

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

PERMIT NO.: Z09-24

Property address: 103 - 189 VT Route 12S

PROPERTY OWNER: Central Vermont Shopping Center, Inc. **Parcel no.:** 121002
PO Box 6 **Parcel size:** 13.62 acres
69 College Street
Burlington, VT 05402

I. INTRODUCTION

On April 21, 2009, Katherine Saunders, on behalf of **Central Vermont Shopping Center, Inc.**, ("Applicant"), filed an application for a zoning permit for a project generally described as **the construction of a 1,924-SF addition to expand existing retail space and 11,583 SF of new retail space at an existing shopping center at 102 – 189 VT Route 12S**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on May 5, 2009.

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.

Also under the Regulations, the Board is authorized to undertake local Act 250 review of Criteria 6, 7 and 10 for all projects that require a new land use permit or an amendment to an existing land use permit under 10 VSA Chapter 151 ("Act 250").

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 hearing¹ held on July 28, 2009;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on July 28, 2009 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. BACKGROUND

Although some of the property's zoning history is not well documented, records indicated that on October 15, 1986, Aubuchon Hardware received site plan approval for an addition to the rear of

¹ Public hearings were technically held on May 26 and June 23, 2009. However, at the Applicant's request, the Board took no evidence and continued the hearing on those dates.

its existing store at 107 VT Route 12S. This site plan indicates that the hardware store and the adjacent grocery store (now defunct) were already in place and that Central Vermont Public Service occupied some of the space currently utilized by Aubuchon Hardware.

On April 28, 1994, Stephen Reid received approval to expand the retail shopping center, to be known as Randolph Marketplace. This approval was never acted upon.

On May 11, 1999, zoning permit #Z099-25 was issued to the Applicant to construct 48,000-SF of retail space connected to the existing stores and a new 2,400-SF stand-alone bank in the parking lot, to be completed in phases. The first phase, a 34,500-SF grocery store (127 VT Route 12S), was completed in May of 2000. One of the phases included a 11,000-SF retail space next to and south of the grocery store.

On October 25, 2000, zoning permit #Z00-120 was issued to the Applicant and Randolph National Bank for the construction of a 486-SF stand-alone bank, which was subsequently constructed (189 VT Route 12S).

III. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Commercial (COM) District.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The use is categorized as “general retail sales”. Such a use is listed as permitted on the Chart of Permitted and Conditional Uses.

The Applicant has requested local Act 250 review. On May 5, 2009, the Administrator referred the application to the Board for review and approval as determined and requested.

IV. PARTICIPANTS

For the purposes of this application, “interested persons” are those who fulfill the requirements of 24 VSA ch. 117 §4465. The Applicants representatives (Ernie Pomerleau, Steve Ploesser, Ron Lyon and Brian Waxler) were the only participants in this proceeding.

Participating Board members were John Becker, J. Kenneth Currier, Samuel Lincoln, Christopher Recchia, Frank Reed, Krista Rumrill and Joel Tillberg.

V. 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 two construction components: One part includes the combining of two vacant retail space (103 and 105 VT Route 12S) and constructing a 1,924-SF addition on the back. Another part includes the construction of 11,583 SF of new retail space with a drive-through facility. This latter component was originally approved in 1999 but was only 11,000 SF and did not include a drive-through facility. (Application, Exh. #1 and municipal records)

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)

The development or subdivision is in conformance with the duly adopted Randolph Town Plan (Act 250 criterion 10)

2. The minimum lot size for the COM District is 12,000 SF. The subject property is 13.62 acres. (Regulations and application)
3. The front, side and rear setbacks for the COM District are set by the Board during site plan review. The shortest setback distance from any proposed structure is approximately 22 feet and does not decrease any existing setback (e.g. the existing structure at the north end of the property is 22 feet from the side property line.) (Regulations, application and Exh. #1))
4. The maximum allowable building coverage in the COM District is set by the Board during site plan review. The existing coverage is approximately 47,500 SF. The proposed project will add approximately 13,500 SF, for a total coverage of 61,000 SF, or 10%. (Regulations and application)
5. The required off-street parking was modified to 4 spaces per 1,000 SF of gross floor space. The existing site plan provides 250 parking spaces and this is not proposed to be changed with the project. With 61,000 SF of gross floor space, the proposed project requires 244 parking spaces. (Municipal records and application)
6. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
7. The purpose of the Commercial District is: “To concentrate the regional and town-wide business, to provide areas for its best development and to protect these locations by excluding other kinds of development which would serve to scatter new businesses and limit the expansion of present business; to provide areas sufficiently compact for the convenience of pedestrians, and with sufficient area to allow parking space for patrons who come by automobile.” The proposed project is a commercial expansion within the COM District. (Regulations)
8. It is anticipated, based on experience at other similar drug stores, that the drive-through for picking up prescriptions will be utilized between 20 and 25 times per day and is ancillary to the store itself. (testimony of E. Pomerleau)

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)

9. The only change to the existing on-site traffic circulation is to accommodate the drive-through prescription pick-up. Extensive signage will be provided to direct vehicles using the drive-through as well as the truck traffic for deliveries to the store. (application)
10. Most of the drive-through vehicles will be repeat customers and thus will quickly become familiar with traffic pattern for the drive-through. (testimony of R. Lyon)
11. Snow removal of the site will be such that pavement markings will be visible. (testimony of E. Pomerleau)
12. No changes to the existing accesses to the property are proposed to be altered. (Exh. #1)

13.

The development or subdivision will not cause an unreasonable burden on the ability of a municipality to provide educational services. (Act 250 criterion 6)

The development or subdivision will no place an unreasonable burden on the ability of the local government to provide municipal or governmental services. (Act 250 criterion 7)

14. The Town of Randolph has determined that no additional allocations are required for this expansion as the existing allocations are sufficient for the additional flows. (Exh. #2)

15. The proposed project will not add any additional students to the school district. (Brent Kay, Superintendent)

16. The subject property is outside of the Randolph Police District therefore this service is not provided by the municipality. (Randolph Municipal Records)

17. The subject property is in the Randolph Village Fire District. The Randolph Village Fire Department has the capacity to provide fire protection to the subject property without undue burdens. However, the fire department recommends: 1) fire alarm panels at both sites be located at the front of the buildings, 2) knox boxes shall be installed at the drug store site and knox locking caps at both sites and, 3) a protective crash barrier to be installed at southeast corner for added protection fro above-ground propane plumbing. (Jay Collette, Randolph Village Fire District Chief)

18. The subject property takes access from a state highway therefore road maintenance is not provided by the municipality. (Randolph Municipal Records)

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)

19. The surrounding area is a mixture of commercial and residential uses with much open land. The adjacent land is used for residences to the west, commercial to south and north and industrial to the east. The proposed project expands an existing commercial area. (application)

20. The proposed changes from the previously-approved site plan will not impact the surrounding area. (application)

VI. 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. Act 250 Criteria²

- A. The proposed project will not cause an unreasonable burden on the ability of the Town of Randolph to provide educational services (criterion 6).
- B. The proposed project will not cause an unreasonable burden on the ability of the Town of Randolph to provide municipal or governmental services provided the recommendations of the fire department are met. (criterion 7).
- C. The proposed project is not in non-compliance with the Randolph Town Plan which was adopted in accordance with 24 VSA ch. 117 on December 21, 2004 (criterion 10).

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.

VII. DECISIONS³

Based upon the foregoing Findings of Facts and Conclusions, approval is hereby granted for the site plan as applied for in zoning permit application #Z09-24 and including the evidence and testimony entered into the record as Findings of Fact. The site plan approval is granted with the following conditions:

- 1. Applicant must construct, maintain and operate the proposed expansion of retail space and related improvements in strict conformance with the project description submitted by the Applicant and specifically identified in the findings of facts.
- 2. Construction shall be as shown on Exhibit #1.
- 3. All landscaping shown on Exhibit #1 shall be maintained in a healthy, living condition.

² This conclusion/decision regarding local Act 250 review is a rebuttable presumption under the provisions of 10 VSA Ch. 151 and this presumption may be overcome in proceedings under 10 VSA Ch. 151

³ 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.

4. Fire alarm panels at both sites (the northern space to be expanded and the new store at the southern end) be located at the front of the buildings,
5. Knox boxes shall be installed at the drug store site and knox locking caps at both sites.
6. A protective crash barrier to be installed at southeast corner for added protection for the above-ground propane plumbing.
7. 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.
8. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
9. 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 7th day of August, 2009.

RANDOLPH DEVELOPMENT REVIEW BOARD

Concurring Board Members

Joel Tillberg, Chair

John Becker

/s/ J. Kenneth Currier

/s/ Frank Reed

/s/ Samuel Lincoln

/s/ Krista Rumrill

Abstaining Board Member

Christopher Recchia