

ROARING BROOK TOWNSHIP
BOARD OF SUPERVISORS

IN RE: CONDITIONAL USE
APPLICATION OF LOU LIFRIERI

January 11, 2021

OPINION

PROCEDURAL HISTORY

Lou Lifrieri (hereinafter “Lifrieri”) filed an application for a conditional use of his property located at 1 Green Mountain Place, Roaring Brook Township, Lackawanna County, Pennsylvania, as a short-term rental property. Lifrieri’s application was considered by the Roaring Brook Township Planning Commission, which issued a Recommendation to the Roaring Brook Township Supervisors on or about October 26, 2020. *See* Exhibit “A”. In relevant part, the Planning Commission recommended as follows: (A) loud music after 10:00 p.m., firearms use on the property, a shooting preserve on the property, hunting on the property, ATVs/snowmobiling on the property, fireworks on the property, open fires, and use of the property as a campground/RV campground are not permitted; (B) maximum “house” guest occupancy capacity is sixteen (16) people and maximum “event” guest occupancy on property, including house guests, is fifty (50) people; (C) that the maximum number of vehicles allowed on the property shall not exceed the maximum number of total guests occupancy capacity nor exceed the maximum number of available parking spaces on the property, whichever is less; (D) that the policies in the rental agreement shall be adhered to by all rental agreement parties; and (E) that all activities on the premises shall conform to and not violate any Roaring Brook Township Zoning Ordinance rules and/or regulations. *Id.*

The Roaring Brook Township Supervisors then scheduled a hearing on Lifrieri’s conditional use application for October 28, 2020. Notice of the hearing was advertised in the

Villager Newspaper on October 8, 2020 and October 15, 2020. Notice letters were also emailed to adjacent property owners on October 9, 2020. Further, notice of the hearing was posted on the Lifrieri property on October 18, 2020.

A hearing took place on October 28, 2020, at which time the applicant, Lifrieri, presented his case for a conditional use, and numerous persons from the Roaring Brook Township Community presented their objections to same. Because of the complicated nature of this matter, the Roaring Brook Township Supervisors requested a continuance from Lifrieri of their mandated forty-five (45) day time-frame to take action of Lifrieri's conditional use application, through January 11, 2021. Such request was granted by Lifrieri. The Roaring Brook Township Supervisors then advertised their intention to hold a special meeting to act on Lifrieri's conditional use application for January 11, 2021 in the Villager Newspaper on December 10, 2020. This opinion shall be presented as the findings of fact and conclusions of law of the Roaring Brook Township Supervisors relative to Lifrieri's application.

FACTS

Lifrieri owns the property located at 1 Green Mountain Place, Roaring Brook Township. *See* Presentation of Lou Lifrieri, Exhibit "B" at 2. This property is located within the RU, or Rural, Zoning District. *Id.* The property consists of approximately two hundred forty-two (242) acres and one single family dwelling unit with four (4) bedrooms. *See* Exhibit "B" at 2; Exhibit "C", Transcript of Proceedings on October 28, 2020, at 11. The sole point of access to Lifrieri's property is through the Summit Woods development, a residential development within Roaring Brook Township and within an R-1 Zoning District. The roads within the Summit Woods development have been dedicated to Roaring Brook Township and are maintained by the Township. Access to Lifrieri's structure includes an approximately one-quarter (1/4) mile access

drive. Exhibit "B" at 5; Exhibit "C", at 11. The property also includes three hundred feet (300') of Roaring Brook River frontage, a one (1) acre lake, mountain views in all directions, and eight (8) miles of mature improved trails along with vistas and lookouts throughout the property. Exhibit "B" at 5; Exhibit "C" at 11. Lifrieri's property is further outfitted with solar, wind and solar thermal technologies capable of complete off-grid independent utility operation. Exhibit "B" at 5; Exhibit "C" at 11.

Lifrieri requested that he be permitted to utilize the property as a short-term rental property. Exhibit "B"; Exhibit "C" at 9. In particular, Mr. Lifrieri requested that a total number of sixteen (16) persons be permitted to occupy the dwelling ("house guests"), with a total of fifty (50) guests on the property at one time, including the house guests ("event guests"). Exhibit "B" at 2; Exhibit "C" at 8. The recreational uses requested at the property are of the "passive" type, to include ice skating, picnicking, cross country skiing, running and jogging, walking, bicycling, wild life viewing, bird watching, climbing, photography, history, fishing, swimming, archaeology and horseback riding. Exhibit "B" at 6; Exhibit "C" at 12. Lifrieri categorized the types of short term rentals into three categories, as follows: (1) relaxers, which include sightseers, persons looking to enjoy recreation and those visiting family and friends in the area; (2) retreaters, which include corporate groups, associations and clubs such as church groups, wellness centers, hiking and nature clubs, and those with holistic lifestyles; and (3) extended stayers, which include those temporarily relocating for employment such as construction or corporate projects. Exhibit "B" at 7; Exhibit "C" at 12-13.

Lifrieri stated that he would require a minimum of a two (2) night stay along with weekly and monthly discounts to encourage longer stays. Exhibit "B" at 8; Exhibit "C" at 13-14. Further, Lifrieri indicated he would require a significant deposit. Exhibit "B" at 8; Exhibit "C" at 14.

Lifrieri projected six (6) total leased days per month, or two (2) days of three (3) nights each month. Exhibit "B" at 8; Exhibit "C" at 14. Lifrieri has contracted through a third party for guest screening and reparations. Exhibit "B" at 8; Exhibit "C" at 14-15. Lifrieri indicated that house rules will both be in the contract and will be documented on site, which will mimic any conditions imposed through the conditional use. Exhibit "B" at 8; Exhibit "C" at 15-16.

Lifrieri maintains that traffic will not significantly increase as a result of the grant of a conditional use for a short-term rental property. Exhibit "B" at 9; Exhibit "C" at 16-17. Specifically, Lifrieri states that he reserves the entire dwelling to guests when his family and friends are not there, so "[w]hile the people and vehicles may be different, the actual traffic will remain largely the same as if we were the primary residents." *See* Exhibit "B" at 9. Lifrieri also addressed the concern of increased noise, stating that similarly, "[w]e currently enjoy the property with as many as 40-50 family and friends at events and special occasions throughout the year without incident." Exhibit "B" at 10. Lifrieri further states that the distance, topography and Summit Woods housing density greatly reduces any concerns of increased noise. Exhibit "B" at 10; Exhibit "C" at 17-18. Specifically, Lifrieri's residence is located almost one-quarter (1/4) mile, or one thousand thirty-five feet (1,035') from the intersection of Summit Woods and Green Mountain Place. Exhibit "B" at 10; Exhibit "C" at 17-18. Further, the area is densely wooded. Exhibit "B" at 10; Exhibit "C" at 18. Lifrieri also describes the topography of his residence as forty feet (40') lower in elevation from the closest dwelling, and twenty-two feet (22') lower in elevation than the intersection of Summit Woods and Green Mountain Place, which contributes to noise reduction. Exhibit "B" at 10; Exhibit "C" at 18. Further, Lifrieri maintains that the characteristics of the Summit Woods development also contribute to reduced disruptive noise, as

the larger lot sizes of several acres per lot result in fewer homes in a given area. Exhibit "B" at 10; Exhibit "C" at 18.

Lifrieri also addressed host presence during short term rentals. While Lifrieri resides in Oceanport, New Jersey, Lifrieri indicated that local representatives, including, but not limited to, Bob Smith, who live within a five (5) minute drive of the property, will have a face-to-face greeting with renters and will be a point of contact for renters, neighbors and Township officials to report concerns or issues to. Exhibit "B" at 11; Exhibit "C" at 19-20. Further, Lifrieri indicated that he has real-time video surveillance of the grounds of his property. Exhibit "B" at 11; Exhibit "C" at 19. Lifrieri's property is equipped with interconnected smoke detectors through the Nest system which alert Lifrieri's phone if there is an issue; Lifrieri would then call 911. Exhibit "C" at 99-100. It was also addressed that Lifrieri's property had proper septic capacity. *Id.*

Several individuals who reside within the Summit Woods development voiced their concerns at the hearing, including Debbie Tubbs, Kimberly Sanderson, William Watson, Rocco Diana, Dean Cali, Allyson Garubba, John Sanderson III, Esq. and Scott Sanderson, Esq. *See generally* Exhibit "C" at pages 22-109. The concerns voiced at this hearing included as follows: a request for a condition (or covenant in the deed) limiting further subdivision of the property such that any subdivided lots could not similarly maintain a short-term rental property (Exhibit "C" at 23-24, 38-39, 81-82); a decrease in property values due to a short-term rental in close proximity to the Summit Woods development (Exhibit "C" at 24-26, 78); a request for a decrease in the number of occupants in the property (requests for 12 and 6 occupants were made) (Exhibit "C" at 26-27, 80); increased traffic (Exhibit "C" at 41, 73, 77); a different type of traffic, as renters may be disruptive visitors with no stake in the community (Exhibit "C" at 41-44, 71-74);

littering (Exhibit “C” at 27-28, Exhibit “C” at 43); partying (Exhibit “C” at 27-28, 43); potential drunk driving (Exhibit “C” at 43-44, 73); security and safety concerns (Exhibit “C” at 42-45, 71-75, 76); concerns of accidents, crime and disruption (Exhibit “C” at 45); guns being fired on the property (Exhibit “C” at 48-49); a request for a condition limiting the number of persons which can be on the property which do not constitute renters (Exhibit “C” at 51, 80); a request for a condition limiting the number of events which may take place on the property (Exhibit “C” at 51-53); and a request for a condition requiring a criminal background check and sexual offender registry database check for potential renters (Exhibit “C” at 76, 79). Individuals also requested that the Supervisors consider the unique nature of Lifrieri’s property and the sole access point through the Summit Woods development as a “*de facto*” R-1 zone. (Exhibit “C” at 39-40, 62, 64-67, 76, 79). Subsequent to the public hearing, Kimberly Sanderson also requested that the Township adopt a short-term rental ordinance and add stop signs to the development to mitigate additional traffic should the Township approve Lifrieri’s application.

ANALYSIS/LAW

As stated previously, Lifrieri’s property is located within an RU, or Rural, Zoning District. “The intent of the RU District is to recognize the traditional rural working landscape . . . Lower density residential development, limited recreational uses, certain institutional uses, and a number of other commercial uses are permitted subject to performance standards in recognition of the need for landowners to have economic opportunity not related to natural resources.” *See* Zoning Ordinance, Section 404.3. In the RU District, a short-term rental is designated as a conditional use. *See* Zoning Ordinance at Page IV-13. A short term-rental unit is defined as “[a]ny single-family dwelling unit, two-family dwelling unit or multi-family dwelling unit which

is rented for periods of thirty (30) consecutive days or less typically, but not exclusively, for transient use by tourists.” *See Zoning Ordinance at Page III-24.*

“Conditional uses . . . are permitted uses which require individual consideration because of their special characteristics and are referred to the Planning Commission for review and preparation of a recommendation to the Board of Supervisors . . . Following a public hearing, and based on its determination that the proposed use meets the standards of [the Zoning] Ordinance, the Board of Supervisors . . . shall approve the issuance of a zoning permit by the Zoning Officer.” *See Zoning Ordinance, Section 406(C).* A permit for a Conditional Use shall be issued by the Zoning Officer only upon the written order of the Board of Supervisors, after the Planning Commission has been given the opportunity to review the application. *See Zoning Ordinance, Section 702.2(C).*

A conditional use applicant must submit an application for same containing certain information to include in relevant part: a narrative providing details of the project; name and address of the applicant and address of affected property; description of the existing and proposed use(s) of the property, including number of dwelling units; and a description of any proposed non-residential operations in sufficient detail to indicate potential nuisances and hazards regarding noise, traffic or other significant public health and safety hazards. *See Zoning Ordinance, Sections 702.3(C); 708.1; 708.6.*

The procedure for action on a conditional use application is as follows. After submission of a conditional use application by an applicant, the Zoning Officer shall distribute copies of the application to the Planning Commission and Board of Supervisors. The Zoning Officer is also responsible for reporting to the Planning Commission and Board of Supervisors as to whether the proposal complies with the Zoning Ordinance. The Planning Commission is provided with the

opportunity to review any proposed conditional use at a regular meeting prior to a decision by the Board of Supervisors and may provide a written advisory review of same. After the Planning Commission review and/or advisory, the Board of Supervisors must hold a hearing to consider same. Notice of all conditional use hearings of the Board of Supervisors shall be given as follows: posting on affected tract of land at least one (1) week prior to hearing, stating the time and place of hearing and a general description of the request; written notice of the hearing to the Zoning Officer and the Chairperson of Planning Commission within ten (10) days of the hearing; written notice of the hearing to any person who makes a timely request for same within fourteen (14) days of the hearing; and mailing to owners of contiguous properties or across the street from the affected property within fourteen (14) days of the hearing via certified mail. *See* Zoning Ordinance, Section 708.2(B)(6). The Board of Supervisors shall then hold a hearing in accordance with Sections 908 and 913.2 of the Municipalities Planning Code. *See* Zoning Ordinance Section 708.2(B)(5) (Page VII-13). In granting a conditional use, the Board of Supervisors may attach such reasonable conditions and safeguards as it determines are necessary to implement the purposes of the Pennsylvania Municipalities Planning Code and the Zoning Ordinance, and to protect the public health, safety and welfare. *Id.*

The Roaring Brook Township Zoning Ordinance contains a list of standards and criteria to be applied to conditional uses to “to ensure that the proposed use will be in harmony with the purposes, goals, objectives and standards of [the Zoning] Ordinance and other ordinances of the Township.” *See* Zoning Ordinance, Section 708.4. Specifically, the following standards and criteria are to be considered by the Supervisors: whether the proposed use is in harmony with the purposes, goals, objectives and standards of the Zoning Ordinance and all other ordinances of the Township; the degree to which the proposed location may be particularly suitable or unsuitable

for the proposed use in terms of the physical characteristics of the site; whether the proposed use at the proposed location will result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way, property values, or other matters affecting the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of this Ordinance, or any other plan, program, map or ordinance of the Township or other government agency having jurisdiction to guide growth and development; whether the proposed use will impose an undue burden on any of the improvements, facilities, utilities and services of the Township; location, arrangement, size, design and general site compatibility of buildings; adequacy and arrangement of vehicular traffic access and circulation; location, arrangement, appearance and sufficiency of off-street parking; adequacy and arrangement of pedestrian traffic access and circulation; adequacy of water supply and sewage disposal facilities; adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands. *See Zoning Ordinance, Section 708.4.* In instances where the supplemental standards contained in the Zoning Ordinance do not adequately protect the general health, safety and welfare of the parties affected, all conditions and safeguards deemed necessary by the Board to protect same and to implement the purposes of the Municipalities Planning Code and the Zoning Ordinance shall be imposed as conditions of approval. *Id.* The applicant shall supply evidence regarding compliance with the standards and criteria and data and evidence shall also be accepted by protestants. *Id.* The evidence shall be evaluated relative to the "injurious impact on the health, safety and welfare of the Township; and the proposed use shall be approved with appropriate conditions or denied based on said evaluation."

Under Pennsylvania law “[a]n applicant for a conditional use has the burden to demonstrate compliance with the specific criteria of the ordinance. Once the applicant meets the requirements, he has made out his prima facie case and the application must be granted unless the objectors present sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare.” *See In re: Thompson*, 896 A.2d 659 (Pa. Cmwlth. Ct. 2006) (omitting internal citations).

After the issuance of a conditional use permit, the approved application shall not be changed without the written consent of the Township. *See Zoning Ordinance, Section 702.6(A)*. Expansions or additions to uses classified as conditional uses shall also be conditional uses. *See Zoning Ordinance, Section 708.2(A)*. A conditional use permit shall be revoked in case of “a violation of any condition lawfully imposed upon a . . . conditional use . . .” or if “ . . . land or structures are being used in such a way that does not comply with this Ordinance . . . or approved permit application”. *See Zoning Ordinance, Section 702.5*.

FINDINGS OF FACT

After consideration of the facts and circumstances present in this matter, as well as the relevant legal standards, the Board of Supervisors of Roaring Brook Township hereby issues the following findings of fact in this matter.

The use of the Lifrieri property as a short-term rental property, with the conditions below, is in harmony with the purposes, goals, objectives and standards of the Zoning Ordinance and all other ordinances of the Township. The location is suitable for a short-term rental for several reasons. First and foremost, the property is located in an RU Zone. Second, the property is sufficiently large, at two hundred forty-two (242) acres. Third, the property is accessed through a development with public roads maintained by the Township. Fourth, the actual access to the

property is by way of a quarter mile drive, through densely wooded lands, at a lower elevation than surrounding lands. Lastly, the layout of the Summit Woods development also contributes to the appropriateness of the location, as the lot sizes are large and contribute to noise reduction.

The use of the Lifrieri property as a short-term rental is also not likely to adversely affect traffic conditions within the Township or within the Summit Woods development. While much testimony was given on this issue, all such concerns are purely speculative. Such use will also not impose an undue burden on Township roads and facilities.

GRANT OF CONDITIONAL USE AND CONDITIONS

After consideration of the facts and circumstances present in this matter, as well as the relevant legal standards, the Board of Supervisors of Roaring Brook Township hereby grant a conditional use permit to Lou Lifrieri to use the property located at 1 Green Mountain Place, Roaring Brook Township, as a short-term rental property. We find that the following reasonable conditions are necessary to ensure that harmony with the purposes, goals, objectives and standards of the Zoning Ordinance and all other ordinances of the Township, and to ensure that the health, safety and welfare of the Township residents and public at large be protected.

1. The conditional use permit must be renewed on an annual basis. Such renewal is not automatic and is subject to an annual inspection and reasonable fee. The inspection shall be limited to establishing conformity with the conditions enumerated herein, as well as other relevant health, safety and welfare concerns. The inspection shall not be for any other purpose.
2. No other commercial activity, other than a short-term rental (as defined in the Zoning Ordinance), is permitted on the property.

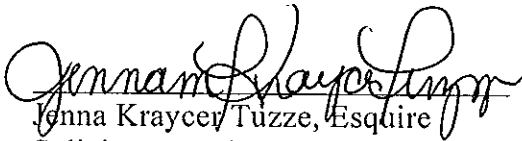
3. The total number of “house guests” is limited to two (2) persons per bedroom plus an additional four (4) persons. In other words, since the property currently consists of four (4) bedrooms, the total number of “house guests” is limited to twelve (12) persons. The total number of bedrooms permitted for this short-term rental property is five (5), meaning the total possible house guest limit is fourteen (14) people.
4. The total number of “event guests” is limited to fifty (50) persons, including “house guests”.
5. Should Lifrieri, or any future owner, subdivide the property, no other short-term rental property shall be permitted on any other subdivided parcel.
6. The following shall be adhered to and enforced by any and all short-term renters and event guests, Lifrieri, his heirs, successors and assigns:
 - a. Loud music after 10:00 p.m. is not permitted;
 - b. Firearms use on the property is not permitted;
 - c. A Shooting Preserve on the property is not permitted;
 - d. Hunting on the property is not permitted;
 - e. The use of ATVs or snowmobiles on the property is not permitted;
 - f. Fireworks are not permitted;
 - g. Open fires are not permitted on the property. Fire pits are allowed only as per Township Ordinance;
 - h. RVing on the property is not permitted.
 - i. The property shall not be used as a campground or RV campground.


- j. The maximum number of vehicles allowed on the property shall not exceed the maximum number of total guest occupancy capacity nor exceed the maximum number of available parking spaces on the property (whichever is less);
 - k. All activities on the premises shall conform to and not violate any Roaring Brook Township Zoning Ordinance, other Township ordinance, rules or regulations.
7. A local point of contact for short-term rentals at the property ("Managing Agent") shall be maintained to address any and all issues by short-term renters, neighbors, police and/or Township officials. Lifrieri, his heirs, successors and assigns must provide the contact information for the Managing Agent to the Township Supervisors and Zoning Officer. Should the identity of the Managing Agent change, Lifrieri, his heirs, successors and assigns shall provide the contact information for the new Managing Agent within ten (10) days of such change.
8. House rules shall be published on a placard in a conspicuous manner in the improvement located on the property. The house rules shall also included in all contracts for rentals of the property. The "house rules" must include the following:
- a. The name of the owner and Managing Agent, as well as contact telephone numbers for both;
 - b. 911 address for the property;
 - c. The maximum number of occupants, as referenced above in paragraphs 3 and 4;
 - d. The maximum number of vehicles allowed to park on the property, as referenced in paragraph 6(j);
 - e. Trash day pick-up and trash regulations;

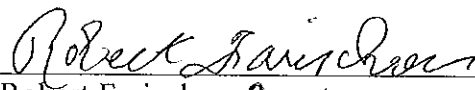
- f. Notice that the occupant or guest may be cited or fined for disturbances or violations of Roaring Brook Township ordinances;
- g. Notice that the short-term rental occupants and guests must make the dwelling available for inspections upon notice.
9. The septic tank at the property shall be pumped every three (3) years. A receipt of same shall be provided to the ~~Zoning~~ ^{Sewer Enforcement} Officer.

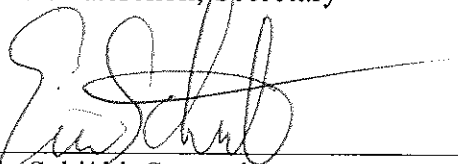
ATTEST:

**BOARD OF SUPERVISORS OF ROARING
BROOK TOWNSHIP**


Jenna Krayce/Tuzze, Esquire
Solicitor, Roaring Brook Township

By: 
Anthony Jordan, Chairman


Robert Farischon, Secretary


Eric Schield, Supervisor