/).

This Decision approved at Pomfret, Vermont, as of this 8th day of May, 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.