

**TOWN OF RANDOLPH  
DEVELOPMENT REVIEW BOARD  
MEMORANDUM OF DECISION**

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**APPLICANT:** Second Branch Homes, LLC  
PO Box 130  
Chelsea, VT 05038

**PERMIT NO.:** Z08-80

**PROPERTY OWNER:** Applicant

## **I. INTRODUCTION**

On April 30, 2007, Richard Dybvig, agent for **Second Branch Homes, LLC** ("Applicant") filed an application for a zoning permit for a project generally described as **a planned unit development (PUD) with 21 residential lots and a lot line adjustment**. The subject properties are **parcel number 112043 and 112044** which are **18.78 and 0.92 acres** in size, respectively and located approximately at **464 VT Route 14S**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on August 20, 2008.

Under the Randolph Zoning Regulations) and the Randolph Land Subdivision Control Regulations ("Zoning Regulations" and "Subdivision Regulations", 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 grant 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.

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 August 26, 2008;
2. Documents contained in this application's file, the Memorandum of Decision for zoning permit #Z07-33 ("MOD #Z07-33"), the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on August 26, 2008 and deliberated on this matter afterwards. This written decision is required and prepared pursuant to 24 VSA ch. 36 §1209.

## **II. DETERMINATIONS BY THE ADMINISTRATOR**

The Administrator has made the following determinations:

1. The subject property is in the East Valley (EV), Rural Use 5-acre (RU5), Conservation (CON) and Flood Plain (FP) Districts. All of the proposed development is in the EV District.
2. The proposed project is a planned unit development (PUD) therefore approval pursuant to §3.5 is required.
3. As more than 2 lots are to be created, approval pursuant to the Subdivision Regulations is required.

On August 5, 2008, 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 was the only participant in this proceeding.

Participating Board members were Joel Tillberg, John Becker, Kenneth Currier, Samuel Lincoln and Frank Reed.

### 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 and Background Information**

1. The applicant has filed an application for a planned unit development (PUD) for the creation of 21 residential lots and one open space lot. The proposal also includes a lot line adjustment between an existing commercial lot. (*application and Exhs. #1 and 2*)
2. The commercial lot is currently 0.92 acres and is proposed to be 0.76 acres after the lot line adjustment. (*Exh. #1*)
3. The 21 residential lots vary in size from 9,000 to 12,130 SF, for a total combined area of 4.76 acres. The common land will be a total of 13.48 acres. (*Exh. #1*)
4. The open space/common land, road and utilities will be owned and maintained by a common ownership association. The commercial lot will not be a part of this common ownership association. (*MOD #Z07-33 and testimony of R. Dybvig*)
5. Each joint parking areas for the residential lots will accommodate 4 parking spaces. (*testimony of R. Dybvig*)
6. The road may or may not be paved. (*testimony of R. Dybvig*)
7. There will be no common solid waste facilities. (*testimony of R. Dybvig*)
8. The trees shown on Exh. #2B will be 6 to 7 feet tall at planting. (*testimony of R. Dybvig*)
9. Zoning permit #Z07-33 was issued upon subdivision, site plan and PUD approvals for the same project except with 21 instead of 24 residential lots. In addition to the reduction in the number of residential lots, only minor modifications to the previous approval are proposed:

water system is located within an existing structure, the hammerhead at the south end of the main road is eliminated, and the cul-de-sac at the north end of the road is replaced with a hammerhead. (MOD #Z07-33 and Exhs. #1 and 2)

10. The Board's decision regarding the approval for zoning permit #Z07-33 was appealed to the Environmental Court by the applicant. The basis for the appeal – a condition that all service wiring be underground – was vacated as it was found to not be required if the street system was not to be public, which it is not. (municipal records)

**The Board may allow for greater concentration of density, or intensity of land use, within some section of the {PUD} than upon others. The approval of 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 requirement of the total area are not exceeded. In deciding whether or 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. (PUD standard A)**

11. The minimum lot size for the EV District is 10,000 SF for a single-family dwelling. The size of the subject property that is to be developed as part of the PUD is 18.9 acres, which could accommodate 82 single-family residential lots. (Randolph Zoning Regulations and application)
12. The proposed project does not exceed the overall density allowed and also reserves considerable common space. (Exh. #1)
13. The applicant is not requesting a greater concentration of density but, rather, a modification of the some of the dimensional standards of the district (see facts above). (application)

**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. (PUD standard B)**

14. As the proposed project is a PUD, the applicant has requested modifications pursuant to §3.5 of the Zoning Regulations from the following EV District development standards: 80-foot minimum lot width (100 feet required), 20-foot minimum front yard setback (30 feet is required), 10-foot minimum side yard setback (20 feet is required) and 9,000-SF minimum lot size for a single-family dwelling (10,000 SF is required). (Exh. #1)
15. The proposed project effectively uses the land by clustering development and utilities and maintaining over 60% of the total lot as open space. This minimizes negative impacts to the sensitive features of the site, including the Second Branch and its associated streambank and flood plain. (application and MOD #Z07-33)
16. The proposed project is innovative in that it creates a clear, organized neighborhood on a common street that all homes front on and relate to visually and socially. (application and MOD #Z07-33)

**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 standard C)**

17. Approximately 12 acres of the common land will be open space, the bulk of which will be the area along the Second Branch and nearly all of the steep slopes up to the plateau upon which all development will occur. (application and Exh. #3)

18. Covenants will be in place that restrict its use to recreation, common use and for lease of the prime agricultural soils for commercial farming operations. *(Exhs. #1 and 3)*

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

19. There is only one non-residential lot proposed and it already exists. The existing building is of such a design that it blends in with the rural residential and nature of the area. *(application)*
20. The water system infrastructure will be located in the existing commercial building. *(Exh. #1)*

**Proposed streets shall be in harmony with existing or approved thoroughfares. (PUD standard E)**

21. In 1990, a state highway access permit was issued for the entrance into the development. *(MOD #Z07-33)*
22. The internal road is parallel to VT Route 14S with a hammerhead turnaround at the north end. *(Exh. #7)*

**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 standard F)**

23. Three phases of 7 houses each is proposed. The first phase is proposed to be completed by late 2008 and the remaining phases in 2009. *(testimony of R. Dybvig)*
24. No municipal services will be burdened by the proposed development. *(MOD #Z07-33)*
25. The open space already exists and therefore will be in place during all phases of the project. *(testimony of R. Dybvig)*

**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 standard G)**

26. To ensure that the lands designated for recreation and open space remain available for that use, such lands shall never be posted and shall be restricted from further development. *(application and conditions of approval)*

## **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 criteria:

### **Planned Unit Development Criteria**

- A. **The Board may allow for greater concentration of density, or intensity of land use, within some section of the {PUD} than upon others.** The applicant has not requested a greater concentration of density, as 82 lots are allowed and only 21 are proposed.

- 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 proposed development is innovative and a very effective use of land.
- C. **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.** The common land along the Second Branch is not proposed to be developed and restrictive covenants will be in place.
- D. **Mixed uses shall be arranged so as to be compatible and ensure visual and aural privacy for project residents.** There is one non-residential lot and its location at the entrance to the development ensures privacy and the architecture is compatible with the area.
- E. **Proposed streets shall be in harmony with existing or approved thoroughfares.** The proposed streets are at right angles to and in harmony to existing thoroughfares (VT Route 14S)
- F. **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.** The municipal services are currently adequate for the proposed project and the open space already exists.
- 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.** See conditions of approval.

## VI. DECISIONS<sup>1</sup>

Based upon the foregoing Findings of Facts and Conclusions, subdivision and planned unit development approvals are hereby granted for the proposed project as applied for in zoning permit application #Z08-80 and including the evidence and testimony entered into the record as Findings of Fact. Planned unit development approval is granted with the following conditions:

1. The minimum lot size requirement is modified to 9,000 SF for a single-family dwelling.
2. The minimum lot width requirement is modified to 80 feet.
3. The minimum side yard setback requirement is modified to 10 feet.

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<sup>1</sup> 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 \$225 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. Nothing in this approval shall be construed to approve commercial development on the lot designated as “commercial”. Any development on this lot shall require zoning approval pursuant to the regulations in effect at the time of application.
5. There shall be no building development on the lower plateau of common land along the Second Branch nor the steep slopes leading up to the upper plateau.
6. Covenants shall be included in the common ownership agreement that the land designated as open space and recreation shall not be further developed except for their intended uses. Such lands shall never be posted and lease for commercial agricultural use of the prime agricultural soils shall be allowed.
7. 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.
8. The development shall have adequate entrance, exit and turnaround for emergency vehicles at all times.
9. The trees on a residential lot shall be planted prior to issuance of the certificate of occupancy for such lot and shall be a minimum of 6 feet tall at planting.

Dated at Randolph, Vermont this \_\_\_\_\_ day of September, 2008.

**RANDOLPH DEVELOPMENT REVIEW BOARD**

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Joel Tillberg, Chair

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John Becker

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J. Kenneth Currier

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Samuel Lincoln

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Frank Reed