

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

PERMIT: **#Z13-76**  
PROPERTY ADDRESS: **24 Pleasant Street, Unit C**  
PARCEL NO.: **238006.003**

PROPERTY OWNER: **Irene Rich**  
**24 Pleasant Street, Unit C**  
**Randolph, VT 05060**

**I. INTRODUCTION**

On August 26, 2013, **Irene Rich** ("Applicant") filed an application for a zoning permit for a project generally described as **the conversion of former retail space into a fitness center**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on August 28, 2013.

Under the Randolph Zoning Regulations (RZR or "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.

Also under the Regulations, the Board is authorized to undertake local Act 250 review of Criteria 6, 7 and 10 for all projects that require a new land use permit or an amendment to an existing land use permit under 10 VSA Chapter 151 ("Act 250").

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 September 24, 2013;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records including the Notice of Decision for zoning permit #Z00-125 (NOD).

The Board closed the public hearing on September 24, 2013 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1309 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. The use as a fitness center is not on the Chart of Permitted and Conditional Uses therefore §2.4.3 of the RZR applies. The space was previously approved as a fitness center in 2000 under §2.4.3. However, §2.4.3 has since been amended to require conditional use approval

for uses not on the Chart of Permitted and Conditional Uses. Therefore, the previous approval for the fitness center is no longer valid and conditional use approval is required.

3. As the project is not either a one- or two-family dwelling, site plan approval is required. However, the site plan was approved in 2000 and, as the site plan review criteria has not been amended since then and no changes to the approved site plan are proposed, that site plan approval is still valid and re-approval is not required.

On August 26, 2013, 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 attached Service List for this project includes the Applicant and persons<sup>1</sup> who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were John Becker, Samuel Lincoln, Eric Sturm<sup>2</sup>, David Miles, Christopher Recchia 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 and Required Approvals**

1. The applicant has filed an application for the conversion of retail space into a fitness/wellness center. The property is a condominium unit on the second floor at 24 Pleasant Street. Part of that unit will remain a residence. (application and testimony of I. Rich)
2. The fitness club will include dance classes, aerobics, fitness/workout equipment (strength fitness and cardio machines and weights) and meeting space for wellness-associated meetings. The meeting space will also be open to the public. (application and testimony of I. Rich)
3. The fitness club will be open from 4 AM to 10 PM. Dance classes will be held no earlier than 5:30 AM and no later than 10 PM. (testimony of I. Rich)
4. "Fitness club" is not a use listed on the Chart of Permitted and Conditional Uses in the RZR therefore §2.4.3 is applicable. (RZR)
5. In October of 2000, zoning permit #Z00-125 was issued for the second floor at 24 Pleasant Street to be used for a fitness club. The use was approved pursuant to §2.4.3 of the RZR and the site plan was also approved. (NOD)

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<sup>1</sup> By inclusion in this section of the Memorandum of Decision, the Board does not address the status of any of the people listed above as "interested persons" as defined in the above-referenced state statute.

<sup>2</sup> Mr. Sturm is an alternate member of the Board who was sitting in place of Member Gregg McCurdy pursuant to Section 206D of the Board's Rules of Procedure. Mr. McCurdy did not participate in this Decision.

6. Since 2000, §2.4.3 was changed such that for a use to be approved under this provision, conditional use approval is required. Therefore, to re-instate this use, conditional use approval is required. (RZR and NOD)
7. Since 2000, the site plan approval criteria has not changed and, as no changes to the approved site plan are proposed, site plan re-approval is required. (RZR and application)

**Consistency and compliance with Town Plan and ordinances. (CU criteria A and H)**

8. The development standards regarding minimum lot size, width, setbacks, building coverage and off-street parking requirements are not applicable as no changes to the approved site plan are proposed. (RZR and application)
9. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. However, there are several citations in the Plan that encourage mixed uses and compact development in the downtown. (Town Plan)
10. The proposed project does not involve any new roads to be adopted by the Town. (application)
11. 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." (RZR)

**Traffic and nuisance considerations (CU criteria B, C and G)**

12. The proposed use will not generate any of the following: odor, glare, dust, or radiation. (application and testimony of I. Rich)
13. The proposed use will generate some noise from children dancing, adults exercising and group meetings, and some vibration from the weights and fitness equipment. The previous fitness equipment included weights up to 100 pounds and there were mats on the floor, but they did not make much difference in reducing any noise and vibration. The weights for this proposal will be rubberized and will not exceed 50 pounds. No rubber mats are proposed. The noise and vibration from the proposed use will not be a nuisance. (application and testimony of I. Rich )
14. The existing use on the first floor (below the proposed fitness/wellness center) generates a lot of noise that often starts at 5 AM and continues until midnight. (testimony of I. Rich)
15. §1.3.56 of the RZR defines "nuisance" in part as "A condition or activity which results in an undue adverse effect on a use of land or public place or public way, where such effect exceeds the effects of *existing uses* as determined at the affected land or public place or way." [emphasis added]. The space on the floor below will be affected by the proposed project. However, no evidence was presented that the proposed use would create an effect that exceeds the effects of the existing use there. (RZR and Exh. #1)
16. The proposed use will not increase the potential hazard from fire, traffic, accident or unsanitary conditions. (application)
17. The proposed use will utilize Pleasant Street, which is a Class 3 town highway. (application)

18. It is anticipated there will be between 37 – 50 customers daily to the facility, 6 – 12 of which will arrive by foot. Some of the children will be dropped off by school bus. (application)
19. The peak traffic period is between 5 – 7 PM. (application)
20. The proposed use will not add a volume to the road beyond its reasonable capacity. (application)

**Continuous strip** (CU criterion D)

21. No changes to the approved site plan are proposed. (application)

**Municipal services** (CU criterion E)

22. The proposed use does not have the potential to increase the enrollment in local public schools nor the need for emergency services, additional public water and sewer services, solid waste disposal or other planned community service. (application)

**Character of the area** (CU criterion F)

23. The surrounding area is a dense mixture residential and commercial uses. (NOD)
24. No exterior changes are proposed. (application)
25. According to the Town Plan, the subject property is proposed to be in the Central Business District (CBD). (Town Plan)
26. The purpose of the CBD is "to continue to concentrate retail and customer-oriented businesses and services in the core downtown area." (Town Plan)
27. The proposed use is a customer-oriented use. (application)
28. There are no stated policies and standards in the Town Plan that specifically relate to this proposed project. (Town Plan)

**Renewable energy resources** (CU criterion I)

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

## **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:

**Conditional Use Criteria**<sup>3</sup>

- A. The proposed use is not inconsistent with the objectives of the Town Plan and is consistent with 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.

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<sup>3</sup> Criteria A – D are from §4.2 of the RZR. Criteria E – I are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

- D. 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.
- E. The proposed use shall not have an undue adverse effect on the capacity of existing or planned community facilities.
- F. The proposed use shall not have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards in the Town Plan.
- G. The proposed use shall not have an undue adverse effect on the traffic on roads and highways in the vicinity.
- H. The proposed use shall not have an undue adverse effect on the bylaws in effect.
- I. The proposed use shall not have an undue adverse effect on the utilization of renewable energy resources.

## VI. DECISIONS<sup>4</sup>

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby grants conditional use approval for the fitness club as applied for in zoning permit application #Z13-76 with the following conditions:

- 1. The project shall be operated in accordance with the application and the findings of fact which are incorporated herein.
- 2. 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 22 day of October, 2013.

### RANDOLPH DEVELOPMENT REVIEW BOARD

#### Concurring Board Members

  
\_\_\_\_\_  
Joel Tillberg, Chair

  
\_\_\_\_\_  
Christopher Recchia

\_\_\_\_\_  
Eric Sturm

  
\_\_\_\_\_  
John Becker

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Samuel Lincoln

  
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David Miles

<sup>4</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 \$262.50 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.

SERVICE LIST

Zoning Permit Application #Z13-76

Irene Rich

**Irene Rich**  
**24 Pleasant Street, Unit C**  
**Randolph, Vt 05060**

Sam Sammis  
2 Park Street  
Randolph, VT 05060

**Bold listings indicate applicants and/or their representatives.**