

**TOWN OF STOWE**  
**DEVELOPMENT REVIEW BOARD**  
Findings of Fact & Conclusions of Law



**PROJECT:** 6021

**SUBJECT PROPERTY:** 56 Old Farm Road; #07-313.C2A

**PROPERTY OWNER:**

Peak Properties LLC  
5430 Waterbury-Stowe Road  
Waterbury Center, VT 05677

**APPLICANT:**

Lindsay Baumann- The Kids School  
61 Burt Farm Lane  
Waterbury Center, VT 05676

**APPLICATION:**

The Applicant, Lindsay Baumann (herein referred to as the "Applicant"), requests conditional use approval for a change of use from office to school/office and design review approval for the installation of fencing. The subject parcel, consisting of ±2.05 acres and located at 56 Old Farm Road (#07-313.C2A), is in the Rural Residential I (RR1) Zoning District and the Stowe Historic Overlay District (SHOD). The property is served by Old Farm Road, a privately maintained and owned road. The subject parcel is bound to the north by Old Farm Road, to the west by common land and Rt. 100, to the east by ±3.45-acre parcel owned by Sara Reed, and to the south by the a ±3.09-acre parcel owned by Full Circle Healing Arts LLC. The application has been reviewed by the Stowe Development Review Board (DRB) under applicable standards of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) for the purpose of conditional use and design review approval.

The Development Review Board's procedural history and relevant findings are attached.

**REVIEW PROCESS:**

*(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)*

An application for conditional use and design review approval was filed by Applicant Lindsay Baumann on May 16, 2019. The application was accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane and referred to the Stowe Development Review Board for a public hearing. A public hearing of the DRB was scheduled for June 18, 2019 and warned by the Zoning Director in accordance with Section 2.14 of the regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on May 30, 2019 and publicly posted at the Town Office, Library, and Police Station. The Applicant provided a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on June 18, 2019 at the Akeley Memorial Building, 67 Main Street, with a quorum of the DRB present. Commission member Tom Hand recused himself given his personal and professional connection to the project. No other ex parte communications or conflicts of interests were reported.

The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant Lindsay Baumann- The Kids School, 61 Burt Farm Lane, Waterbury Center, VT 05677
- John Lupien, 5430 Waterbury-Stowe Road, Waterbury Center, VT 05677
- Sara Reed, 146 Old Farm Rd, Stowe, VT 05672

- Betsy Ellis, 453 Old Farm Rd, Stowe, VT 05672
- Mark Chernosky [399 Old Farm Rd] 4 Travis Road, Shrewsbury, MA 01545
- Eric Gershman, Po Box 283, Stowe, VT 05672
- Tom Hand, 331 West Shaw Hill Rd, Stowe, VT 05672

The following materials were submitted in support of the application and entered into the hearing record:

1. Town of Stowe Development Application, dated 5/16/2019;
2. Project narrative, no date;
3. Photograph showing 'Vermont Prequalified Prekindergarten Education Program', no date;
4. Invoice 109, dated 5/15/2019;
5. Photograph 3- Proposed fencing, no date;
6. Photograph 4- Proposed landscaping, no date;
7. Proposed site plan, Sheet A-1, showing existing improvements and proposed landscaping and fencing, dated 5/21/2019;
8. Photographs (5) showing existing conditions and building, no date;
9. Proposed floorplan 'Peak Building/The Kids School- 56 Old Farm Road, dated May 2019;
10. SHPC Recommendation, dated 6/2/2019;
11. The Kids' School Playground Concept Plan, prepared by Tom Hand, dated 6/15/2019;
12. The Kids' School Playground Concept Images, prepared by Tom Hand, dated 6/15/2019;
13. Parking Availability Summary- no date (added during the 6/18 hearing).

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

**FINDINGS OF FACT & CONCLUSIONS OF LAW:** The Applicant's request for conditional use and design review approval was reviewed by the Stowe Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted October 9, 2018) including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
- Section 4- Specific Use Standards
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density
- Section 10- Stowe Historic Overlay District and Historic Buildings
- Section 15- Parking Regulations

During its review of the application, the Board made the following Findings of Fact and Conclusions of Law:

**Dimensional Requirements:**

1. **Zoning District.** The subject parcel contains ±2.05 acres in the Rural Residential I (RR1) Zoning District and the Stowe Historic Overlay District as shown on the Official Town of Stowe Zoning Map (as adopted October 9, 2018).
2. **Lot Area, Lot Width.** The ±2.05-acre parcel is located in the RR1 district. No changes to lot area or lot width are proposed under this application.

3. **Setbacks.** Required minimum district setbacks in RR1 are front (50'), side (30') and rear (40'). The Applicant seeks approval for a change of use. No changes to the footprint or height are proposed under this application. The Applicant proposes to install a fenced in area along the front and sides of the building. Section 3.4(2) states "2) *Dimensional requirements and property setbacks are not applicable to: public utility structures no more than 100 sq. ft. in area, bus shelters, handicap access ramps, lampposts, patios or terraces at grade level, swing sets and similar playground equipment, flag poles, barbecue pits, decorations such as statues or similar items, playhouses, signs and fences that are not part of a structure.*" The Applicant is not proposing any improvements that encroach on any required setback.
4. **Maximum Building Coverage.** The maximum building coverage in RR1 is 8%. No changes to lot coverage are proposed under this application
5. **Use.** The parcel contains an existing office building. The Applicant seeks conditional use approval for a change of use from office to school/office. School is defined as "A *public or private facility for the training of students.*" Schools are a conditional use in the RR1 district. In addition to the proposed school, approximately 2600 sf of office space will remain.
6. **Height.** The maximum building height in RR1 is 28' feet. No changes in height are proposed under this application.
7. **Density.** No increases in density are proposed. As proposed, the building will contain a school and office uses. The parcel does not contain any residential uses.

**Section 3.7(2)(A) – Standards of review (Conditional Use Applications):** The Development Review Board must determine that the use will conform to the following set of standards and will not result in an undue adverse effect on the following:

8. **Capacity of existing or planned community facilities and services:** Staff requested comments on the proposal from respective Town departments including the Department of Public Works, Fire Department, Stowe Electric, Police Department, EMS, and Parks and Recreation. The Applicant requests approval for a change of use. The parcel is served by septic and potable water, no municipal connections are proposed.

No Municipal Department review forms returned indicated that the proposed development would have any undue adverse impact on existing or planned community facilities and services.

**Conclusion:** The Board concludes the proposal will not result in an undue adverse effect on the Town's existing or planned facilities or services.

9. **Section 3.7(2)(A)(2) – Traffic on roads and highways in the vicinity:** The Applicant requests approval for a change of use from office to school/office. The Applicant did not provide the estimated number of vehicle trips. The project narrative states the proposal involves increasing enrollment to forty-five (45) children ages three (3) months to five (5) years. The narrative indicates a total of ten (10) teachers; six (6) teachers will hold regular hours and four (4) teachers will have staggered hours throughout the day. Proposed hours of operation are 8:00 AM-4:30 PM with extended hours for additional fees. During the hearing the Applicant testified that extended hours include 7:30-8:00 AM and 4:30 PM- 6:00 PM and drop off time is generally staggered from 7:30 AM-9:00 AM.

**Conclusion:** The Board concludes the proposal represents a nominal increase in traffic on roads and will not create an undue adverse impact on traffic on roads and highways in the vicinity.

10. **Section 3.7(2)(A)(3) – The character of the area affected:** The subject parcel is in the RR1 zoning district. The general purpose of the RR1 district is as follows:

*A. To maintain the natural and scenic qualities which create and preserve the best possible environment for residential development.*

*B. To promote the preservation of adequate open space through carefully planned cluster types of development.*

*C. To encourage agricultural productivity of good farmlands and of forest resources.*

*D. To permit the establishment of recreational and resort facilities when compatible with the primary purpose of a residential environment.*

The specific purposes in RR 1 and RR 2:

*“To allow a higher density closer to available municipal services while maintaining the quality of the neighborhoods.”*

The property is located along Rt. 100 in the RR1 district. Other nearby uses include both commercial and residential.

**Conclusion:** The Board concludes the proposal will not adversely affect the character of the area as defined under the town’s zoning regulations.

11. **Section 3.7(2)(A)(4) – Regulations and ordinances in effect:** The application is being reviewed under the Conditional Use standards. Applicable bylaws include the Stowe Zoning Regulations, as adopted October 9, 2018. No other known or identified municipal bylaws or ordinances apply to this project. During the hearing the Applicant testified that there are additional State and code requirements pertaining to childcare facilities, outside the of the town’s zoning requirements.

**Conclusion:** The Board concludes the proposal is in conformance with the Stowe Zoning Regulations, as adopted October 9, 2018.

12. **Section 3.7(2)(A)(5) – Utilization of renewable energy sources:** The Applicant requests approval for a change of use from office to office/school and to install a fence. No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

**Conclusion:** The Board concludes the project is not expected to interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources.

13. **Section 3.7(2)(B)(1) – Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.** The parcel is previously developed and is located within the Stowe Historic Overlay District. No known or identified historic sites are located on the parcel. The Historic Preservation Commission reviewed the proposed fencing and provided a positive recommendation. According to the ANR Natural Resources Atlas there are no rare or endangered species, deer wintering areas, or inventoried wetlands on the parcel. The parcel does contain hydric soils along the northern property line.

**Conclusion:** The Board concludes the proposal will not adversely affect the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

14. **Section 3.7(2)(B)(2) - Project will not result in undue water, noise or air pollution.** The Applicant requests approval for a change of use from office to office/school and for the installation of fencing. No other changes to the exterior of the building or site plan are proposed under this application.

**Conclusion:** The Board concludes the project will not result in undue water, noise, or air pollution.

15. **Section 3.7(2)(B)(3) – Access Management:** The project is served by the existing private road Old Farm Road connecting to VT Route 100 and a private driveway serving the parcel. No changes to existing access are proposed under this application

**Conclusion:** The Board concludes that the existing access and improvements are adequate for the intended and existing use(s).

16. **Section 3.7(2)(B)(4) – Shared Access:** The parcel is served by an existing private driveway shared by the other uses (office) on the property. No changes to the existing access are proposed under this application.

**Conclusion:** The Board finds that the existing access is sufficient for the intended and existing use(s).

17. **Section 3.7(2)(B)(5) – Circulation and Parking:** The regulations require that parking be provided per the requirements of Section 14 and be designed to minimize the off-site visibility of parking areas through the location, landscaping and screening of such areas. The Applicant requests approval for a change of use from office to office/school. Following the change of use, the building will contain 2600 sf (gross) of office and the proposed school.

Table 15.2 outlines the minimum parking requirements and requires three (3) parking spaces for every 300 sf (gross- excluding storage) of office use which calculates to nine (9) parking spaces. Table 15.2 does not include a listed parking requirement for schools. The provided site plan appears to show thirty-nine (39) parking spaces. The project narrative outlines the proposed student enrollment of forty-five (45) students and a total of ten (10) teachers. The narrative outlines the general hours of operation and estimated drop off/pick-up schedule and states that twenty-four (24) parking spaces are available on that portion of the lot and no parking complications are expected. During the hearing the Board took testimony on the number of parking spaces the existing parking area can accommodate and the proposed parking needs for the school. After considerable discussion it was concluded that the existing office space requires (9) spaces per Table 15.2, ten (10) spaces are required for drop off/pick up times, and ten (10) spaces needed for school staff. The remaining balance can used as extra shared office/school parking.

No changes are proposed to the width of the existing driveway, parking spaces or parking area.

**Conclusion:** The Board concludes the existing circulation and parking improvements represents safe and adequate access and circulation for the intended and existing use(s). As a condition of approval, the Board will require the parking tabulation be added to the proposed plans.

18. **Section 3.7(2)(B)(6) – Pedestrian Circulation and Access:** The regulations require pedestrian circulation within the site, and access through the site to adjacent properties along public roads, be

provided. The proposed site plan does not depict any internal sidewalks or other pedestrian improvements. During the hearing the Applicant testified that existing internal sidewalks connect to the building entrance. This portion of Waterbury-Stowe Road (VT Route 100) does not contain sidewalks. No additional pedestrian improvements are proposed under this application.

**Conclusion:** The Board concludes the existing site layout, including pedestrian circulation and access, represents safe and adequate pedestrian access and circulation for the intended and existing use(s).

19. **Section 3.7(2)(B)(7) – Landscaping and Screening:** The regulations require landscaping details and screening of garbage collection areas, outdoor storage, commercial ventilation systems over two square feet; loading and unloading areas and other outdoor utilities, including solar installations, be provided as part of proposed site development plans. The provided site plan shows the location of existing trees and landscaping (pine, birch, willow) and proposed lilies planted along the perimeter of the fence. During the hearing the Applicant provided an enhanced landscaping plan showing a revised fence location and existing mature landscaping. It was noted that the Historic Preservation Commission reviewed the proposed fencing on 5/29/19 and recommended that the Applicant install a black metal chain link fence. The Applicant testified that childcare regulations have specific requirements for fencing. Property abutters raised concerns regarding the proposed chain link fence and the desire for additional landscaping. The Applicant agreed to plant lilies and flowers along the exterior of the fence.

**Conclusion:** The Board concludes the existing and proposed landscaping and screening meets the standards outlined in Section 4.8. As a condition of approval, the Applicant is required to maintain plantings along the exterior perimeter of the fence.

20. **Section 3.7(2)(B)(8) – Stormwater Management:** Section 3.12(2) provides stormwater and erosion control standards for construction-related activities associated with any new construction. No changes to impervious surfaces or drainage patterns are proposed.

**Conclusion:** The Board concludes the proposed change of use will not increase the total impervious surfaces.

21. **Section 3.7(2)(C).** In addition to other provisions of Section 3.7, the Board shall be guided by the following standards when reviewing all site development plans in the designated zoning district. These standards apply to all site development plans, including those involving new construction, expansion, alteration or change of use. The Board may waive the specific requirements of this section when it is found that mitigation through design, screening or other mitigation will accomplish the objectives outlined for the designated districts.

1. Additional HT, **RR**, MOD, UMR Standards: Within the Highway Tourist (HT), (Rural Residential (RR), Meadowland Overlay (MOD)) and Upper Mountain Road (UMR) Districts, site plans shall re-enforce efficient traffic circulation, preserve such important landscape features as open fields, scenic vistas, natural and cultural focal points and a well landscaped highway corridor.

To help achieve these objectives, the following standards shall apply:

Within the Rural Residential (RR) Districts the following is required:

- i. Treatment of front yard and driveways for all conditional uses in the RR districts: A continuous strip not less than twenty (20') feet deep shall be maintained between the street line and the balance of the lot in all RR Districts, which strip shall be suitably landscaped. Only driveways and pedestrian walks may traverse the required strip. Not more than fifty (50%) percent of the required front yard may be used for driveways and parking. No portion of the required front yard may be used for storage or for any purpose except as above provided. Exceptions to these standards may be granted by the DRB in cases involving pre-existing buildings and/or uses when undue hardship is likely to exist. Cases will be reviewed on an individual basis, taking into account the unique features/circumstances of a site while still providing proper landscaping.
- ii. Supplemental Standards for Development in the RR 1 District: In addition to the conditional use criteria set forth in these regulations, the DRB shall find that development permitted as a conditional use in the RR 1 District is designed in a manner compatible with the area's rural character. At a minimum, the Board will consider:
  - Adequacy and appropriateness of architectural design and visual context of the project. Generally, architectural designs should reinforce the rural landscape of the district through contextual scale and orientation of the buildings within the site and should reflect vernacular Vermont residential and agricultural building styles and incorporate, where appropriate, traditional materials.
  - Buildings should generally be designed with a pitched roof and be of a mass and scale compatible with neighboring properties and the site.

The Applicant requests approval for a change of use from office to office/school. The site is previously developed. No changes to building façade or footprint are proposed. The Applicant proposes to install a fence along the side and front of the property with lilies planted along the perimeter. No additional improvements or modifications to the previously approved site plan are proposed.

**Conclusion:** The Board concludes the proposal has been designed in a manner compatible with the areas rural character and are consistent with the defined purpose of the RR1 district. Where appropriate, the Board waived the specific requirements when it was found that mitigation through design, screening or other mitigation has accomplished the objectives of the UMR district.

#### **Section 4: Specific Use Standards**

22. **Section 4.6 Landscaping Standards.** See discussion above.

23. **Section 4.8 Outdoor Lighting.** The regulations require that all outdoor lighting shall be installed in accordance with the Section 4.8(A-C). The Applicant testified that no changes to previously approved building mounted lighting or site lighting are proposed.

**Conclusion:** The Board concludes no changes to previously approved building mounted lighting or site lighting are proposed.

#### **Section 10: Stowe Historic Overlay District and Historic Buildings**

The parcel is located within the Stowe Historic Overlay District regulation under Section 10 of the zoning regulations. The applicant met with the Stowe Historic Preservation Commission on May 29, 2019 and received positive recommendations. The Commission approved an alternate fence design consisting of black metal chain link fencing. As a condition of approval, the Applicant will be required to obtain positive recommendations from the Historic Preservation Commission on the modified location of the fence.

### **DECISION**

Based upon the foregoing Findings of Fact, in RE: **6021** the Board finds (4-1) the proposal meets the Stowe Zoning Regulations, as adopted on October 9, 2018, subject to the following conditions of approval:

1. The project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required. The Zoning Administrator is granted the authority to review and administratively approve non-material modifications to the approved plans upon finding that the proposed change or alteration would not have affected the decision made or any conditions if had been included in the plans as approved.
2. All relevant prior conditions of approval, unless amended herein, remain in full force and effect.
3. Prior to the issuance of a zoning permit, the Applicant shall complete the following:
  - File with the Zoning Administrator, a revised site plan clearly indicating the parking calculations for the existing and proposed uses; the location of the shed; and proposed and phased landscaping improvements.
  - Obtain a positive recommendation from the Historic Preservation Commission on the modified location of the fencing.
4. Landscaping shall be properly maintained. Any dead and dying plants and trees shall be replaced within one (1) year of death.
5. A Certificate of Occupancy must be obtained from the Zoning Administrator prior to occupancy and use to ensure that the project has been completed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
6. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of this approval, the Applicant agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purpose of ascertaining compliance with the conditions of approval.

Voting favor: D.White, C.Walton, A. Volansky, M. Diender

Voting to deny: T.Mumley

Dated at Stowe, Vermont this the 2 day of July 2019

By:   
Douglas White, Chair



**NOTICES:**

1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #5 (802-505-5367) to determine whether state permits are required.
2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a notice of appeal that specifies the basis for the request with the Secretary of the Development Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised on appeal have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another interested person who participated in the proceeding 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 Division Court Proceedings.
4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke a permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

