

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

PERMIT: **#Z12-7**
PROPERTY ADDRESS: **2975 Fish Hill Road**
PARCEL NO.: **118072**
PARCEL SIZE: **2.75 acres**

PROPERTY OWNER: **Frederick Pedersen**
2975 Fish Hill Road
Randolph, VT 05060

I. INTRODUCTION

On February 2, 2012, **Fred Pedersen** ("Applicant") filed an application for a zoning permit for a project generally described as **auto sales and service and a landscaping business**, both as cottage/home industries. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on February 2, 2012.

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 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 February 28, 2012;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on February 28, 2012 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1209 and supersedes the oral decision.

II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Rural Use 5 Acre (RU5) 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 "home or cottage industry". Such a use is listed as permitted on the Chart of Permitted and Conditional Uses.

On February 13, 2012, 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.

Participating Board members were John Becker, Trini Brassard, Samuel Lincoln, Christopher Recchia, Frank Reed, 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 conducting two home/cottage industries on his property: auto sales and service and landscaping contractor, as shown on Exh. #3. The applicant revised the site plan at the hearing to show the area that will be used for display of vehicles for sale and additional landscaping. (application)
2. The landscaping business will be seasonal and operated 7 days a week from dawn until dusk. Some landscaping equipment could be returning to the property after dark. (application and testimony of F. Pedersen)
3. The auto sales and service business will be open and operating up to 7 days a week from 7 AM to 7 PM and by appointment during times when the landscaping business isn't operational. (application and testimony of F. Pedersen)
4. The auto sales and service business may have up to 2 additional employees on-site. The landscaping business may have up to 10 employees but all will off-site except for an occasion need to pick up or drop off equipment on the property. (testimony of F. Pedersen)
5. The applicant resides in the house on the property. (application)

Consistency and compliance with Town Plan and ordinances. (SP criterion A)

6. The minimum lot size for the RU5 District is 5 acres. The subject property is 2.75 acres and is a pre-existing small lot. (RZR, Exh. #3 and application)
7. The front, side and rear setbacks for the RU5 District are 30 feet. The shortest setback distance from any proposed structure is approximately 30 feet. (RZR, application and Exh. #3)
8. The maximum allowable building coverage is 15% in the RU5 District, or 18,000 SF for the subject property. The proposed building coverage is 3,918 SF, or 3%. (RZR, application and Exh. #2)
9. The required off-street parking shall be as set by the Board. The proposed project has two general parking areas that provide parking spaces for 10 – 15 cars. One of which will also be used for parking of a dump truck and trailer used for the landscaping business. The parking left of the garage will be kept open for customer parking. (RZR, application, Exh. #3 and testimony of F. Pedersen)
10. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)

Character of the area (SP criteria B)

11. The surrounding area is a mixture of rural residential uses and undeveloped/forested land. The adjoining developed properties are used as residences. (application and Exh. #1)
12. The primary business for the applicant is the landscaping, which is seasonal. This business has no traffic impacts it does not generate any vehicular or pedestrian traffic other than the comings and goings of the applicant. The equipment used for the landscaping business will be kept indoors or will be significantly shielding from public traffic on Fish Hill Road by buildings. (application and Exh. #3)
13. The applicant has been doing auto repairs for over 10 years at this location with no traffic problems. The greatest potential for impacts on the appropriate and orderly development of the surrounding area is from noise. This could be mitigated by having the garage doors facing the applicant's residence and requiring the applicant to have the doors to the garage closed during noisy repairs. (application)
14. The applicant will have up to 5 cars on display for sale within the area designated in red on the revised site plan. (testimony of F. Pedersen and Exh. #3)
15. The area where scrap materials will be kept is by the resident and behind a fence barrier. (Exh. #3)
16. There will be no solid waste dumpster. (testimony of F. Pedersen)

Traffic and pedestrian considerations (SP criterion C)

17. The proposed use will utilize Fish Hill Road, which is a Class 3 town highway with a posted speed limit of 35 MPH. (application)
18. No changes to the existing access are proposed. The access has sight distances of 200 feet in both directions. The closest intersection to the access is about 3 miles. (application and Exh. #3)
19. Most of the traffic to the property will be from the north, thereby maintaining fairly consistent turning movements onto and off of Fish Hill Road. (testimony of F. Pedersen)
20. The auto sales and service business is anticipated to see 2 to 6 vehicles per day. (application)
21. Neither of the proposed uses generate any pedestrian traffic. (application)

Affects on adjacent land (SP criterion D)

22. The parking areas are existing, as is the garage used for repairs. (Exh. #1)
23. The adjacent land most impacted by the location of new buildings is to the south. This property is currently undeveloped. A treeline with stone wall separates these two properties. The treeline is proposed to remain. (application and Exhs. #1 and 3)
24. No new fencing, parking, loading or landscaping is proposed. (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 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. 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.

VII. DECISIONS¹

Based upon the foregoing Findings of Facts and Conclusions, approval is hereby granted for the site plan for the auto sales and service and landscaping business as applied for in zoning permit application #Z12-7 and including the evidence and testimony entered into the record as Findings of Fact. Site plan approval is granted with the following conditions:

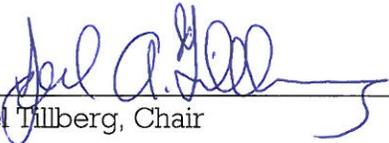
1. As the two businesses are considered home industries, they shall only be owned and operated by residents of the property.
2. Construction shall be as shown on Exh. #3 as revised at the hearing.
3. All landscaping shown on Exh. #3 as revised at the hearing shall be maintained in a healthy, living condition.
4. There shall be at least 3 parking spaces available for customers (i.e. not for customers vehicles awaiting service).
5. There shall be no more than 5 cars on display for sale at any one time in the area shown in red on Exh. #3 as revised at the hearing.
6. All scrap metal, vehicles, junk, etc., shall be kept screened in the area shown on Exh. #3.
7. The doors to the garage shall be kept closed during noisy auto repairs.
8. 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.
9. On-site stockpiling of snow shall not interfere with sight distances at the access point nor utilization of parking spaces.

¹ 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 \$250 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.

10. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
11. 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.

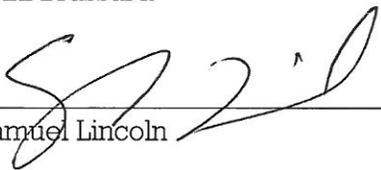
Dated at Randolph, Vermont this 27th day of March, 2012.

RANDOLPH DEVELOPMENT REVIEW BOARD
Concurring Board Members



Joel Tillberg, Chair

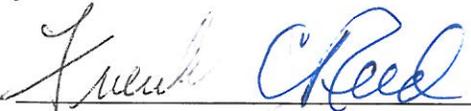
Trini Brassard



Samuel Lincoln



John Becker



Frank Reed



Christopher Recchia

