

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

APPLICANT: William Milnor
PO Box 162
Randolph,VT 05060

PERMIT NO.: Z08-97

PROPERTY OWNER: Applicant

I. INTRODUCTION

On September 2, **William Milnor** ("Applicant") filed an application for a zoning permit for a project generally described as the **construction of a third bay and expansion of an existing parking area for an existing auto repair business**. The subject property is **parcel number 255032.010** which is **0.48 acres (20,800 SF)** in size and located at **43 Weston Street**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on September 26.

The application was determined to be incomplete pursuant to the Board Rules of Procedure Section 301 for reasons stated in a letter from the Administrative Officer ("Administrator") to the Applicant dated September 8, 2008. The application was deemed complete on September 26, 2008 upon receipt of supplemental information.

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 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 October 28;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on October 28 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 Apartment-Residential (AR) and Industrial (IND) Districts.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The existing use is categorized as "automobile repairs," which is listed as prohibited on the Chart of Permitted and Conditional Uses and therefore is non-conforming. As such, approval for expansion of a non-conforming use is required.

On September 8, the Administrator referred the application to the Board for review and approval as determined.

II. PARTICIPANTS

For the purposes of this application, "interested persons" are those who fulfill the requirements of 24 VSA ch. 117 §4465. The Applicant and Joel Tillberg were the only participants in this proceeding.

Participating Board Members were John Becker, Kenneth Currier, Samuel Lincoln, Frank Reed, Christopher Recchia and Krista Rumrill. Member Tillberg recused himself from this proceeding, which was chaired by Reed.

III.# 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 16-foot by 30-foot single-story addition that will be a third bay on an existing automotive repair shop and enlarging the parking area to the west of the shop as shown on Exhs. #1 and 2. Exh. #1 was revised to show where the dumpster is to be located. It was also noted that the lot dimensions on Exh. #1 are not accurate and do not coincide with the municipal records. (application and municipal records)
2. No changes to the existing operation of the business are proposed. (application and testimony of W. Milnor)

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)

3. There will be no effect upon the community. (testimony of W. Milnor)
4. The bay door will be closed during really noisy repairs. (testimony of W. Milnor)

5. The existing business produces little to no noise. (testimony of W. Milnor and J. Tillberg)
6. No complaints about noise have been received. (testimony of W. Milnor)
7. Existing noises from the skateboarders on the adjacent property across the railroad tracks is louder than anything emanating from the existing business. (testimony of J. Tillberg)

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)

8. There is no established minimum lot size for the AR District for non-residential uses. The minimum lot size in the IND District is 20,000 SF. The subject property is 0.48 acres, or 20,800 SF. (Regulations and application)
9. The front and rear setback requirements for the AR District are 30 feet and the side setback requirement is 20 feet. The proposed addition will be 30 feet from the front and side property lines and approximately 12 feet to the rear property line. However, pursuant to §5.17.5, there is no rear or side yard set back requirement for properties that are a portion in the IND District and are adjacent to the railroad. (Regulations and Exh. #1)
10. The maximum allowable building coverage is 40% in the AR District, or 8,200 SF for the subject property. The existing building coverage is 1,500 SF or 7% and the proposed building coverage is 1,980 SF, or just under 10%. (Regulations and application)
11. The required off-street parking shall be as set by the Board. The proposed project increases the amount of off-street parking spaces. (Regulations and application)
12. There is no clear and unambiguous language in the Town Plan that directly relates to this project. (Randolph 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)

13. The existing parking area to the west of the building is proposed to be expanded. No changes, however, to the existing on-site traffic circulation are proposed. (application and Exh. #1)

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)

14. The surrounding area is a mixture of commercial, industrial and residential uses. The adjoining properties are used as residences to the south and east, vacant industrial to the north and commercial to the west. (application)
15. The proposed project is an expansion of an existing commercial use and will not affect adjacent properties. (application)
16. No additional exterior lighting is proposed. (application)

IV. 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 and included herein as facts, 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:

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-compliance 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. DECISIONS¹

Based upon the foregoing Findings of Facts and Conclusions, the following approvals are hereby granted for the construction of a third bay on an existing automotive repair shop as applied for in zoning permit application #Z08-97 and including the evidence and testimony entered into the record as Findings of Fact.

- A. The non-conforming use may be expanded with the condition that the bay door shall be kept closed during noisy repair operations.
- B. The site plan as revised at the hearing is approved with the following conditions:
 1. Construction shall be as shown on Exh. #1 with the exception that the dumpster shall be moved behind the building to be better screened.
 2. A revised site plan be submitted that conforms to the lot dimensions in the municipal records or to the deed to the property and that reflects maintenance of the required setbacks .
 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.

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.

4. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
5. Any substantial modifications to the approved site plan shall require Board re-approval pursuant to the regulations in effect at the time of re-application.

Dated at Randolph, Vermont this 18th day of November, 2008.

RANDOLPH DEVELOPMENT REVIEW BOARD

Frank Reed, Acting Chair

/s/ John Becker

/s/ J. Kenneth Currier

/s/ Samuel Lincoln

/s/ Krista Rumrill

/s/ Christopher Recchia