

TOWN OF CHARLOTTE
Zoning Board of Adjustment

In Re: ZBA-21-256-CU – Conditional Use Review to approve development of an outdoor education center on an agricultural parcel and forest lands at 2369 Spear Street. Parcel ID: 00002-2369.

DECISION

1. Introduction and Procedural History:

The Vermont Commons School submitted an application to the Charlotte Planning Commission on November 20, 2020 to develop their 54.3 acre property, located at 2369 Spear Street in the rural district, for use as an outdoor education center. The parcel includes hayfields, Class III wetlands, and tracts of forest, separated by a Class II wetland running north to south. The school proposed to leave most of the property undeveloped, except for athletic fields, trails, a few unheated structures, and a parking area.

The application proposed the following improvements to the property: an improved driveway leading to a gravel parking area for 25 vehicles; an open-sided 40 x 80 ft. pavilion; two portable toilets in a screened enclosure adjacent to the parking area; a 10 x 16 ft. storage building; playing fields including a sandpit volleyball court; an unpaved trail leading through the forest to two tent platforms and a composting toilet.

The Planning Commission approved the application and issued a decision on July 29, 2021 with conditions that included: preservation of forest and wetlands as Significant Forest and Aquatic Habitat, except for the approved trails, tent platforms and other alterations; adding hedgerows along the northern and eastern edges of the recreation field; keeping trails unpaved and unimproved, except for the required elevated boardwalk spanning the stream labeled Valley View Brook; providing a right-of-way easement agreement with the property owner of 2333 Spear St.; keeping property boundaries in the forested portion of the parcel unfenced; obtaining Conditional Use approval from the Zoning Board of Adjustment; and, obtaining zoning permits for the construction of the pavilion, storage building, port-o-let enclosures, composting toilet and the two tent platforms. Conditional Use Review is required for change of use from agriculture to school. The Zoning Board of Adjustment had a site visit on November 10, 2021, prior to the public hearing.

The ZBA's public hearing took place on Nov. 10, 2021 at 7:00 PM in the town offices and via Zoom. Prior to the meeting the ZBA conducted a site visit. The members present at this hearing included: Chair Lane Morrison, Eli Lesser-Goldsmith, Charles Russell, and Karina Warshaw; and Rebecca Kaplan (staff). Also present were: Dexter Mahaffey (applicant), Dave Marshall (engineer), Sarah Thompson, Bill Stuono, Bill Nestork, Pat Nestork, Sara Hays, Fred Fischer, Paul Plante (all in person); and, Joe Obuchowski, Suzanne Webb, Craig Heindel, Mara Brooks, Andrew

F., Bill Stuono, Susan, Trina Bianchi, JS, VCS, Ian Govett, Carrie Spear, Lee Ann Cox, and Stephany Hasse (all via Zoom).

The public hearing was continued on December 8, 2021 at 7:00 PM in the town offices and via Zoom. ZBA members present at this hearing included: Chair Lane Morrison, JD Herlihy, Charles Russell and Karina Warshaw; and Rebecca Kaplan (staff). Also present were: Dexter Mahaffey (applicant), Dave Marshall (engineer), Dick St. George (Charlotte Fire Chief), Sarah Thompson, Bill Stuono, Sara Shays, Susan Moraska (all in person); and, Joe Obuchowski, Craig Heindel, Paul Plante, Andrew F., Pat Nestork, VCS (all via Zoom).

The public hearing was continued on December 11, 2021 at 1:00 PM in the town offices and via Zoom. ZBA members present at this hearing included: Chair Lane Morrison, JD Herlihy, Charles Russell and Karina Warshaw; and Rebecca Kaplan (staff). Also present were: Dexter Mahaffey (applicant), Andrew Furtusch, Susan Moraska (all in person); VCS (via Zoom).

Public notification was accomplished via the following means: electronic posting of the notice to the Town website on Oct. 21, 2021; and by posting hardcopies of the meeting agenda at the Town Office, Post Office, and Spear's Corner Store on Oct. 21, 2021. Hearing warnings were mailed to adjoining property owners on Oct. 21, 2021. Publication of the hearing notice in *The Citizen* newspaper was on Oct. 28, 2021.

2. Exhibits received in support of this application:

- 1) Planning & Zoning Permit Application, VCS, Oct. 5, 2021
- 2) Project Description, VCS, (Sept. 29, 2021)
- 3) Site Plan Approval, Charlotte Planning Commission, July 9, 2021
- 4) Responses to PC-21-121-SP VT Commons School Decision and Order, Oct. 2, 2021
- 5) Conditional Use Review application, VCS, Oct. 2, 2021
- 6) Conditional Use Questionnaire, VCS, Oct. 2, 2021
- 7) Performance Standards Questionnaire, VCS, Oct. 2, 2021
- 8) Voice Level at Distance, The Engineering Toolbox, Oct. 2, 2021
- 9) Legal documents, including Deeds and Release of Right of First Refusal, Oct. 5, 2021
- 10) Photographs, Oct. 5, 2021
- 11) Representative Architectural Elevations, Oct. 5, 2021
- 12) Traffic Impact Analysis, Civil Engineering Assocs., June 11, 2021
- 13) Wetlands Correspondence, VTDEC, Oct. 5, 2021
- 14) Charlotte Volunteer Fire & Rescue Services Correspondence, Oct. 5, 2021
- 15) Setbacks and Structure Dimensions, Oct. 5, 2021
- 16) List of property abutters, Oct. 5, 2021
- 17) Maps (13), Civil Engineering Assocs., Oct., 2021
- 18) Site Plans, C1.0 – C5.2 (13 sheets), Civil Engineering Assocs., Aug. 30/Sept. 13, 2021
- 19) Plat of Survey, Civil Engineering Assocs., Oct. 26, 2020

3. Regulations in Effect:

Charlotte Town Plan, Amended November 5, 2019
Charlotte Land Use Regulations, Amended March 2, 2021

4. Standard of Review:

The application requires review under the following sections of the *Land Use Regulations* for the Town of Charlotte, hereafter referred to as the *Regulations*:

1. **Section 2.3, Table 2.5 (D)** – Conditional Uses
2. **Section 3.12 (A)(1)** – Performance Standards
3. **Section 4.15** - Public Facility
4. **Section 5.4 (C)** – Conditional Use Review; General Standards

5. Findings & Conclusions of Law:

The applicant seeks a conditional use approval for change of use from agriculture to school to development the property into an outdoor education center for the Vermont Commons School. Based on the application, testimony, exhibits, and other evidence submitted, the Zoning Board of Adjustment makes the following findings & conclusions:

- The Board finds the current 2021 enrollment of Vermont Common School is 95 students.
- The Board finds the highest level of enrollment was 115 students.
- The Board finds the maximum anticipated number of students and staff, based on the highest enrollment of 115 students, is 135.

1. **Chapter II, Table 2.5 – Rural District (D) Dimensional Standards:**

The Board finds that: the proposed project fits the definition of a School; and, a School is an allowable conditional use in the Rural District.

2. **Section 3.12 (A) – Performance Standards** - ... *No use, under normal conditions, shall cause or result in: (1) noise in excess of 70 decibels, or which otherwise represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area.*

The Board finds that: the noise levels of the regular VCS activities could exceed 70 decibels. An increase in the buffer to 30 feet from the northern property line is included to mitigate any undue adverse effects from noise, see *Decision and Conditions G*, below.

... **(6) glare, lumen, light or reflection which constitutes a nuisance to other property owners or tenants, which impairs the vision of motor vehicle operators, or which is otherwise detrimental to public health safety and welfare;**

The Board finds that: no outdoor lighting is proposed; the project is in compliance with the *Regulations*.

... **(8) undue fire, safety, explosive, radioactive emission or other hazard which endangers the public, public facilities, or neighboring properties, or which results in a significantly increased burden on municipal facilities and services.**

The Board finds that: the proposed two contained campfire sites adjacent to the yurts do not represent an undue fire hazard. The Board supports the recommendations from the Charlotte Volunteer Fire & Rescue Fire Chief, Dick St. George, for: minimum 3-foot wide trails with a clear opening of 6 feet between trees; maintaining 2.5 gallon water fire extinguishers or dry chemical ABC extinguishers whenever there are campfires; training for counselors and students on fire extinguisher use; compliance with state burn guidelines and permits.

3. **Section 4.15 - Public Facility** - *In accordance with the Act [§4413(a)], the following public facilities are subject to conditional use approval under Section 5.4, and site plan review under Section 5.5, but may be regulated under these review proceedings only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities, traffic, noise, lighting, landscaping and screening requirements.*

The Board finds that: the Vermont Commons School is certified by the Vermont Agency of Education and accredited by the New England Association of Schools and Colleges, and therefore, meets the definition of a school. As described in Section 4.15, schools receive a limited review.

4. **Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards** stipulates that a proposed conditional use shall not result in an undue adverse effect on any of the following:

1. *The capacity of existing or planned community facilities and services*

Pursuant to the limited review under Section 4.15: n/a.

2. *Character of the area affected*

- The Board finds, “The purposes of the Rural District are (1) to protect important agricultural land and promote viable agriculture, wildlife habitat, productive woodland, natural areas, aquifers, scenic vistas and views, open spaces, and other significant natural, cultural and scenic resources identified in the Charlotte Town Plan; and (2) to allow for low density or clustered residential development in accordance with the capability of the land to support such development, that does not adversely affect the town’s natural and scenic resources or properties and uses in the vicinity, and is compatible with the rural character of the town as expressed in the Charlotte Town Plan.”
- The Board finds the neighbor to the north of the subject property maintains four equines in their pasture, which is a recognized agricultural use. The neighbor also maintains a wood products business (firewood), which may constitute a second agricultural use.
- The Board finds the subject property also abuts several single-family residences.
- The Board finds noise levels associated with educational use may have an adverse effect on the adjoining residential and agricultural uses.
- The Board finds site visitors coming in close proximity with the horses can cause a safety concern for humans and horses.
- The Board finds excess debris (trash, etc.) can cause a health risk for horses.

- The Board finds no known adverse impact on the character of the area. The Board recognizes the agricultural use of the adjacent properties and includes in the *Decision and Conditions* measures to mitigate any adverse impacts on said properties.
3. Traffic on roads and highways in the vicinity
- The Board finds the applicants traffic study supports attendance up to and including 50 people.
 - The Board finds traffic in excess of 50 attendees may have an adverse effect.
 - The Board finds minimal impact on traffic during proposed regular educational uses of the property. Refer to PC-21-121-SP VT Commons School, Section 5.4 (3) Access, and *Decision and Conditions* (E), below. The Board does not have sufficient evidence that the area can support large events and therefore includes in its *Decision and Conditions* (C), below.
4. Bylaws in effect
Pursuant to the limited review under Section 4.15: n/a.
5. The use of renewable energy
Pursuant to the limited review under Section 4.15: n/a.

5. Decision and Conditions:

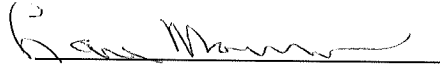
Subject to the conditions set forth below, the Zoning Board of Adjustment APPROVES application ZBA-21-246-CU as a School Use:

- A. The Board hereby grants conditional use approval for the proposed project (development of an outdoor education center (school) on an agricultural parcel and forest lands) in accordance with the plans submitted by the applicant on Oct. 5, 2021.
- B. The Board imposes the following conditions on regular use of the property: all activities shall end ½ hour after sunset; maximum number of people allowed is 50.
- C. For events larger than 50 people, the applicant shall notify the adjacent neighbors and seek approval from the Selectboard, or as the Selectboard chooses to delegate.
- D. The Board allows for up to 30 weekdays per year of overnight camping on the property.
- E. The Board prohibits parking or unloading on Spear Street adjacent to the property.
- F. The Board prohibits the use of air horns on the property.
- G. To reduce the risk of debris and trash from entering the horse pasture and to create a physical separation between site visitors and the property to the north for noise and safety concerns, the Board requires the applicant to add a 3-4 foot high, 300 feet long fence 30 feet from the northern property line and parallel to the proposed 300-foot-long hedgerow, which is 10 feet from the northern property line.
- H. During construction, access to the driveway of the property to the north shall not be impeded.

- I. Any deviation from the approved plans (as described in A. above) shall be regarded as additional "land development," requires additional permit(s), and must be reviewed and approved by the Zoning Administrator prior to commencing construction, in accordance with the provisions of Sec. 5.2 and 9.1 of the *Charlotte Land Use Regulations*.

Vote: 4 Ayes, 0 Nays, 1 Abstention

Dated at Charlotte, Vermont this 14th day of December, 2021.



Lane Morrison, Chairman

There may be additional local, State of Vermont, and federal permits or approvals needed for the proposed development or use. The applicant may contact the Agency of Natural Resources Permit Specialist at 802.477.2241 for further information.

This decision may be appealed to the Vermont Superior Court Environmental Division by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the latest date of signature above, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Reconsideration: At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B).