

TOWN OF CORNWALL
2629 Rte. 30, Cornwall, VT 05753
Development Review Board
FINDINGS AND DECISION

In re: PH Ridge Road, LLC

Hearing Application No.: drb#18-004

I. INTRODUCTION AND PROCEDURAL HISTORY:

1. This proceeding involves review of an application submitted by Janet and Churchill Franklin ("Applicants") for approval of a proposed Conditional Use of property owned by PH Ridge Road, LLC at 299 Ridge Road as a commercial event venue, under the *Town of Cornwall Zoning Regulations effective February 26, 2008*.
2. The application was initially received by the Development Review Board (DRB) on July 10, 2018. With the filing of further material on August 10, 2018, the application was deemed complete. A copy of the application and attendant files and testimonies are available at the Cornwall Town Clerk's Office.
3. On August 16, 2018, notice of a public hearing on September 5, 2018 for review of the application ("Notice of Hearing") was published in the *Addison Independent*.
4. On August 16, 2018, the Notice of Hearing was posted at the following places:
 - a. The Town Clerk's office.
 - b. The Town Garage
 - c. The Town website
5. The application was then considered by the DRB at a public hearing on September 5, 2018. The hearing was adjourned and continued on October 3, 2018, the final public hearing.
6. Present at the hearing(s) were the following members of the DRB:
 - Barbara Greenwood (DRB Chair)
 - Gary Barnett
 - David Anderson (present for first Hearing; filling in for Magna Dodge at second Hearing)
 - Shari Johnson
 - Joe Severy
(Magna Dodge was present for first Hearing, and absent from second Hearing)
7. Cheryl Cesario recused herself as her business uses a portion of the property for agricultural purposes.
8. At the outset of the hearing, the DRB Chair read aloud the Notice of Hearing as published. The Chair then read aloud the statutory definition of "interested person," and afforded those attendees wishing to claim status as an interested person an opportunity under 24 V.S.A. §4465(b) to sign in and to provide a USPS mailing address at which to receive materials. A record of the name and address of persons claiming status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing are available at the Town Clerk's Office. Those persons wishing to participate were duly sworn-in.

II. EVIDENCE AND RELEVANT TESTIMONIES:

During the hearings the following exhibits were submitted to the DRB, accepted into evidence, and marked as shown:

1. Exhibit A—Proof of Notice of Hearing mailing to abutters
2. Exhibit B—Notice of Hearing as published, August 16, 2018

3. *Exhibit C*— Application, dated July 7, 2018
4. *Exhibit D*—[D1] Corrected Map, filed August 9, 2018
[D2] Google Earth Map, August 9, 2018
5. *Exhibit E*—Conservation Commission Report, August 27, 2018—noting that the CCC has no concerns with this application
6. *Exhibit F*—Lapin email, August 27, 2018
7. *Exhibit G*—Aldrich letter, August 31, 2018
8. *Exhibit H*—Sperry email, September 4, 2018
9. *Exhibit I*—Bechhoefer email, September 4, 2018
10. *Exhibit J*—Beaney email, September 4, 2018
11. *Exhibit K*—Fritz email, September 5, 2018
12. *Exhibit L*—Diehl letter, September 5, 2018
13. *Exhibit M*—Rheaume letter, September 25, 2018 (submitted by Attorney Donahue as authorized)
14. *Exhibit N*—Sunderland letter, September 12, 2018 (submitted by Attorney Donahue as authorized)
15. *Exhibit O*—Department of Public Safety—Division of Fire Safety, submitted by Attorney Donahue, September 27, 2018 regarding additional permits
16. *Exhibit P*—Additional Fire Marshall-related documentation
17. *Exhibit Q*—Fritz second email, September 24, 2018
18. *Exhibit R*—Goldman email, September 24, 2018
19. *Exhibit S*—Dorsey email, October 1, 2018

These exhibits are available at the Town Clerk's Office. Also at the Town Office are the Hearing Minutes with audio recordings of the full testimonies heard (Ref: *DRB Minutes September 5, October 3, 2018*). Only those testimonies relevant to the specific subject of the application before the DRB are shown below:

1. The Applicants (Janet & Churchill Franklin) and Attorney Joan Donahue on their behalf have testified that:
 - They are the owners/members of PH Ridge Road, LLC, which owns the property located at 299 Ridge Road. The property comprises approximately 162 acres +/-, excluding former Charles Foote lands (24.92 +/- acres), and approximately 25 acres on the westerly side of Ridge Road. The parcel of approximately 25 acres located on the westerly side of Ridge Road is the subject of this application and hearing (the "Property"). On the Property are located, *inter alia*, a pink farmhouse ("Pink House"), a storage barn, a gravel parking area, and a leveled area for a tent site.
 - The Applicants wish to rent the Property for use as a commercial event venue for private parties, for up to 8 events seasonally (May through October).
 - They would not consider any event larger than 200–250 attendees, most likely it would be around 40–50. An event was held in the fall of 2017 with little or no negative feedback from neighbors; estimated number of attendees was 200.
 - All parking would be in the field south of the barn; whenever possible, attendees would be bused from another site.
 - A Contact Person provided by the renter and a Contact Person (probably Property Manager, Gina Gale) for the Franklins would be required to be onsite at all times.
 - Currently, the barn has been permitted by the Fire Marshall for storage only, other than use by a caterer for staging. The Fire Marshall would have to permit the barn for public use. As a private building there is no other Fire Marshall permit necessary.
 - Only string lights would be allowed, also no smoking, no fires, no large-area lighting. Safety lighting for access to and from parking would be required.
 - The renter would be responsible for any local permits, generator if needed, tent rental and associated permits if needed.
2. On behalf of the Applicants, Attorney Joan Donahue provided the DRB with authorized

statements from the Cornwall Road Foreman and Cornwall Fire Chief:

- Mike Sunderland, Road Foreman—Did not feel wear and tear on the road would be a negative factor, felt that restricting attendees—as much as possible—to accessing Ridge Road from the Route 30 end would be best and would minimize the impact on the road and the dust; suggested use of flagger(s) as necessary to ease any traffic congestion, and use of signs along Rte.30 and Ridge Road to give motorists notice of possible event traffic.
 - Denny Rheaume, Fire Chief—Felt it would be best if event attendees used the lower drive (closest to Rte. 30) rather than the upper drive at the corner. The upper drive could be used for any needed drop-offs, or for emergency vehicle access, but otherwise should remain free of parked vehicles to allow for emergency equipment and vehicles to access the property. He noted that there is ample turn-around area for emergency vehicles and expressed no other concerns regarding onsite safety.
3. Attorney Donohue also provided a sample “event addendum to lease” that addressed several issues brought up at the first hearing, in addition to those noted above: electrical needs, toilets, parking, alcohol use, smoking, fireworks, open fires, noise, end times, cleanup and camping.
 4. Applicants agreed with the access, signage/notification, and use of flaggers suggestions.
 5. The Applicants have received many requests for use of a non-residential portion of the Property as an event venue for private parties (weddings, reunions, graduation parties, etc.). Thus this application.
 6. Public testimony centered on:
 - Traffic and resulting safety concerns for walkers, bicyclists, and children, as well as concerns that a business of this nature might disrupt the neighborhood community as it has developed.
 - Road dust, music lasting until 10:00 (Sun–Th) or 11:00 (F & Sa) PM, noise in general, inebriated drivers leaving the event.
 - There was also concern expressed that there might be “project creep” with the example of 1 event (a wedding) becoming 3 events (rehearsal dinner, wedding, post-wedding breakfast) and the increased traffic over 4 or 5 days when consideration is given to the event itself (3 days) in addition to 1 day for preparation and deliveries and 1 day for clean-up/trash, etc. The Applicants stated that they consider an event like a wedding (plus the pre-wedding rehearsal dinner and the post-wedding breakfast) to be 1 event.
 7. Questions arose on how to determine when a private party at the house becomes an “event” and thus subject to event rules. One suggestion related to revenue, i.e. whether or not the event venue area itself was being rented, versus just the short-term rental unit in the house. Another suggestion related to defining a number of attendees that would trigger an “event.”
 8. The DRB was asked about the possibility of making the permit personal to the applicants rather than “running with the land.” The Applicants expressed the desire to be able to pass the permit on to their heirs. They concurred with a possible prohibition on transferring the permit to a third (non-family) party.
 9. All attendees expressed high regard for the Franklins themselves, their responsiveness and sense of responsibility. This did not allay the fears of the negative impacts their project would have on the Ridge Road community.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based on the application, relevant testimony, and exhibits above, the DRB makes the following:

FINDINGS OF FACT:

1. The owner of the property is a private limited liability company registered in the State of Vermont as “PH Ridge Road, LLC.” The Applicants are the members (owners) of PH Ridge Road, LLC.

2. The subject of the application is a parcel at 299 Ridge Road in the Town of Cornwall (Land Records, Book 78 page 498) that the Applicants purchased for its agricultural use in April 2015. Rather than demolish the existing house, they chose to rehabilitate it. It is currently permitted as a two-family residential dwelling with one long-term rental unit and one short-term rental unit. The parcel also hosts some excellent trails/trail site. Other areas of the property are reserved for agricultural use.
3. The Applicants sometimes use the short-term rental unit themselves for private family functions and gatherings.
4. The full parcel is located in both the Low Density Residential District and the Medium Density Residential District as described on the Town of Cornwall Zoning Map on record at the Cornwall Town Clerk's Office. The portion of the parcel subject to this hearing's application (the Property) lies entirely within the MDR portion along Ridge Road and includes, *inter alia*, the barn, a gravel parking area behind the barn and a leveled area for a tent site, as shown on Exhibit D-1. The applicants would like to be able to rent the Property for use as an event venue for private parties.
5. Eventually the Applicants would like to open the trails for public use, but such a proposal is not before the DRB at this time.
6. The Applicants seek a Conditional Use Permit for up to eight events during the six-month period from May through October, to be held on the Property. Such events would include gatherings such as weddings, family reunions, graduation parties and team parties.
7. The Applicants take the position that no Conditional Use Permit is required for the Applicants' private family functions and related gatherings held on the Property.
8. The proposed events will not be held inside the Pink House but will be held outside (with or without a tent) and/or in the barn.
9. The barn is not currently permitted for such use. The Applicants acknowledge that in order to rent the barn for use for such events, the Applicants would have to obtain an occupancy permit from the Vermont Department of Public Safety, Division of Fire Safety.
10. Based on last fall's event, Applicants' sample event addendum to the lease agreement for the short-term rental unit includes:
 - the Lessee is authorized to host a social event, including a party, wedding, or other special event on the Property, limited to use of the outdoors and the barn only. Access to the Pink House is limited to the Lessees.
 - any music to end at 10:00pm Sunday–Thursday, 11:00pm Friday & Saturday; amplified music to end one half-hour prior to the end time of the event.
 - parking will be onsite, not on Ridge Road.
 - field toilettes will be brought in.
 - no kitchen/cooking facilities, caterers may use warming dishes in the barn area.
 - no smoking, no open fires, no fireworks/sparklers.
 - renter to have liability insurance for the event.
 - all liquor must be served by an insured and properly licensed caterer.

CONCLUSIONS OF LAW:

A. Authority

The DRB has the authority to hear applications for approval of, and to grant approvals of, conditional uses listed in the sub-sections governing each zoning district. Cornwall Zoning Regulations (CZR), §350. Use as an event venue is not specifically listed in the sub-section governing the Medium Density Residential

District; however, CZR §250(B)(9) includes in the list of conditional uses for the Medium Density Residential District “Other uses with impacts similar to those noted above that do not significantly change the character of the area as envisioned in the Town Plan.”

The DRB is required to make findings on general and specific standards and has the authority to attach conditions. CZR §350.

B. CZR §250(B)(9)

The proposed occasional use as an event venue will have impacts similar to certain of the conditional uses listed in CZR §250(B), including outdoor recreational facility. “Recreation outdoor” is defined in CZR Article X as “Low-impact dispersed outdoor commercial recreation including: a golf course or practice facility, outdoor educational facility, hunting preserve, skating rink, park, beach, swimming pool, cross country skiing facility, playground, ball field, or other similar places of outdoor recreation.” Given the conditions imposed by the DRB, the occasional noise and traffic caused by the proposed use would be low impact and dispersed like many of the listed recreation activities.

The proposed occasional use will not significantly change the character of the area as envisioned in the Town Plan. The Town Plan describes the Cider Mill – Ridge Road area (page 100) as primarily a residential area, with open space and scenic views. The proposed use will not change this. Nor will it impact agricultural activity. The Town Plan says that low-intensity home occupations and home-based businesses that will not negatively affect the quality of life for neighboring property owners should be encouraged, and that restrictions should be given to hours of operation, noise, lighting, traffic, outdoor storage, parking, signage and other impacts that could affect the quality of life for neighboring property owners. While the proposed use may not meet the definition of home-based business or home occupation, it is similar in nature. Given the conditions imposed by the DRB, the proposed use will not change the character of the area as envisioned in the Town Plan. The DRB’s decision includes restrictions on hours of operation and traffic, among other things, to reduce the impact on neighboring property owners.

C. Criteria for review

The DRB finds that the proposed use as a commercial event venue, given the conditions imposed in this decision, will not result in an undue adverse impact on the criteria set forth in CZR §355:

1. *Capacity of Community Facilities and Services*

Based on the information from the Cornwall Road Foreman and Fire Chief, the DRB finds that the proposed use will not overburden or exhaust the road capacity, or the Town’s road services, nor will it overburden the capacity of the Town Fire Department to respond to emergencies.

2. *Character of the area*

There will be no undue adverse impact on the agricultural or residential character of the area.

3. *Traffic impacts*

The traffic will not exceed the road capacity. Traffic volume will be addressed through encouraging the use of vans and buses for larger events. Road signs will be required for traffic safety. Traffic will be directed to use the Route 30 entrance to Ridge Road. Parking will not be permitted on Ridge Road.

4. Compliance with regulations

The proposed use will comply with regulations. The Applicants, the renters, and the caterers, as applicable, will be required to obtain all required licenses and permits and comply with all applicable state and local regulations.

5. Renewable energy resources

The proposed use will not excessively inhibit or restrict access to or the use of renewable energy resources.

IV. DECISION

Based upon these Findings, Conclusions of Law, and the evidence presented in the form of exhibits and testimony at the hearings, the Development Review Board hereby grants approval of the proposed use as an occasional commercial event venue of a portion of the property at 299 Ridge Road – specifically the Medium Density Residential portion of the property located along the westerly side of Ridge Road that includes, *inter alia*, the barn, a gravel parking area behind the barn, and a leveled area for a tent site, as shown on Exhibit D-1 – subject to all of the Conditions hereinafter set forth. This Conditional Use approval is not personal to the Applicants; the permit shall run with the land.

The Development Review Board agrees that no Conditional Use Permit is required for the Applicants' own private functions and gatherings held on the Property.

CONDITIONS:

- A. Events may be scheduled during the summer season from May 1st through October 31st. Maximum number of guests at any event is 200. No more than 8 events may take place per season. Events may not be scheduled on successive weekends. (For purposes of this Decision, a "weekend" is Friday, Saturday, and Sunday.) If an event is scheduled on a weekday, there shall be at least 8 days between it and another event. For events (such as a wedding) that include a gathering on the preceding day (such as a rehearsal dinner), and/or a gathering on the following day (such as a breakfast), each gathering shall be considered a separate event. Any gathering held by a lessee of the short-term rental unit with 40 or more guests shall be considered an event, even if the Applicants have not rented the Property to the lessee for purposes of hosting an event.
- B. An event contact person, retained by the renter and approved by the Applicants, shall be onsite to oversee and coordinate all activities during the event, and during set-up and take-down.
- C. Applicants will have a contact person of their choosing onsite during the event and during set-up and take-down.
- D. Notice of an event shall be provided to abutters and to residents of Ridge Road at least two weeks prior to the event. Notice shall be delivered electronically or via the postal service and shall provide contact information for the Applicants' event onsite contact person including name, cell phone number and e-mail address.
- E. The Applicants shall require that all parties involved in an event including attendees, service providers and others, be directed to enter Ridge Road from Route 30. Signs directing attendees to the event shall be posted at the intersection of Route 30 and Ridge Road on the day of the event.

F. The Applicants shall require that attendees at all events be encouraged to car pool or use van or bus transportation.

G. The Applicants shall require that vehicles use the lower driveway (closest to Route 30) to enter and exit the property and to park in the field by the barn. The upper driveway at the corner of the road shall remain free of parked vehicles throughout the event to allow emergency vehicles and equipment to access the property in case of emergency. The upper driveway may be used for the drop off and pick up of individuals with disabilities and others in need of assistance. There shall be no parking on Ridge Road.

H. Event set-up and take-down shall take place during the morning to the extent possible.

I. The Applicants shall obtain and comply with, or require the renter or caterer, as applicable, to obtain and comply with all applicable state and local licenses and permits. All alcoholic beverages shall be served by an insured and properly licensed caterer. Any use of the Property for an event shall comply with all applicable state and local regulatory and licensing requirements. Bonfires, fireworks and camping are not permitted.

J. Events must end by 11:00 pm on Friday and Saturday evenings and by 10:00 pm on Sunday through Thursday evenings.

Dated at Cornwall, Vermont, this 10th day of November, 2018.

Robert Greenwood
Chair, DRB

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. 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*.