

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

PERMIT: **#Z11-33**
PROPERTY ADDRESS: **71 VT Route 12S**
PARCEL NO.: **121001.010**
PARCEL SIZE: **1.15 acres**

PROPERTY OWNER:
Aubuchon Realty Co., Inc.
23 West Main Street
Westminster, MA 01473

APPLICANT: **Irene Rich**
Riches Recycled
24 Pleasant Street
Randolph, VT 05060

I. INTRODUCTION

On June 2, 2011, **Irene Rich** ("Applicant") filed an application for a zoning permit for a project generally described as **the addition of food service to a recently-approved retail sales establishment**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on June 7, 2011.

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 public hearings held on June 29 and July 27, 2011;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records, including previous notices or memoranda of decisions for the subject property.

The Board closed the public hearing on July 27, 2011 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 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 categorized as "restaurant." Such a use is listed as permitted on the Chart of Permitted and Conditional Uses.

On June 7, 2011, 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 attached Service List for this project identifies persons¹ who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were John Becker, Trini Brassard, Scott Berkey², Christopher Recchia³, Krista Rumrill 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 additional use of food service to a recently-approved retail sales establishment. Several versions of the site plan were presented and the final one upon which this decision is based is Exh. #6. (application and Exh. #6)
2. The food service will include a take-out/service window on the west side of the building. Outdoor seating, including benches and picnic tables will be provided, as well as several indoor seats. Food service will include ice cream at first and may expand to other foods such as hot dogs, chili, etc. (Exh. #5 and testimony of I. Rich)
3. The remaining part of the property will continue to be used for storage, and propane filling and retail sales, both as accessory to retail sales on an adjacent lot. (application, testimony of I. Rich)
4. The proposed use is not a one- or two-family dwelling therefore site plan approval is required. (application and Regulations)
5. The property was approved for retail sales in 2000 but the permit was never used for such except that some space is used for storage and a propane filling station associated with the retail sales on the adjacent lot. The property was re-approved for retail sales in April of 2011. (municipal records)

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

6. The development standards for minimum lot size, setbacks and maximum coverage are not applicable as no changes to the building footprint are proposed. (Regulations and application)

¹ 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.

² Mr. Berkey is an alternate member who participated in place of absent regular member Sam Lincoln.

³ Mr. Recchia participated in this matter but abstained from voting on in.

7. The required off-street parking for retail sales is 6 spaces for every 1,000 SF of gross floor space but this may be modified or waived by the Board. It has been demonstrated in the past that 4 spaces per 1,000 SF is adequate for retail sales and the Board so modified the requirement for this use and property. The previously-approved amount of retail space was 5,185 SF. The food service will be 600 SF of gross floor space. Therefore, the amount of retail space will be reduced to 4,585 SF. However, of this space, 1,336 SF is strictly for storage and parking of the company vehicle, leaving 3,249 SF of retail space. The required off-street parking for the retail space is then 13 spaces. (Regulations, MOD for #Z11-6 and Exh. #6)
8. The required off-street parking for restaurants is 6 spaces for every 1,000 SF of gross floor space but this may be modified or waived by the Board. With 600 SF of food service, the Regulations require 4 spaces for the food service and a total of 17 spaces for both uses. A total of 18 spaces are provided. (Regulations and Exh. #6)
9. The business has been open for 3 weeks (without food service) and there have been no issues with the parking. Additionally, a certain number of retail patrons will also be food service patrons, thereby reducing the overall need for parking. (testimony of I. Rich)
10. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)
11. 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." The proposed project is a commercial enterprise in the Commercial District. (Regulations)

Character of the area (SP criterion B) and affects on adjacent land (SP criterion D)

12. Site plan criteria B and D are not affected by the proposed project.

Traffic and pedestrian considerations (SP criterion C)

13. No changes to the approved parking or on-site traffic circulation pattern are proposed. (Exh. #5)
14. Outdoor seating is proposed. Planters and fencing will be in place to provide a physical barrier/separation between the pedestrians/patrons and vehicular traffic. (Exh. #5)

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.

VI. DECISIONS⁴

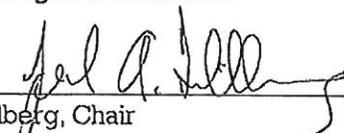
Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decisions regarding retail sales as applied for in zoning permit application #Z11-6 and including the evidence and testimony entered into the record as Findings of Fact.

- A. The off-street parking requirement is modified to 13 spaces as following:
 - 1. The basic requirement is modified to 4 spaces (instead of 6) per 1,000 SF of gross floor space for retail uses.
 - 2. The space used for storage and the parking of a company vehicle does not count toward the gross floor space for the retail use.
- B. Site plan approval is granted with the following conditions:
 - 1. Development shall be as shown on Exh. #6.
 - 2. Snow from parking areas must not be plowed onto public highways, adjoining streams or waterways, or onto abutting properties. Stockpiled snow shall not interfere with sight distances at exit/entrance points nor take up designated parking spaces. Snow must be plowed elsewhere on the subject property or removed.
 - 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.

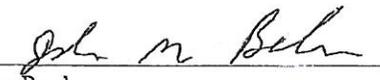
⁴ An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of \$250 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the 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.

Dated at Randolph, Vermont this 12th day of September, 2011.

RANDOLPH DEVELOPMENT REVIEW BOARD
Concurring Board Members



Joel Tillberg, Chair



John Becker



Trini Brassard

Frank Reed



Scott Berkey



Krista Rumrill

SERVICE LIST

Zoning Permit Application #Z11-33
Irene Rich & Aubuchon Realty Co., Inc.

William Jakubowski
CVPS
77 Grove Street
Rutland, VT 05701

Greg Moran
Aubuchon Realty Co., Inc.
95 Aubuchon Drive
Westminster, MA 01473

Bold listings indicate applicants and/or their representatives.