

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

PERMIT NO.: Z10-17

Property address: 29 North Main Street

PROPERTY OWNER: George Rich
29 North Main Street
Randolph, VT 05060

Parcel no.: 234010.010
Parcel size: 1,820 SF

APPLICANTS: Gary Hull and Justin Stacey
Capitol Grill 'n' Chill, LLC
29 North Main Street
Randolph, VT 05060

I. INTRODUCTION

On March 29, 2010, **Gary Hull and Justin Stacey** ("Applicant") filed an application for a zoning permit for a project generally described as **the installation of a walk-up service window**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on April 6, 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 April 28, 2010;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records, including the Memorandum of Decision for zoning permit #Z09-27 ("MOD #Z09-27").

The Board closed the public hearing on April 28, 2010 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 Commercial (COM) District.
2. As the project is not either a one- or two-family dwelling and the proposed project modifies the previously-approved site plan, site plan re-approval is required.

3. The existing use is categorized as "restaurant". Such a use is listed as permitted on the Chart of Permitted and Conditional Uses therefore no use approval is required.

On April 6, 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 Applicants and the Randolph Town Manager were the only participants in this proceeding.

Participating Board members were John Becker, Trini Brassard, Christopher Recchia, Frank Reed 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

1. The applicant has filed an application for the replacement of a plane glass window on the North Main Street side of the building with a slider glass window to accommodate walk-up window service for ice cream and creamees as shown on Exh. #1. No other changes to the operation of the restaurant are proposed. (application, testimony of G. Hull)
2. The restaurant was approved on June 4, 2009 and issued zoning permit #Z09-27. (municipal records)
3. Site plan approval is required as the proposed modification could potentially effect pedestrian traffic and adjacent properties, which are considerations under site plan criteria C and D. (Regulations and application)
4. The minimum lot size for the COM District is 12,000 SF. The subject property is 1,820 SF and therefore is a pre-existing small lot. (Regulations and application)
5. Other than the work described in Fact #1 above, no changes to the site are proposed. (application)
6. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
7. Most of the business at the window will be in the evening when most of the other businesses are closed. (testimony of J. Stacey)
8. There is sufficient sidewalk space in front of business. (testimony of G. Hull)
9. The window service has the potential to generate trash to be disposed of outside of the business. This could be alleviated by the applicants maintaining a trash can near the existing Town's trash receptacle when the window is open for service. (testimony of G. Hull and G. Champy)

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 site plan criteria:

- A. Site plan criterion 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) is not applicable as no changes are proposed from the existing approved site plan that affect this criterion.
- B. Site plan criterion 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) is not applicable as no changes are proposed from the existing approved site plan that affect this criterion.
- 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 provided a trash can is provided and maintained by the applicants.

VI. DECISIONS¹

Based upon the foregoing Findings of Facts and Conclusions, approval is hereby granted for the site plan for the installation of a walk-up service window as applied for in zoning permit application #Z10-17 and including the evidence and testimony entered into the record as Findings of Fact. Site plan approval is granted with the following conditions:

1. Construction shall be as shown on Exh #1.
2. A trash can that is maintained by the applicants shall be placed in the vicinity of the Town's trash receptacle during business hours.
3. All conditions of approval for zoning permit #Z09-27 shall continue to apply.
4. The applicant shall make every effort to keep clear the through-way of the sidewalk along North Main Street in front of the window.
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.

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 \$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.

Dated at Randolph, Vermont this 26th day of May, 2010.

RANDOLPH DEVELOPMENT REVIEW BOARD
Concurring Board Members

/s/ Joel Tillberg, Chair

/s/ John Becker

/s/ Trini Brassard

/s/ Frank Reed

/s/ Christopher Recchia