

**TOWN OF POULTNEY
DEVELOPMENT REVIEW BOARD**

**IN RE: POULTNEY PROPERTIES, LLC - 10/11/17 ZONING PERMIT
APPLICATION FOR PARCEL #225006.100**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

INTRODUCTION AND BACKGROUND

On or about October 11, 2017, Poultney Properties, LLC ("Poultney Properties" or "Applicant") submitted a zoning permit application concerning, for zoning purposes, a single contiguous parcel of land identified as tax map parcel #225006.100. The parcel contains four (4) existing and separate structures with street addresses of 53, 55, 57, and 61 Beaman Street (Route 30) (f/n/a the "VEMAS" property, herein sometimes collectively referred to as "the Parcel").¹ The submitted application concerned a portion of the building located at 61 Beaman Street (Route 30) (hereinafter the "Proposed Church Space"). The zoning permit application indicated the Applicant seeks an "Other" application, involving "[a]dding interior walls." The application also identified the identified proposed use as "Church."

The remaining portion of 61 Beaman Street is the subject of a prior application by the Applicant, submitted on 2/23/17. See In re Poultney Properties, LLC - 2/23/17 Zoning Permit Applications for Parcel #225006.100, Findings of Fact, Conclusions of Law and Order. In that application, the Applicant sought approval to use approximately 10,000 square feet of 61 Beaman Street for retail use. The Applicant also requested approval of using 55 Beaman Street and 57 Beaman Street as woodworking facilities. The DRB granted conditional approval for the woodworking uses and denied the request to use 61 Beaman Street for retail purposes. Id. at Order/Decision. The Applicant appealed this denial of retail use to the Vermont Superior Court, Environmental Division, and that appeal is still pending. Poultney Properties LLC Change of Use & SP App., Docket No. 98-7-17 Vtec. The 2/23/17 Application will be referred to hereinafter as the "Appealed Retail Decision" and the approximately 10,000 square foot portion of 61 Beaman Street shall be referred to as the "Appealed Retail Space."

The zoning application was referred to the Poultney Development Review Board (DRB) for hearing pursuant to Poultney Unified Bylaws (PUB) Article XII and §1407. Because the application pertains to a single unified and contiguous parcel of land with multiple pre-existing structures located thereon, the DRB has treated this application, for review purposes, as a single integrated use proposal given that the proposed use will share a single dimensional lot with integrated needs for access points, drives, parking, traffic, loading and unloading with cumulative impacts in

¹ The four (4) individual structures located on the Parcel shall hereinafter be referred to by their identified street addresses.

connection with circulation safety, traffic and pedestrian flow, noise, glare, landscaping and screening.

On Tuesday, December 12, 2017, the DRB convened a duly warned public hearing at the Poultney High School Gymnasium to consider the application pursuant to the PUB and site plan review. Hearings were recessed and continued to January 8, 2018. On January 8, 2018, the hearing was closed and the DRB began its deliberations.

All members of the DRB who have deliberated and have participated in this decision have reviewed all exhibits and other evidence and have attended all hearings in this matter.

The following members of the public were sworn in to testify and/or presented evidence as Interested Parties on the following dates:

December 12, 2017

Terry K. Williams, for the
Town of Poultney Selectboard
David R. Cooper, Esq.
Janet Sumner
Gene Sumner
Neal C. Vreeland
Barbara Betit
Harry Ryan, Esq.
Carol Bunce
C.B. Hall
Julia W. Riehl
Cassandra Kerber
Tim Kerber
Amy Kerber
Stacey Mach
Michael Mach
Kimberlee Simons
Kaylana Simons
Charles Simons
Marie A. Kerber
Dale Kerber
Derik Kerber
William Schaumloffel
Kerry O. Furlani
James Jordan
Christina Fabrey
Rebecca Ribeiro

Suzanne Striglia
Linda Roberts
Carl Diethelm

January 8, 2018

David R. Cooper, Esq.
Derik Kerber
William Chalmers
Chuck Helfer
Gail Helfer
Mona Hall
Julie Denko
Francis Morey
Phyllis Morey
Miranda Morey
Christian Morey
Amanda Stonehouse
Chanda McCarthy
Neal Vreeland
C.B. Hall
Carol Bunce
Barbara Betit
Linda Roberts
John Pedone Jr.
James Jordan
David Bosch
Melanie L Potter

Based upon the testimony of the interested parties appearing during the Hearing and the documents and evidence introduced at the hearings, the DRB finds, concludes and orders as follows:

FINDINGS OF FACT

THE APPLICATION

- 1) The subject property is a single, contiguous and integrated parcel of land identified as Poultney tax map parcel #225006.100 with multiple pre-existing structures with street addresses of 53, 55, 57 and 61 Beaman Street ("the Parcel").
- 2) The Parcel is comprised of those lands that are described in a Warranty Deed from Knappmiller, LLC to Poultney Properties, LLC and dated January 10, 2017 and of record in the Poultney Land Records at Book 177, Page 81.
- 3) The property is owned by Poultney Properties, LLC. The principal and managing partner is Leonard V. Knappmiller.
- 4) On October 11, 2017, Poultney Properties, LLC filed an application seeking permission (1) to perform interior renovations in 61 Beaman St. characterized as "[a]dding interior walls" and (2) to use a portion of 61 Beaman Street as a "Church."
- 5) Although the Application was filed by the property owner, the proposed tenant also appeared at the hearings. The proposed tenant is Revive Church, currently located at 60 Kerber Lane in Poultney, Vermont. Revive Church was represented at the hearings by its Pastor, Derik Kerber. Revive Church and Poultney Properties, LLC were also represented at the hearing by their attorney, David R Cooper, Esq.
- 6) Pastor Kerber indicated at the hearing that Revive Church did not have a written lease with Poultney Properties, LLC.
- 7) The Application seeks a change of use with respect to 6,500 square feet of interior space in a portion of 61 Beaman Street (the "Proposed Church Space").
- 8) Approximately 10,000 square feet of the remaining portion of 61 Beaman is the subject of the Appealed Retail Decision, in which the DRB denied approval for retail use.
- 9) In the current Application, the Applicant did not seek a waiver, variance, or exemption. At the hearing, Revive Church, through its attorney, David R. Cooper, Esq., took the position that no variance was required. In a letter

dated January 5, 2018, counsel for Revive Church indicated that a waiver under §602(A) was not “required in this case.”

10) The following documents were introduced by interested parties during the hearings and have been admitted as exhibits for the DRB’s consideration. The DRB incorporates as part of the permanent record of this hearing, the following:

a. The Application submitted by the Applicant, received on October 11, 2017, entered into evidence and attached to this Decision as Exhibit A, consisting of:

A Town of Poultney Zoning Permit Application Form, signed by Poultney Properties, LLC, received October 11, 2017;

A Warranty Deed, dated January 10, 2017, from Knappmiller, LLC to Poultney Properties, LLC, recorded in Book 177, Page 81 of the Poultney Land Records;

A Potable Water Supply and Wastewater System Permit, Case No. WW-1-1500, dated September 25, 2006;

A one-page sketch identifying the location of proposed interior walls to be added to the lower level of 61 Beaman Street;

An undated, one-page statement, on Revive Church letterhead, entitled Revive Church Building Permit Write-Up;

A two-page document (including an aerial photograph of the Parcel, with areas marked as P1, P2, and P3) outlining a proposed parking plan; and

A “Parking Lot Agreement” dated October 11, 2017, between Revive Church and S. Allen Macomber.

b. A Letter with two attachments from David R. Cooper, Esq. to Paul A. Donaldson, Poultney Zoning Administrator, dated January 5, 2018, submitted by David R. Cooper, Esq., on behalf of the Applicant on January 5, 2018. Entered into evidence and attached to this Decision as Exhibit B.

c. A “Statement before Poultney Development Review Board, dated January 8, 2018, submitted by Slate Quarry Park Group. Entered into evidence and attached to this Decision as Exhibit C.

CURRENT USES OF THE PARCEL

- 11) The Parcel is depicted as being located in the Industrial Zoning District ("I") on the Official Zoning Map (*see* **PUB, Article II, Establishment of Zoning Districts and Zoning Map, §202**) and Official Zoning Map. The area in which the subject parcel is located, however, is commonly treated, and generally understood under the 2014 PUB, to be located within the Village Industrial Zoning District ("VI") (**PUB, Article II, Establishment of Zoning Districts and Zoning Map, §201(D)**).
- 12) The structures on the Parcel, including 61 Beaman Street, have been used, historically, for industrial purposes including the assembly of computer circuit boards. Most recently, the Parcel and 61 Beaman Street housed VEMAS Corp., an electromechanical manufacturer.
- 13) 57 Beaman Street is currently occupied by a woodworking business which is engaged in on-site and off-site construction and restoration of wood products including furniture and cabinetry, falling within the definition of "Industry, Light."
- 14) **PUB, Article XIII, Definitions**, defines "Industry, Light" as:

A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.
- 15) Pursuant to **PUB, Article III Table of Uses**, "Industry, Light" is considered a permitted use subject to review by the DRB in accordance with site plan approval under Article III in both the I and VI Districts.
- 16) On March 8, 2017, the DRB approved 55 Beaman Street for conditional use as a REED Woodworking Shop to be operated by Green Mountain College as a tenant; in the Appealed Retail Decision, the DRB concluded this use fell within the definition of Industry, Light as defined at **PUB, Article XIII, Definitions**.
- 17) On March 8, 2017, the DRB also approved 57 Beaman Street for conditional use as a woodworking shop; in the Appealed Retail Decision, the DRB also concluded this use fell within the definition of Industry, Light as defined at **PUB, Article XIII, Definitions**.
- 18) The current "Industry, Light" uses of the buildings located on the Parcel comply with both the historical use of the property and the current

permitted uses subject to review by the DRB in accordance with site plan under Article II in both the I and VI districts.

- 19) Currently, the structure on the subject parcel bearing a street address of 61 Beaman St. is vacant. The Appealed Retail Space would be located in 61 Beaman if the 2/23/17 appealed application was implemented as proposed.
- 20) The only "mixed use" category recognized in the **PUB, Article III, Table of Uses** is for "Commercial/Residential Mixed Use," a category which only applies to the Village Commercial District and has no application here where residential use is not being proposed. Mixed commercial uses are not otherwise specifically recognized in the **PUB, Article III, Table of Uses**. Pursuant to the **PUB, Article III Table of Uses**, a Church is not a use expressly permitted in the VI District. *See* PUB, §204.
- 21) All uses not permitted by the PUB are deemed prohibited. **PUB, Article II, §204.**

EXISTING NONCONFORMITIES

- 22) The Parcel is a nonconforming lot under the PUB.
- 23) **PUB, Article XIV, §1411, Lot Limitations** provides, "In all districts only one principal building shall be placed on a zoning lot." The Parcel currently contains four separate buildings: 53 Beaman Street, 55 Beaman Street, 57 Beaman Street, and 61 Beaman Street, at least three of which (55, 57, and 61 Beaman Street) are principal buildings.
- 24) **PUB, Article V, §501, Lot Size, Yards and Setbacks** requires minimum setbacks of 30' in the Front, Side and Rear yards of lots in the VI District.
- 25) The Parcel contains the following existing structural dimensional nonconformities:
 - a. For 61 Beaman St., the proposed location for both the Proposed Church Space and the Appealed Retail Space, has a Northerly setback at its minimum point of 6.25'.
 - b. 55 Beaman St., the location of the proposed REED Workshop, has a Southerly setback of 3.75'.
 - c. 57 Beaman St., the location of the existing woodworking shop, has a Southerly setback of 0' and a Westerly setback of 6'.
 - d. 53 Beaman St. has a Northerly setback of 25'; a southerly setback of 15'; and an Easterly setback of 22'.

PROPOSED USES OF PROPERTY

- 26) Poultney Properties proposes to lease a portion of the structure identified as 61 Beaman St., comprised of 6,500± sq. ft. of indoor space, to Revive Church for operation of a church. Revive Church is currently located at 60 Kerber Lane in Poultney, Vermont. At the hearing, Pastor Kerber stated that Revive Church did not have a written lease agreement with Poultney Properties, LLC.
- 27) Proposed activities to be held at the Proposed Church Space include the following:
- a. "One or more weekly worship services on Sundays," with "up to 200 adult persons per service, with children also attending in a different room within the same building." Ex. B.
 - b. LifeGroup sessions meeting at night, with an estimated 20-30 people attending, once per week.
 - c. An unspecified number of "workshops, events, and activities throughout the week." Ex. B.
 - d. Open-door access for children, "including those walking home from school, to serve as a safe space to do homework, to volunteer, and to socialize." Ex. B.
- 28) The total number of potential users of the Proposed Church Space could not be confirmed, however, the Applicant represented that some 200-300 people call Revive Church their home church and the Church hopes to reach out to other members of the community to use the Proposed Church Space for activities such as workshops and afterschool programs.
- 29) In addition to the uses requested in connection with the current application, the Applicant hopes "the Town will revise its zoning to allow the Church to provide formal daycare in the future." Ex. B.
- 30) The Application proposes the addition of interior walls to define a total of five separate rooms within the Proposed Church Space. These rooms will be used as children's ministry classrooms and a warming kitchen.
- 31) The hours of operation of the proposed church could not be confirmed because Pastor Kerber and counsel provided varying descriptions of potential activities. However, Revive Church indicated that worship services would occur every Sunday between 10:00 a.m. and 11:30 a.m., and that the facility would be used through the week for various activities.

- 32) The days of operation of the Proposed Church Space could not be confirmed. A variety of potential activities were described, and it was represented that the facility might be used throughout the week at various times, including specifically the evenings and afterschool hours.
- 33) The number of employees of the proposed church, or the number of daily volunteers or visitors, could not be confirmed.

PARKING PLAN

- 34) The Application proposes an off-street parking plan using a combination of three separate locations: (1) off-street parking located on the Parcel; (2) off-street parking located on an adjoining parcel with a street address of 75 Main Street, Poultney, Vermont, currently owned by S. Allen Macomber and currently the location of Poultney Auto Supply (the "Poultney Auto Supply Lot"); and (3) off-street parking located at 60 Kerber Lane, with busing provided to the Proposed Church Space for those who park at 60 Kerber Lane.
- 35) The Application proposes 39 parking spaces on the Parcel, 24 parking spaces on the Poultney Auto Supply Lot, and 65 parking spaces at 60 Kerber Lane, accessible via bus shuttles.

PROPOSED PARKING ON THE PARCEL

- 36) The Applicant proposes adding eight new parking spaces to currently paved portions of the Parcel and 24 new parking spaces to currently unpaved portions of the Parcel.
- 37) The 24 parking spaces proposed for the currently unpaved portion of the Parcel would be directly adjacent to residential parcels located to the north.
- 38) The site plan provided by the Application does not indicate the distances between the adjoining residential parcels and the proposed additional parking spaces.
- 39) **PUB, Article VI, S601(G)** provides: "All open off-street parking areas containing more than four (4) parking spaces and all off- street loading areas shall be: 1. screened on each side adjoining or fronting on any property in a residential district, by a wall, fence, or densely planted hedge not less than five (5) feet in height"
- 40) The Application provided no information regarding planting screens or suitable fences between the proposed parking and the adjacent residential properties.

PROPOSED OFF-SITE PARKING ON THE POULTNEY AUTO SUPPLY LOT

- 41) The Applicant's parking plan proposes the use of the adjacent Poultney Auto Supply Lot as a portion of the parking for the Proposed Church Space.
- 42) In support of this part of the Applicant's parking plan, the Applicant provided a "Parking Lot Agreement" dated October 11, 2017, between Revive Church and S. Allen Macomber. The Parking Lot Agreement reads:

This Agreement ... is to establish the use of the parking lot located at 75 Main St., Poultney, VT 05764, during weekly worship services on Sundays and potentially in the future during the week after 5:30 p.m. No other access is granted for the use of the parking lot unless prior written permission is granted by S. Allen Macomber. This permission is only for the Revive Church and its members to use the parking lot for parking and is not a right of way.

Either party may terminate this agreement by providing written notice to the other party and said termination shall be effective 30 days from said notice.

- 43) During hearings, the Slate Quarry Park Group presented a Statement to the DRB. The Slate Quarry Park Group owns a lot located at 76 Main Street, which it is developing for use as a park. The Slate Quarry Park Group shares a property line to the North with Poultney Properties, LLC. The Statement indicates that the Slate Quarry Park Group has a current and ongoing "handshake" agreement with S. Allen Macomber regarding the use of the Poultney Auto Supply Lot as a parking lot to serve the park located at 76 Main Street. The Slate Quarry Park Group expressed concerns regarding whether the Applicant's proposed parking plan and the Revive Church's Parking Lot Agreement with S. Allen Macomber would conflict with the Slate Quarry Park Group's existing arrangement with S. Allen Macomber.

PROPOSED OFF-SITE PARKING AT 60 KERBER LANE

- 44) The Applicant proposes that an additional 65 parking spaces would be provided off-site at 60 Kerber Lane. The Applicant proposes that persons who park at 60 Kerber Lane would be bused to the Proposed Church Space for weekly worship services.
- 45) The number of people who might use the overflow parking, and the number of bus trips required to move people from 60 Kerber Lane to the Proposed Church Space could not be confirmed.

INGRESS AND EGRESS

- 46) The Applicant's parking plan provides for one-way flow of traffic for ingress and egress. The line of traffic moves from Main Street, through a narrow, deeded right of way to and through the Parcel, and then across the Poultney Auto Supply Lot to a Main Street exit located on the Poultney Auto Supply Lot. Ex. B. All traffic is proposed as one-way.
- 47) The proposed traffic plan is dependent entirely on access to the Poultney Auto Supply Lot. If the Lot is not available to the Applicant, then the traffic would need to enter and exit the Parcel at the same entrance—a narrow deeded right of way that cannot accommodate a continuous or simultaneous flow of two-way traffic.
- 48) The Applicant proposes the addition of two gates: (1) a gate to separate the Proposed Church Space parking from the proposed parking for the Appealed Retail Space, and (2) a locked gate to divide the 24 new parking spaces located just south of adjoining residential properties from the Macomber Parcel to the South. The Applicant proposes that this second, locked gate will only be opened during a weekly worship service to allow cars to exit to Main Street through the Poultney Auto Parts lot. The Parking Lot Agreement between Revive Church and S. Allen Macomber also limits access to the Poultney Auto Supply Lot to the times of Sunday services. Accordingly, it is unclear that the Applicant's proposed traffic flow plan would be available to the Proposed Church Space during the proposed days and hours of operation.
- 49) Interested parties and Board members raised concerns at hearing regarding the access for emergency vehicles in the event of an emergency, given the narrowness of the traffic plan and the potential numbers of vehicles using the proposed parking. The Applicant represented that the chain gate separating the retail parking from the church parking could be cut with chain cutters in the event of an emergency.
- 50) The current and expected daily traffic and load increase if the permit was approved could not be confirmed by the Applicant.
- 51) The **PUB** was adopted on May 27, 2014 and all the regulations mentioned in these Findings of Fact were in effect on January 10, 2017, the date that Poultney Properties, LLC, the current owner, acquired the Parcel.

CONCLUSIONS OF LAW

52) The Application's proposed use of "Church" raises special considerations in the DRB's review. Religious institutions and churches are afforded special protections and treatment under federal,² state, and local law.

53) 24 V.S.A. §4413, "Limitations on municipal bylaws" provides:

Churches and other places of worship, convents, and parish houses" may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use.

"The Legislature's intent in using the term 'location' was to give municipalities the ability to regulate the general location" of the uses outlined in §4413(a)(1) within the municipality. In re Town of Charlotte Rec. Trail Appeal, 2011 Vt. Super. LEXIS 111, *17.

54) The PUB does not regulate the location of religious institutions directly. *See, e.g., PUB, Article III, Table of Uses* (excluding "Church"). This is fitting, given the limited review the DRB is authorized to make pursuant to 24 V.S.A. §4413(a)(1). Instead, the PUB regulates the location of religious institutions by subjecting religious institutions to general regulations such as §1401, §1201, and §204, as well as a specific regulation at §1407.

55) **PUB, Article XIV, §1401, Compliance with Regulations** provides

No land, building, or premises, or part thereof, shall hereafter be used, and no building or part thereof, or other structure, shall be constructed, reconstructed, extended, enlarged, moved or altered, except in conformity with this Regulation. No lot shall have an area, width, or a front, side or rear yard, less than that set forth unless otherwise provided for in this Regulation.

56) **PUB, Article XII, §1201, Permit Required**, provides:

A zoning permit shall be issued by the Zoning Administrator [sic] any use or structure, only after the Development Review

² During the hearings, counsel for Revive Church indicated that federal law "preempted" the regulations contained in the PUB. Counsel did not elaborate on which provisions of federal law apply in this situation.

Board grants site plan approval as provided under Section 4460(7) of the Act..."

57) **PUB, Article II, §204** provides:

Hereafter ... any change in the use of any building or other structure, or land, or extension of use of land shall commence except in compliance with all regulations in this bylaw for the district in which such building or land is located.

Any use not permitted by these regulations shall be deemed to be prohibited.

58) The Applicant's proposal must satisfy these provisions, and the other general provisions of the PUB, before the DRB can approve it.

59) The DRB remains mindful that its review of this Application for church use is limited and that the DRB has no authority to impose regulations that do not relate to the specific aspects listed in 24 V.S.A. §4413, namely "location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements." In re Town of Charlotte Rec. Trail Appeal, 2011 Vt. Super LEXIDS 111, *19 ("[I]f the Questions presented do not correlate to Town regulations that relate to aspects listed in §4413(a), the Questions are beyond the scope of the Town's enabling authority.").

MIXED USE

60) It is evident from the facts as submitted by the Applicant and found above that the Parcel, does not, in its current configuration, conform with the PUB in at least two ways:

- a. Under the proposal contained in this Application, the Parcel would have at least two principal buildings located on the subject parcel which would be in use or proposed for use by two distinct entities for two distinct uses in derogation of PUB §1411; and
- b. there are four pre-existing nonconforming structures on the subject parcel that both exceed the lot limitations of §1411 and fail to meet existing setback requirements.

61) **PUB, Article III, "Table of Uses,"** permits mixed-use solely in the Village Commercial (VC) district, and then solely for residential/commercial uses. See also **PUB, Article XIII, "Definitions"** (defining "Professional Office/Residential Mixed Use"). The PUB makes no other express provision for mixed uses. The Table of Uses governs how uses are located within the

municipality, and limit the locations of mixed uses to a particular district, namely, the Residential/Commercial District.

- 62) Any use not permitted by the regulations is prohibited. §204.
- 63) Here, the Application proposes a mixed-use for the Parcel. If the proposal were approved, two existing entities would continue to use two principal buildings on the Parcel for “Industry, Light” activities, and a third, new entity would use a portion of the remaining principal building for a use other than “Industry, Light.” Such mixed use is not permitted at this location under the Table of Uses and is therefore presumptively prohibited under the PUB, unless the use is somehow permitted due to some other authority granted under the PUB, such as waiver, variance, exemption, or conditional use approval.³
- 64) It is not the use proposed in this application that triggers concerns over mixed use. Rather, it is the pre-existing uses already present on the Parcel that render the proposed use a mixed one. If the Parcel were already being used solely as a church, then the current application would not raise the mixed-use concern; similarly, if the use proposed in the present Application were an “Industry, Light” use, then the mixed-use concern would not be implicated.⁴ However, because the use proposed in the Application is not “Industry, Light,” the mixed-use concern is present. The PUB seeks, whenever possible, to promote single uses on lots limited to a single principal building. **PUB, Article III, Table of Uses and PUB, Article XIV, §1411.** When, as here, an application proposes mixed uses, located on a lot with more than one principal building, the application does not comply with the PUB, and absent some separate authority authorizing an exception such as a waiver, variance, exemption, or conditional use approval, denial of the application is appropriate. No request for variance, waiver, or exemption is currently before the DRB, and such a request has not been duly noticed. The DRB therefore concludes that the Application cannot be approved as presented here, and that this ground alone is sufficient for the Application to be denied at this time. In reaching this conclusion, the DRB expressly reserves any ruling regarding whether a mixed use might be appropriate for the Parcel in the future.
- 65) This conclusion is consistent with the conclusion reached in the Appealed Retail Decision. See In re Poultney Properties, LLC – 2/23/17 Zoning Permit

³ If both the current Application and the proposals contained in the 2/23/2017 Application currently on appeal before the Environmental Court were implemented, the lot would contain four (4) distinct entities, operating out of three (3) separate buildings, representing three (3) separate uses (Light Industrial, Retail, and Church).

⁴ Other concerns, such as expansion of existing nonconformities and appropriate site plan review might exist.

Applications for Parcel #225006.100, Findings of Fact, Conclusions of Law and Order, at ¶ 52.

PUB, ARTICLE XIV, §1407

- 66) In addition to the general requirements, **PUB Article XIV, §1407, Churches, Temples, Religious Institutions**, imposes specific requirements on religious institutions. Under §1407, a church must meet the following requirements:
- A. There shall be a minimum lot area of two (2) acres.
 - B. Structures, including accessory buildings, shall not occupy more than thirty percent (30%) of the area of the lot.
 - C. There shall be minimum yards of twenty-five (25) feet on all sides of the building(s) with a minimum setback of one hundred (100) feet from all adjacent residential property.
 - D. Where possible, entrances and exits to the parking lot shall be on non-residential streets.
 - E. Off-street parking shall be provided in accordance with Article VI and shall be located a minimum distance of twenty five (25) feet from any adjacent residential property and shall be surrounded by a planting screen or suitable fence.
 - F. All driveways, entrances and exits shall be located a minimum of seventy-five (75) feet from any street intersections
- 67) The specific requirements in §1407 directly regulate the permissible locations of religious institutions within the municipality. If a lot cannot meet the specific requirements of §1407, then the proposed lot is, as a matter of express requirements, not a permissible location for the religious institution within the municipality.
- 68) The proposed location of the church does not meet the requirements of §1407.
- 69) Section 1407(A) requires a church to have a minimum lot of area of “two (2) acres.” The Parcel is only 1.76 acres.

- 70) Section 1407(C) requires “minimum yards of twenty-five (25) feet on all sides of the building(s) with a minimum setback of one hundred (100) feet from all adjacent residential property.” The Parcel does not meet this minimum requirement. None of the buildings located on the Parcel meets the setback requirement, and 61 Beaman Street, the location of the Proposed Church Space has a minimum setback of 6.25’ at its minimum point.
- 71) Section 1407(E) provides that off-street parking “shall be located a minimum distance of twenty-five (25) feet from any adjacent residential property and shall be surrounded by a planting screen or suitable fence.” The Application does not provide for off-street parking located a minimum distance of twenty-five feet from any adjacent residential property and makes no provision for a planting screen or a suitable fence.
- 72) Accordingly, the DRB concludes that the Application fails to satisfy the express requirements of §1407 and that the Application is denied on this ground alone.
- 73) The DRB has the authority to “hear and grant or deny a request for a variance or waiver in the application of provisions of the Zoning Regulations in accordance with Sections ... 1407.” **PUB, Article XVI, §1605(a)(2)**. The Applicant did not request such a variance or waiver in this application, and such a request was not duly warned and noticed. In concluding that the Application must be denied because the location of the Proposed Church Space does not comply with the express requirements of §1407, the DRB is reserving any ruling with respect to a future application for a variance or a waiver sought pursuant to §1605(a)(2).

SITE PLAN REVIEW

- 74) **PUB, Article X11, §1201** requires the DRB to conduct a site plan review before issuing a permit. Section 1203 states that the DRB “may impose appropriate conditions and safeguards only with respect to the adequacy of traffic access, circulation and parking, landscaping and screening” All these inquiries are permissible under 24 V.S.A. §4413(a)(1). Section 1203 describes the specific objectives the DRB must consider in conducting its site plan review.
- 75) The DRB concludes that the Applicant has not provided sufficient detailed information upon which to sustain site plan approval in accordance with 24 V.S.A. §4416(a) and **PUB Article XII, §1203, Site Plan Approval**, in the following ways:

(A) Maximum safety of vehicular circulation between the site and the street network. Particular consideration shall be given to visibility at

intersections, to traffic flow and control, to pedestrian safety and convenience, and to access in case of an emergency.

The Applicant has not provided sufficient information regarding the scope of visitors and traffic that is likely to use the Proposed Church Space, not only on Sundays, but throughout the week. Revive Church anticipates the attendance of potentially 300-400 persons over the course of multiple services on Sundays alone. At the hearings, the Applicant represented that Revive Church also anticipates hosting additional activities during the week, both during the day and in the evening, although the Applicant was unable to specify the full extent of those activities. In the light of the uncertainty regarding the numbers of persons who would need parking at the Proposed Church Space, the DRB concludes that the Applicant has presented insufficient information to evaluate the sufficiency of the proposed parking plan and traffic flow with respect to the “safety of vehicular circulation between the site and the street network, ... traffic flow and control, pedestrian safety and convenience and to access in case of an emergency.”

In addition to the uncertainties concerning the amount of traffic expected to flow in and through the Parcel, certain features of the Applicant’s traffic plan raise concerns with respect to traffic flow and control and access in case of an emergency. The proposed traffic pattern entering, moving through, and leaving the Parcel is entirely dependent on access to the Poultney Auto Supply Lot on the adjacent property to the West. Without access to this Lot, traffic moving through the Parcel and exiting the Parcel must move in a two-way pattern, and cars must both enter and leave the Parcel over the same narrow, deeded right of way—a passage that does not allow for simultaneous two-way traffic. The Applicant’s access to the Poultney Auto Supply Lot is based on a Parking Lot Agreement that (1) may be terminated by either party within 30 days, (2) currently only allows for access to the lot on Sundays, and (3) already appears to conflict with an existing agreement with another neighbor, the Slate Quarry Park Group, for use of the Lot. Given the lack of workable and reliable on-site ingress and egress, the DRB concludes that site plan approval is inappropriate under the current proposal.⁵

⁵ The Applicant proposed that the current Application be treated as an “Assembly” under **PUB, Article VI, §603, Parking Space Requirements** for purposes of calculating parking space requirements. The Applicant further observed that the requirements for “Assembly” provide two separate measures for an “Assembly” use, namely “One (1) space for every three (3) seats or every two hundred square feet of floor area.” In this instance, the two measures would result in a requirement of either 66 parking spaces or 33 parking spaces, respectively, depending on which measure is applied. The Applicant proposed that, due to the DRB’s duty to resolve ambiguities in zoning regulations in favor of a landowner, the DRB should apply the lesser of these two figures. The DRB does not reach this issue, because it concludes the uncertainty with respect to potential traffic flow, ingress and egress issues, and emergency vehicular access, render the Application

(B) Adequacy of circulation, parking and loading facilities. Particular consideration shall be given to the items in (A) above and the effect of noise, glare, or odors on adjoining properties. Refuse and service areas should be included in this consideration. Provisions for snow removal should also be made. The standards under Article VI Parking Requirements must also be met.

Despite requests for information at the hearing, the Applicant has not yet provided sufficient information regarding workable plans for snow removal. This issue is of particular concern given the narrow vehicular passages available on-site. The Applicant provided alternate possibilities, suggesting at one time that snow would be stored on-site in one of the parking areas (a plan that would necessarily impair the parking available for attendees) and suggesting at another time that the Applicant and the adjacent property owner would work out a plan for snow removal. The DRB concludes that it has insufficient information to evaluate the sufficiency and workability of the proposed snow removal plan.

(C) Adequacy of landscaping and screening with regard to achieving maximum compatibility and protection to adjacent property. Particular consideration shall be given to the preservation of existing vegetation, visibility of unsightly or incompatible areas from the road and adjoining properties, and the adequacy of landscaping materials to meet seasonal conditions, soil conditions, and light on the site.

The Application makes no proposals for landscaping or screenings for adjacent property, even though the site plan calls for the addition of a new paved parking area immediately adjacent to a residential property. To that end, the Applicant has failed to submit a site plan that achieves maximum compatibility with adjacent property by preserving existing vegetation while minimizing unsightly and incompatible areas from visibility.

ORDER/DECISION

The permit application seeking a permit and site plan approval for church use of 61 Beaman Street is denied.

Motion made by Ernie DeMatties, seconded by Jaime Lee.

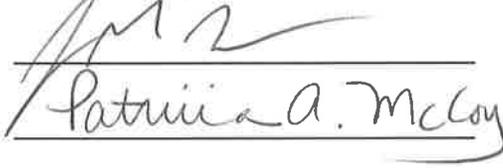
inappropriate for approval at this time. In reaching this conclusion, the DRB is reserving any ruling regarding the parking space issues under §603.

APPEAL PROCEDURE

Any interested person who has participated in this proceeding may appeal this Decision of the Development Review Board to the Superior Court, Environmental Division within thirty (30) days of this decision under PUB §1001(b) and pursuant to 24 V.S.A. §4471. Upon the failure of any interested person to appeal this decision to the Superior Court, Environmental Division, this decision will be final. See 24 V.S.A. §4472(d).

DEVELOPMENT REVIEW BOARD MEMBERS for the decision





Dated at Poultney, Vermont, this 19th day of February, 2018

Copy to: Leonard V. Knappmiller of Poultney Properties, LLC; Pastor Derik Kerber of Revive Church of Poultney, Vermont; and David R. Cooper, Esq. of Facey Goss & McPhee P.C. of Rutland, Vermont.

EXHIBIT A

TOWN OF POULTNEY
ZONING PERMIT APPLICATION FORM

Application # _____

Filing fee: \$ _____

A Zoning Permit must be applied for and approved prior to undertaking any construction or land development, including the construction of alterations or additions to existing structures or accessory buildings. A zoning permit must be applied for and approved prior to any change of use of an existing structure or property. Incomplete applications may be denied. Construction must be commenced and completed in accordance with the timeline(s) established by the Poultney Unified Bylaws. Any material misstatement or misrepresentation in the application process may result in any permit issued to be void. If you have any questions, contact the Zoning Administrator. The owner is urged to review the local zoning bylaws. The issuance of a Zoning Permit does not relieve the owner from applying for and obtaining any other permits required by any State of Vermont, and/or Federal, Department or Agency.

PROPERTY / OWNER DATA

Names as they appear on the deed:

Poultney Properties LLC

Tax map parcel identification number:

225006100

Street address of property:

61 Beacon St

Owners' mailing address:

P.O. Box 136 Center Poultney VT 05736

Telephone number/E-mail address:

NA

Does the owner own any adjoining properties or property across a town highway from the subject property? Yes ___ No X (If so, provide a copy of the deed and any surveys of the same)

Contractor/Designer/Architect Contact Information (attach separate sheet if needed):

Name:

Michael Mach Construction

Mailing address:

802-236-1455

Telephone number/E-mail address:

1070 South St. Castleton

michaelmach2014@gmail.com

VT 05735

TYPE OF APPLICATION:

- Application for Permitted Use or Permitted Structure.
- Application for a Permitted Use subject to review by Development Review Board
- Application for a Variance
- Application for Conditional Use
- Application for Subdivision Approval
- Application for change of Nonconforming Use
- Application for alteration to a Nonconforming Structure
- Application for replacement of existing structure

Other: Adding interior walls.

RECEIVED
10/11/17

Application # _____

REQUIRED DOCUMENTS /INFORMATION TO BE INCLUDED WITH APPLICATION:

- A copy of most recent deed to the property with recording data.
- A copy of any survey of the property and if recorded, the recording information.
- A copy of the State of Vermont Wastewater and Water Supply Permit or satisfactory evidence of exemption from permit requirements.
- Copies of any and all other State of Vermont permits issued with respect to the property or use.
- Scale drawing of existing and proposed structures and improvements, to include existing setback dimensions, and a plot plan drawn to scale showing the location of the proposed construction with setback dimensions, driveways, parking and other pertinent data.

Estimated cost of construction, materials and labor at current market rates: \$ 30,000

Detailed description of proposed construction/alterations (attach separate explanation sheet(s) if needed):

See attachment #1

Detailed description of existing use: VACANT
Detailed proposed use: Church

Building dimensions: length: _____; width: 84'; vertical height: _____
Number of stories: 2
Dimensions of the lot: _____ ft. x _____ ft.; frontage on street or road: _____ ft.
Proposed or existing setbacks: from road right-of-way: _____ ft.;
side yard: _____ ft.; other side yard: _____ ft.; rear yard: _____ ft.

OWNERS' SIGNATURES

x [Signature] x _____

THIS SECTION FOR USE BY THE ZONING ADMINISTRATOR ONLY:

Date complete application received with fee: _____
Zoning district: _____
Applicable sections of the Bylaws: _____

- Approved
- Denied: Reasons: _____ (see appeal rights contained in Bylaws)
- Referred to the development review board for hearing under § _____

Zoning Administrator _____

Date _____

Derik Herber
802-342-7942

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that KNAPPMILLER, LLC, a limited liability company organized and existing under the laws of the State of Vermont, with a principal place of business in Rutland, Vermont, GRANTOR, in the consideration of One Dollar (\$1.00) and other good and valuable consideration paid to its full satisfaction by POULTNEY PROPERTIES, LLC, a limited liability company organized and existing under the laws of the State of Vermont, with a principal place of business in Rutland, Vermont, GRANTEE, by these presents does freely GIVE, GRANT, SELL, CONVEY AND CONFIRM unto the said GRANTEE, POULTNEY PROPERTIES, LLC, and its successors and/or assigns forever, a certain piece of land in the Town of Poultney, County of Rutland and State of Vermont, described as follows, viz:

Being all and the same lands and premises conveyed to Knappmiller, LLC by Confirmation Order of the Vermont Superior Court, Civil Division, Rutland Unit, Docket No. 453-8-16 Rdev, in Re: "National Bank of Middlebury vs. No Boundaries, LLC", dated December 19, 2016, to be recorded in the Town of Poultney Land Records just prior to the within Warranty Deed, and further described as follows:

Being all and the same lands and premises conveyed to No Boundaries, LLC by Confirmation of Sale in the matter entitled "Banknorth, NA, successor in interest to First Vermont Bank and Trust Company, Plaintiff v. JRL Industries, Inc., et al," Rutland superior Court, Docket No. 501-8-04 Rdev, said Confirmation of Sale being dated June 10, 2005 and recorded July 8, 2005 in Book 126, Pages 286-91 of the Town of Poultney Land Records, and further described in Schedule A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said GRANTEE, POULTNEY PROPERTIES, LLC, to its own use and behoof forever; and It, the said GRANTOR, KNAPPMILLER, LLC, for itself and its successors, heirs, executors and administrators, does covenant with the said GRANTEE, POULTNEY PROPERTIES, LLC, and its successors and/or assigns that until the ensealing of these presents it is the sole owner of the premises, and has good right and title to convey the same in manner aforesaid, that they are FREE FROM EVERY ENCUMBRANCE; except those of record

and as herein referred to and it hereby engages to WARRANT AND DEFEND the same against all lawful claims whatever, except as herein referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10th day of January, 2017.

IN PRESENCE OF:

KNAPPMILLER, LLC

[Signature]
Witness

By:

[Signature]
Leonard V. Knappmiller, Authorized Member

STATE OF VERMONT
COUNTY OF RUTLAND, SS.

At Rutland City in said County, this 10th day of January, 2017, personally appeared Leonard V. Knappmiller, duly authorized member of Knappmiller, LLC, and acknowledged this instrument, by him sealed and subscribed, to be his free act and deed, and the free act and deed of Knappmiller, LLC.

Before me,

[Signature]
Notary Public
My Commission Expires: 02/10/19

SCHEDULE A

Being all and the same lands and premises described in a Certificate of Non-Redemption dated March 28, 2003 and Judgment Order, Decree of Foreclosure, Order of Execution and Order of Public Sale dated January 28, 2005, both being recorded March 30, 2005 at Book 125 Pages 240-249 of the Town of Poultney Land Records and being more particularly described in pertinent part, as follows:

"Being all and the same lands and premises conveyed to JRL Industries, Inc. by deed of Williams Machine Co. by Deed dated October 1, 1987 and recorded October 2, 1987 at Book 77, Pages 226-28 of the Poultney Land Records and more particularly described therein as follows:

Beginning at a point marked by an iron pipe driven in the ground in the southerly line of Main Street, which said point is three hundred fifty-three (353) feet, more or less, westerly of an iron pin marking the intersection of the southerly line of Main Street and the westerly line of Bennett Street, and said point further being the southeasterly corner of lands now supposed to be owned by Peter Patch, et al, THENCE along the easterly line of said lands of Patch one hundred seventy and one-half (170.5) feet, more or less, to the southeast corner of said Patch; thence along the northeasterly line of lands of Patch forty-eight (48) feet, more or less, to the westerly line of lands now supposed to be owned by Swarov (formerly School Lot); thence northerly along the easterly line of lands of Swarov one hundred thirty-two (132) feet, more or less, to the southerly line of lands now supposed to be owned by Klasey (formerly Johnson); thence easterly along the southerly line of lands of Klasey and lands now supposed to be owned by Ricci (formerly Russell Williams) one hundred sixteen and one-half (116.5) feet, more or less, to the southeasterly corner of said lands of Ricci; thence northerly along the easterly line of lands of Ricci forty-three and one-half (43.5) feet, more or less, to the southerly line of lands now supposed to be owned by Michel (formerly George Ripley lot); thence easterly along the southerly line of land of Michel, lands now supposed to be owned by Vreeland (formerly W.W. Oyster) and land now supposed to be owned by Milstern (formerly Hatfield) as follows: forty-three (43) feet, more or less, easterly to a corner; thence (12) feet, more or less, southerly to a corner; easterly twenty-five (25) feet, more or less, to a corner; northerly seventeen (17) feet, more or less, to a corner; and easterly eighty-nine (89) feet, more or less, to the south easterly corner of said lands now supposed to be owned by Matheon; thence northerly along the easterly line of lands of Matheon one hundred thirty-two (132) feet, more or less, to the southerly line of Church Street; thence westerly along the southerly line of Church Street fifty-three (53) feet, more or less, to the westerly line of Beaman Street; thence southerly along the westerly line of Beaman Street three hundred fifteen (315) feet, more or less, to the northwesterly corner of land now supposed to be owned by Champlain Oil Company, and lands now or formerly of Coburn, one hundred ninety-three (193) feet, more or less, to the northwesterly corner of lands now or formerly of Coburn; thence southerly along the westerly line of lands now or formerly of Coburn one hundred forty-seven (147) feet, more or less, to a corner; thence easterly four (4) feet, more or less, to the westerly line of lands now or formerly of Coburn; thence southerly along the westerly line of lands of Coburn one hundred three (103) feet, more or less, to the northerly line of Main Street; thence westerly along the northerly line of Main Street one hundred sixty (160) feet, more or less, to the point and place of beginning.

"To all of which deed, other title instruments of record, the references therein contained and the records thereof, reference is hereby made and had for a more particular description.

EXCEPTING THEREFROM the property described in the following deeds:

- (1) Warranty Deed to Steven M. Bell and Barbara B. Bell of JRL Industries, Inc. dated April 13, 1989 and recorded on April 14, 1989 in Book 80, Page 200 of the Poultney Land Records.
- (2) Warranty Deed to John R. Griffith of JRL Industries, Inc. dated December 13, 1990 and recorded on December 14, 1990 in Book 81, Page 279 of the Poultney Land Records.

Subject to easements and rights of way of record or otherwise in existence.

Vermont Property Transfer Tax
 32 V.S.A. Chap 231
ACKNOWLEDGMENT-
 RETURNS RECEIVED
 Return No. 208
 Signed [Signature] Clerk
 Date 01.13.2017

filed for Records Date 1/13/17 Time 8:45 am
 Attest [Signature] Town Clerk [Signature]

Book: 177 Page: 81 Seq: 3



State of Vermont

Potable Water Supply and Wastewater System Permit

CASE NO.: WW-1-1500
APPLICANT: No Boundaries, LLC
ADDRESS: 485 Main Street
Orwell, VT 05760

LAWS/REGULATIONS INVOLVED
10 VSA, Chapter 64
Environmental Protection Rules,
Chapter 1
Water Supply Rules, Chapter 21

- (1) This project consisting of new water and sewer lines and conversion of a machine shop with 55 employees into a manufacturing facility with 80 employees; located on Bearnan Street in Poultney, VT, is hereby approved in accordance with the requirements of the regulations named above, subject to the following conditions:
- (2) The project shall be completed as shown on the plans: Site Location Plan And Legend dated August 2006 last revised 21 September 2006, General Construction Notes dated August 2006, Waterline Details dated August 2006, and Sewer Service Profiles And Details dated August 2006; prepared by Bruce F. Douglas PE, and which have been stamped "approved" by the Division of Wastewater Management. The project shall not deviate from the approved plans without prior written approval from the Division of Wastewater Management.
- (3) The project is approved for water supply by construction and utilization of the municipal water service depicted on the approved plans. No other means of obtaining potable water shall be allowed without prior review and approval by the Division of Wastewater Management.
- (4) The water supply system herein approved shall be routinely and reliably inspected during construction by a licensed designer or installer, who shall, upon completion and prior to utilization of the system, report in writing to the Division of Wastewater Management that the installation was accomplished in accordance with the approved plans and permit conditions.
- (5) The building's potable water service shall be isolated from all fire suppression piping by the inclusion of appropriate backflow prevention devices, as specified and approved by the Vermont Department of Labor and Industry.
- (6) The project is approved for wastewater disposal by construction and utilization of the municipal sewer connection system depicted on the approved plans. No other method or location of wastewater disposal shall be allowed without prior review and approval by the Division of Wastewater Management.
- (7) The municipal sewer connection system herein approved shall be routinely and reliably inspected during construction by a licensed designer or installer, who shall, upon completion and prior to occupancy of the subject establishment, report in writing to the Division of Wastewater Management that the installation was accomplished in accordance with the approved plans and permit conditions.

State of Vermont
Potable Water Supply and Wastewater System Permit #WW-1-1500
Page 2

(8) No Permit issued by the Secretary shall be valid for a substantially complete potable water supply and wastewater system until the Secretary receives a certification from a designer or the installer, signed and dated, that states:

"I hereby certify that, in exercise of my reasonable professional judgement, the installation-related information submitted is true and correct and the potable water supply and wastewater systems were installed in accordance with the permitted design and all permit conditions, were inspected, were properly tested, and have successfully met those performance tests."

(9) The conditions of this permit shall run with the land and will be binding upon and enforceable against the permittee and all assigns and successors in interest. The permittee shall be responsible for recording this permit in the Land Records within 30 days of issuance of this permit and prior to the conveyance of any lot subject to the jurisdiction of this permit.

(10) By acceptance of this permit, the permittee agrees to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental/health statutes and regulations, and with this permit.

(11) In the event of a transfer of ownership (partial or whole) of this project, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.

(12) This permit does not constitute Act 250 approval (Title 10 V.S.A., Chapter 151). The permittee is hereby reminded to procure all relevant State and local permits prior to proceeding with this project.

(13) This permit shall in no way relieve the permittee of the obligations of Title 10, Chapter 48, Subchapter 4, for the protection of groundwater.

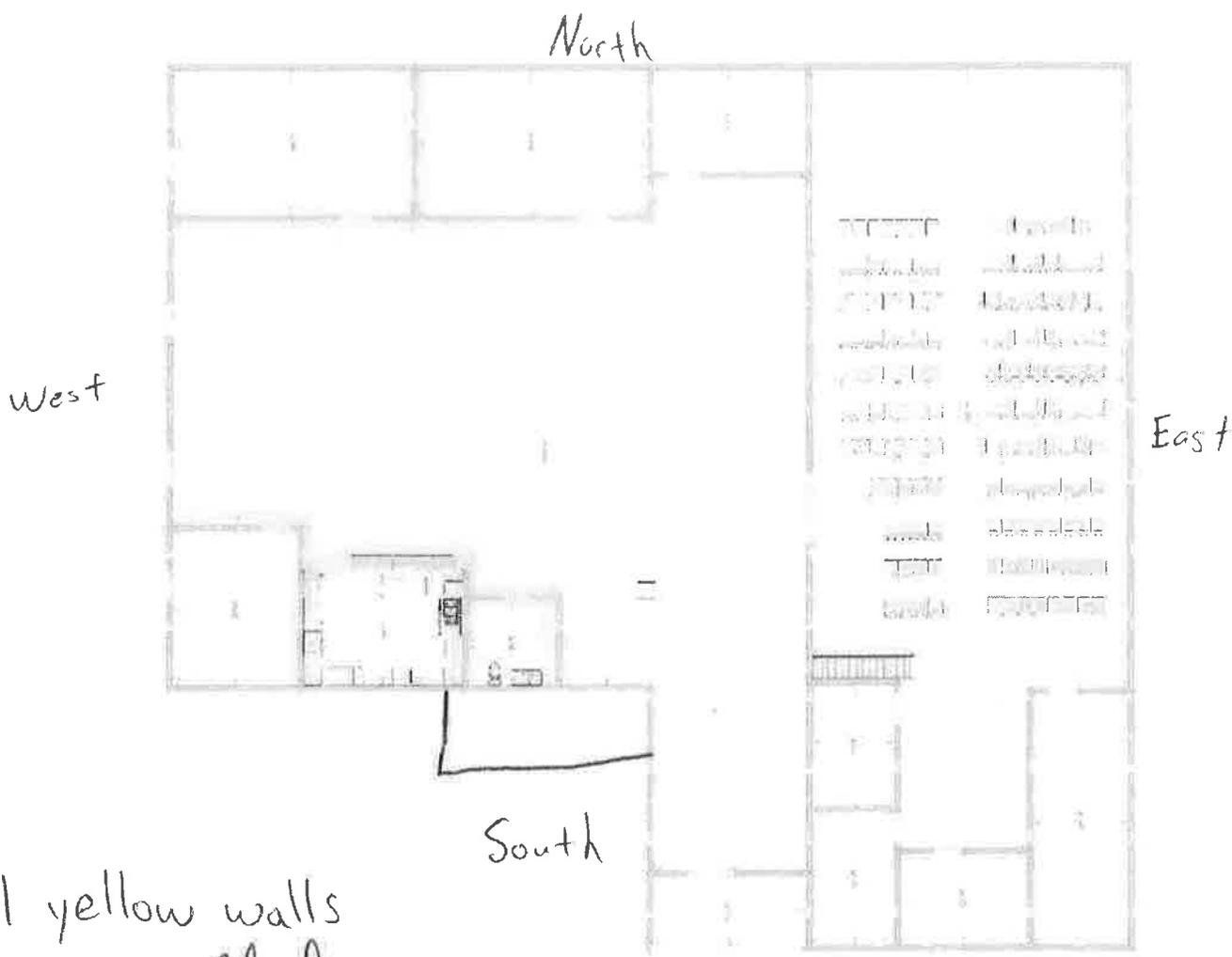
Jeffrey Wennberg, Commissioner
Department of Environmental Conservation

By: 

Marsha J. Thompson
Assistant Regional Engineer
Wastewater Management Division

Dated at Rutland, Vermont, 25 September 2006

cc: Poultney
Bruce F. Douglas, P.E.



Attachment 1



Revive Church Building Permit Write Up:

Below is an application to upfit and occupy the west side of the prior Vemas building, 61 Beaman St, currently owned by Poultney Properties LLC.

Section 1: Construction

Construction will consist of adding a partition walls for children's ministry classrooms and a warming kitchen on the lower level. Construction will also include painting and drywall work throughout the building. No extra square footage will be added to this property. All construction is strictly to upfit it for the purpose of conducting weekly Worship Services.

Section 2: Parking

The entrance and exit to Revive Church will be located off Main Street on the East side of the Auto Parts store through a right-of-way of Steve Betit's property. During our weekly service times the exit will be located through the parking lot of the Auto Parts Store on the West side of the Auto Parts Store Building. All traffic during services will be one way. Permission has been given in verbal and written form from Poultney Auto Part's owner Allen Macomber to use his parking lot during our worship services on Sundays and potentially mid-week after 5 in the future. (See attachment) A locked gate will be installed on the north end of Poultney Auto Parts Store's parking lot and access for Revive Church will only be allowed during a weekly worship service.

All parking spots are calculated to be 9x18ft.

Parking Lot P1: 10 regular spaces and 3 Handicap Spaces

Parking Lot P2: 31 regular spaces

Parking Lot P3: 25 regular spaces

Parking Lot P4: ~~60~~⁶⁵ regular spaces Located at 60 Kerber Lane for overflow parking with shuttle.

Total of 69 Parking Spaces on site. With an overflow Parking Lot that will hold 65 spaces.

Total potential parking: 134 spaces.

There will be no other entrance or exit to the Revive Church from Beman Street during our weekly worship services.



PARKING LOT AGREEMENT

Landowner:

S. Allen Macomber
Phone # 802-287-9211
Email: _____
Address: 75 Main St., Poultney, VT
05764

Tenant:

Revive Church, Derik Kerber, Pastor
Phone # 802-342-7942
Email: peopleofpraisevt@gmail.com
Address: PO Box 231, Poultney, VT 05764

THIS AGREEMENT between Tenant, Revive Church and Derik Kerber, Pastor, and Landowner, S. Allen Macomber, is to establish the use of the parking lot located at 75 Main St., Poultney, VT 05764, during weekly worship services on Sundays and potentially in the future during the week after 5:30 p.m. No other access is granted for the use of the parking lot unless prior written permission is granted by S. Allen Macomber. This permission is only for the Revive Church and its members to use the parking lot for parking and is not a right of way.

The Tenant agrees to carry liability insurance to cover any injuries to persons or property while the Tenant is using the parking lot. Tenant agrees to add the Landowner as an additional insured on its liability policy and to hold said Landowner harmless for any injuries to persons or property while Tenant is using said parking lot and to indemnify him for any injuries or damage caused by the Tenant, or its members and agents, while using said parking lot.

The parties shall make arrangements between them regarding snow-plowing.

Either party may terminate this agreement by providing written notice to the other party and said termination shall be effective 30 days from said notice.

Dated this 11th day of October, 2017.


S. Allen Macomber, Landowner

REVIVE CHURCH


Derik Kerber, Agent


Derik Kerber, Pastor

EXHIBIT B

Shannon A. Bertrand
David R. Cooper
John A. Facey, III
James P.W. Goss
Rodney E. McPhee
John C. Newman*

*Also admitted in NH



FACEY GOSS & McPHEE P.C.
ATTORNEYS AT LAW

Christopher W. Blanchard*
David G. Carpenter*
Heather Z. Cooper*
M. Kate Thomas

*Also admitted in MA
*Also admitted in NY and MA

Sheri J. Slack, Paralegal
Holly Webb, Paralegal

David R. Cooper, Esq.
dcooper@fgmvt.com
Direct Dial 802 665 2702

January 5, 2018

Via Electronic Mail (poultneymanager@comcast.net)

Paul A. Donaldson
Town/Village Manager
Poultney, Vermont
9 Main Street
Poultney, Vermont 05764

RE: Revive Church – Zoning Permit Application

Dear Paul:

I am writing in anticipation of next week's hearing on the above-referenced application to address some questions and concerns that have been raised. In no particular order:

1. Proposed Activities. The proposal is to use the site as a church, with all that such a use inherently and typically entails. Certainly, this will mean one or more Sunday services, which will attract the largest numbers, up to 200 adult persons per service, with children also attending in a different room within the same building. The Church also will host smaller LifeGroup sessions, worship services, and other workshops, events, and activities throughout the week. The Church is hopeful that the Town will revise its zoning to allow the Church to provide formal daycare in the future, as that is a much needed service in Town; in the meantime, the Church plans to open its doors to children, including those walking home from school, to serve as a safe space to do homework, to volunteer, and to socialize.
2. Parking (Shared). On Sunday mornings, the Church will be able to use the parking spaces allocated to the woodworking shop, which will be closed at that time. The Church will not use the seven spaces allocated to the REED building. The Church will not use any of the spaces to the east of the building along Beaman Street allocated to the proposed retail store; conversely, the retail store will not use any of the spaces allocated to the Church. A chain gate will be placed between the parking and loading areas to prevent vehicular traffic. The location of the chain gate is shown on the attached site plan. In exigent circumstances, this chain can be cut by emergency personnel to allow access if necessary.

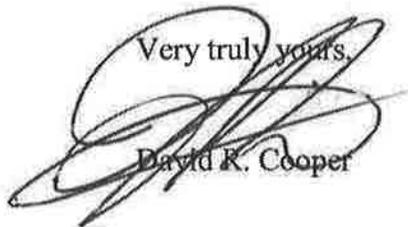
3. Parking (Number and Size). If the DRB requires each space to be 10'x20', the Church will have on-site, off-street parking for 56 cars. The location and layout of the parking spaces are shown on the attached site plan. If the DRB allows the Church to use 9'x18.5' spaces, there would be room for 60 on-site parking spaces as shown on the alternative site plan, attached. Additional off-road parking is available at the Church's location on Kerber Lane north of town, if necessary, and busing will be provided to those who park in that location.

Section 603 establishes two alternative parking minimums for assembly-type uses: (i) "one space for every 3 seats" or (ii) "one space for...every two hundred square feet of floor area." The Regulations do not specify whether the applicable alternative is whichever requires more spaces or whichever requires fewer spaces. By their nature, zoning ordinances are in derogation of common law property rights and any uncertainties must be resolved in favor of the landowner/developer. Accordingly, Section 603 must be interpreted to require a minimum of 33 spaces for the 6,500 sq.ft. building. The Church's proposal easily complies with this requirement, even using 10'x20' spaces.

Even if the DRB were to interpret Section 603 to require 67 spaces based on the Church's proposed 200 seats, sufficient parking is provided when the off-site parking on Kerber Lane is taken into account. Furthermore, while not required in this case, the conditions for a waiver under Section 602(A) are satisfied here as well, namely: There is available parking along Main Street in close proximity to the Church, as well as off-site parking at the Church's second location on Kerber Lane; the Church will not generate a significant increase in traffic, there are no other areas available to accommodate on-site parking, and no deliveries to the Church will be made on Sunday mornings.

4. Gates. The location of the two proposed gates are shown on the attached site plan. One gate will separate the Church from the loading and parking areas allocated to the proposed retail store to the east. The other gate will be located to the west of the auto parts store and will be opened to allow vehicles to exit onto Main Street.
5. Ingress and Egress. Traffic circulation is shown by arrows on the attached site plan.

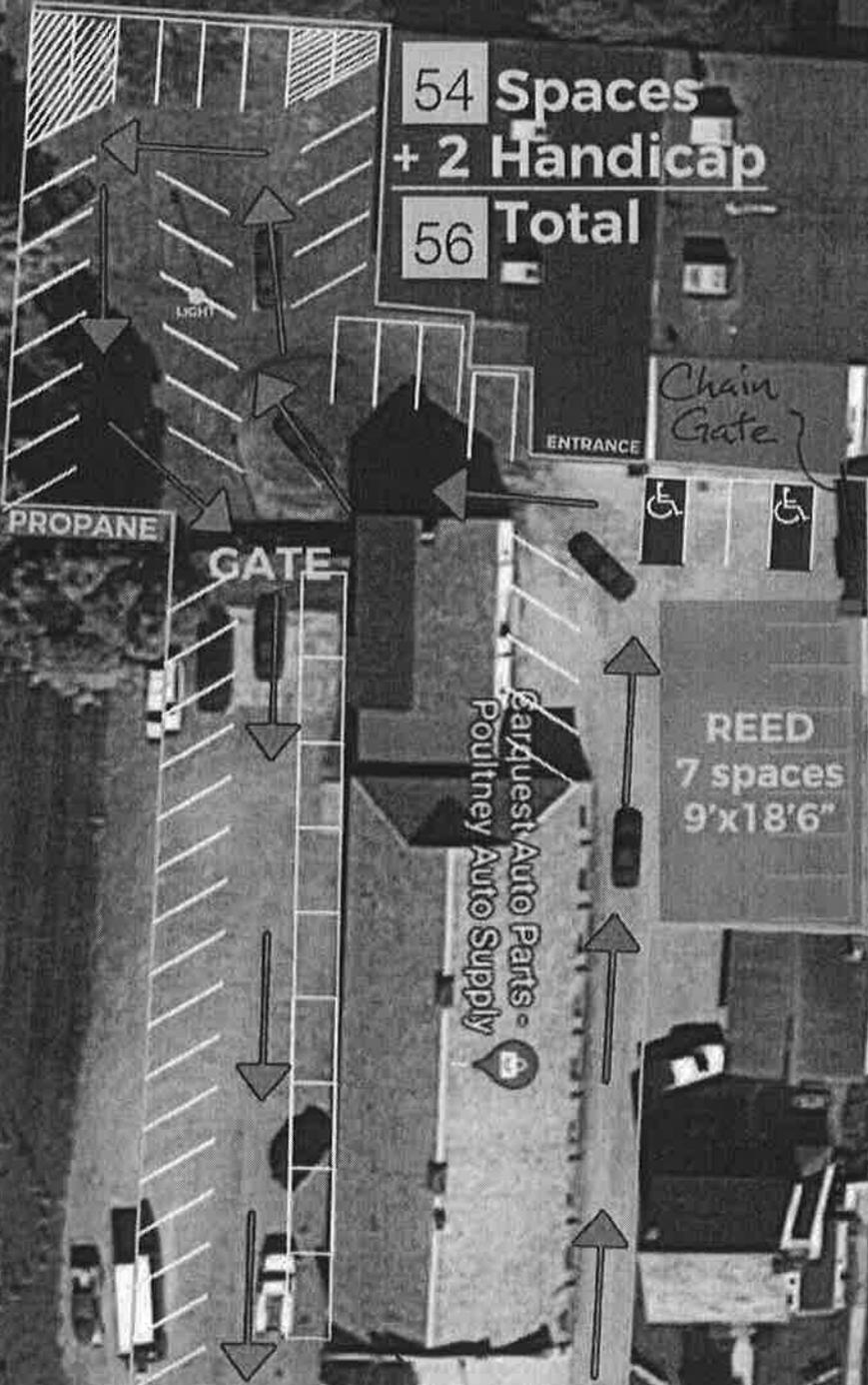
Should you have any questions or require additional information before next week's hearing, please contact me.

Very truly yours,

David R. Cooper

DRC:clk
Enclosure
cc: Derik Kerber
Len Knappmiller

Using 10'x20' spaces

54 Spaces
+ 2 Handicap
56 Total



PROPANE

GATE

ENTRANCE

Chain Gate

REED
7 spaces
9'x18'6"

Fairquest Auto Parts -
Poutney Auto Supply

Main St

Main St

Main St

Google

Herrn

Ma

William

Using existing 9'x18'6"

57 Regular
+ 3 Handicap
60 Total



Main St

Main St

Main St

EXHIBIT C

Jan. 8, 2018

Statement before Poultney Development Review Board

Slate Quarry Park Group

The Slate Quarry Park Group owns the lot at 76 Main Street in Poultney. We share a property line to the north with the former Vemas Corporation lot now owned by Poultney Properties.

Having faith in small town values wherein a hand shake serves as well or better than a transaction across a counter, last year we approached our neighbor Al and established a verbal agreement to make use of the parking lot of Poultney-Fair Haven Auto Parts for four or five parking spaces near the Main Street entrance to the lot which adjoins our lot to the east. Several weeks ago (and again today) I contacted Al Macomber once more to ensure that we still have that agreement. He stated that he didn't think the agreement with the church to use the lot on Sundays abrogates the agreement he has with us. We hope and pray that is true.

If there is the possibility of conflict we beseech the parties to recognize that we have a responsibility to each other and to residents of Poultney to make sure everyone has the opportunity for well-being and co-existence. Our ultimate goal is to build a park that will eventually be turned over to the town free of any encumbrance. This is not a hobby with us; it is a serious commitment to the citizens of Poultney that we intend to keep.