

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

In re: Barn On The Flats LLC

Hearing Application No.: drb#21-001

I. INTRODUCTION AND PROCEDURAL HISTORY:

1. This proceeding involves review under the *Town of Cornwall Zoning Regulations* (CZR) of an Application for Conditional Use Approval submitted by Kayla and Cam Schaefer, on behalf of the Applicant Barn On The Flats LLC, seeking Conditional Use Approval to allow the use of their barn at 1683 West Street as an event venue.
2. The Application and supporting documents were received by the Development Review Board (DRB) on March 9, 2021. A copy of the Application is available at the Cornwall Town Clerk's Office.
3. On March 11, 2021, notice of a public hearing (warning) to be held on April 7, 2021, for review of the Application, was published in the *Addison Independent*.
4. Notice of a public hearing for review of the Application was posted at the following places:
 - a. The Town Clerk's Office.
 - b. The Town Garage
 - c. The Town website
 - d. The property in question
5. The Application was considered by the DRB at a public hearing held virtually on April 7, 2021. The hearing was adjourned to July 7, and subsequently rescheduled for October 6, 2021 for applicants' personal reasons. The DRB reviewed the Application under the *Town of Cornwall Zoning Regulations*, dated February 26, 2008. Board also referenced Planning Commission's 2015 decisions regarding the West Street Properties LLC subdivision.
6. Present at the hearing(s) were the following members of the DRB:
 - Barbara Greenwood (*DRB Chair*)
 - David Anderson (*Vice-Chair*)
 - Shari Johnson
 - Ellen Whelan-Wuest (*replaced Magna Dodge who resigned prior to 2nd hearing*)
 - Joan Lynch (*Alternate, assigned to fill seat vacated by Ross Gregory who resigned prior to 2nd hearing*)
7. At the outset of each hearing, the DRB Chair read aloud the Hearing Notice 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 attendees and a record of their participation at the hearing is available at the Town Clerk's Office. Those persons wishing to participate were duly sworn in.

II. EVIDENCE AND RELEVANT TESTIMONIES:

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

Exhibit 1—Warning (which was posted in a timely fashion at the Town Hall and Town Garage, and on the Town website; the property was also posted)

Exhibit 2—Warning as published in the *Addison Independent*, March 11, 2021

Exhibit 3—Proof of service—certified mail receipts for abutters dated March 8, 2021, together with list of abutters and copy of the warning provided to abutters

Exhibit 4—Application as filed on February 5, 2021, consisting of: application form; warranty deed for lot on the west side of West Street on which the barn sits (1683 West Street); copy of part of survey showing lot on which barn sits as “lot 2”; and list of abutters. [*Note* the ZA found the application as originally filed incomplete. He declared it complete March 8, subject to the filing the following day of the materials marked *Exhibits 5* and *6*.]

Exhibit 5—Part of application filed March 9, 2021—Letter “to whom it may concern” dated February 16, 2021 from Cam & Kayla Schaefer explaining basis for their application

Exhibit 6—Another part of application filed March 9, 2021—February 15, 2021 email from Kayla Schaefer providing information to address elements of §353 of the Zoning Regulations, and attaching two maps—PDF is titled “barn developed for events” but actual document is titled “1683 West Street—Barn on the Flats Parking” and PDF titled “barn to scale” [actual document is titled “1683 West Street—Barn on the Flats”]

Exhibit 7—March 12, 2021 email from Kayla Schaefer addressing the criteria set forth in §355 of the Zoning Regulations

Exhibit 8—Cornwall Conservation Commission’s review of application, dated March 27, 2021

Exhibit 9—Cornwall Road Foreman’s assessment of the potential traffic impacts of the proposed conditional use, as set out in an email dated March 18, 2021

Exhibit 10—Written public comments received prior to hearing:

- **10a**—from Will Amidon, in an email dated March 31, 2021
- **10b**—from Susan Parsons, in an email dated March 31, 2021
- **10c**—Cesario letter dated April 6, with a map of the property showing the path of the access road and nearby lots.
- **10d**—Letter from James Dumont, Esq., dated April 6, 2021, on behalf of his clients the Cesarios, R. Kinhead, the Menkarts, the Berninghausens.
- **10e**—Email from Branch & Collier with comments, dated April 6, 2021

Exhibit 11—Warranty deed for land on which Schaefer’s house sits (1776 West Street)

Exhibit 12—Declaration and Establishment of Covenants Regarding Barn

Exhibit 13—Warranty Deed between West Street Properties LLC and the Agency of Natural resources

Exhibit 14—Warranty Deed between West Street Properties LLC and Holmes Jacobs regarding the spring easement.

Exhibit 15 a, b, c, and d—Written comments received following the first hearing—

- **15a**—April 20, 2021 from Katherine Branch along with the linked materials from the Vermont Secretary of State (Business Information about Barn on the Flats LLC, Annual Report, Articles of Organization, Grant of Articles of Organization);
- **15b**—April 10, 2021 from Cheryl Cesario;
- **15c**—April 11, 2021 from Elizabeth Napier;
- **15d**—April 11, 2021 from Rebecca Kinhead.

Exhibit 16—Barbara Greenwood email correspondence with Kayla Schaefer June 3—June 26

Exhibit 17 a, b, c, d, and e —Additional materials filed by Kayla Schaefer September 9, 2021

- **17a**—Cover memorandum listing attachments and providing additional details
- **17b**—Email exchange between Kayla Schaefer and Dave Berno, the Cornwall Fire Chief, April 2–April 30, 2021
- **17c**—Sample rental contract entitled “Barn on the Flats LLC Agreement and Event Policies”
- **17d**—Unsigned draft license agreement between Kayla and Cameron Schaefer and State of Vermont Department of Fish and Wildlife
- **17e**—Vermont Division of Public Safety Fire Inspection Results from June 28, 2021

Exhibit 18 a, b, c, d, and e—Further materials filed September 14, 2021 at the request of Barbara Greenwood

- **18a**—September 7–14, 2021 email exchange between Barbara Greenwood and Kayla Schaefer
- **18b**—*Exhibit 1* to the unsigned draft license agreement with the Department of Fish & Wildlife just marked as *Exhibit 17d*, called “*Schaefer MOU Boundary 2020*” [note for the record that a color copy was provided electronically but a black and white photocopy with the “parking area to be maintained” apparently overdrawn on the photocopy was filed; *Exhibit 18b* includes both copies]
- **18c**—*Exhibit 2* to the draft license agreement; Called “*1683 West Street—Barn on the Flats Parking*”
- **18d**—Signed License Agreement between Kayla and Cameron Schaefer and State of Vermont Department of Fish and Wildlife, executed November 3, 2020
- **18e**—Email correspondence between Kayla Schaefer and Amy Alfieri of Vermont Fish and Wildlife confirming that Vermont Fish and Wildlife is in agreement with the draft license agreement [*Exhibit 17d*] and is willing to sign the agreement once any conditional use information has been added.

Exhibit 19—Letter of September 16, 2021 from Barbara Greenwood to James Glass and Victoria Palay giving them notice of this hearing. (The new owners of the house across the road from the barn, that used to belong to Rebecca Kinhead.)

Exhibit 20—2021 Vermont Hunting & Trapping Seasons

These Exhibits are available at the Town Clerk’s Office. Also at the Town Office are the Hearing Minutes with details of the full testimonies heard (Ref: *DRB Minutes April 7 and October 6 2021*). Only those testimonies relevant to the specific subject of the application before the DRB are shown below:

1. The subject property is owned by Kayla and Cameron Schaefer doing business under the name of Barn On The Flats LLC. The Schaefers reside at 1776 West Street across the road from the subject parcel (the “Residential Property”).
2. The subject property (the “Barn Property”) is at 1683 West Street, Cornwall, Vermont, in the low density residential district (“LDR”) as described on the Town of Cornwall Zoning Map on record at the Cornwall Town Clerk’s office and in CZR §260.
3. The Barn Property is approximately 7.38 acres and is located on the West side of West Street and is further described in a warranty deed recorded in the Cornwall Land Records in Book 87 Page 291 (see *Exhibit 4*).
4. **Kayla Schaefer** explained the proposed project for the Barn Property at 1683 West Street, Cornwall, Vermont:
 - **The barn** has been an ag building used for hay storage, and storage for boats most recently. The field areas around the barn are hayed.
 - **Dimensions**—Barn is 40 x 100 (4,000sf). [corrected to 6,190 sf]
 - Milkhouse (part of barn) is 70 feet from road
 - Entrances—3 on South end, plus 1 each NW and SW
 - **Parking**—Field parking south of farm road. If area too wet, parking can be shifted. No expected impact on haying. ADA parking on grass, East side of barn. Number of spaces to be determined by Fire Marshal after decision on load capacity of barn from Fire Marshal’s Office.
 - **Water** comes via a well & easement, on East side of West Street. The water is for ag use, is not potable
 - Barn has power, concrete floor, windows do not open.
 - **Planned Use** is to rent the barn for use as an event venue for celebratory parties such as graduations, weddings, reunions, family events. The rental season will be from June through September with a maximum of 8 events per season (2 events per month).
 - **Request for Conditional Use approval of use as an event venue:**
 - *Cornwall Zoning Regulations §350* conditional use approval. Seeking approval for home based business under §260 (B) Conditional Uses, Adaptive Reuse, and §407 home based business.
 - The Applicant requests a Conditional Use Approval under §§350-358 of the zoning regulations. Note that ***CZR §260 (A)*** states “*commercial uses within this area will continue to be primarily home based business, including those that are based out of buildings on the property other than the residence. Adaptive reuse of agricultural buildings is encouraged.*”
 - **Testimony**
 - 1 *Signage?* **Kayla:** None planned
 2. *ADA parking?* **Kayla:** On the grass East of the barn. Number of spaces to be as Fire Marshall requires based on occupancy load of the barn.
 3. *Multi-day events such as the pre-event setup and post-event clean up for weddings?* **Kayla:** No multi-day events will be allowed. A multi-day event such as a wedding

would be a 1-day event, the entire span of days (including set-up/take-down, prep and cleanup) would be one of the eight scheduled events.

4. *How do the Schaefers plan to get 150 vehicles into the 150-foot x 250-foot parking area?* **(Kayla/Cam)** Event parking is capable of handling 150-160 vehicles, though they expect far fewer. Do not see how this applies as Regulations refer to year round parking, but they seek only June through September parking. At 6,190 sf, the Regulations require a minimum of 42 spaces for a commercial building.
5. Season shortened from May–October to June–September after consultation with Fish & Wildlife and in deference to various hunting seasons.
6. *Who will enforce no smoking, other fire hazard rules?* **(Cam)** The event's on-site designee. If the rules are broken, the renters will forfeit their deposit money.
7. *Who manages the field gate?* **(Cam)** The gate is 200+ yards away, they do not think it likely that attendees will bother going out that far.
8. *With Schaefers supplying only the location, and renters supplying food, potable water, insurance, lighting, all related event supplies, porta-potties, etc. what satisfies the criteria that the property owner is operating a home-based business?* **(Kayla/Cam)** The barn is an accessory structure which they maintain for the rental. The barn and location are the service being rented wherein the renter creates their own experience.
9. *What required changes were mentioned by the Fire Marshall's Office? What is the Fire Alarm System reference in item 6?* **(Kayla)** Handicap access doors having push-bars to open and be wide enough for handicap access need to be installed. The Fire Alarm System will be wired so that it will shut off the music when activated.
10. **(Kayla/Cam)** There will be no music outside the barn.

• **Hearing Attendee Concerns**

1. The Cornwall Conservation Commission indicated (*Exhibit 8*) that it had concerns about spring crossings on West Street, particularly regarding amphibians trying to access the wetland areas west of the road. The Schaefers share CCC concerns about amphibian springtime movements. No events will be held mid-March to mid-April during amphibian movements across West Street.
2. Neighbor concerns primarily focused on:
 - Noise during daytime/evening events—music especially if doors open for ventilation, generator(s) for parking/farm road lighting; noise curfew/attendee exits: 11pm is too late closure on Friday, Saturday; 10:00pm too late for weekdays.
 - Traffic before & after events, including toilet and trash deliveries/removals, set ups, caterers, etc.
 - Risks to abutting cattle grazing operation, including attendee harassment of grazing cattle, possibility of guests leaving gate open, damage to farm road (i.e., the ROW), and potential for ROW/access to cattle grazing operation to be blocked .
 - Fear of fire, how will smoking and other fire hazards be controlled; there have been grass fires in the area recently.
 - Event venue not in sync with rural character of neighborhood.
 - Too much responsibility shifted onto renters, owners should take on more of the responsibilities.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the Application, relevant testimony, and Exhibits, the DRB finds the following:

A. FINDINGS OF FACT:

1. The Applicant is Barn on the Flats LLC. Kayla and/or Cam Schaefer are the principals of Barn On The Flats LLC under which name they would run the proposed event venue business on the property located at 1683 West Street in the Town of Cornwall.
2. The property at 1683 West Street (the Barn Property) is owned by Kayla and Cam Schaefer, and is comprised of Lot 2 of the West Street Properties LLC Subdivision as shown on the LaRose survey of February 23, 2015, recorded at Map Slide 267 (referred to as “LaRose Survey”).
3. The property at 1683 West Street (the Barn Property) is a permitted separate lot in the West Street Properties LLC Subdivision by act of the Cornwall Planning Commission dated June 17, 2015, as shown on the recorded Plat signed on November 6, 2015 and of record as Cornwall Map Slide 267.
4. The subject property (the Barn Property) is further described in a warranty deed (part of *Exhibit 4*) dated December 6, 2019 and recorded in the Cornwall Land Records in Volume 87 at Page 291, with the well/spring easement recorded in Volume 78, page 611. The lot consists of 7.38 ± acres. The subject lot is labeled “Lot 2” on drawings and surveys submitted.
5. The property at 1683 West Street (the Barn Property) is subject to a right of way located in an east to west orientation just south of the barn from West Street to the west boundary of the property (“ROW”). See Warranty Deed in *Exhibit 4* and Warranty Deed marked *Exhibit 13*. The ROW is an unimproved dirt road that provides access (e.g., for farm vehicles) to VHCB conserved lands owned by the Cesarios comprised of 85 acres which is used by the abutter for contract livestock grazing purposes. The ROW also provides public access to State lands subject to a WRP (Wetlands Reserve Program) easement along and adjacent to the Lemon Fair. See Orthophoto map included in *Exhibit 10C*.
6. The Schaefers reside at 1776 West Street on 4± acres of land which is located on the east side of West Street (The “Residential Property”), a portion of which is directly across West Street from 1683 West Street. The 4- acre lot is used by the Schaefers for residential purposes as their primary residence. The house lot is referred to in its deed (*Exhibit 11*) as “Lot 1”. The 4-acre lot is also a designated and permitted lot within the West Street Properties, LLC Subdivision as depicted on a LaRose Survey dated May 14, 2014 and approved by the Cornwall Planning Commission on March 6, 2013, as shown on a recorded Plat of Record as Cornwall Map Slide 261. The 4-acre lot is subject to the terms and conditions of the Cornwall Planning Commission Notice of Decision dated November 4, 2014, and Final Approval dated July 16, 2015, and as such constitutes a separate and distinct developable lot.
7. The private events at the Barn On The Flats will be held on the Barn Property located on the west side of West Street, in and around the barn, and they will be monitored and scheduled from the Schaefer residence located on the east side of West Street.
8. The Barn Property is located in the Low Density Residential zoning district as described on the Town of Cornwall Zoning Map on record at the Cornwall Town

Clerk's Office and in §260 of the *Regulations*. The minimum lot size in the LDR is 4 acres with a minimum frontage of 300 feet, lot depth of 300 feet, front yard setback minimum of 100 feet, side yard minimum setback of 50 feet and rear yard minimum setback of 50 feet.

9. The overall plan for the Barn Property is to use it as an event venue to be rented out for wedding receptions, graduations, party/celebratory, etc. events. Event hours would end by 11:00 pm on Friday and Saturday nights; 10:00 pm Sunday–Thursday nights.
10. Temporary event parking for as many as 150 cars would be in the hayfield to the west of the barn on the Barn Property. See *Exhibit 6*. The parking area is claimed to be sufficient for 2 rows of event vehicles with a 20 ft. aisle.
11. Vehicles would enter the Barn Property via a curved driveway off West Street, to the south of the barn. See “loading and unloading area” shown on the map labeled “1683 West Street—Barn on the Flats Parking” (part of *Exhibit 6*). Traffic will be directed to enter the property via the driveway's north access and to leave via the south. The farm road serving the fields to the west (i.e., the ROW) is to serve as connection between the driveway and event parking lot. Handicap access and loading/unloading to take place at the driveway. Spaces for ADA parking are to be located on the grass area on the east side of the barn.
12. The driveway, loading and unloading area, and a small parking area with a kiosk are the subject of an existing agreement between the Schaefers and the State of Vermont Department of Fish & Wildlife (F&W) (*Exhibit 18d*). Should conditional use approval be granted, the Schaefers and F&W propose to enter into a new agreement (see *Exhibits 17d, 18b, 18c, and 18e*). The new agreement would specifically prohibit the use of the small parking area by event attendees, so that it can continue to be used at all times by persons seeking to access the State lands across the ROW.
13. The Applicant indicated (*Exhibit 4*) that they are applying for Conditional Use approval (CZR §350) for a Home Based Business (§260 (B)(2)).
14. The front of the Barn, i.e., the Milkhouse, is about 70 feet from West Street. This does not conform with the current front yard setback minimum of 100 feet. The other setbacks are within the district required dimensions.
15. The plans for the operation of the event venue include:
 - a. *Lighting*—minimal; only in the parking area, possibly generator powered, solar is an option. Responsibility of renter.
 - b. *Safe paths/walkways from the field to barn*—lights responsibility of renter.
 - c. *Events*—June through September, possibly two to be scheduled each month, with a maximum of 8 events per season
 - d. *Number of vehicles planned for and maximum attendees*—Vehicles: up to 150; Attendees: up to 200.
 - e. *Closing time*—11:00 pm Friday and Saturday nights; 10:00 pm Sunday–Thursday nights
 - f. *On-site authority*—The Schaefers or their designee. Renter to have a designated person in charge of the event.
16. The plans for operation also include:
 - a. *Wastewater*—Portable toilets, renter responsible for arranging delivery and removal.

- b. *Hand washing facilities for food vendors and attendees*—Responsibility of renter.
 - c. *Potable water*—Not available, no plans to obtain State permit. Renter responsible for bringing in.
 - d. *Lighting in barn*—Barn has ceiling lights, on-site power
 - e. *Ventilation*—Doors on NW and SW 1 each; south end has 3: total of 5 entrances; windows do not open.
 - f. *Noise control*—Schaefer's will monitor
 - g. *Other*—Renter also responsible for insurance, trash removal, grounds/barn clean up.
17. Additional permits or reports:
- a. Renters will be responsible for all food and drink permits
 - b. Fire Chief (*Exhibit 17b*)—emailed response, no problem
 - c. State Fire Marshall's Office (*Exhibit 17e*)—Preliminary review report.
 - The doors need replacing with handicap access doors having push-bars to open and be wide enough for handicap access.
 - One door with a curb will need to be removed.
 - The fire alarm system will be wired so that it will shut off the music when activated.
 - No decision on capacity yet. There may be other requirements depending on number of attendees permitted.
 - d. State Water/Wastewater permit—No, none planned
 - e. Road Foreman Report (*Exhibit 9*)—No issues, but bulk of traffic would need to come from Route 125 or Route 30 and not the gravel side roads.
 - f. ADA Parking—Requirements set out by §611(2)(c) "*Accessible spaces shall be provided in accordance with ADA requirements...*". The Schaefer's do not know how many ADA spaces will be required. They say this will be determined by the State Fire Marshall. They have not determined if the proposed ADA parking location (on the grass to the east of the barn) is acceptable to the State Fire Marshall.
18. An interested party, Cheryl Cesario, recounted an occurrence at another event venue on Ridge Road where party goers stood on a fence and harassed the animals that she was grazing on abutting fields.
19. The applicants do not believe there will be any negative effects related to the event venue and:
- a. haying of the field to the west of the barn
 - b. parking access or ADA parking
 - c. access during events by hunters and their firearms crossing over the field road to the Wildlife Management area.
 - d. event attendees harassing grazing animals
 - e. fire hazards or excessive noise
20. No multi-day events (e.g., rehearsal dinner one day, wedding the next, breakfast the next) are proposed. However, set-up is likely to take place on a day prior to the day of the event, and cleanup and take-down is likely to take place on a day after the day of the event.

B. CONCLUSIONS OF LAW

1. **Authority**—The DRB has the authority pursuant to the State Statute and the *Town of Cornwall Zoning Regulations* §332(3) to hear, approve or deny requests for Conditional Use Approval made under §350.
2. **Home Based Business**—“Event venue” is not a permitted conditional use in the Low Density Residential District (“LDR”). CZR §260.B. The Applicant seeks conditional use approval for the proposed event venue as a home based business, which is a permitted conditional use in the LDR. CZR §260.B.
 - a. The Board must consider whether the proposed event venue operation qualifies as a “home based business.” “Home based business” is defined as: “*Home based businesses constitute businesses operated on the premises of the owner that allow for an expansion of the business beyond the strict confines of a home occupation. Home based businesses may be allowed in designated zoning districts as conditional uses subject to review under Sections 350–358 hereof.*” CZR §1000. “Home occupation” is defined as: “*The use of an accessory building or minor portion of a dwelling for an occupation that is customary in residential or rural areas and that does not unreasonably change the character thereof.*” CZR §1000.
 - b. CZR §407 regulates home based businesses. It provides in part:

Cornwall desires to provide residents with reasonable economic opportunity by encouraging local enterprises of suitable size and scale for their location. Home based businesses as a category are designed to allow Cornwall residents’ [sic] flexibility above the statutory floor set by home occupations, while protecting the rights of neighboring property owners from substantial undue impacts through the conditional use process.

1. Home Based Businesses are subject to the following:
 - a. *A member or members of the family residing in the principal building shall operate the business with no more than two additional, non-resident full time equivalent employees.*
 - b. *The business shall be operated within the principal building or an existing accessory building. The adaptive re-use of existing agricultural buildings is encouraged.*
 - c. *Any exterior storage of material shall be in keeping with the character of the residential neighborhood. The Zoning Board of Adjustment may prohibit or require screening for outdoor storage of materials.*
2. Parking—*A person using a dwelling for a Home Based Business shall provide, in addition to the parking spaces required for the dwelling, two off-street parking spaces on the same lot or on a lot adjacent thereto under the same ownership or under a permanent easement and otherwise meet the parking requirements in Sections 610 and 611 of these Regulations.*
3. *The above regulations are intended to expand upon the minimum statutory requirements for home occupations and shall not be construed to infringe upon the right of any person to use “a minor portion of their dwelling for an occupation which is customary in residential areas and does not have an undue adverse*

impact on the character of the residential area” as provided in 24 V.S.A §4412(4).

4. *Retail operations are allowed as a portion of the Home Based Business but should be secondary to the Home Based Businesses’ primary function.*

5. *Limited personal services are allowed as home based businesses.*

[Section 407(6) omitted]

- c. Under CZR §407, a member of the family residing in the principal dwelling must operate the business, and the business must be operated within the principal building or an existing accessory building. CZR §407(1)(a) and (b). The definition of “accessory building” is: “A ...building customarily incidental and subordinate to the principal...building **and located on the same lot.**” CZR §1000 (emphasis added).

While to some extent it might be argued that the business will be operated from the Schaefer’s principal dwelling as the bookings will be done from there, all events will take place entirely in and around the barn across the street. We conclude that the business will be operated in the barn or at least on the Barn Property.

- d. The definition of “lot” provides in relevant part: “LOT: For the purposes of land development, land and premises, with or without buildings, having not less than the minimum area, width and depth required for a lot in the district in which such lot is situated, and having frontage on a public road or public waters, or other means of access as may be required elsewhere in these bylaws....” CZR §1000.

- Here, the Schaefer’s reside in the house located in a lot that they own on the east side of West Street at 1776 West Street (the Residential Property). The barn is located on a lot that they own on the west side of West Street at 1683 West Street (the Barn Property). We conclude that each of these lots satisfies the CZR definition of “lot.”
- Because the two lots have, for zoning purposes, already been subdivided and designated as separate and permitted lots with each containing distinct principal structures, it cannot be argued that the barn, as a structure, can be considered as accessory to the Schaefer residence located on a separate developable lot. This is particularly the case where an accessory building, by definition, must exist on the same lot as the principal building. See CZR §1000.
- That the properties are assessed, for taxation purposes, as a single parcel does not mean they are a single lot for land use purposes. A merger of these lots would, at a minimum, require an amendment of existing subdivision permits and plats of record.

Given Cornwall’s existing, approved and usual treatment of each lot as separate and distinct lots for land use purposes, we conclude that the Residential Property and the Barn Property are separate lots. Accordingly, the barn is not an “accessory building,” and therefore the proposed event venue business does not qualify as a “home based business.”

- e. There are a couple of other reasons that the proposed business does not qualify as a “home based business.”

- i. The provisions of CZR §407 contemplate that a home based business will be operated by a person or member of the family residing in the principal building.

Here, the Schaefers propose to do little more than rent out the venue to a third party, who will take on responsibility for just about everything involved in running the event, e.g., insurance, encouraging carpooling, parking, potable water, food/caterers, tent if any, music, lighting for parking lot and ROW, hand-washing facilities and porta-potties, trash, obtaining required permits for the event (e.g., liquor), enforcing no smoking rule, all aspects of setting up for the event, all aspects of taking down/cleaning up after the event. The renter will be responsible for providing an on-site representative with responsibility for supervising and monitoring the event. The Schaefers likewise will monitor the event, personally or through a delegee, and will monitor noise levels and direct traffic. We conclude that it is really the renters who will be operating the event on the Barn Property. The Schaefers will be little more than landlords. To permit this kind of arrangement here would render the concept of a home based business meaningless.

- ii. In addition, the home based business rules (CZR §§407 and 1000) clearly contemplate businesses of modest size and scale, such as professionals operating home offices, or small scale contractors. CZR §407, for example, restricts the number of employees to two non-resident full time equivalent employees. Here the Schaefers propose events with up to 200 guests, with music, food and drink, and with an undefined number of people working the event (e.g., caterers, musicians, party planners, onsite supervisor(s) for traffic, parking etc.). In our view, the size and scale of the proposed events is not what is contemplated by the concept of home based business, and is not suitable for the location of the proposed business, as required by CZR §407. The noise generated by the proposed events will carry up and across the valley and disrupt the usual peace and quiet of the neighborhood during the evening hours, possibly as frequently as every second weekend in the June through September period. The Applicant proposes allowing up to 200 guests, which is likely to result in a significant increase in traffic in the neighborhood, not just on the day of the event but also on separate days before and after the event for set-up and take-down.

We conclude that the proposed use of the Barn Property as an event venue (which is not a customary use in residential areas in Cornwall) would have a substantial undue impact on the rights of neighboring property owners and an undue adverse impact on the character of the residential area, and therefore would not comply with CZR §407. Accordingly, we find the proposed use is not a permitted conditional use in the LDR.

3. Criteria for Review

- a. *General Criteria*—In determining the appropriateness of a proposed conditional use, the Board must determine that the proposed use will not result in an adverse impact on any of the general criteria for review set forth in §355.
 - i. The Board has already determined that the proposed use does not meet the requirements for a home based business and therefore is not a permitted conditional use in the LDR.
 - ii. Even if the proposed use could qualify as a home based business, the proposed use would not satisfy all of the general criteria for review of conditional use applications under CZR §355:

- *Capacity of Community Facilities:* Based on the email from the Cornwall Fire Chief (*Exhibit 17b*), the proposed use would not overburden the Fire Department.
- *Character of the Area:* We conclude that the proposed use is likely to, by its nature, scale, or conduct, cause an undue adverse change to the character of the area. Agriculture is the primary existing land use in the LDR. One of the primary objectives of the LDR is to preserve and encourage agriculture. CZR §260. Based on the testimony of Cheryl Cesario, we are concerned that the proposed event venue poses a potential risk to the grazing business that she and her husband operate on abutting lands. There is also residential development in the LDR, including along West Street. As discussed above, the noise and traffic generated by the proposed use is likely to cause an undue adverse change to the peace and quiet that characterizes the neighborhood. Further, under CZR §355.2, the conditional use must meet the dimensional requirements for the district. The front yard setback minimum in the LDR is 100 feet. The barn's front yard setback is only 70 feet, and therefore does not meet the district's dimensional requirements. Finally, CZR §260 says that "*public uses, with the exception of recreation, should not be encouraged in this district, in order to guide such uses into Cornwall Village.*" "Public uses" is not defined in the regulations. It may be that operating an event venue for 200 private guests is technically a private rather than a public use. Nevertheless, it is akin to a public use, and in our view, should not be encouraged in the LDR.
- *Traffic Impacts:* Based on the email from the Cornwall Highway Foreman (*Exhibit 9*), West Street (which is paved) could bear the higher traffic associated with the proposed use, but the bulk would have to come from Route 125 or Route 30 and not the gravel side roads.
- *Compliance with Regulations:* As discussed above, we have concluded that the proposed use would not comply with CZR §407.
- *Renewable Energy Resources:* We conclude that the proposed use would not inhibit or restrict access to the use of renewable energy resources.

In sum, we are not satisfied that the proposed use will not result in an undue adverse impact on any of the general criteria for review set forth in CZR §355.

- b. *Specific Criteria*—In considering specific criteria for review (CZR §356),
- i. We do not think that the Applicant has demonstrated that the circulation between the site and West Street, i.e., the proposal for cars and buses to drop supplies and people off in the driveway and loading and unloading area located right beside West Street, and then either leave the site (buses) or proceed to the event parking area in the field (cars), is adequate to accommodate the traffic proposed. CZR §394.1. The Schaefers claim that there will be no problem with circulation, but given the small size of the driveway and loading and unloading area, and the likelihood that much of the traffic will arrive at around the same time, we think there is a risk that traffic will become backed up on West Street.
 - ii. We also conclude that the noise that will be created by the proposed events (music, general party noise, generators, and traffic) will represent a significant increase in the vicinity of the barn that will be incompatible with the reasonable

use of the surrounding residential area, especially given that the proposed hours of operation extend to 10 o'clock (weeknights) and 11 o'clock (weekends). CZR §810.

iii. Finally, we are concerned that the use of the driveway, loading and unloading area, and small parking lot near West Street that is the subject of the Schaefer's agreement with Vermont Fish and Wildlife (*Exhibits 18b, 18c, 18d, and 17d*), and the right of way (ROW) running from West Street and the parking lot across the field proposed for event parking (see *Exhibit 13*) by hunters carrying firearms while events are underway or being set up, poses a potential safety risk. (While the risk has been reduced by eliminating April (turkey hunting) and October (deer hunting) from the proposed months of operation for the event venue, there are other hunting seasons in Vermont during the period from May through September. See *Exhibit 20, 2021 Vermont Hunting & Trapping Seasons*.)

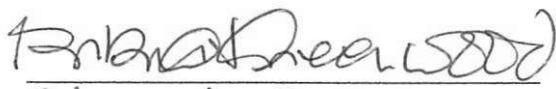
In sum, even if the proposed use of the Barn Property as an event venue were a permitted conditional use in the LDR under CZR §260(B), we would find that this Application does not satisfy the criteria for conditional use approval under CZR §350.

We do wish to commend the Schaefer's for putting the field located on the Barn Property back into agricultural use (haying), and for their desire to preserve the barn. Adaptive reuse of agricultural buildings is a laudable goal and should be encouraged, as provided in CZR §260. However, there must still be compliance with applicable zoning regulations.

IV. DECISION

Based upon these Findings of Fact, Conclusions of Law, and the evidence presented in the form of Exhibits and testimony at the hearing, the Development Review Board hereby denies the Conditional Use Approval Application brought by Barn on the Flats LLC (#drb21-001) and submitted by Kayla and Cam Schaefer on February 5, 2021.

Dated at Cornwall, Vermont, this 9th day of November, 2021.


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*.