

TOWN OF RANDOLPH, VERMONT
DEVELOPMENT REVIEW BOARD
MEMORANDUM OF DECISION

(Findings of Facts, Conclusions of Law, and Decision)

APPLICANT: Anne Silloway
Especially Imports
858 Silloway Road
Randolph Center, VT 05061

PERMIT NO.: Z08-43

PROPERTY OWNER: Applicant

I. INTRODUCTION

On May 27, 2008, **Anne Silloway** (“Applicant”) filed an application for a zoning permit for a project generally described as **the construction of additional parking for display of vehicle for sale for an existing auto repair, sales and rental business**. The subject property is parcel number **106021** which is **2.78 acres** in size and located at **1535 VT Route 66**. The application was deemed complete pursuant to the Development Review Board (“Board”) Rules of Procedure Section 301 on May 29, 2008.

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 June 24, 2008;
2. Documents contained in this application’s file, the Regulations, Town Plan and the Randolph municipal records include previous approvals by the Board.

The Board closed the public hearing on June 24, 2008 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1209 and supercedes the oral decision.

II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Mixed Use (MU) District.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The existing use is a prohibited use in the MU District and therefore is a non-conforming use. As such, approval to expand a non-conforming use pursuant to §2.5 of the Regulations is required.

On May 29, 2008, 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 and Don Silloway, owner of the business, were the only participants in this proceeding.

Participating Board members were John Becker, J. Kenneth Currier, Frank Reed, Krista Rumrill and Joel Tillberg. Member Becker disclosed that Especially Imports is a client of his employer, Compucount. No objections were voiced to his participation in this proceeding.

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

1. The Applicant has filed an application for a new parking area approximately 145 feet by 35 feet on the west side of the existing building as shown on Exh. #3. Exh. #3 was modified by the Applicant at the hearing to indicate the type of landscaping that exists on the eastern side of the lot, to designate the proposed parking configuration in front of the building and to indicate where two additional lights under the eaves of the building will be located. (testimony of A. Silloway)
2. The parking area will be used to display 5 – 7 vehicles that are for sale as part of the business. All of the vehicles in this display area will have valid state inspection stickers. In addition to providing an area to display vehicles, the parking area will help to manage snow fall off the building and on the site. (application, testimony of A. Silloway and Exh. #3)
3. It was clarified that the hours of operation for towing and rental drop-off is 24 hours a day. The Applicant also requested to amend the auto repair shop hours to include Saturdays. (testimony of A. Silloway)
4. The existing chain link fence may be removed. (testimony of A. Silloway)
5. The new parking area will be hardpack or crushed stone at first. It may be paved after a few years. (testimony of A. Silloway)
6. The Applicant owns the land but not the business. The business, Especially Imports, is owned by Don Silloway and the land is leased to the business. (testimony of A. Silloway)

No non-conforming use shall be extended or expanded except with the approval of the Board, which shall have determined that no greater detrimental effect upon the community will result. (§2.5.4)

7. The business was originally permitted as an auto repair shop in 1983 when such a use was a conditional use. In 1990, the zoning regulations changed such that the use was no longer allowed and thus was considered a non-conforming use. (municipal records including the Notice of Decision for permit #Z00-124)

8. The proposed parking area and expanded hours of operation are an expansion of the non-conforming use and thus requires approval pursuant to §2.5.4. (Regulations and application)

The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and the Town Plan. (SP criterion A)

9. The minimum lot size for the MU District is 5 acres. The subject property is 2.78 acres which was a conforming lot before the zoning regulations were amended in 1990. (application and Regulations)
10. The front, side and rear setbacks for the MU District are as established by the Board. However, §5.17.9 "Use of Land for Access or Parking" states the following, in part: "access to or parking...may take place in a required front, side or rear yard." The parking lot is proposed to be partially within the state right-of-way for VT Route 66 and may remain so if permission is granted by the state to be so located or, if not, it shall be adjusted to be at the front property line. The lot shall be approximately 38 feet to the rear property line and over 100 feet to the side property lines. (Regulations and Exh. #3)
11. The maximum allowable building and parking coverage is 35% in the MU District, or 42,500 SF for the subject property. The proposed building and parking coverage is 16,703 SF, or 13%. (Regulations and application)
12. The required off-street parking shall be as set by the Board. The preciously-approved site plan provided parking for 35 cars. The proposed project maintains the same number of spaces, exclusive of the new spaces for displaying vehicles for sale. (Regulations, application, and Notice of Decision for permit #Z00-124)
13. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)

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. (SP criterion C)

14. The proposed use will utilize VT Route 66, which is a Class 2 state highway. (application)
15. The proposed project will improve on-site traffic circulation by allowing circular flow around the building. It will also relieve some congestion that currently existing around the front of the building and the entrance to the property. (application and testimony of A. Silloway)
16. No changes to the existing access is proposed. (application)

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. (SP criterion B)

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. (SP criterion D)

17. The surrounding area is a mixture of agricultural, religious/institutional and commercial uses. The property to the west is a church and school. A field separates the new parking area from that adjacent property. (application and Exh. #3)
18. The new lighting shall be under the eaves of the building. (testimony of A. Silloway and Exh. #3 as revised)

V. CONCLUSIONS OF LAW

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. **Expansion of a non-conforming use**

No evidence was presented demonstrating that the expansion of the auto sales business would have a detrimental effect on the community.

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 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 if restrictions are placed on the type and location of proposed new lighting.
- 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.

VII. DECISIONS¹

Based upon the foregoing Findings of Facts and Conclusions of Law, the Board makes the following decisions regarding the construction of the new parking area for the display of vehicles for sale for an existing auto repair, sales and rental business as applied for in zoning permit application #Z08-43 and including the evidence and testimony entered into the record as Findings of Fact.

- A. The expansion of a non-conforming use is granted.
- B. The site plan approval is granted with the following conditions:
 - 1. Construction shall be as shown on Exh. #3 with the exception that no part of the parking area shall be within the state right-of-way for VT Route 66 without state permission or permit.
 - 2. All new lighting shall have fully-cutoff fixtures, be down-facing, mounted no higher than 20 feet above grade and shall be located or shielded to prevent glare onto the road and the travelling public.
 - 3. All landscaping shown on Exh. #3 shall be maintained in a healthy, living condition.

¹ 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 \$225 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.

4. 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.
5. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
6. 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.

Dated at Randolph, Vermont this 29th day of July, 2008.

RANDOLPH DEVELOPMENT REVIEW BOARD

/s/ Joel Tillberg, Chair

/s/ John Becker

/s/ J. Kenneth Currier

/s/ Frank Reed

/s/ Krista Rumrill