

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

PERMIT NO.: Z09-80

Property address: 12 South Main Street

PROPERTY OWNER: A Place of Hope, LLC
c/o Gerald Tallman
PO Box 92
Randolph, VT 05060

Parcel no.: 238001
Parcel size: 0.16 acres (7,300 SF)

APPLICANT: Al Daubenschmidt
Al's Pizzeria
3247 VT Route 66
Randolph Center, VT 05061

I. INTRODUCTION

On October 15, 2009, **Al Daubenschmidt** ("Applicant") filed an application for a zoning permit for a project generally described as **the conversion of office space into a 15-seat restaurant**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on November 3, 2009.

Under the Randolph Zoning Regulations ("Regulations" or "RZR"), 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 November 18, 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 November 18, 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. 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 "restaurants, diners, cafes". Such a use is listed as permitted on the Chart of Permitted and Conditional Uses.

On November 3, 2009, 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 Gerald Tallman, property owner, were the only participants in this proceeding.

Participating Board members were Samuel Lincoln, Frank Reed, Krista Rumrill 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 conversion of office space into a 15-seat restaurant as shown on Exh. #1. There may be up to 20 seats in the future. The Applicant revised Exh. #1 at the hearing to show the existing and proposed lighting and to indicate where there will be a new back/side door to the business. (application and testimony of A. Daubenschmidt)
2. The Applicant is going to operate this facility 7 days a week from 11 AM to 9 PM. Delivery service will be offered. (application, testimony of A. Daubenschmidt)

Compliance with Town ordinances and Plan. (SP criterion A)

3. The minimum lot size for the COM District is 12,000 SF. The subject property is 7,300 SF and is therefore a non-conforming lot. (Regulations and application)
4. The development standards regarding setbacks and coverage are not applicable as no changes to the footprint of the building are proposed. (Regulations and application)
5. The required off-street parking is 1 space for every 1,000 SF of gross floor. The proposed project provides parking spaces for 12 cars and there are 13 on-street spaces on South Main Street which is ample. The majority of the business will be take out and delivery service. (Regulations, application and testimony of A. Daubenschmidt and G. Tallman)
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 use is a commercial development in the COM District. (Regulations and application)

Safety for on-site vehicular and pedestrian traffic. (SP criterion C)

Affect on development in adjacent land. (SP criterion D)

8. No changes to the existing site plan are proposed except for the addition of lighting at the new back/side door entrance and some new lighting in the parking area. Such lighting will have cut-off fixtures. (revised Exh. #1, application and testimony of A. Daubenschmidt)

Orderly development of the surrounding area. (SP criterion B)

9. The surrounding area is a dense mixture of commercial uses with mixed uses within the buildings. The adjoining properties are used as an insurance office and vacant retail space with office space above to the north, a convenience store/gas station to the south, a fitness center and office space to the east and a restaurant, retail space and transportation facility with offices to the west. Additionally, railroad tracks are along the northern border of the subject property. (application and Exh. #2)
10. As no changes to the existing site plan or footprint of the building are proposed, the proposed project will not adversely affect the surrounding area. (application)
11. The proposed project is in similar to the dense, mixed use and commercial development of the surrounding area. (application)
12. There will be no dumpster on-site (testimony of A. Daubenschmidt)

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. 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.

VI. DECISIONS¹

Based upon the foregoing Findings of Facts and Conclusions, approval is hereby granted for the site plan for the conversion of office space into a 15-seat restaurant as applied for in zoning

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.

permit application #Z09-80 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 as revised at the public hearing.
2. 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.
3. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
4. 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 31st day of December, 2009.

RANDOLPH DEVELOPMENT REVIEW BOARD

Concurring Board Members

/s/ Joel Tillberg, Chair

/s/ Krista Rumrill

/s/ Samuel Lincoln

/s/ Frank Reed