

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

PERMIT: **#Z14-3**
PROPERTY ADDRESS: **18 Merchants Row**
PARCEL NO.: **231001**
PARCEL SIZE: **0.06 acres**

PROPERTY OWNER: **Scott Berkey**
The Berkey Co., Ltd.
49 Cottage Circle
West Lebanon, NH 03784

APPLICANT: **Guy Flatley**
47 Pent Road
Chelsea, VT 05038

I. INTRODUCTION

On January 14, 2014, **Guy Flatley** ("Applicant") filed an application for a zoning permit for a project generally described as a **business for tattooing, piercing and retail sales**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on January 21, 2014.

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 RZR. 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 January 28, 2014;
2. Documents contained in this application's file, the RZR, Town Plan and the Randolph municipal records.

The Board closed the public hearing on January 28, 2014 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. As the project is not either a one- or two-family dwelling, site plan approval is required.

3. The principal use of the property will be tattooing and piercing with accessory retail sales. The principal use is not listed on the Chart of Permitted and Conditional Uses. As such, RZR §2.4.3 applies and conditional use approval is required.

On January 14, 2014, 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. Applicant Guy Flatley was the only participant in this proceeding

Participating Board members were John Becker, Samuel Lincoln, Paul Putney¹, Gregg McCurdy, 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 use of 600 SF within an existing building for a tattooing, piercing and retail sales business. No changes to the exterior of the building or the site plan are proposed. (application and testimony of G. Flatley)
2. The business will be open Monday through Saturday from 11 AM to 8 PM and by appointment on Sundays. (application)
3. The business will employ 1 – 2 people. (application)
4. The Board concurs with the facts determined by the Administrator in Section II above. (application and RZR)

Consistency and compliance with Town Plan and ordinances. (SP criterion A and CU criteria A and H,)

5. The development standards for setbacks and coverages are not affected by this project as no increase in building footprint is proposed. (application)
6. The required off-street parking shall be as set by the Board. There are no off-street parking spaces for this property. However, there is on-street parking and the property is in close proximity to a municipal parking lot on Pleasant Street in which there is adequate parking to meet the needs of the business. (RZR and testimony of G. Flatley)
7. The amount of anticipated daily vehicular traffic is minimal (3 – 5 customers). (application)
8. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
9. The proposed project does not involve any new roads to be adopted by the Town. (application – only for CU)

¹ Mr. Putney is an alternate member of the Board who was sitting in place of Member David Miles pursuant to Section 206D of the Board’s Rules of Procedure. Mr. Miles did not participate in this Decision.

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

10. As stated in Facts # 1, 6 and 7 above, there are no changes to the site proposed, there is not on-site parking and minimal vehicular traffic is anticipated.
11. The proposed use will not generate any dust, noise, odor, glare, vibration or other nuisance. (application)
12. The proposed use does not have the potential to cause a hazard through fire, traffic, accident or unsanitary conditions. The used needles from the tattooing are the only items that are considered a biohazard and they will be disposed of properly and per state regulations. (application and testimony of G. Flatley)

Continuous strip (CU criterion D)

13. The building is at or very near the street line and that space between is paved and part of the sidewalk. (testimony of G. Flatley and Exh. #1)

Municipal services (CU criterion E)

14. As the proposed use does not have the potential to increase any of the following: enrollment in public schools, need for emergency services, need for public water and sewer capacity, solid waste disposal or any planned community services. (application)

Character of the area and effects on adjacent land (SP criteria B and D and CU criterion F)

15. The subject property is in the downtown. (application)
16. The proposed use is primarily a personal service business. It will be a small business in an area with other small businesses. (application)
17. All solid waste, except for the biowaste indicated in Fact #12, will be not be stored on-site and removed from the premises by the Applicant. (testimony of G. Flatley)
18. No changes to the exterior of the building are proposed. (application)

Renewable energy resources (CU criterion I)

19. 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:

1. **Conditional Use Criteria²**

- 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.

² Criteria A – D are from the RZR. Criteria E – I are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

- C. The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity.
- D. This criterion is not applicable. (*"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.

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 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. This criterion is not applicable. (*"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. This criterion is not applicable. (*"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. DECISIONS³

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decisions regarding the tattooing, piercing and retail sales business as applied for in zoning permit application #Z14-3:

- A. The site plan approval is granted with the following conditions:

³ 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.

1. The project shall be constructed as shown on the exhibits and completed and operated in accordance with the application and the findings of fact which are incorporated herein.
 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. On-site snow storage shall not interfere with sight distances.
 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.
- B. The condition use approval is granted 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 ^{27th} 25th day of February, 2014.

RANDOLPH DEVELOPMENT REVIEW BOARD
Concurring Board Members

Joel Tillberg, Chair

Christopher Recchia

GREGG H. Mc CURDY

Gregg McCurdy

John M. Becker

John Becker

Samuel Lincoln

Samuel Lincoln

Paul Putney

Paul Putney

