

TOWN OF RANDOLPH, VERMONT
DEVELOPMENT REVIEW BOARD
MEMORANDUM OF DECISION

(Findings of Facts, Conclusions of Law, and Decision)

APPLICANT: James Lumbra
Village Auto and Tire, Inc.
12 Prince Street, Suite 1
Randolph, VT 05060

PERMIT NO.: Z08-13

PROPERTY OWNER: Applicant

I. INTRODUCTION

On March 20, 2008, **James Lumbra** (“Applicant”) filed an application for a zoning permit for a project generally described as the addition of auto sales to an existing auto repair business. The subject property is parcel number **239003.010** which is a condominium unit within Foundry Park located at **12 Prince Street, Unit #1**. The application was deemed complete pursuant to the Development Review Board (“Board”) Rules of Procedure Section 301 on April 17, 2008.

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 29, 2008;
2. Documents contained in this application’s file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on April 29, 2008 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1209 and supercedes 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 “auto and truck sales”. Such a use is listed as conditional on the Chart of Permitted and Conditional Uses and therefore conditional use approval is required.

On March 31, 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 John Becker, J. Kenneth Currier, Samuel Lincoln, Christopher Recchia, 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 addition of auto sales to an existing auto repair business as shown on Exh. #2. This exhibit was modified by the Applicant at the public hearing to show where existing outdoor lighting fixtures are located. (*application and Exh. #2*)
2. The hours of operation are not proposed to be changed from what currently exists (Monday through Friday 7:30 AM – 5 PM) except that weekend appointments for showing vehicles may occur. (*testimony of J. Lumbra*)
3. There would be no car-washing exception occasionally of the vehicles for sale. (*testimony of J. Lumbra*)

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

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

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)

4. The minimum lot size for the COM District is 12,000 SF. The subject property is 4.57 acres. (*Regulations and application*)
5. The requirements for setbacks and coverage are not applicable as no changes are proposed that would affect these standards. (*Regulations and Exh. #2*)
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 project is an expansion of an existing commercial business within the COM District. (*Regulations and application*)

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)

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)

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

8. The proposed use will not generate any of the following: noise, dust, odor, glare, vibration or radiation or other nuisance. *(application)*
9. No changes to the existing on-site traffic circulation or parking is proposed. The vehicles for sale will be located in either an area currently used for parking vehicles or along a fence and out of the way of traffic entering the property. *(Exh. #2)*
10. It is anticipated that the expanded business will generate an additional 5 vehicles to the property. *(application)*

The criterion regarding Town of Randolph road standards is not applicable as no new roads are proposed. (CU criterion D)

11. The proposed project does not involve any new roads to be adopted by the Town. *(application)*

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)

12. No changes to the existing site plan are proposed with respect to the access point. *(Exh. #2)*

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

13. There is one (1) parts car on the premises that has scrap material in it. It is located behind the building. *(application)*

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

14. No changes are proposed to the site with respect to grade, paving, etc. *(application and Exh. #2)*

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)

15. There are no changes to the existing site plan proposed. *(application)*

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

16. As the proposed use is not a residential use, it will not increase the enrollment in local public schools. *(application)*
17. The proposed use will not require additional water and sewer allocations be granted. *(application)*
18. As the proposed is not located near any public recreational facilities and, therefore, will not increase the use of such facilities. *(application)*

19. The proposed use will not generate additional solid waste and therefore will not have an adverse affect on the local transfer station. *(application)*
20. The proposed use has the potential to minimally increase the need for emergency services. *(application)*

The proposed use will not adversely affect the character of the area affected. (CU criterion J)

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)

21. The surrounding area is a dense mixture of commercial and residential uses. The proposed use is in keeping with the existing use of the property. *(application)*
22. No changes are proposed with respect to walls, fences, loading, etc. *(application)*
23. The existing outdoor lighting is operated by motion sensors. *(testimony of J. Lumbr)*

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

24. The proposed use will not affect the utilization of renewable energy resources. *(application)*

VI. CONCLUSIONS OF LAW

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:

1. Conditional Use Criteria¹

- A. The proposed use is consistent with the objectives of the Town Plan and 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.

¹ 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).

- 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.

2. **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 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. DECISIONS²

Based upon the foregoing Findings of Facts and Conclusions of Law, the Board makes the following decisions regarding the addition of auto sales to an existing auto repair business as applied for in zoning permit application #Z08-13 and including the evidence and testimony entered into the record as Findings of Fact.

- A. The site plan approval is granted with the following conditions:
 - 1. Use of the property shall be as shown on Exhibit #2.
 - 2. All landscaping shown on Exhibit #2 shall be maintained in a healthy, living condition.

² 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.

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.
 4. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
 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.
- B. The condition use approval is granted 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 ____ day of May, 2008.

RANDOLPH DEVELOPMENT REVIEW BOARD

Joel Tillberg, Chair

John Becker

J. Kenneth Currier

Christopher Recchia

Samuel Lincoln

Krista Rumrill