

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

PERMIT: **#Z13-89**
PROPERTY ADDRESS: **15 North Main Street, Unit 1**
PARCEL NO.: **234007**

PROPERTY OWNER: **Peter Winslow**
Winslow Family, LP
PO Box280
Randolph, VT 05060

I. INTRODUCTION

On October 21, 2013, Peter Winslow ("Applicant") filed an application for a zoning permit for a project generally described as the **installation of an ice cream service window in an existing retail store**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on November 12, 2013.

Under the Randolph Zoning Regulations ("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.

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 November 18, 2013;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on November 18, 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. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The use is accessory to the general retail sales, which is listed as permitted on the Chart of Permitted and Conditional Uses.

On October 30, 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. Peter Winslow and Penny Young, representatives of the Applicant, were the only participants in this proceeding.

Participating Board members were John Becker, Thomas Malanchuk¹, 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.

1. The applicant has filed an application for the replacement of pane glass window on an existing retail store (Belmains) with a ±15-foot long slider glass window to accommodate walk-up window service for ice cream as shown on Exh. #1. (application and Exh. #1)
2. Ice cream service will be open no earlier than 8:30 AM nor later than 10 PM. (testimony of P. Young)
3. A table without seats will be set up outside the store for convenience of customers. (testimony of P. Winslow)
4. The sale of ice cream is incidental to the existing retail store and therefore an accessory use. (RZR)
5. Site plan approval is required as the proposed modifications could potentially effect pedestrian traffic and adjacent properties, which are considerations under site plan criteria C and D. (RZR)
6. Other than the work described in Fact #1 above, no other permanent changes are proposed. (application)
7. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
8. 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." (Regulations)
9. When the window is open for service, a 3-foot wide aisle will be roped off for patrons to line up along the building and thus not interfere with pedestrian traffic. This will leave 6 feet of width open for pedestrians on the sidewalk. (Exh. #1 and condition of approval)

¹ Thomas Malanchuk is an alternate member who was sitting in place of absent regular members pursuant to Section 206D of the Board's Rules of Procedure.

10. When the window is open for service, a trash receptacle will be placed near the exit of the window service area. The receptacle will be maintained in a neat and sanitary manner by the property and/or store owner. (Exh. #1 and condition of approval)

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. Site plan criterion 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.) is not applicable as no changes are proposed that affect this criterion.
- 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 provided at least 6 feet of sidewalk width along the service area is kept clear for through pedestrian traffic.
- 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 provided that the trash receptacle is properly maintained.

VI. DECISIONS²

Based upon the foregoing Findings of Facts and Conclusions, approval is hereby granted for the site plan for the ice cream service window as applied for in zoning permit application #Z13-89. 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 Exh. #1.
3. The table and trash receptacle shall be located in the general vicinity of the ice cream service window to accommodate customers, shall not interfere with pedestrians on the sidewalk and shall abut the building.
4. The trash receptacle shall be maintained in a neat and sanitary manner.
5. Every effort shall be made to keep clear by the window service area at least 6-feet of sidewalk width for through pedestrian traffic.

² 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.

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 27 day of December, 2013.

RANDOLPH DEVELOPMENT REVIEW BOARD

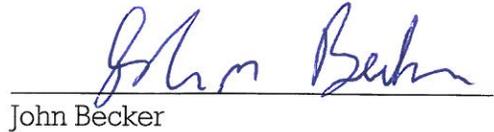
Concurring Board Members



Joel Tillberg, Chair



Thomas Malanchuk



John Becker



David Miles

Christopher Recchia