

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

PERMIT NO.: Z09-17

PROPERTY ADDRESS: 25 Salisbury Street and 34 School Street

PROPERTY OWNER: Randolph Area Community Development Corp.
PO Box 409
Randolph, VT 05060

Parcel no.: 244010

Parcel size: 4.3 acres

I. INTRODUCTION

On March 30, 2009, Julie Iffland, on behalf of the **Randolph Area Community Development Corp.** ("Applicant" or "RACDC"), filed an application for a zoning permit for a project generally described as **a planned unit/residential development with 36 dwelling units and office space**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on April 14, 2009.

Under the Randolph Zoning Regulations and the Randolph Land Subdivision Control Regulations ("RZR" and "RSR", respectively, or "Regulations" collectively), 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 issue a permit, the Board must find that the project complies with all applicable criteria and approve the subdivision, site plan, 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. Observations made by the Board during a site visit to the subject property on June 23, 2009;
2. Sworn testimony presented to and evidence received by the Board during the public hearings held on April 28, May 26, June 23, July 28 and August 25, 2009;
3. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on August 25, 2009 and completed deliberation thereafter. This written decision was prepared as required in 24 VSA Ch. 36 §1209.

II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Apartment-Residential (AR) District.

2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The office space is categorized as “personal and professional offices “ which is listed as a conditional on the Chart of Permitted and Conditional Uses and therefore conditional use approval is required.
4. The proposed project is a planned unit/residential development (PUD/PRD) therefore approval pursuant to RZR §3.5 is required which also requires subdivision approval.
5. As more than 2 lots are to be created and pursuant to RZR §3.51a and §3.5.1b, subdivision approval pursuant to the RSR is required.
6. The applicant has also requested local Act 250 review.

On April 14, 2009, the Administrator referred the application to the Board for review and approval as determined and requested.

III. PARTICIPANTS

For the purposes of this application, “interested persons” are those who fulfill the requirements of 24 VSA Ch. 117 §4465. The attached Service List for this project includes the Applicant and persons¹ who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were John Becker, J. Kenneth Currier, Samuel Lincoln, Frank Reed and Krista Rumrill². Members Joel Tillberg and Christopher Recchia did not participate pursuant to the Board's Rules of Procedures and Ethics. The two alternate members were either unavailable or had a conflict of interest and therefore were unable to participate in this proceeding.

IV. FINDINGS OF FACTS

for planned unit/residential development, subdivision, site plan, local Act 250 reviews for the entire project, and conditional use for the “Bookkeeping Building”

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. Applicant proposes to create a planned unit/residential development (PUD/PRD) on the former Ethan Allen Property in the Village of Randolph in the AR District. The PUD/PRD is proposed to have a condominium ownership structure. Each condominium unit is one physical portion of the property (lot) that is designated for separate ownership, such unit to include the buildings and the land under and between them as shown on Exh. #A-19. When completed, the condominium will contain 36 dwelling units and one office in 25 condominium units. These are designated as follows (unit numbers are as shown on Exh. #A-19):

¹ By inclusion in this section of the Memorandum of Decision, the Board does not address the status of any of the people listed above as “interested persons” as defined in the above-referenced state statute.

² Member Rumrill was absent for the hearing on August 25, 2009 but listened to the audio recording and reviewed the addition evidence submitted at that hearing.

- Unit #1 - two five-dwelling unit (DU) apartment buildings fronting on School Street (designated as Unit A on Exh. #A-55)
- Unit #2 - four DUs in the Bookkeeping building and addition (designated as Unit B on Exh. #A-55)
- Unit #3 - office space on the first floor of the Bookkeeping building (designated as Unit C on Exh. #A-55)
- Units #4-25— 22 single DUs (three two-DU buildings, one three-DU building, and thirteen one DU buildings) (designated as D1-D11 and E1-E11 on Exh. #A-55)

The condominium will consist of lots containing the condominium units (ownership units) and one common interest lot administered by the Condominium Association and supported by a pro-rata share from each condominium unit owner. This common interest land includes two open spaces and the roads.

2. The project is proposed to be phased, with the first phase to include the two 5-DU building on School Street, the renovation of and addition to the bookkeeping building and up to 7 of the single-family dwellings. The remainder of the project will be constructed as market demands. (Exh. #A-18)
3. The proposed project is a PUD/PRD and therefore requires approval pursuant to RZR §3.5.1a and b.
4. As the proposed project includes multi-family dwellings and office space, site plan approval pursuant to RZR Article IV is required.
5. RZR §3.5.1a and b also require subdivision approval pursuant to the RSR.
6. The proposed office space requires conditional use approval pursuant to RZR §3.4.1.
7. The applicant has requested local Act 250 pursuant to RZR §3.4.2.

The BOARD may allow for greater concentration of density, or intensity of land use, within some sections of the development than upon others. The approval for greater concentration of density in one section shall be offset by a lesser concentration in another or by an appropriate reservation of common space as long as overall density requirements of the total area are not exceeded. In deciding whether or not to allow for a great density, the BOARD shall consider the type of water and sewerage facilities and other proposed utilities and their ability to handle greater density or intensity of use (PUD/PRD criterion a)

8. The subject property, owned and controlled by the applicant, is 4.3 acres in size and is located entirely within the AR District. (application and RZR)
9. Permitted uses in the AR District include dormitories, parks, single-family, two-family, and multi-family dwellings. (RZR)
10. RZR §6.2.2 lists the following lot requirements for the AR District:

All dwellings must be connected with public water and sewer

10,000 sq. ft. single family unit

15,000 sq. ft two family unit

15,000 sq. ft. + 5,000 sq. ft. per family unit for each additional unit greater than 2 units

11. According to RZR §3.5.1a and b, the Board is empowered to vary certain zoning regulations under the criteria and procedures established in §4407(3) of the Development Act when reviewing a PUD/PRD application.
12. The applicant's proposed density is 8.37 DUs per acre. (Exh. #A-58)
13. The average density in the AR District currently, without the proposed development, is 2.99 DUs per acre. (Exh. #A-58³)
14. The average density in the AR District with the proposed development would be 3.50 DUs per acre. (Exh. #A-58⁴)
15. The PUD/PRD has been approved for connection to the public water and sewer systems. (testimony of J. Benson and J. Dextrateur)
16. Page 37 of the Randolph Town Plan policy on future land use recommends that "Growth and density of residential, commercial ...--particularly those which provide or rely heavily upon services – should be targeted primarily to those areas served by existing municipal or private utility service infrastructure, including:
 - Roads served by Class 1 and 2 highways
 - Water
 - Sewer
 - Electrical and 3-phase power
 - Telecommunications"
17. Page 37 of the Randolph Town Plan provides that town zoning and investments should encourage future development in areas where the Town or State have already made investments in services and infrastructure in order to optimize their usefulness. ... In addition, the effect of growth and density on the capacity of existing municipal services, such as fire and police protection, schools and road maintenance should be considered.

Width, yard, coverage and height requirements for the district in which the development is to be located shall normally be met. The BOARD may vary these requirements to allow for innovative design and effective land use. Applicable procedures and requirements outlined in Section 3.5.6 below, and other sections of these regulations, as well as the Town of Randolph Subdivision Regulations shall also be met. (PUD/PRD standard b)

18. RZR §6.2.2 lists the following lot requirements for the AR District:

| | |
|--------------------------|---------|
| Min. lot width..... | 100 ft. |
| Front yard setback..... | 30 ft. |
| Rear yard setback..... | 30 ft. |
| Side yard setback..... | 20 ft. |
| Max. bldg. coverage..... | 40% |
| Max. bldg. height..... | 30 ft. |

19. RZR §1.3.64 defines a front yard as the open space adjacent to the street as measured from the street right-of-way line. Therefore, corner lots and through lots have two front yards.

³ It appears that Exh. #A-58 reversed the headings on the bottom of the table such that it lists the average density as being lower without the Salisbury Square project, which cannot be if the density of that project is higher than the average.

⁴ Ibid.

20. RZR §5.17.8 allows accessory structures to be as close as 4 feet to a side or rear property line but not within the front yard setback.
21. The applicant is seeking to modify the minimum lot width requirement, with the smallest requested of 19.79 feet (lot #D2 on Exh. #A-55).
22. The applicant is seeking to modify the minimum yard setback requirements (front, rear and side), with the smallest being 0 feet. (Exh. #A-55)
23. The proposed coverage is 38,107 SF, which is 20% of the total lot.
24. The maximum height of the tallest structure (the 5-DU buildings on the lower plateau) is 30 feet. The height of the bookkeeping building (28 feet) is not proposed to be increased. (Exhs. #A-7 and #A-9⁵).
25. The development offers the opportunity to bring a brownfield site into productive use while providing housing in the village. (testimony of J. Iffland)

The PUD shall be an effective, unified treatment of the development possibilities of the project site. The development plan shall make appropriate provision for the preservation of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas, historic areas, unique natural and man-made features. (PUD/PRD standard c)

26. With the exception of the office space on the first floor of the bookkeeping building, all of the development is residential. (Exh. #A-2)
27. No building development is proposed on the forested steep slope between the upper portion along the railroad and the lower portion along School Street. (Exh. #A-4)
28. There are no streams, wet areas, soils unsuitable for development (after remediation for the brownfields) or unique natural or man-made features. (Exh. #A-4)
29. The bookkeeping building and the smoke stack are the only historic features of the site. These will be preserved and renovated to maintain its historic characteristics and preserved and repaired, respectively. All the other structures are non-contributing and will be removed. (Exh. #A-44)

Mixed uses shall be arranged so as to be compatible and ensure visual and aural privacy for project residents. (PUD/PRD standard d)

30. The project is a mix of residential uses with a small commercial component of offices. The offices will be adjacent to an open space parcel and along the fenced and landscaped back yard of another residence, thus minimizing its impact on that residence and the other residents in the development. (Exh. #A-4)
31. The configuration of the structures and landscaping provides a level of privacy for residents of the project while allowing access to the downtown area. (Exh. #A-4)

Proposed streets shall be in harmony with existing or approved thoroughfares. (PUD/PRD standard e)

32. The internal road system serving this development is proposed to be owned and operated by the condominium association on behalf of the residents of the project. (Exh. #A-30 and testimony of C. Leif)

⁵ It appears that the scale indicated on Exh. #A-9 of 1/8" = 1' is not correct and should be 1/4" = 1'.

33. The Town of Randolph has indicated that they will not take responsibility for the roads within this project. (Exh. #A-30 and testimony of G. Champy)
34. Two points of access are proposed: one onto School Street to access the development on School Street and the other at the corner of Salisbury and Franklin Streets to access the development on the upper plateau. There is no road connection between the portion of the development on School Street and the portion of the development on the upper plateau accessed from Salisbury and Franklin Streets. School, Franklin and Salisbury Streets are all Class 3 roads of the Town of Randolph. There are no sight distances restrictions at each of the two points. (Exh. #A-21)

The development shall be proposed over a reasonable period of time in order that adequate municipal services and facilities may be provided. If the development is to be phased, open spaces shall be developed simultaneously with residential or commercial units in various stages of the project. (PUD/PRD standard f)

35. The first phase of construction will include the 14 rental units (Unit A), the renovation and expansion of the bookkeeping building (Units B and C), up to 7 for-sale homes (lots #D1-D5, then lot #D8), all infrastructure (water, sewer and stormwater) and the portion of the internal road needed to access the building construction. The upper plateau will maintain a temporary loop road to service the development as the subsequent phases are constructed. (Exh. #A-18 and testimony of J. Dextradour)
36. The remaining for-sale homes will be constructed in accordance with market demands. (Exh. #A-18)

When a PUD results in land available for parks, recreation or open space the Board may require as a condition of approval that donation of these lands for municipal purposes. In addition, the Board may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes. (PUD/PRD standard g)

37. No land is proposed for parks and recreation within the project boundaries. (Exh. #A-4)
38. There are two areas of open space with a total area of approximately 7,200 SF that are available for residents of the project. (Exh. #A-55)
39. Municipal recreation areas are in the immediate neighborhood of the development. (Exh. #A-1)

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)

The proposed use is consistent with the objectives of the Town Plan and the purposes of the Randolph Zoning Regulations. (CU criterion A – office space only)

The proposed use will not adversely affect the bylaws in effect. (CU criterion K – office space only)

40. See facts #18 – 24 for compliance with development standards.
41. The required off-street parking is 2 spaces for each single-family dwelling, 1½ spaces for each apartment and 1 spaces for every 250 SF of gross office floor space, thereby

requiring a total of 71 spaces. Parking within the carports and garages and in driveways count as off-street parking and therefore 77 spaces are provided. (RZR and Exhs. #A-43 and #A-4)

42. See facts # 16 and 17 for Town Plan compliance.
43. The purpose of the Apartment-Residential Districts is: “To provide for single family, two (2) family and multi-family residential areas in those Village areas of the Town are suitable to such uses in order to accommodate the present population and land use in this area and to provide for future growth.” The proposed project includes 36 DUs in combinations of single-, two- and multi-family dwellings. (Regulations and application)

The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity. (CU criterion C – office space only)

44. The proposed office space will have up to 5 employees. (application)
45. The proposed office space will generate a small volume traffic which will not exceed the capacity of the public roads. (Exh. #A-21)

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)

46. Sufficient space for snow storage is available on-site. Snow plows can turn around in a driveway on the western dead-end road and can do a three-point turn in the northeastern dead-end road. (testimony of J. Benson)
47. On the upper plateau, the on-site traffic circulation minimizes turning movements by looping the main internal road, having only one-way traffic on part of it and two-way on the part from which many of the carports and off-street parking takes access. (Exh. #A-2)
48. No change to the location of the access to the upper plateau is proposed. Sight distances at this location are adequate. (Exh. #A-2 and #A-21)
49. Sidewalks are provided on-site between the upper and lower plateaus to facilitate pedestrian traffic between the two. This allows residents of the upper plateau easy access to the facilities on School Street, including municipal recreation facilities. Allowances are in place for sidewalks to be constructed along the access to the upper plateau at such time as the sidewalks on Salisbury Street are upgraded and maintained. (Exh. #A-2 and #A-21)
50. There are three locations where sidewalks lead to the road and then continue on the other side (near Units D5, E4 and E6 as designated on Exh.#A-56). Crosswalk markings are not proposed on the site. (Exh. #5 and #A-20).

The criterion regarding Town of Randolph road standards is not applicable as the roads are proposed to be adopted by the Town. (CU criterion D – office space only)

51. The proposed project does not involve any new roads to be adopted by the Town. All roadways will be maintained by the condominium association. (Exh. #A-18 and testimony of C. Leif)

The access and exit points of the subject property will be limited to one location, which is sufficiently wide and so related to highways to insure safety and efficiency of circulation of vehicular and pedestrian traffic. (CU criterion E – office space only)

52. The one access/egress to the office space will be at the corner of Salisbury and Franklin Streets. (Exh. #A-2)

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 not place an unreasonable burden on the ability of the local government to provide municipal or governmental services. (Act 250 criterion 7)

The proposed use will not adversely affect the capacity of existing or planned community facilities. (CU criterion I – office space only)

53. The proposed project will add 15 additional students to the school district. Such a number will not be a burden to the school district. (Brent Kay, Superintendent)
54. The subject property is in the Randolph Police District. The Randolph Police Department has the capacity to provide police services to the subject property without undue burdens. (James Krakowiecki, Randolph Police Chief)
55. 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. (Jay Collette, Randolph Village Fire District Chief)
56. For fire protection reasons, the Randolph Fire Chief recommends the two-way portion of the internal road on the upper plateau be a minimum of 20 feet in width with 2-foot reinforced shoulders on either side. The project proposes this road being 18 feet in width with 3-foot reinforced shoulders as a narrower width provides some traffic calming and reduces stormwater run-off. The reinforced shoulders could bear the weight of a fire truck and will be kept clear. A significant portion of this road will be wider than 18 feet in locations by and next to buildings and carports. (Exh. #A-3, A-28 and testimony of J. Benson and J. Dextrateur)
57. The Randolph Center ladder fire truck can traverse through the development. (testimony of J. Benson)
58. The subject property is accessed from two town highways. The Randolph Highway Department has the capacity to provide the proposed project with road maintenance without undue burdens of the town roads. The on-site roads will remain private and thus maintained by the condominium association. (Gary Champy, Town Manager)
59. The PUD/PRD has been approved for connection to the public water and sewer systems. (testimony of J. Benson and J. Dextrateur)

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 use will not adversely affect the character of the area affected. (CU criterion J – office space only)

60. The surrounding area is a mixture of single-, two- and multi-family dwellings with some scattered non-residential uses such as public recreational facilities, hair salon, auto repair garage, and offices. (Exh. #A-58)

61. The surrounding area is within the School Street Neighborhood Historic District. The architecture of the proposed housing is designed to complement the historic nature of the surrounding area. (Exh. #A-44 and #A-5 through -18)
62. The proposed uses of the development is similar with other development in the AR District in that it contains single-, two- and multi-family residences with some scattered non-residential uses. (Exh. #A-58)
63. The average density of the School Street area AR District is 2.99 DUs per acre, with a maximum density of 25 DUs per acre. The proposed project will increase that average to 3.50 DUs per acre. (Exh. #A-58⁶)
64. Of the proposed 36 DUs, 10 will be on the lower plateau and 26 on the upper, thereby distributing the impact of the development to two areas. (Exh. #A-5)

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)

65. There are no undeveloped parcels in the School Street area AR District. (Exh. #A-58)
66. The upper plateau is largely screened by grade changes and existing vegetation, greatly reducing any visual impacts to adjacent residential properties. (Exh. #A-4 and testimony of J. Ancel)
67. Proposed landscaping and fencing will increase screening of the existing site from adjacent residential properties. (Exh. #A-4 and testimony of J. Ancel)
68. No evidence was presented indicating that the proposed project would unreasonably affect the use of adjacent land.
69. All building lighting will be typical residential-style. (testimony of T. Boyle)
70. Street lighting shall be on 14-foot high poles, fully cut-off fixtures that operate either on photosensors or timers. (testimony of T. Boyle)

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. (CU criterion B – office space only)

71. The proposed office space will not generate any unsanitary conditions, excessive noise, vibration, odor or other nuisance. (testimony of J. Ancel)
72. The proposed office space will not cause any hazard to health or property through fire, traffic or accident. (testimony of J. Ancel)

The proposed use will not adversely affect the utilization of renewable energy resources. (CU criterion L – office space only)

73. The proposed office space will not affect the utilization of renewable energy resources. (testimony of J. Ancel)

All unsightly uses of the proposed project are properly screened. (CU criterion F – office space only)

⁶ See footnote #2.

74. Landscaping will be adequate to screen any potentially unsightly uses of the office uses. . . (testimony of T. Boyle and T. Scott)

An adequate system of surface runoff control is not required. (CU criterion G – office space only)

75. The drainage system for the project will utilize the public stormwater system. (testimony of H. Voisin)

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. (CU criterion H – office space only)

76. Exh. #A-56 indicates that there is an 11.15-foot continuous strip between the office and the proposed road right-of-way.

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 criteria below. Board comments are italicized.

1. Act 250 Criteria⁷

- 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 (criterion 7).
- C. The proposed project is in compliance with the Randolph Town Plan which was adopted in accordance with 24 VSA ch. 117 on December 21, 2004 (criterion 10).

2. Planned Unit/Residential Development Criteria

- A. The Board may allow for greater concentration of density, or intensity of land use within some sections of the development than upon others. The approval for greater concentration of density in one section shall be offset by a lesser concentration in another or by an appropriate reservation of common space as long as the overall density requirements of the total area are not exceeded. In deciding whether to not to allow for a greater density, the board shall consider the type of water and sewerage facilities and other proposed utilities and their ability to handle greater density or intensity of use.

The current RZR was first adopted in 1988 and has been amended several times since then. However, it has never been totally revised in light of new town plans and is sorely out of date and confusing in many areas. In terms of a PUD/PRD, RZR §3.5 refers to §4407(3) of the Development Act (24 VSA Chapter 117), a section repealed in 2003. However, the saving clause of §4481 provides that Randolph has until 2011 to revise the RZR to reflect this action. Until that time, the RZR relies on this repealed section of the Development Act. The Board is required to follow the RZR when making decisions regarding development.

⁷ 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

The RZR, like all zoning ordinances, is supposed to reflect the goals and policies of the Town Plan. Zoning implements a town plan. The current Town Plan, at page 37, recommends that growth and increased density of residential dwelling units should be targeted to areas served by existing municipal services for roads, sewer, water, telecommunications, and electrical supply. At page 65, the Town Plan encourages higher-density development in areas of Town most suitable to support it and identifies areas served by municipal services as an area appropriate for higher-density development. The area proposed for development in this application meets these requirements.

The PUD/PRD portions of the current RZR are found at §3.5.1, §3.5.1a and §3.5.1b. Each refer to the enabling statute and the criteria and procedures noted at § 4407(3) of the Development Act. While the numbering in the RZR then becomes §3.5.2 and continues in that vein, the Board believes that these paragraphs (§3.5.2 through §3.5.5) provide interpretation and context to the review of a PUD/PRD as it relates to §4407(3) of the Development Act. While §4407(12) of the Development Act is titled "Planned Unit Development", the RZR, as written, appears to have used §4407(3) to develop the standards of review stated in the RZR. Further, the RZR treats PUD's and PRD's collectively in RZR §3.5.5. Consequently, the Board will follow the tenor of the RZR as written.

§4407(3) of the Development Act was chosen by the Town of Randolph as the guideline for review of both PUD's and PRD's as noted in the RZR at §3.5.1a and §3.5.1b. Section 4407(3) allows the Board discretion in determining the density and intensity of land use for a PUD/PRD after giving due consideration to site conditions limiting development and after giving due consideration to the capacity of community facilities and services. §4407(3)(C) gives the Board discretion in determining how the number of dwelling units permitted on a parcel might be distributed in terms of one-family, two-family or multi-family construction.

RZR §3.5.2 provides for the encouragement of more efficient land use and innovation in design to help preserve the qualities of open land. RZR §3.5.5a provides the Board discretion in determining the density and intensity of land use on a parcel, adopting the approach in the Development Act.

The above leaves the Board in the position of being able to allow an applicant to distribute the number of dwelling units allowed on a parcel based in a manner most conducive to implementing the development in light of the services available to the parcel. In this case, the RZR clearly allows the applicant to build 36 dwelling units if the units were all in one building. The number of dwelling units allowed in the AR District is based on the square footage of the parcel. As stated above, to build a single family dwelling unit requires 10,000 square feet. A two-family dwelling unit requires 15,000 square feet. After that, the requirement is for 15,000 square feet for the first two dwelling units and 5,000 square feet for each additional unit.

One reading of the AR District lot requirements could lead one to find that 36 dwelling units of any type could be constructed on the property based on the requirement of 15,000 square feet for the first two dwelling units and 5,000 square feet for each additional unit. An alternative reading might require that for 36 dwelling units to be permitted and constructed, all the dwelling units must be in one structure. Carrying this further could allow 36 dwelling units to be constructed if the dwelling units were

connected by corridors or some other structural element. Basically, the Board must determine what the density could be and then determine how that density might be distributed as provided in §4407(3)(C) of the Development Act.

The Board reads the RZR to allow the construction of 36 dwelling units on this property. The Board further finds that it has the authority to allow these dwelling units to be of varied types, including one-family, two-family, or multi-family types.

Based on this authority, the Board concludes that the applicant may construct 36 dwelling units on the property and they shall be distributed as follows:

- *two buildings with five dwelling unit in each facing School Street*
- *four dwelling units in the Bookkeeping building and addition,*
- *three buildings with two dwelling units each,*
- *one building with three dwelling units, and*
- *thirteen buildings with one dwelling unit*

- B. Width, yard, coverage and height requirements for the district in which the {PUD} is to be located shall normally be met. The Board may vary these requirements to allow for innovative design and effective land use. The Board concludes that the project utilizes innovative design and provides for the effective use of land and therefore authorizes the modification of the width and yard requirements
- C. The PUD shall be an effective, unified treatment of a development possibility of the project site. The development plan make appropriate provisions for the preservation of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas, historic areas, unique natural and man-made features, where they exist.
- D. Mixed uses are arranged so as to be compatible and ensure visual and aural privacy for project residents.
- E. Proposed streets are in harmony with existing or approved thoroughfares.
- F. The development is proposed over a reasonable period of time in order that adequate municipal services and facilities may be provided. If the development is to be phased, open spaces shall be developed simultaneously with residential or commercial units in various stages of the project.
- G. When a PUD results in land available for parks, recreation or open space the Board may require as a condition of approval that donation of these lands for municipal purposes. In addition, the Board may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes. No lands are available for parks therefore the Board does not need to establish any conditions on use or maintenance.

3. 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 in 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.

4. Conditional Use Criteria⁸ (for the office space only)

- A. The proposed use is consistent 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. The criterion regarding Town of Randolph road standards is not applicable as no new roads are proposed.
- E. The access and exit points of the subject property will be limited to one location, which is sufficiently wide and so related to highways to insure safety and efficiency of circulation of vehicular and pedestrian traffic.
- F. All unsightly uses of the proposed project are properly screened.
- G. An adequate system of surface runoff control is not required.
- H. 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.
- I. The proposed use will not result in an undue adverse affect on the capacity of existing or planned community facilities.
- J. The proposed use will not result in an undue adverse affect on the character of the area affected.
- K. The proposed use will not result in an undue adverse affect on the traffic on roads and highways in the vicinity.
- L. The proposed use will not result in an undue adverse affect on the bylaws and ordinances in effect.
- M. The proposed use will not result in an undue adverse affect the utilization of renewable energy resources.

⁸ Criteria A – H are from the Randolph Zoning Regulations. Criteria I – M are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

VI. DECISIONS⁹

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decisions regarding the PUD/PRD as applied for in zoning permit application #Z09-17 and including the evidence and testimony entered into the record as Findings of Fact.

A. PUD/PRD is approved with the following modifications and/or conditions:

1. The minimum lot width requirement is modified to 19.79 feet.
2. The minimum setback requirements for all yards (front, rear and side) is modified to 0 feet.
3. Covenants shall be included in the common ownership agreement that the land designated as open space shall not be further developed.
4. Snow from parking areas and roads must not be plowed onto public highways, adjoining streams or waterways or over the slope down to the lower plateau.
5. The development shall have adequate entrance and exit for emergency vehicles at all times.
6. The trees along the upper plateau internal roads shall be planted as the road is constructed and shall be a minimum of 6 feet tall at planting.

B. The subdivision of the property into 25 lots is approved with the condition that all roads within the subject property and the on-site stormwater system shall remain private and a covenant as shown in Exhibit B of the RSR, with deletion to references to water and sewer systems, shall be recorded with each deed for the individual units and similar language included in the common ownership agreement.

C. The site plan approval is granted with the following conditions:

1. Applicant must construct, maintain and operate the proposed condominium development and related improvements in strict conformance with the project description submitted by the applicant and specifically identified in the findings of fact.
2. Construction shall be as shown on the exhibits submitted for this application.
3. All landscaping shown on Exhibit #A-4 shall be maintained in a healthy, living condition.
4. On the upper plateau, crosswalk markings on the road shall be painted and maintained to connect the sidewalks that lead to the road and then continue on the other side (i.e. in front of Unit E4 and D5 and next to Unit E6 as designated on Exh. #A-56).
5. The reinforced shoulders of the internal road shall be kept clear, including free of snow.

⁹ 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.

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.
- D. Conditional use approval is granted for the office space 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 29th day of September, 2009.

RANDOLPH DEVELOPMENT REVIEW BOARD

Concurring Board Members

/s/ Frank Reed, Acting Chair

/s/ John Becker

/s/ J. Kenneth Currier

/s/ Krista Rumrill

/s/ Samuel Lincoln

SERVICE LIST
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Randolph Area Community Development Corporation

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Randolph, VT 05060

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