

**TOWN OF RANDOLPH, VERMONT**  
**DEVELOPMENT REVIEW BOARD**  
**MEMORANDUM OF DECISION**  
(Findings of Facts, Conclusions, and Decision)

**Permit:** #Z10-115  
**Property address:** 895 VT Route 12S  
**Parcel no.:** 121021  
**Parcel size:** 2.1 acres

**Property Owner:** Gene Bianco  
Chimney Savers, Inc.  
PO Box 246  
Randolph, VT 05060

**I. INTRODUCTION**

On December 6, 2010, **Gene Bianco** ("Applicant") filed an application for a zoning permit for a project generally described as a **20-foot by 30-foot addition to a garage and conversion of the structure into use by a chimney contractor business**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on December 7, 2010.

Under the Randolph Zoning Regulations ("Regulations"), projects are reviewed based on the site plan, conditional use and/or any other applicable criteria of the Regulations. Before the Administrative Officer ("Administrator") may grant a permit, the Board must find that the project complies with all applicable criteria and approve the site plan, the conditional use and/or provide any other approval, as required.

Decisions must be stated in the form of Findings of Facts and Conclusions of Law. In rendering this decision, the Board relied on the following:

1. Sworn testimony presented to and evidence received by the Board during the first and final public hearing held on January 5, 2011;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on January 5, 2011 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1209 and supersedes the oral decision.

**II. DETERMINATIONS BY THE ADMINISTRATOR**

The Administrator has made the following determinations:

1. The subject property is in the Rural Village (RV) District.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The use cannot be reasonably categorized as anything on the Chart of Permitted and Conditional Uses, therefore conditional use approval is required pursuant to RZR §2.4.3.

On December 7, 2010, the Administrator referred the application to the Board for review and approval as determined.

### III. PARTICIPANTS

For the purposes of this application, "interested persons" are those who fulfill the requirements of 24 VSA ch. 117 §4465. The Applicant was the only participant in this proceeding.

Participating Board members were John Becker, Samuel Lincoln, Thomas Malanchuk<sup>1</sup>, Christopher Recchia, Frank Reed, Krista Rumrill and Joel Tillberg.

### IV. FINDINGS OF FACTS

*The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact.*

#### Project Description and Required Approvals

1. The applicant has filed an application for the construction of a 20-foot by 30-foot addition on an existing detached residential garage and converting that garage into an establishment for a chimney contractor as shown on Exh. #1.
2. The chimney contractor business currently has operated at 47 VT Route 66 for the past 12 years. The business involves chimney repair and building and complete chimney services such as cleaning, etc. There is no fabrication done on-site, just storage and office space. Most of the work is done off-site. On-site operations involve office space/work, the storage of supplies, company vehicles and employee vehicles but no repair or fabrication work. (application and testimony of G. Bianco)
3. "Chimney contractor" cannot be reasonably categorized as a use on the Chart of Permitted and Conditional Uses, therefore conditional use approval is required pursuant to RZR §2.4.3. (application and Regulations)
4. As the use is not either a one- or two-family dwelling, site plan approval is required pursuant to RZR §4.1. (application and Regulations)

#### Consistency and compliance with Town Plan and ordinances. (SP criterion A and CU criteria A and H)

5. The minimum lot size for the RV District for non-residential uses is 20,000 square feet (SF). The subject property is 2.1 acres. (Regulations and application)
6. In the RV District, the requirement for the front and rear setback is 30 feet and the side setback is 20 feet. The shortest setback distance from the proposed addition is over 50 feet. (Regulations and application)
7. The maximum allowable building coverage is 25% in the RV District, or nearly 23,000 SF for the subject property. The proposed building coverage is 2,728 SF, or 3%. (Regulations and application)

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<sup>1</sup> Thomas Malanchuk is an alternate member who was sitting in place of absent regular member Trini Brassard.

8. The required off-street parking shall be as set by the Board. The proposed project provides parking spaces for 8 vehicles. There will a maximum of 5 vehicles on-site. (Regulations, application and testimony of G. Bianco)
9. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
10. The proposed project does not involve any new roads to be adopted by the Town. (application)
11. The purpose of the Rural Village Districts is: “To provide areas for residence and commerce to co-exist in the same neighborhood and allow for future growth as an economic and social center for the surrounding area.” The proposed project is a residence and commercial business on the same lot. (Regulations)

**Traffic and nuisance considerations (SP criterion C and CU criteria B, C and G)**

12. The proposed use will utilize VT Route 12S, which is a Class 1 state highway. The proposed use will generate a maximum of 20 vehicle trips per day. (application)
13. Most of the traffic to the proposed use will be from the south, thereby maintaining fairly consistent turning movements onto and off of the Ridge Road. (application)
14. Each use of the property – residence and chimney contractor – will have it’s own access thereby minimizing vehicular conflicts between the uses. A state highway access has been applied for and all accesses shall conform to state standards. (application)
15. No pedestrian traffic is anticipated. (application)
16. The proposed use will not generate any of the following: noise, dust, odor, glare, vibration or radiation. (application)

**Continuous strip (CU criterion D)**

17. The new parking area for the business will be 30 feet from the edge of the right-of-way for VT Route 12S. This strip between the parking lot and the right-of-way will be grass/lawn. (application and testimony of G. Bianco)

**Municipal services (CU criterion E)**

18. As the proposed use is not a residential use, it will not increase the enrollment in local public schools. (application)
19. The property is served by an on-site well and septic system, therefore public water and sewer service is not required. (municipal records)
20. As the proposed is not located near any public recreational facilities and, therefore, will not increase the use of such facilities. (application)
21. The proposed use will generate minimal solid waste and therefore will not have an adverse affect on the local transfer station. (application)
22. The proposed use does not have the potential to increase the need for any of the following municipal services: education, fire protection, solid waste disposal or emergency services. (application)
23. The subject property is outside of the Randolph Police District therefore this service is not provided by the municipality. (municipal records)

24. The subject property takes access from a state highway therefore road maintenance is not provided by the municipality. (application)

#### Character of the area (SP criterion B and CU criterion F)

25. The surrounding area is a mixture of commercial and residential uses. The adjoining properties are used as residences to the south, west and east and commercial/retail sales to the north. (application and Exh. #2)
26. The proposed project is a small-scale business that generates minimal traffic and activity on the property. (application)
27. The proposed project is in keeping with the adjacent commercial business. (application)
28. There will be no dumpster on-site nor other unsightly uses associated with the proposed use. Any materials stored on-site will be behind the garage and properly screened (application and testimony of G. Bianco)
29. There will be on light on the commercial building and it will be of residential type that will be on during business hours and operate on motion sensor during non-business hours. (application)

#### Renewable energy resources (CU criterion I)

30. The proposed use will not affect the utilization of renewable energy resources. (application)

## V. CONCLUSIONS

Based on the foregoing Findings of Fact, it is the conclusion of the Board that the project described in the application referred to above and including the Applicant's representations at the public hearing, if completed and maintained in conformance with all of the terms and conditions of that application and as required below, will meet the following criteria:

### 1. Conditional Use Criteria<sup>2</sup>

- A. The proposed use is not inconsistent with the objectives of the Town Plan and is consistent with the purposes of the Randolph Zoning Regulations.
- B. The proposed use will not cause any hazard to health or property through fire, traffic, accident, unsanitary conditions, excessive noise, vibration, odor or other nuisances.
- C. The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity.
- D. A continuous strip of not less than six (6) feet wide will be maintained between the right-of-way line and the balance of the lot which will be suitably landscaped.
- E. The proposed use shall not have an undue adverse effect on the capacity of existing or planned community facilities.
- F. The proposed use shall not have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards in the Town Plan.

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<sup>2</sup> Criteria A – D are from the Randolph Zoning Regulations. Criteria D – I are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

- G. The proposed use shall not have an undue adverse effect on the traffic on roads and highways in the vicinity.
- H. The proposed use shall not have an undue adverse effect on the bylaws in effect.
- I. The proposed use shall not have an undue adverse effect on the utilization of renewable energy resources..

**2. Site Plan Criteria**

- A. The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and is not in non-conformance with the Town Plan.
- B. The proposed use, design and layout is of such a location and in such a size and character that it will be in harmony with the appropriate and orderly development of the surrounding area.
- C. The proposed use and layout is of such a nature that it will not make vehicular or pedestrian traffic hazardous when considering turning movements, relationship to intersections, sight distances, location and access of off-street parking, pedestrian traffic and pedestrian-vehicular contact points.
- D. The proposed height and location of buildings, walls, fences, parking, loading and landscaping will not interfere with or discourage the appropriate development in adjacent land or unreasonably affect its use.

**VI. DECISIONS<sup>3</sup>**

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decision regarding the site plan and conditional use for the chimney contractor as applied for in zoning permit application #Z10-115 and including the evidence and testimony entered into the record as Findings of Fact:

- A. The site plan approval is granted/denied with the following conditions:
  - 1. Construction shall be as shown on Exhibit #1.
  - 2. On-site storage of materials shall be behind the building and properly screened.
  - 3. Snow from parking areas must not be plowed onto public highways, adjoining streams or waterways, or onto abutting properties. Snow must be plowed elsewhere on the subject property or removed.
  - 4. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
  - 5. Any significant modifications to the approved site plan shall require re-approval by the Board pursuant to the regulations in effect at the time of re-application.

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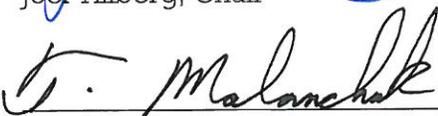
<sup>3</sup> An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of \$250 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the appeal, and a copy mailed to the Zoning Administrator. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.

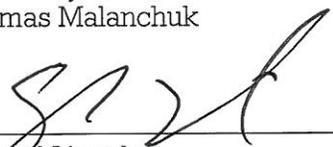
- B. The condition use approval is granted/denied with the condition that any expansion of the use shall require approval pursuant to the regulations in effect at the time of re-application.

Dated at Randolph, Vermont this 16<sup>th</sup> day of February, 2011.

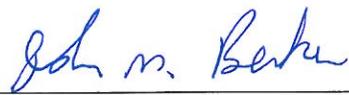
RANDOLPH DEVELOPMENT REVIEW BOARD  
Concurring Board Members

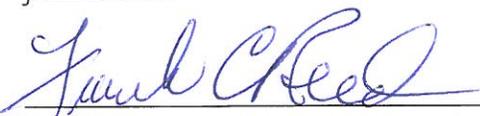
  
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Joel Tillberg, Chair

  
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Thomas Malanchuk

  
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Samuel Lincoln

  
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