

Town of Underhill

Development Review Board

Conditional Use Review Findings & Decision

APPLICATION OF POKER HILL SCHOOL, INC. FOR A CONDITIONAL USE PERMIT TO CONSTRUCT A PARKING LOT IN FRONT OF THE FRONT BUILDING LINE

In re: Poker Hill School, Inc.
216 Poker Hill School (PH216)
Underhill, VT 05489

Docket No. DRB-17-17

Decision: Approved with Conditions (see Section V for More Details)

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns a conditional use application for the construction of a parking lot in front of the front building line on property located at 216 Poker Hill Road (PH216) in Underhill, Vermont, owned by Poker Hill School, Inc..

- A. On December 11, 2017, Poker Hill School (applicant), officially filed an application for a conditional use for the abovementioned project. The application was accepted and determined to be complete shortly thereafter. The hearing was scheduled for Monday, December 18, 2017 at 6:35 PM.
- B. On November 30, 2017, a copy of the notice of the conditional use review hearing was mailed via Certified Mail to the following property owners adjoining the property subject to the application:
 1. PH178 –Weir Family Trust, 178 Poker Hill Road, Underhill, VT 05489
 2. PH203 – Allen David Tremblay & Sheri Osgood, 203 Poker Hill Road, Underhill, VT 05489
 3. PH204 – Michael & Joyce Babbitt, 204 Poker Hill Road, Underhill, VT 05489
 4. PH209 – David & Elizabeth London, 209 Poker Hill Road, Underhill, VT 05489
 5. PH211 – Dale Kowalewski & Monika Fout-Kowalewski, P.O. Box 112, Underhill Center, VT 05490
 6. PH217 – Donald R. Tobi & Barbara U. Aldrich, 217 Poker Hill Road, Underhill, VT 05489
 7. PH224 – Joseph H. & Judith K. Cross, 224 Poker Hill Road, Underhill, VT 05489
 8. Applicant: PH208 & PH216 – Poker Hill School, Inc., 208 Poker Hill Road, Underhill, VT 05489
- C. During the week of November 26, 2017, notice of the public hearing for the proposed conditional use permit was posted at the following locations:
 1. The Underhill Town Clerk's office;
 2. The Underhill Center Post Office; and
 3. The Underhill Flats Post Office.
- D. On December 2, 2017, the notice of public hearing was published in the *Burlington Free Press*.
- E. The conditional use review hearing commenced at 6:35PM on December 18, 2017 at the Town of

Underhill Town Hall.

F. Present at the conditional use review hearing were the following members of the Development Review Board:

1. Board Member, Penny Miller, Acting Chairperson
2. Board Member, Matt Chapek
3. Board Member, Mark Green
4. Board Member, Daniel Lee
5. Board Member, Karen McKnight
6. Board Member, Stacey Turkos

Also in attendance was Staff Member Andrew Strniste, Planning Director & Zoning Administrator.

Others present at the hearing were:

1. Deb Towne, 75 Poker Hill Road, Underhill, VT 05489

G. At the outset of the hearing, Acting Chair Miller explained the criteria under 24 V.S.A § 4465(b) for being considered an "interested party." Those who spoke at the hearing were:

1. Kyle Hibbard, 340 VT Route 15, Jericho, VT 05465
2. Briana Cronin, 16 Tupper Road, Underhill, VT 05489
3. Deb Towne, 75 Poker Hill Road, Underhill, VT 05489

H. In support of the conditional use review application, the following exhibits were submitted to the Development Review Board:

- Exhibit A -Poker Hill Road Conditional Use Review Staff Report
- Exhibit B - PH216 Rules of Procedure - Conditional Use Review
- Exhibit C - Conditional Use & Site Plan Review Hearing Request Form
- Exhibit D - Site Plan Review Standards Checklist
- Exhibit E - Conditional Use Review Standards Checklist
- Exhibit F - Certificate of Service
- Exhibit G - Access Permit Application
- Exhibit H - Proposed Site Location
- Exhibit I - Proposed Site Plan
- Exhibit J - ANR Source Protection Areas Map
- Exhibit K - ANR Slopes Map
- Exhibit L - ANR Streams & Water bodies Map
- Exhibit M - ANR Wetlands Map

All exhibits are available for public review in the Poker Hill School Conditional Use Review file (PH216/DRB 17-17) at the Underhill Zoning & Planning office.

II. FINDINGS

The Minutes of the December 18, 2017 meeting, written by Andrew Strniste, are incorporated by

reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the Underhill Unified Land Use and Development Regulations (ULUDR) as amended March 6, 2012 & March 4, 2014:

FACTUAL FINDINGS

The applicant, Poker Hill School, Inc., record owner of the property located at 208 & 216 Poker Hill Road in Underhill, Vermont, is seeking a conditional use permit to construct a parking lot in front of the front building line at the abovementioned property. Since the use is classified as a public use, the construction of a parking lot in front of the front building line requires approval from the Development Review Board under Section 3.13.A.3 of the ULUDR.

The property is located in two zoning districts: the Rural Residential District as defined in Article II, Table 2.3 of the ULUDR, and the Soil & Water Conservation District as defined in Article II, Table 2.6 of the ULUDR.

The Board finds that the Underhill Unified Land Use and Development Regulations are silent as to whether they should consider two lots that are adjacent to one another and held in common ownership as one lot for the purposes of review, or whether they should be considered as separate stand-alone lots. In the subject application, the applicant holds both 208 and 216 Poker Hill Road in common ownership, and both lots are adjacent to each other. In response to the above stated issue, for this application, the Board interprets the Regulations as allowing them to consider adjacent parcels in common ownership as one lot for the purpose of this review, and therefore, the Board considers both 208 and 216 Poker Hill Road as one lot.

ARTICLE II, ZONING DISTRICTS

A. ARTICLE II, TABLE 2.3 – RURAL RESIDENTIAL DISTRICT

The Board finds the proposed project will help facilitate the public use (Poker Hill School) as stated in the purpose statement for this zoning district. Specifically, the parking lot will help improve overall site circulation and alleviate safety concerns at this location by minimizing parking on Poker Hill Road and by reducing or eliminating pedestrian traffic associated with the school on Poker Hill Road.

B. ARTICLE II, TABLE 2.6 – SOIL AND WATER CONSERVATION DISTRICT

The Board finds the proposed project will not be located in the Soil & Water Conservation, and therefore, review under this table is not applicable.

ARTICLE III, GENERAL REGULATIONS

A. SECTION 3.2 – ACCESS

The parking lot proposed in this application will have two access points, which is normally prohibited under Section 3.2.D.2; however, the Board finds that the inclusion of two access points will improve traffic circulation and vehicular and pedestrian safety at the site. Therefore, the Board approves the second curb cut per Section 3.2.D.2.c, which is consistent with the approved access permit from the Selectboard (Access Permit #: A-17-19) and the findings from the Underhill Road Foreman. Specifically, with the anticipation that the proposed new parking lot will be used for staff vehicle parking, the existing parking lot immediately adjacent to Poker Hill School will be open for drop off and pick up of students, thus presumably reducing or eliminating the need for on-street parking and resultant local congestion.

In addition, the Board finds that the parking lot meets the setback requirements under Section 3.2.D.9. The Board finds that review of the proposed project should consider both 208 Poker Hill Road and 216 Poker Hill Road since both lots are under common ownership, (Poker Hill School). Therefore, the setback requirements are to be measured from the following: the west, front property line of 216 Poker Hill Road, the north, side property line of 216 Poker Hill Road, the south, side property line of 208 Poker Hill Road, and the east, rear property line of 216 Poker Hill Road. The Board notes that the Regulations are unclear if associated parking lots, like the one at issue here, are to meet driveway setback requirements (12 feet from the side and rear property lines) or if parking lots are to meet the accessory structure/use setback requirements (30 feet from front property line and 20 feet from side and rear property lines). The Board finds that the proposed parking lot would meet the requirements of accessory structures since both lots are taken into consideration as part of this decision. Since the parking lot meets the more stringent setback requirements, no further analysis is needed.

B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

Since both 208 Poker Hill Road and 216 Poker Road are considered as part of this review, the Board finds that the proposed parking lot will meet the minimum setback requirements for an accessory structure – the more stringent setback requirements as described above, which will serve the principal public use (Poker Hill School). Specifically, the parking lot is proposed to be ±30 Feet from the west, front 216 Poker Hill Road property line; ±182 Feet from the north, side 216 Poker Hill Road property line; ±373 Feet from the south, side 208 Poker Hill Road property line; and ~1,810 Feet from the east, rear 216 Poker Hill Road property line.

C. SECTION 3.11 – OUTDOOR LIGHTING

The applicant is not proposing any outdoor lighting and thus, in consideration that this parking lot is being proposed primarily for school staff use, the board makes no requirement or findings regarding lighting. Any future installation of permanent outdoor lighting would necessitate re-review under Section V.4. (Conditions of Approval) of this decision.

D. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

The Board finds that the applicant is proposing a parking lot in front of the front building line, contrary to Section 3.13.A.3, which requires parking lots associated with public uses to be located behind the front building line. The Board finds that, given the site constraints of slopes and wet areas and the applicant’s desire to preserve open space, the proposed location is considered ideal. In addition, the Board finds that the construction of the new parking lot will likely reduce traffic congestion and help improve pedestrian and vehicular safety for the reasons stated under Section 3.2 above, and reiterated below:

- With school staff parking being relocated to the new parking lot, the existing parking lot in the immediate vicinity of Poker Hill School will be available for drop off and pick up of students, improving overall site circulation.
- The increase in available parking should reduce the need for parking along Poker Hill Road with a corresponding reduction in pedestrian use of the road.

In addition, the Board finds that the applicant is responsible to ensure that snow removal does not impact traffic along Poker Hill Road.

E. ARTICLE III, TABLE 3.1 – MINIMUM OFF-STREET PARKING REQUIREMENTS

The Board finds that 73 total students are enrolled at Poker Hill School. Per Table 3.1, three

parking spaces are required for every 10 children that are enrolled at the school. Poker Hill School staff has advised that there are no more than 38 children on their busiest day. If the Board considers the total enrollment of children in order to calculate the parking requirement, 23 parking spaces are required. If the Board considers the enrollment of children on their busiest day, 12 parking spaces are required. The board finds that there are approximately 10 existing parking spaces directly adjacent to the school building, and therefore the applicant is currently pre-existing non-conforming with regards to parking. With the construction of the new parking lot, the applicant will have a total of 17 parking spaces. If total enrollment is considered, while still nonconforming, the applicant will make a nonconforming situation less nonconforming by constructing the parking lot. If the Board considers the enrollment of children on the school's busiest day, the construction of the parking lot will bring the parking situation into conformance with the Regulations. The Board finds that enrollment of children on the school's busiest day is the more appropriate standard to apply, especially since the children enrolled at the school are not of age to drive. Therefore, with the construction of the new parking lot, the total number of parking spaces – seventeen – exceeds the minimum parking space requirement of 12 spaces.

F. SECTION 3.14 – PERFORMANCE STANDARDS

The Board finds that the applicant did not submit the requisite information to satisfy the requirements of Section 3.14; however, the Board does not anticipate that the applicant will cause, create, or result in any of the situations identified in this section.

G. SECTION 3.17 – SOURCE PROTECTION AREAS

The Board finds the proposed parking lot exists within a groundwater source protection area, therefore the applicant shall not interfere with any natural drainage ways, and shall maintain vegetative buffers for the treatment of storm water and snowmelt runoff. The applicant shall not direct surface water runoff towards any water source. In addition, the applicant shall minimize the use of sodium chloride for ice control per Section 3.17.B.7 (ULUDR).

H. SECTION 3.18 – STEEP SLOPES

The Board finds that there are areas of steep slopes (15-25%) or very steep slopes (>25%) on the lot; however, the applicant is not proposing construction of the parking lot in these areas, and therefore, review and analysis under this section is not required.

I. SECTION 3.19 – SURFACE WATERS & WETLANDS

The Board finds that there are Class II Wetlands located on the 208 Poker Hill Road lot; however, the applicant is not proposing to construct the parking lot in the vicinity of these areas, nor in the vicinity of the associated buffers. In addition, while an unnamed stream bisects both 208 and 216 Poker Hill Road, the parking lot will be located approximately 190 feet to the west of the stream, and therefore, no further review or analysis under this Section is required.

J. SECTION 3.22 – WATER SUPPLY & WASTEWATER SYSTEMS

The Board finds that the applicant is not proposing to alter the public use structure, and therefore, the Board finds that review under this section is not required.

ARTICLE V, DEVELOPMENT REVIEW

A. SECTION 5.1 – APPLICABILITY

The Board finds that as part Section 5.4.C of the ULUDR, site plan review is required in addition to conditional use review required by Section 5.4.

B. SECTION 5.3 – SITE PLAN REVIEW

Section 5.3.A – Purpose: The Board finds that site plan review is required as part of conditional use review per Section 5.4.C.

Section 5.3.B – Standards: The Board has considered this section's standards and issues the following comments and/or imposes the following safeguards, modifications, and conditions:

SECTION 5.3.B.1 – Existing Site Features: The Board finds that the applicant provided an adequate site plan allowing the Board to make a determination regarding the project. The Board finds that there will be minimal impact, if any, to significant natural, historic and scenic resources identified in the Underhill Town Plan, maps, and related inventories, as well as the list enumerated in this subsection.

Section 5.3.B.2 – Site Layout & Design: The Board finds that the proposed parking lot will not further significantly change this site's impact on the purpose and stated goals under subsection b for the Rural Residential District.

Section 5.3.B.3 – Vehicle Access: The Board finds that the applicant is proposing to align the entrance of the newly constructed parking lot with an existing driveway directly across Poker Hill Road. In addition, the Road Foreman has confirmed that the two proposed curb cuts along Poker Hill Road will not create hazards to vehicles, pedestrians or bicyclists. The Board also finds that the proposed dual curb cuts are appropriate for the reasons stated elsewhere in this decision (II.A.3.2).

Section 5.3.B.4 – Parking, Loading & Service Areas: See Section 3.13 above for information regarding parking and service area requirements.

Section 5.3.B.5 – Site Circulation: The Board finds that the construction of the new parking lot will positively impact the existing site circulation as described in Section 3.13 above.

Section 5.3.B.6 – Landscaping and Screening: The Board finds that while some existing vegetation will be removed in order to construct the access ways to the parking lot, the site's conformance to this section will not likely be significantly impacted.

Section 5.3.B.7 – Outdoor Lighting: See Section 3.11 above for information regarding outdoor lighting requirements.

Section 5.3.B.8 – Stormwater Management and Erosion Control: The Board finds that the applicant should utilize the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control when constructing the parking lot.

C. SECTION 5.4 – CONDITIONAL USE REVIEW

Section 5.4.A – Purpose: The Board finds that conditional use review is required per Section 3.13.A.3, which requires approval for the construction of parking lots associated with public uses that are built in front of the front building line. The Board finds that the conditions imposed herein address the identified potential impacts, as well as help reduce, avoid, or mitigate those impacts.

Section 5.4.B – General Standards: The Board finds that the conditions imposed herein will likely

mitigate any potential undue adverse effects.

Section 5.4.B.1 – The Capacity of Existing or Planned Community Services or Facilities: The Board finds that the proposed parking lot will not result in an increase in demand on community services and facilities. Additionally, the Board finds that there will be fewer cars parked along Poker Hill Road, and therefore this should improve conditions that currently exist along that road.

Section 5.4.B.2 – The Character of the Area Affected: The Board finds that the addition of this parking lot will not further contribute significantly to the site’s impact on the character of the area.

Section 5.4.B.3 – Traffic on Roads and Highways in the Vicinity: The Board finds that the proposed parking lot will help reduce the occurrence of on-street parking along Poker Hill Road in the vicinity of the school, and that there should be no increase or decrease in traffic on the roads and highways as a result of this project.

Section 5.4.B.4 – Bylaws in Effect: The Board finds that this application is in conformance with the regulations in effect at this time.

Section 5.4.B.5 – The Utilization of Renewable Energy Resources: The Board finds that the proposed conversion of use will not interfere with any sustainable use of renewable energy resources.

Section 5.4.C – Site Plan Review Standards: The Board finds that site plan review is required as a part of conditional use review. Analysis can be found under Section 5.3 above.

Section 5.4.D – Specific Standards: The Board finds that it may consider the Subsections 5.4.D.1 through 5.4.D.4 and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development.

Section 5.4.D.1 – Conformance with the Town Plan: The Board finds that the proposed parking lot is consistent with the Town Plan.

Section 5.4.D.2 – Zoning District & Use Standards: The Board finds that the proposed parking lot conforms with the zoning districts and use standards as outlined above.

Section 5.4.D.3 – Performance Standards: The Board finds that the proposed project will comply with the performance standards set forth in Section 3.14 above.

Section 5.4.D.4 – Legal Documentation: The Board finds that this Section does not apply.

D. SECTION 5.5 – WAIVERS & VARIANCES

Section 5.5.A – Applications & Review Standards: The Board finds that it has the authority to waive application requirements and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to a particular application. The Board has noted those conditions that have been waived throughout this decision. Any provision that was not explicitly waived, and has not been explicitly addressed, the Board makes no finding on.

ARTICLE VI, FLOOD HAZARD AREA REVIEW

The Board finds that there are no Special Flood Hazard Areas, as illustrated on the requisite Flood Insurance Rate Maps, present on the lot, and therefore, review under Article VI is not required.

III. CONCLUSION

The Board thoroughly reviewed all aspects of the proposal under the evaluation criteria in the ULUDR, and it is satisfied with the level of investigation, engineering and evaluation conducted in the application submittal and review process concerning the abovementioned project.

Based on the evidence submitted and the above findings, the Board concludes that the proposed project generally conforms to the Underhill Land Use & Development Regulations.

IV. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS

The Board grants the following waivers/modifications:

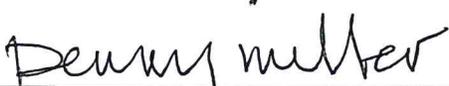
- The Board waives the requirement under Section 3.13.A.3 that parking lots associated with public uses shall be built behind the front building line, and therefore, the applicant can proceed to construct the parking lot in the location as presented on the site plan that was submitted as part of this application.

V. DECISIONS AND CONDITIONS OF APPROVAL

Based upon the findings above, the Development Review Board grants conditional use approval as presented at the hearing, subject to the following conditions. See the narrative above for more detailed requirements related to the summarized conditions below.

1. The applicant is responsible to ensure that snow removal does not impact traffic along Poker Hill Road.
2. The applicant shall not modify any natural drainage or direct stormwater runoff or snowmelt towards any water source. The applicant shall maintain a vegetative buffer for the treatment of stormwater and snowmelt runoff. The applicant shall minimize the use of sodium chloride for ice control.
3. The project shall conform to the submitted application materials and hearing testimony presented by the applicant. Any changes to the plans or any obstructions to the conditions above shall be brought to the attention of the Planning and Zoning Administrator for review and shall be referred to the DRB for a new Conditional Use review at the PZA's discretion.

Dated at Underhill, Vermont this 21 day of December, 2017.



Penny Miller, Acting Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings 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. Appeal period ends January 20, 2017.