

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 23-ENV-00103

Benoit Conditional Use Appeal

MERITS DECISION

This is an appeal of an August 14, 2023, Town of Barre Development Review Board decision granting John and Pam Benoit (“Applicants”) a conditional use permit to convert an existing barn into a Community Center/Recreational Facility on the property located at 241 School Road in Barre, Vermont (the “Property”). Several neighboring landowners (together “Neighbors”) appealed the DRB’s decision to this Court.¹ The Court and parties completed a site visit to the Property on March 21, 2024, followed by a two-day merits hearing at the Washington County Superior Court in Barre, Vermont.

Applicants are represented by attorney Brooke Dingledine. Neighbors William and Brenda Yacavoni are represented by attorney Stephen Cusick. The remaining Neighbors are self-represented.

Statement of Questions

Neighbors William and Brenda Yacavoni filed a 12-Question Statement of Questions on October 2, 2023. At trial, Neighbors waived Questions 5, 8, 10, and parts of Question 12.² Accordingly, the following Questions are presented for a final determination:

(1) Should the application be denied because it does not meet the intent/criteria of a Community Center or Recreational Facility by not providing any cultural or recreational activities for benefit of

¹ Those neighbors are Brenda and William Yacavoni, Howard Cook, Deborah Lefebvre, Cindy and Seth Loranger, Karen Ann Marsh, Gary McAvoy, and Jacqueline Patts.

² Mr. and Mrs. Yacavoni were the only neighbors to file a notice of appeal and subsequent Statement of Questions. At trial, the Yacavonis waived the above-mentioned Questions. None of the other Neighbors objected to this waiver, and no evidence was offered at trial pertaining to these Questions. Accordingly, we dismiss Questions 5, 8, 10, and the parts of Question 12 pertaining to smoke.

the community as defined in Article 8 of the Town of Barre Zoning Bylaw?

(2) Should the application be denied based on its proposed use as a for-profit commercial rental facility providing no events which all community members, at any time, could choose to attend?

(3) Should the application be denied for “intense” use of the property for this project not allowed under Article 2, Section 2.2 of the Town of Barre Zoning Bylaw definition of use of low-density residential zone?

(4) Should the application be denied based on a burden to the community not allowed under Article 2, Section 2.2 of the Town of Barre Zoning Bylaw definition of use for low-density residential zone?

(6) Should the application be denied due to the lack of an approved wastewater disposal plan with no sewage on site?

(7) Should the application be denied to “protect the health safety, convenience, and general welfare of the inhabitants of the Town of Barre” as noted in the Town of Barre Zoning Bylaw, Article 5, Section 5.1, enacted under the authority of 24 V.S.A. Chapter 117?

(9) Should the application be denied based on an adverse “change” of the “character of the area affected as defined by the purpose(s) of the zone within which the project is located, and specifically stated policies and standards of the municipal plan” (Town of Barre Zoning Bylaw, Article 5, Section 5.5, Review Standard #2)?

(11) Should the application be denied due to the close proximity 200-1,000 feet from residential homes, and minimal feet from adjacent residential front yards and back yards (Town of Barre Zoning Bylaw, Article 5, Section 5.5, Review Standard #7)?

(12) Should the application be denied due to the traffic, noise, [and] lighting that will be created in the vicinity of the residences?

Statement of Questions (filed October 2, 2023, amended on the record March 22, 2024).

Findings of Fact

1. John and Pam Benoit own the property located at 241 School Road in Barre, Vermont (previously defined as the “Property”).
2. The Property is a 53-acre parcel located in the Low-Density Residential District and is subject to the Town of Barre Zoning Bylaw.

3. The Property contains a barn structure (the “Barn”), which Applicants seek to convert into a wedding and special events venue. The remainder of the Property is leased for growing agricultural crops.

4. The current application proposes that the Barn will only be used up to 28 days per year.

5. The application seeks approval to operate year-round with the following hours of operation: Sunday – Thursday (11am-7pm); Friday – Saturday (11am-11pm) with no amplified music after 10pm.

6. In the proceedings before the DRB, Neighbors raised concerns about outdoor amplified music, lighting, and the consumption of alcohol.

7. In response to noise concerns, Applicants implemented the following mitigation measures: replacing the Barn’s doors and windows (single to double pane), installing insulation to the Barn walls, replacing the Barn’s siding and roof, and eventually installing an HVAC system so that all amplified music events can take place inside the Barn with the doors closed.

8. In response to lighting concerns, the Applicants have agreed to make all outdoor lighting LED and downcast.

9. All alcohol supplied at events will be served by a Vermont licensed and insured bartender.

10. The proposed project includes 46 parking spaces in an existing gravel parking area and proposed gravel expansion area, as well as 24 additional overflow parking spots on a grassy area. Three of the parking spaces will be ADA compliant, and there will be two areas on the eastern side of the Barn designated for food grills and catering trucks.

11. Adjacent to the parking area and close to the eastern side of the barn is an area designated for portable toilets.

12. The outdoor land use proposed during special events is to be located on the north and west end of the Barn, and includes:

- a. Weddings and recommitment ceremonies, with amplified music during guest seating, processional, ceremony, and recessional;
- b. A designated outdoor tent area;
- c. Outdoor games and recreational activities;
- d. A fire pit and chairs;
- e. Golf carts to transport equipment and guests.

13. The expected attendance at events is 100-150 guests, with a maximum of 200 people.

14. There is currently no wastewater system or water supply to the Property.

15. Neighbors' properties are located at various distances from the subject Property. The closest appealing Neighbor is Cindy Loranger, whose home is 335 feet from the Barn. The Yacavonis' home is 605 feet from the Barn.

16. The Barn is located on School Road, a Town class 3 paved road.

17. Traffic on roads and highways in the vicinity of the Property will temporarily increase when guests arrive and depart from events. These events will not interfere with school bus traffic given the likely hours of the events. Overall, the traffic on roads in the vicinity of the project can accommodate the proposed use. Testimony of George McCain; Testimony of Josh Martineau.

Conclusions of Law

I. Questions 1 – 2: Whether the Project is a Community Center/Recreational Facility

Neighbors' Questions 1 and 2 ask generally whether the proposed project was improperly classified as a Community Center/Recreational Facility as defined in Article 8 of the Barre Zoning Bylaw. The Bylaw defines a Community Center/Recreational Facility as:

A building, together with accessory buildings and uses, used for recreational and cultural activities operated for profit for benefit of the community; shall only have an outdoor public address system or any type of amplified music device by conditional use permit.

Town of Barre Zoning Bylaw at Art. 8, p. 54.

Based on this definition, we conclude that the proposed project is properly classified as a Community Center/Recreational Facility. The primary use of the Barn will be to host weddings, anniversaries, and birthday parties, all of which conclude are cultural events. These events will be operated for profit and provide a venue for special events to take place in the community.³ Other benefits to the community include preserving a historic barn through rehabilitation and reuse; improving the value of the Property and thereby increasing property tax revenue; generating rooms and meals tax revenues; and providing employment opportunities during

³ Neighbors argue that the definition for a Community Center/Recreational Facility requires such facilities to be open and available to the public, and complain that the proposed events will be by invite only. However, no such language exists in the definition requiring these facilities to be open to the public. Rather, the proposed project will be available for rent to members of the community.

construction and operation.⁴ For all these reasons, we conclude that the proposed use is properly categorized as a Community Center/Recreational Facility. This requires us to answer Questions 1 and 2 in the negative.

II. Questions 3–4: Whether the Project belongs in the Low-Density Residential District

Questions 3 and 4 ask generally whether the application should be denied based on the definition of the Low-Density Residential Zoning District in which the Barn is located. The Bylaw contains the following purpose statement for the Low-Density Residential District:

This district is limited to non-intensive land uses. The purpose of this district is to prevent premature development of land, retain certain areas for non-intensive uses, prevent development where it would be a burden on the community, and retain areas for open space. Since the rural character of these lands depends on open space and natural areas, protection of these features should be considered when evaluating proposed conditional uses. Municipal water and sewer may or may not be available.

Town of Barre Zoning Bylaw § 2.2 at p. 4.

Based on the evidence presented, we conclude that this project falls squarely within this definition for the Low-Density Residential District. The project is located on a roughly 50-acre parcel, but only takes up about 2 acres, most of which is to be used for parking and accessory outdoor activities. The rest of the property will remain used for agricultural activities, thus preserving open space and the rural character of the neighborhood.⁵ Furthermore, the only “development” occurring on the Property is the restoration and rehabilitation of an existing barn structure, and a small expansion of the parking area. For all these reasons, we conclude that the project is consistent with the definition and purpose of the Low-Density Residential District. This requires us to answer Questions 3 and 4 in the negative.

⁴ Neighbors argue that these benefits to the Town should be weighed against any detriment to the neighborhood community. However, Neighbors provide no legal basis for the Court to adopt such a balancing test.

⁵ Neighbors argue that the special events occurring on the Property are an intensive land use. They suggest that these events will have up to 150 people, 70 vehicles, and loud music and outdoor activities for up to 12 hours on Fridays and Saturdays, thus putting a burden on the neighboring community. While we recognize Neighbors’ rights to use and enjoy their land, we disagree that the proposed activities are an intensive land use that places a burden on the community. Most notably, the application before the Court only proposes holding special events up to 28 days per year. Furthermore, the application limits amplified music to occurring indoors with the barn doors and windows closed. For these reasons, we conclude that the proposed use is not an intensive land use as used in the definition/purpose statement for the Low-Density Residential District.

III. Question 6: Wastewater disposal plan

Neighbors' Question 6 asks whether the application should be denied due to the lack of an approved wastewater disposal plan. In their post-trial filings, Neighbors William and Brenda Yacovoni waive Question 6. As explained at trial, Applicants are exempt from state wastewater permitting requirements pursuant to § 1-304(27) of the Vermont Wastewater System and Potable Water Supply Rules because they currently seek to operate events for only up to 28 days per year. Applicants will also provide bottled water, temporary portalets, and enhanced hand washing stations in accordance with the Rules. Accordingly, we answer Question 6 in the negative.

IV. Question 7: Health, safety, convenience, and general welfare

Neighbors' Question 7 asks whether the application should be denied to "protect the health, safety, convenience, and general welfare of the inhabitants of the Town of Barre" as noted in Article 5, Section 5.1 of the Town Bylaw. Section 5.1 is an introductory provision to the conditional use review criteria and does not contain its own substantive criteria. Even so, Neighbors offered no evidence to support a finding that the proposed project would have an adverse impact on the health, safety, convenience, or general welfare of Town inhabitants. Rather, their arguments pertain to whether the project has an undue adverse effect on the character of the area, which is a conditional use review standard pursuant to Section 5.5 of the Bylaw. We address the Neighbors' character of the area concerns in the following section, and hereby answer Question 7 in the negative.

V. Questions 9 – 12: Conditional use criteria

Neighbors' Question 9 asks whether the application should be denied because it has an undue adverse impact on the character of the area. The Town Bylaw states that a proposed development shall not have an undue adverse effect on "[t]he character of the area affected as defined by the purpose(s) of the zone within which the project is located, and specifically stated policies and standards of the municipal plan." Town Bylaw § 5.5(2). As explained above in response to Questions 3 and 4, the proposed project is consistent with the purpose of the Low-Density Residential District. We have also not received any evidence with respect to any

applicable policies and standards in the municipal plan. Therefore, our remaining task is to determine whether the proposed project has an undue adverse impact of the character of the area based on the existing uses in the area. See In re Rublee CU, No. 140-11-15 Vtec, slip op. at 10 (Vt. Super. Ct. Env'tl. Div. Aug. 23, 2016) (Walsh, J.).

Based on the evidence presented, we conclude that the proposed project will not have an undue adverse impact on the character of the area, specifically with respect to noise and lighting. There is no Bylaw provision requiring noise testing or a specific decibel limitation. The surrounding neighborhood is mostly made up of residential and agricultural uses and is a short distance from downtown Barre. In fact, several Neighbors' properties are located within the High-Density Residential District. Applicants have implemented several mitigation measures to minimize any noise impacts. These measures include installing double pane windows, insulation, an HVAC system, and limiting amplified music to inside the Barn. With respect to lighting, the parking area is oriented in a North/South direction such that vehicle lighting will not be directly aimed at the adjacent Loranger and Yacavoni properties, and all permanent outdoor lighting will be LED and downcast. Taken together, these measures will ensure that there is no undue adverse impact on the character of the area. Accordingly, we answer Question 9 in the negative.

Next, Question 11 asks whether the application should be denied due to close proximity to residential homes. This Question cites to Town Bylaw Section 5.5(7), which states that a proposed project shall not result in an undue adverse effect on "[d]istance from adjacent or nearby uses." The closest Neighbors to the Barn are the Lorangers and Yacavonis, whose properties are approximately 335 feet and 605 feet, respectively, from the Barn. As explained above, adequate mitigation measures have been proposed to ensure that events will not have an undue adverse impact on these neighboring properties. Furthermore, it is undisputed that the proposed project complies with all Town setback provisions. Accordingly, we answer Question 11 in the negative.

Lastly, Question 12, as amended, asks whether the application should be denied due to the traffic or noise that will be created in the vicinity of the residences. With respect to traffic, the Town Engineer and Director of Public Works, Josh Martineau, testified that he had no concerns with traffic in the area if the proposed project were to be approved and developed as

presented. Any traffic increases will be temporary based on the timing of special events, and these increases are unlikely to conflict with any school bus traffic. As explained above, with respect to vehicle lighting, the parking lot is oriented in a way that will minimize lighting impacts on the adjacent residential properties. With respect to noise, we again conclude that the proposed mitigation is sufficient to minimize the effects on neighboring properties. Accordingly, we answer Question 12 in the negative.

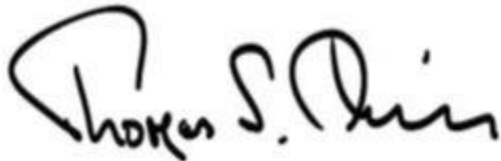
Conclusion

For the foregoing reasons, we conclude that the Benoit's application for conditional use approval for a wedding barn was properly characterized as a Community Center/Recreational Facility and that the proposed use will not have an undue adverse effect on the character of the area or traffic. We therefore answer Questions 1, 2, 3, 4, 6, 7, 9, 11, and 12 in the Applicant's favor and **GRANT** the Benoit's application for conditional use approval, subject to the conditions imposed by the Development Review Board.

The pending matter is remanded to the Town of Barre Zoning Administrator to complete the ministerial act of issuing a permit in conformance with this Decision and the unappealed portions of the August 14, 2023, Town of Barre Development Review Board Decision.

This completes the current proceedings before this Court concerning this appeal.

Electronically signed at Newfane, Vermont on Tuesday, May 21, 2024, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Thomas S. Durkin". The signature is written in a cursive, flowing style.

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division