

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

PERMIT: **#Z14-5**
PROPERTY ADDRESS: **1917 VT Route 66**
PARCEL NO.: **106026**
PARCEL SIZE: **1.41 acres**

PROPERTY OWNER: **Summit Distributing, LLC**
Tom Frawley
240 Mechanic Street
Lebanon, NH 03766

I. INTRODUCTION

On February 24, 2014, Tom Frawley ("Applicant") filed an application for a zoning permit for a project generally described as the replacement of an existing gasoline pumps and canopy and convenience store with a new 4,175-SF store and 10 gasoline dispensers. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on February 24, 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 March 25, 2014;
2. Documents contained in this application's file, the RZR, Town Plan and the Randolph municipal records, including Memorandum of Decision for zoning permit #Z07-65 ("MOD").

The Board closed the public hearing on March, 25, 2014 and deliberated on this application. This written decision is the result of those deliberations.

II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Interchange-Northwest (INT-NW) District.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.

3. The use is not listed as any of the allowable uses in the INT-NW District (see §6.9.3(C)(2)) therefore it is a non-conforming use and approval to expand a non-conforming use is required pursuant to §2.5.4¹.
4. The proposed building does not meet the rear setback requirement and the project does not meet the building and lot coverage requirements, therefore a variance is required from these standards. The Applicant did request the variances.

On February 24, 2014, the Administrator referred the application to the Board for review and approval as determined and requested.

III. PARTICIPANTS

For the purposes of this application, "interested persons" are those who fulfill the requirements of 24 VSA ch. 117 §4465. The Applicant's representatives Tom Frawley and Russ Rohloff were the only participants in this proceeding

Participating Board members were John Becker, Trini Brassard, Thomas Malanchuk², Gregg McCurdy, 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 and Property Description

1. The Applicant has filed an application to replace the 8 existing gasoline dispensers and canopy, and 1,400-SF convenience store with a new 4,175-SF convenience store and 10 gasoline dispensers and revised canopy. The existing diesel dispensers and canopy, and stormwater management facility will remain unchanged. (application and Exh. #1)
2. The subject property is 1.41 acres with a maximum depth of 150 feet. The existing development of the property has nearly 6% building coverage and 41% building and lot coverage. The existing store is 28 feet from the rear property line. (application and Exh. #1)
3. The subject property is in the INT-NW District. The maximum building coverage is 8% and lot coverage is 24%. The side and rear setback requirement is 30 feet and, for expansion of existing building or parking, no less than 95 feet. (RZR)
4. The subject property is in the COM District, which requires 5,000 SF of lot size for each dwelling unit, thereby requiring 45,000 SF for 9 units. With the lot line adjustment, the subject property will be 35,552 SF therefore a variance is required from the minimum lot size requirement. (RZR and application)

¹ The Administrator, having determined that the use is not a conditional use, further determined that the standards in §6.9.5 and §6.9.6 are not applicable and, as such, review by the Design Review Advisory Commission was also not required.

² Mr. Malanchuk is an alternate member of the Board who was sitting in place of Member Samuel Lincoln pursuant to Section 206D of the Board's Rules of Procedure. Mr. Lincoln did not participate in this Decision.

Variance Criteria (for rear setback, and building and lot coverage requirements)

5. The minimum lot size in the INT-NW District is 5 acres. The subject property, at 1.41 acres, is a pre-existing non-conforming lot. The front and rear setback requirements of the District account for 200 feet of lot depth. This lot is only 150 feet deep at its widest. The adjacent lots are all over 5 acres and have greater depths. (RZR, Exh. #1 and municipal records/tax maps)
6. In order to avoid impacts to the more important VT Route 66 setback, the new building is shifted to the north and thus closer to the rear property line. If the rear setback is enlarged by shifting the store to the south, this would impact vehicular safety. If the rear setback is enlarged by constructing a smaller store or changing its location or orientation, this would impact vehicular safety and code compliance within the store. (Exhs. #1 and 2 and testimony of T. Frawley)
7. The project seeks to redevelop the existing use. Such redevelopment would result in a facility that meets current building codes, standard practices for filling stations with convenience stores, and improvements to aesthetics, safety and traffic flow. (Exh. #1)
8. The existing facility was built in the 1960's and does not meet current accessibility standards. There is no possibility to redevelop the property in an efficient, safe and code-compliant manner due to the narrowness of the lot. (Exh. #1 and testimony of T. Frawley)
9. Significant investment in the property for use as a filling station and convenience store was made a few years ago when the diesel dispensers and canopy were constructed and other site improvements were made such as construction of a new access onto Harvey Road and a stormwater management system. (Exh. #1 and MOD)
10. The Applicant received approval for a similar project in 2007 which is before the current INT-District regulations were adopted. (Exh. #1, RZR and MOD)

Expanding a non-conforming use. (§2.5.4)

11. The property has been utilized as a gasoline filling station and convenience store dating back to the 1960's. (Exh. #1)
12. The existing store and gasoline dispensers and canopy are old and deteriorated. They will be replaced with structures that are of an architectural style reflecting New England landscapes without impacting existing viewsheds. (Exh. #1)
13. The project improves efficiency of the site access, safety of on-site traffic circulation and safety of parking. (Exhs. #1 and 2)

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

1. The side setback requirement for the INT-NW District is 30 feet. The store is approximately 73 feet from the closest side property line. (application, RZR and Exh. #1)
2. The front setback requirement is 170 feet from the centerline of VT Route 66 or the setback of the existing building or parking if less than 170 feet, but in no case less than 95 feet. The existing site is 108 feet from the centerline and is proposed to be 111 feet. (RZR and Exh. #1)
3. The required off-street parking for retail space is 6 spaces for every 1,000 SF of gross floor space. The proposed project provides parking spaces for 27 cars, 10 of which are at the gasoline dispensers. (application and RZR)
4. There is no clear and unambiguous language in the Town Plan that directly relates or refers to the proposed project. (Town Plan)

Traffic and pedestrian considerations (SP criterion C)

5. The proposed project will continue to utilize its existing two accesses onto VT Route 66, which is a Class 1 state highway. These access have received a state highway access permit. (Exh. #4)
6. The proposed parking area is next to the proposed store and includes sidewalks to the store thereby improving pedestrian safety by minimizing vehicular-pedestrian contact points. (Exh. #1)
7. The access and exit points, including the connector to the adjacent restaurant, are as far from the proposed store as possible which limits turning movements near the accesses thereby helping maintain on-site traffic circulation. (Exh. #1)
8. Sight distances on VT Route 66 from the existing egresses are approximately 400 feet in both directions. The AASHTO Green Book recommends a minimum sight distance of 350 feet for a 40 mile per hour speed limit, which it is for VT Route 66 at the subject property. (application and Exh. #1)
9. The proposed on-site traffic circulation keeps the tractor trailers utilizing the diesel dispensers separate from the other vehicular traffic. Additionally, the fuel storage tanks can still be filled and deliveries made to the store without interfering with other vehicular traffic. (Exh. #1 and MOD)
10. The realignment of the dispensers provides ease of access, improved turning radius into and out of the dispensers and additional on-site space for vehicle queuing. (Exh. #1)

Character of the area and effects on adjacent lands (SP criteria B and D)

11. The surrounding area is a mixture of commercial and light industrial uses in close proximity to an interstate interchange. The adjoining properties are used as a driving range to the south, a restaurant to the west, the interstate to the east and an open field currently in agricultural use to the north. (MOD)
12. The proposed project will impact the surrounding area by improving traffic circulation with and between the adjacent restaurant. (application)
13. The proposed project will not impact future development on adjacent lands. (Exh. #1)
14. The existing site has an unscreened solid waste dumpster and storage containers. The proposed site will not have the storage containers and the dumpster will be screened by fencing. The location of this screened dumpster will be near the dumpsters on the adjacent property. (Exh. #2)
15. Where currently the building and canopy are flat, the new ones are designed with hip roofs and other architectural details such as cupolas and gables to be in harmony with more traditional New England architecture. (application and Exhs. #1, 2 and #6)
16. The proposed construction is still a single-story structure to help preserve the scenic character of the area. (Exh. #1 and #2)
17. The proposed project includes removal of three utility pole-mounted lights and all new lighting will utilize cut-off fixtures which should reduce the incidence of off-site lighting and lighting of the night sky over what currently is produced by the existing lighting. (Exh. #2)

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. Variance Criteria

- A. There are unique physical circumstances or conditions, including shallowness and size of the lot or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulations in the neighborhood or district in which the property is located.
- B. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- C. The unnecessary hardship has not been created by the appellant.
- D. The variance will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.
- E. The variance represents the minimum variance that will afford relief and represents the least deviation possible from the zoning regulations and from the plan.

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. 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. DECISIONS³

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decisions regarding the replacement of a gasoline station and convenience store as applied for in zoning permit application #Z14-5:

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

- A. Approval is granted to expand a non-conforming use.

- B. The site plan approval is granted with the following conditions:
 - 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. Construction shall be as shown on Exhs. #2 and 6.
 - 3. All landscaping shown on Exh. #2 shall be maintained in a healthy, living condition.
 - 4. 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.
 - 5. The subject property shall have adequate entrance and exit for emergency vehicles at all times.
 - 6. 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 29th day of April, 2014.

RANDOLPH DEVELOPMENT REVIEW BOARD
Concurring Board Members



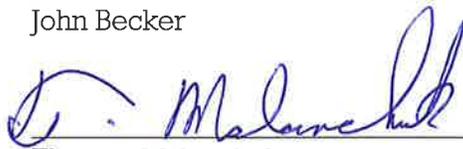
Joel Tillberg, Chair



John Becker



Trini Brassard



Thomas Malanchuk

Christopher Recchia



David Miles

Dissenting Board Member



Gregg McCurdy

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.