

**Cornwall Development Review Board (DRB)
MINUTES • October 6, 2021 • 7:00–9:55 pm
Meeting & Hearing • Virtual via ZOOM**

MEMBERS PRESENT: Barbara Greenwood, Shari Johnson, David Anderson, Cheryl Cesario, Ellen Whelan-Wuest

ALTERNATES PRESENT: Joan Lynch

ATTENDEES: Sue Johnson, Kayla Schaefer, Cam Schaefer, David Toder, Ashar Nelson

1. **CALL TO ORDER:** at 7:02pm by Barbara Greenwood, DRB Chair
2. **ESTABLISHMENT OF QUORUM**—Established
3. **APPROVAL OF AGENDA**—Shari MOVED, David SECONDED, to approve the Agenda as presented. *Motion passed.*
4. **APPROVAL OF MINUTES:**
 - **July 7, 2021** (hearing)—David MOVED, Shari SECONDED, to approve the **July 7 Minutes** as amended. *Motion passed.*
5. **PUBLIC MEETING ATTENDEE SIGN-IN:**
 - Barbara noted that she would be chairing the meeting, and David Anderson would be handling the Zoom aspects. She introduced the DRB members in attendance in addition to herself: David Anderson, Shari Johnson, Cheryl Cesario, Ellen Whelan-Wuest, Board Alternate, Joan Lynch, and Board Secretary, Robin Conway. Also present: David Toder, BOLDER Architecture PLLC, and Ashar Nelson, Vermont Integrated Architecture, for the BOLDER-Toder Hearing, and Kayla and Cam Schaefer, Applicants for Barn On The Flats Hearing. Sue Johnson was thanked for serving as the Board's representative at the Town Hall so that any person wishing to attend this meeting could do so from that location.
 - Barbara advised that there would be two hearings this evening. The first for a setback waiver on Lemon Fair Road brought on behalf of Elizabeth Toder, the second a continuation of the Barn On The Flats LLC hearing begun on April 7, 2021.
 - She then indicated that sign-in of attendees was first up, and read the statutory explanation of who an Interested Person was and how it was relevant (24 V.S.A §4465(b) and §4471), then turned the Sign-ins over to David.
 - David asked for attendees' names, addresses, Interested Person status, and for which hearing, following with the swearing-in for those planning to participate. Seventeen members of the public were sworn-in.
6. **HEARING: BOLDER/Toder Conditional Use Waiver Application**
 - **Introduction & Housekeeping**—
 - This hearing is for approval of a setback waiver requested by BOLDER Architecture PLLC on behalf of Elizabeth Toder for construction of a code-compliant fire-escape on her house at 39 Lemon Fair Road. This waiver will require review under the waiver criteria (§383) and the conditional use review provisions (§§350–358), per §410 *Non-Conformities*, because the existing structure does not meet the MDR front yard setback requirement of 100 feet. David Toder of BOLDER Architecture, and Ashar Nelson of Vermont Integrated Architecture will represent Elizabeth Toder, property owner.
 - Before commencing with the hearing several housekeeping measures will be handled: then the hearing procedure was explained. The Applicant will be asked to make the project presentation, followed by questions from the Board. Once Board questions are ended, there will be public comment, followed by a chance for the Applicant to respond, then any additional Board queries

and a short Board conference to determine whether to close or adjourn the hearing to a specified date, time, and place. First the housekeeping:

1. **Disclosure of Board conflicts of Interest, ex parte communications, site visits—**

- Barbara visited the property on September 29, 2021
- Cheryl and Ellen visited last week on the 30th of September
- Shari visited last week, but not sure of the date.

2. **Exhibits**—Materials submitted and accepted into evidence, marked as follows:

- **Exhibit 1**—Warning (which was posted in a timely fashion at the Town Hall and Town Garage, on the Town website, and on the property)
 - **Exhibit 2**—Copy of electronic tear sheet showing that the warning was published in the *Addison Independent*, September 16, 2021
 - **Exhibit 3**—Proof of service—list of abutting property owners, certified mail receipts, and copy of notice of hearing (warning) sent to abutting property owners
 - **Exhibit 4**—Application form, filed electronically with the ZA September 10, 2021, and filed in hard copy with the ZA and declared complete September 11, 2021
 - **Exhibit 5**—Some of the materials filed with application—Narrative entitled “Egress Stair at 39 Lemon Fair Road”; copy of §§540–543 from *Zoning Regulations*; Warranty Deed, tax map, and list of property owners adjacent to 39 Lemon Fair Road; and copy of excerpt from unsigned Survey Plat dated June 18, 2001.
 - **Exhibits 6a, 6b, 6c**—Set of 3 drawings filed with application—
 - 6a—L01 Site Plan,
 - 6b—A01 Floor Plans,
 - 6c—A02 Elevations
 - **Exhibit 7**—Narrative filed September 12, 2021 entitled “Egress stair to road centerline”
 - **Exhibit 8**—Cornwall Conservation Commission’s review of application, dated September 20, 2021, indicating it has no concerns.
- **Applicant’s Presentation**—[David Toder] After introducing himself and Ashar Nelson, David proceeded to present the application, why it is needed, and the CZR provisions allowing it:
- The application is to secure a waiver that will allow construction of a code compliant fire-escape from the third floor of the house at 39 Lemon Fair Road. The parcel is on the corner of Lemon Fair Road and Vt Route 125, and as a corner lot has a front yard adjacent to each road. The front setbacks for this MDR property are required to be 100 feet from the road centerline. The house was built c. 1805 and lies completely within the front setbacks making it a legally-existing non-compliant property.
 - The house has an existing small balcony on the North side at the third-floor level, with a ladder on the exterior wall, serving as the egress in event of fire or other emergency.
 - The plan calls for replacing the existing egress components with a new code-compliant series of short stairs and landings that will end near the base of a large tree just outside the property line on Lemon Fair Road. The structure will be constructed of open-grid steel and steel stairs/steps. The non-conformity of the property will be increased by 9 feet ±.
 - The following zoning provisions are presented to support the waiver request or are criteria that the new structure will meet:
 - §543—allows projections of structures that do not have roofs or similar coverings into the setback areas;
 - §383—The new egress structure will meet all five waiver criteria.
- **Board Questions**
- **Cheryl & Ellen:**
 - Is there no alternate location for this structure? **David:** *The south end of the house could be*

possible but would be more complex and awkward because there is a roof below (not a clear drop to the ground).

- Will there be any work needed on the tree to accommodate the stair? **David:** *No; no trimming will be needed and the tree will not impact fire safety.*
- Are there plans for any other use of the stair structure, is it to be exclusively for fire safety (e.g. chair/table on balcony for sitting outside)? **Ashar:** *Yes, the structure will be strictly for fire safety. Not really large enough for other use, being a little more than 3 feet wide by 4 feet deep. There has been some discussion about turning the third floor into an apartment, but that is a separate issue with separate permitting involved.*
- What will be required for maintenance against snow and ice in the winter? **David:** *The open-grid treads and landings will help dissipate any potential accumulations. Owner will have to do basic maintenance with minimal de-icing using shovel and salt/ice-melt granules.*
- What sort of projection over the stairs does the current roof make? **David:** *The existing house roof has about a 12"–16" overhang. The structure will be roughly 6" from the house wall to allow for painting, etc.*
- **Questions from other Board members:** None
- **Public Comments**—None
- **Board last opportunity**—No questions or comments.
- **Applicant closing comments**—None
- **Board Conference**—Board agreed that they had sufficient information to deliberate on. Barbara closed the hearing at 7:30 pm. She advised the Applicant that the Board would issue its decision within 45 days.

7. HEARING: Barn On the Flats LLC Conditional Use

- **Recap of the Initial Hearing**—As set out in the warning that was posted, published in the paper, and mailed to abutters, the April hearing had been held to consider the application submitted by Kayla and Cam Schaefer for a Conditional Use approval of the barn at 1683 West Street, using the barn as a commercial event venue for private parties. The event venue would be run as a Home-based Business pursuant to CZR §407. The first hearing was held April 7, 2021, and adjourned to July 7, at which time it was again adjourned and rescheduled to October 6, 2021.
- **Housekeeping**
 - **Hearing's Procedure**—Barbara advised that, after some housekeeping matters, the applicant will be asked to present the application's new material. This will be followed by Board questions, and then an opportunity for any public comment. The applicant will have an opportunity to respond. The Board may have further questions. The Board will then confer if necessary and, finally, either close the hearing or adjourn it to a later specified date and time. This meeting will be conducted in an orderly manner and in accordance with DRB rules of procedure.
 - **Board Members hearing this matter**—Since the first hearing in this matter, there have been several changes in Board membership. Magna Dodge and Ross Gregory have left the Board. Cheryl Cesario, who was an alternate member, has been appointed a regular member. Ellen Whelan-Wuest is new to the Board and has been appointed as a regular member.
 - Cheryl Cesario has declared a conflict of interest in this matter and so will not be participating in this matter as a Board member.
 - Board members hearing this matter tonight will be Barbara Greenwood, David Anderson, Shari Johnson, Ellen Whelan-Wuest, and Joan Lynch. As required by our Rules, Ellen has

listened to and viewed the Zoom recording of the first hearing, and has reviewed all the exhibits. Joan, DRB alternate, will step up to hear this matter in place of a regular member. Joan was present at the first hearing, heard all the testimony and reviewed all the exhibits.

- **Disclosure of Board conflicts, ex parte communications, visits to property—**
 - Barbara spoke with Kayla on the phone on June 25. After the filing of new information on September 7, Barbara emailed Kayla (September 8) advising that there was material that had been requested but was not yet received. That email is included in the list of Exhibits for this hearing.
 - Cheryl, as an Interested Party, recused herself.
 - David spoke with Fire Chief Berno about necessity for a fire lane around the barn; such a lane might make it easier, but will not be required. David also spoke with the Fire Marshal Inspector, Joshua Maxham, regarding occupancy limits; no discussion of this between Maxham and Schaefer yet. Occupancy limits would not be considered until after permit application is submitted
 - Ellen visited the site September 18.
- **Exhibits—**The materials that the Board had requested were filed by the Schaefer and have been accepted into evidence and marked as Exhibits, continuing the number scheme of the first hearing on this matter. Included is some additional material.
 - **Exhibit 15a, 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 17a, 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 April, 2021.
 - **Exhibit 18a, b, c, and d—**Further materials filed September 14, 2021 at Barbara’s request:
 - 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 Wildlife just marked as *Exhibit 17d*, called “*Schaefer MOU Boundary 2020*”;
 - 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 the conditional use information has been added.

- **Exhibit 19**—Letter of September 16, 2021 from Barbara to James Glass and Victoria Palay giving them notice of this hearing. (New owners of the house across the road from the barn that used to belong to Rebecca Kinkead.)
- **Exhibit 20**— *2021 Vermont Hunting and Trapping Guide*—taken in as evidence during the October 6 hearing.
- **Applicant presentation**—*Kayla*
 - The original proposal for the event season has been reduced from May–October to June–September, with a decrease in events from 12 to 8.
 - There were no Fire Marshall issues.
 - Schaefers believe there will be no greater impact on neighboring properties than if they were holding other outdoor recreational activities that are allowed by the CZR, especially with the reduced number of events.
- **Board questions**
 - **David and Shari:**
 - Please describe lot locations and purchase dates. **Cam:** *Their house is on the East side of West Street. It was purchased in June, 2018. The barn is on the West side of the road and was purchased in December, 2019. They have also recently (a month ago) purchased an additional 5 acres, a lot on the East side formerly owned by Rebecca Kinkead.*
 - Separate deeds for each lot? **Cam:** *Yes*
 - Who will manage the parking of event vehicles? **Kayla:** *They will oversee the parking themselves, they have no employees.*
 - Traffic will be managed to move quickly and safely off the road? **Cam:** *Yes.*
 - How do the Schaefers plan to get 150 vehicles into the 150-foot x 250-foot parking area? **Cam:** *Vehicles to be lined up on North/South axis; 150 is what they feel can be fitted, but they anticipate fewer. The 150 was just a demonstration of capacity.* **Kayla:** *Does this matter, is it relevant? The regulations refer to year ‘round use. They do not want year ‘round use, just June through September.*
 - Do they have an ADA parking plan? Where will it be located? **Cam:** *They plan to mark a spot off the curved drive closer to the barn than the parking area.*
 - The field around the barn is currently being hayed? In current use? **Cam:** *Yes, twice during the season. They will re-evaluate as needed. Field is not in current use.*
 - Schaefers had indicated there would not be tents, but the rental agreement indicates the possibility? **Kayla:** *Yes, they do not feel people will be interested in the expense of tents, but the option is covered in the contract.*
 - Who enforces the no smoking rule (or other fire hazard bans)? **Cam:** *The event’s on-site designee. If the rules are broken, the renter’s will forfeit their deposit money.*
 - Who manages the field gate? **Cam:** *The gate is 200yards away, they do not think it likely that attendees will bother going out that far.*
 - Who are the “land managers” mentioned in the agreement? **Cam:** *The term refers to the Fish & Wildlife personnel and the Cesarios.*
 - Solar lighting is mentioned, but no lighting plan has been provided. Explain? What amperage is in the barn? **Cam:** *No barn outlets are over 120V.* **Kayla:** *They have researched both generator powered and solar powered lights. Both are possibilities.*
 - **Other Board members:**
 - **Joan:** How was the size of the parking determined? **Kayla:** *they based their expected*

number of cars on the CZR parking spaces allowed for the building. The barn at 6,190 square feet is allowed 42 spaces.

- **Barbara:** How many spaces do they anticipate needing for events with up to 200 people? **Kayla:** Generally, they believe that there will be 2 people per car, though some people will come alone. The 150 spaces was to show that there is plenty of room for parking, including buffer space for vehicles in excess of the 42 required spaces. ADA parking will be to the East of the barn, the number of spaces depends on what the Fire Marshall determines the building capacity to be. The Fire Marshall had mentioned that ADA parking was needed, but they have not yet confirmed this.
 - Map in *Exhibit 18b* shows an aerial view of the property with a blue box drawn in south of the barn. The circular drive and West Street are also shown. The blue box is labeled “Parking area to be maintained” and is the “licensed premises” referred to in the draft F&W agreement? Where is the ADA parking to be located and how many spaces allocated for ADA use? **Kayla:** Yes, the blue box shows the “licensed premises.” ADA parking will be on the grass on the East side of the barn between it and West Street. The number of spaces depends on what the Fire Marshall requires. They may be able to make arrangements to use the F&W parking.
 - Proposed amendment with the Fish & Wildlife Department prohibits event parking in that area. **Kayla:** Correct. If the Conditional Use is approved, they can then apply for the Fire Marshal permit, get an occupancy load and number of ADA spaces needed, and see if they can work with F&W on ADA parking.
 - Was ADA the parking location discussed with the Fire Marshall? **Kayla:** The Fire Marshall indicated that ADA parking would be needed, but number of spaces was not mentioned. The occupancy load has not been determined yet. The figure of 200 persons was mentioned, but as the board has not approved the application they have not applied for the Fire permit. The permit requirements depend on the occupancy load.
 - **Barbara:** The Pink House was similar, but even though there was no final Fire Marshal report, the Board had been given a pretty good idea of what the requirements would be. In this instance, the Board does not have that.
 - **Barbara:** Regarding multi-day events—Does a Saturday wedding, for example, include a Thursday/Friday setup and a Sunday/Monday take down, or they separate events? **Cam:** They would not be separate events. The wedding would be a 1-day event, the entire span of days would be one of the eight scheduled events.
 - **David:** Item #5 in the rental agreement says “where animals are present,” but would the prohibition not be also applicable to areas where there were no animals? **Cam:** Yes. The wording was to acknowledge and respond to concerns about the Cesaris’ animals.
 - **Joan:** The rental agreement makes it the renter’s responsibility to supply everything but the building, the grounds, and the power. How does this meet the criteria for a home-based business.
 - The insurance is borne by the renter. Can a home-owner get a liability policy for an event they host off their property?
- Kayla:** It’s a home-based business because the barn is an accessory structure. **Cam:** The business’s “service” is the opportunity for an “experience.” Their business, i.e. rental of the barn space and grounds, provides the opportunity for the renter to create their own experience as they see fit utilizing the setting the Schaefers provide. There are other things included such as tables, chairs, lighting. But they have addressed the feedback issues in the rental contract which they see as policies, and other things included with the property rental

are not policies so were not added. **Kayla:** Yes (re insurance). They can purchase a rider for their home-owner policy.

• **Barbara:** Please confirm my understandings:

- The proposal is to schedule 2 events per month, June–September? **Kayla:** Yes
- The barn square footage is 6,190? **Kayla:** Yes
- The barn’s setback is 70 feet? **Kayla:** Yes
- The redacted tax bill is submitted as evidence of the property being 1 lot? **Kayla:** Yes
- The 5-acre Kinhead lot is on the East side of the road, and all 3 lots were lots on the West Street Properties subdivision? **Kayla:** Yes **Cam:** Not sure if barn was a lot in the subdivision.
- Regarding the Fish & Wildlife draft agreement, supplies are permitted to be dropped off twice a month, but where will people be dropped off. What about renters wanting to drop off supplies on the day before an event? **Kayla:** It may be that the Schaefers will need to review this with the Fish and Wildlife people.
- What about F&W users carrying guns across the lot to the west field gate? **Kayla:** They do not see this as a problem. Very few hunters use this access road.
- The 2021 Vermont hunting and trapping season list shows a number of hunting seasons for several animals and birds during June–September. The listing is accepted into evidence and marked as *Exhibit 20*.
- Participants are required to remain on the “event premises,” meaning the whole parcel the barn is on? **Kayla:** Yes
- What changes were mentioned by the Fire Marshall’s Office? What is the Fire Alarm System reference in item 6? **Kayla:** 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.
- **Joan:** How are vendors selected? **Kayla:** Renters are given a list of recommended vendors, or they may know who they want already.

• **Public comment—**

- **Mary Dodge,** CCC—The shortened event season is a plus. The CCC would like this to be a condition of any approval.
- **A. Berninghausen:** Would like to hear more about plans for porta-potties, trash, noise, water, wild parties. **Kayla:** *Porta-potties to be rented by lessees, will be placed on west side of barn. Trash—renters responsible for clean up the day after the event. Water is in the barn but is permitted for agricultural use and has not been tested for potability. People would bring in bottled water. Noise—Music to be shut down 30 minutes prior to closing time. Wild parties—Business goal is to provide event space for local residents hosting small family-type events, not College students or people living more distantly. They would be unlikely to rent to anyone they felt might be inclined to have wild parties.*
 - **Barbara:** Will there be music outside of the barn? **Cam:** Not likely, there may be voices, but not music, not yelling. Music will end a half-hour before the closing time (11:00pm closing on Friday/Saturday, music ends at 10:30; Sunday through Thursday, closing is at 10:00pm, music ends at 9:30)
- **Dumont:** Regarding the language of §407—Home Occupations have a long history as permitted uses and are protected by Statute. Home-based businesses are intended by the CZR to provide more flexibility and be somewhat less restricted. However this does not

mean any type or size business is to be allowed. The language specifically allows 2 additional parking spaces, not 150. The owner is to “operate the business,” but in this case nearly all business operations are being handed over to the renters. Liquor licenses to be obtained from the Selectboard which will have no recourse in the event of problems. Similarly, porta-potty arrangements, trash, insurance are all shifted from the owners to the renter.

- **Pope**: Feels Schaefer's doing a great job.
- **Glass**: Concerned about noise.
- **Palay**: As a former event planner, has concerns about what the kitchen plan is? Field Kitchen? **Kayla**: *No kitchen facilities, caterers bring everything they will need.*
- **J. Berninghausen**: Appreciates Schaefer's concerns regarding adverse impacts on neighbors. Still has same concerns as expressed at first hearing. Does not feel this is the right sort of business for this specific place, it does not fit this neighborhood .
- **Branch**: Noise, traffic, fire—application not clear enough on many accounts, Example: fire works, similar hazards prohibited “in and around” barn; what about other areas of the property?
- **Paine**: Noise and fire are concerns.
- **Smith**: What will be done to deal with mosquitoes?
- **Cesario**: Advocates for their farming business. Has seen attendees at the Pink House events harass their sheep grazing in near-by field, yelling at the sheep and standing on the fence. In August, Rescue had to be called for an intoxicated attendee at 12:30 AM. The event had ended, but the party had not.
- **Applicant response**—Kayla feels they have taken the April feedback into account. Cam: They are willing to put in the work to make it successful.
- **Board final questions**—None
- **Wrap Up**—
 - Board agreed that they had sufficient information to deliberate and issue a decision. Barbara closed the hearing at 9:31pm, advising that the Board would issue its decision within 45 days and send to applicant via certified mail.

The Board resumed its business meeting and proceeded with the Agenda.

8. AVAILABILITY FOR NEXT MEETINGS

- ***November 3, 2021***—All expect to be available.
- ***December 1, 2021***—All expect to be available.

9. OTHER BUSINESS

- ***Old***—None
- ***New***—None

10. DELIBERATIVE SESSION—BOLDER/Toder; Barn On The Flats LLC

ADJOURNMENT—Meeting adjourned at 9:55pm.

Respectfully Submitted,
Robin Conway, DRB Secretary