

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

PERMIT: **#Z14-9**  
PROPERTY ADDRESS: **6 Summer Street**  
PARCEL NO.: **245003**  
PARCEL SIZE: **0.22 acres**

PROPERTY OWNERS: **Justin Idoine**  
**Michael and Karen Idoine**  
**PO Box 412**  
**Randolph, VT 05060**

## **I. INTRODUCTION**

On January 13, 2014, Justin Idoine ("Applicant") filed an application for a zoning permit for a project generally described as adding 2 dwelling units to an existing 3-unit multi-family dwelling. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on March 11, 2014.

The application was determined to be incomplete pursuant to the Board Rules of Procedure Section 301 for reasons stated in a letter from the Administrative Officer ("Administrator") to the Applicant dated January 28, 2014. The application was deemed complete on March 11, 2014 upon receipt of supplemental information.

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 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 March 25, 2014;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

At the end of the final hearing, the Board closed the hearing and completed deliberations on the matter later that evening.

## **II. BACKGROUND**

In August of 2012, the Administrator, acting in her capacity as E911 Coordinator, inquired of Mr. Idoine as to how many units were in the building so that they could be properly addressed. Having received no response, the Administrator, acting in her capacity as such, informed Mr. Idoine in October of 2012 that she suspected additional units had been added to the multi-family dwelling

which would constitute a violation of the Regulations. She requested the Applicant contact her. Mr. Idoine left her a message in January of 2013 that he intended to apply for a zoning permit.

Having not received an application for a zoning permit, the Administrator issued a Notice of Violation in June of 2013. While some assurances were given to the Administrator that an application would be forthcoming, none did.

The Town pursued enforcement through the Town Attorney who re-issued a Notice of Violation in December 2013. An incomplete application was thus submitted as indicated in Section I above.

### **III. DETERMINATIONS BY THE ADMINISTRATOR**

The Administrator has made the following determinations:

1. The subject property is in the Apartment-Residential (AR) 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 "multi-family dwelling". Such a use is listed as permitted on the Chart of Permitted and Conditional Uses.
4. With a multi-family dwelling, the building is non-conforming because it does not meet the minimum lot size requirement. Therefore, to expand the non-conforming use by adding additional dwelling units requires approval under RZR §2.5.4.

On March 11, 2014, the Administrator referred the application to the Board for review and approval as determined.

### **IV. 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.<sup>2</sup>

Participating Board members were John Becker, Trini Brassard, Thomas Malanchuk<sup>3</sup>, Gregg McCurdy, David Miles Christopher Recchia and Joel Tillberg.

### **V. 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.*

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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> A letter from an abutter and addressed to the Selectboard, was received by the Administrator the day after the hearing. This letter was not entered into the record for this application nor viewed by the Board.

<sup>3</sup> Mr. Malanchuk is an alternate member that was sitting in place of absent regular member Samuel Lincoln. Mr. Lincoln did not participate in this proceeding.

1. The applicant has filed an application for adding 2 more dwelling units to an existing 3-unit multi-family dwelling (MFD) within the existing structure, as shown on Exh. #1. The applicant revised this site plan at the hearing (application and Exhs. #1 and 1B).
2. The additional units have been occupied for 3 to 6 years. Renovations to add the 2 units began in 2004 and were finished in 2010. (application and testimony of J. Idoine)
3. The only visible changes to the property are to the ingress and egress to the apartments and the planting of several trees along the Summer Street side of the building. (application and testimony of J. Idoine)
4. Site plan approval is required as the use is not a one-or-two family dwelling. (RZR and application)
5. The property is in the AR District. The minimum lot size for a MFD in the AR District is 15,000 SF plus 5,000 SF for every unit over 2. The subject property is 0.22 acres or 9,500 SF. For a 3-unit MFD, the required lot size is 20,000 SF and for a 5-unit MFD it is 30,000 SF. Therefore, the use as a MFD is non-conforming due to the small lot size. (RZR and application)
6. The development standards regarding setbacks and building coverage are not applicable as there was no increase in footprint. (RZR and application)
7. The required off-street parking is 1½ spaces per dwelling unit, or 8 spaces for 5 units. The property provides 10 parking spaces, 5 of which are stacked (i.e. does not have direct access to the road and a vehicle parked there could be blocked in if a car is parked behind them.). Each stacked set of spaces is dedicated to one unit. Tenants are responsible for removing snow from their own spaces but are not required to do so. (RZR and testimony of J. Idoine)
8. The tenants who have been designated the 4 spaces that have access from School Street have not removed snow from their spaces. (testimony of E. Sakai and J. Idoine)
9. There is a municipal parking lot directly across the road on Summer Street. The tenants who didn't remove the snow from their spaces use this municipal parking lot. (RZR, Exhs. # 1 and 4, and testimony of J. Idoine)
10. Tenants using the municipal parking lot interfere with use of the lot by area residents attending church and town events. (Exh. #5 and testimony of E. Sakai)
11. There is little area for on-site snow storage that does not interfere with designated parking spaces. (Exh. #1)
12. Many vehicles drive too fast down summer Street toward School Street. (testimony of E. Sakai)
13. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
14. The purpose of the Apartment-Residential Districts is: "To provide for single family, two (2) family and multi-family residential areas in those Village areas of the Town are suitable to such uses in order to accommodate the present population and land use in this area and to provide for future growth." The project is a MFD, however, it is on a corner lot in a dense neighborhood of commercial, institutional (churches) and residential uses. Two of the closest residences are single-family dwellings. (RZR, application and Exhs. #4-6)

15. The 4 parking spaces off School Street take access within 50 feet of the intersection of Summer and School Streets. The access crosses a sidewalk and there are trees along the driveway to the east. (Exhs. #1 and 4)
16. The 6 spaces off Summer Street take access within approximately 75 feet of the intersection. There is no sidewalk on Summer Street. (Exh. #1)
17. Emergency access to the structure would have to be from Town roads as there is no space on the lot. (testimony of J. Idoine)
18. The surrounding area is a dense mixture of commercial, religious and residential uses. The adjoining properties are used as residential to the north, office building to the east, municipal parking lot to the west and a church to the south. (application)
19. There are 5 trash barrels that are stored in a lean-to as shown on the revised site plan. The applicant has hired a private contractor to remove the tenants' trash twice a month. (Exhs #1B and 6)

## **VI. CONCLUSIONS**

Based on the foregoing Findings of Fact, the Board makes the following conclusions regarding the project as applied for in this application and including all application materials, exhibits and testimony presented at the public hearing:

**1. The project does not meet the standard of §2.5.4.<sup>4</sup>**

- a. The additional 2 units in a building that does not meet the minimum lot size for a single-family dwelling increases traffic very close to an intersection that often sees many vehicles driving too fast as it is approached.
- b. The location and configuration of the parking spaces results in inadequate snow storage and removal from the parking spaces, and thus to use of the municipal parking lot. This hinders the community's use of the lot.
- c. The stacking of the parking spaces lends itself to tenants having to move cars around to access the one that is blocked in. This creates increased turning movements on public roads, as there is no area on the property where this can be done. Additionally, these additional turning movement on School Street will create a hazard for pedestrians on the School Street sidewalk. While the Board has allowed stacked spaces in a garage to be used to meet the parking requirement, it has never allowed 50% of the spaces to be stacked nor such spaces where there is no area available on-site for cars to maneuver out of the way of each other.
- d. Not meeting the minimum lot size and utilizing all the property for the structure and parking eliminates the ability for emergency services (police, fire, rescue) to access the property without using the public highways, thus increasing the potential for conflict with vehicles and pedestrians. This also adds unnecessary risk to emergency personnel and equipment.

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<sup>4</sup> No non-conforming use shall be extended or expanded except with the approval of the Board, which shall have determined that no greater detrimental effect upon the community will result.

2. The project does not meet site plan criterion A.<sup>5</sup>

- a. The off-street parking requirements are not met, as indicated in 1(c) above. The RZR require, as a minimum, 8 off-street spaces. The project only provides 5 spaces with unfettered access to a public road.
- b. The project does not meet the purpose of the AR District as the location of the MFD is not suitable given the adjacent non-residential and single-family residences.

3. For the reasons stated in above, the project does not meet site plan criterion C.<sup>6</sup>

**VII. DECISIONS<sup>7</sup>**

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby denies the expansion of a non-conforming use and does not approve the site plan for this application.

Dated at Randolph, Vermont this 29<sup>th</sup> day of April, 2014.

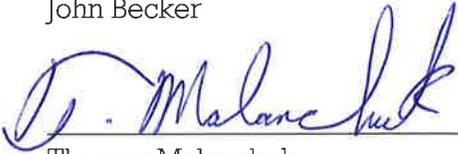
RANDOLPH DEVELOPMENT REVIEW BOARD

Concurring Board Members

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

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

  
\_\_\_\_\_  
Trini Brassard

  
\_\_\_\_\_  
Thomas Malanchuk

  
\_\_\_\_\_  
Gregg McCurdy

  
\_\_\_\_\_  
David Miles

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

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</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 #Z14-9

Justin Idoine

Michael and Karen Idoine

Justin Idoine  
PO Box 412  
Randolph, VT 05060-0412

Michael and Karen Idoine  
PO Box 953  
Wendell, MA 01379

Gordon and Bonny Grant  
1 School Street  
Randolph, VT 05060

Eric and Suzanne Sakai  
3 School Street  
Randolph, VT 05060-1129

Lee and Anna Sease  
via email  
dwarfpond@comcast.net

Ellen Baker  
via email  
eplumb3@gmail.com

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

