ZONING BOARD OF ADJUSTMENT
STAFF REPORT
JULY 7, 2016

GENERAL INFORMATION:

Landowner: Center Road Properties, LLC (Pomerleau)
Applicant: Eric & Rebecca Koval
Address: 51 Center Road, Essex Town

Proposal: Request for an Unspecified Use approval to operate a custard/ice cream shop in one of the commercial structures currently situated on the southeast corner of Center Road and Saybrook Road. A few tables or a counter is proposed. No food will be prepared on-site.

A portion of retail, (**not requiring ZBA approval)** to include but not limited to selling current and past trading cards, small sports memorabilia items, candy and snacks is proposed in combination with the unspecified use.

BACKGROUND:

This is a 2.07 acre lot located in the Residential-Business (RB) Zoning District. Currently the lot houses 3 buildings. The first being the former furniture building, which is now occupied by a 38-child daycare facility, two small commercial uses, and vacant space; the second building is a residential duplex; and the third being a former garage that was approved to be converted into commercial space. Records show that a beauty parlor was located in this building in the earlier years.

This parcel is surrounding by residential uses, primarily condos and apartment buildings.

The following approvals were granted on this parcel of land:

January 26, 1984, Planning Commission (PC) approval of a 3-lot subdivision of lands known as 51-61 Center Road, as follows: An 83-acre parcel; A second parcel owed by the Collette Furniture; and a 26-acre +/- parcel, with existing 2 family home and outbuildings; and a third 26+/1 acre lot.
June, 1985, PC approval for an addition to the building;
February 25, 1988, PC approval for the creation of Lot D. (The applicant did not go through the development of this lot over the issue of a condition requiring a second 60' access on the easterly portion of the property. They submitted a new application without this access in 1989.)
March 23, 1989, PC denial of the 4th lot.
July 26, 1990, State of VT Superior Court Decision re: appeal of the 3/23/89 PC Decision. Court ruled approval of Lot D without a southerly 60' access.
June 3, 1991 – ZBA approval for the operation of a dance studio. Collette Furniture shared the building;
August 7, 1991, ZBA approval to operate a 24-child pre-school/day care facility;
August 15, 1991, PC approval to operate a 24-child pre-school/day care facility;
December 10, 1993, ZBA approval for retail sales associated with dance studio;
March 19, 2003, Administrative Approval for minor improvements to front façade and landscaping;
April 28, 2005, PC approval of free standing sign;
May 10, 2006, ZBA approval to amend daycare hours to 6:30 a.m. to 6:00 p.m.;
April 14, 2011, ZBA approval to increase daycare to 38 children;
Administrative Use Permit #2016-42, Music Space

Administrative Use Permit #2016-43, Ping Pong Recreation

GENERAL INFORMATION:

A traffic analysis was requested and provided by Doug Goulette, P.E., of Lamoureux & Dickinson Consulting Engineers, as follows:

Proposed Shop
Basis of calculations – Institute of Traffic Engineers Parking Generation,
4th edition Category # 939 (Bread/donut/bagel shop)=
8 parking spaces/1,000 sf gross floor area x 1,000 sf = 8 spaces

Existing Daycare Use
Basis of calculations – Institute of Traffic Engineers Parking Generation
4th edition Category # 565 (Day Care Center)=
3.16 parking spaces/1,000 sf gross floor area x 3,200 s.f.= 10 spaces

1,200 s.f. space – Music Instruction
Basis of calculations – Town of Essex Zoning Regulations, Table 3.3
Office use as noted on 4/22/16 Zoning Permit
1 space/250 sf gross floor area x 1,200 sf = 5 spaces

2,000 s.f. space – Mentoring Office
Basis of calculations – Town of Essex Zoning Regulations, Table 3.3
Personal Services use as noted on 4/22/16 Zoning Permit
1 space/200 sf gross floor area x 2,000 sf = 10 spaces

Vacant 2,400 s.f. space – Possible Martial Arts Studio
Basis of calculations – Institute of Traffic Engineers Parking Generation
4th edition Category # 492 (Health/Fitness Club)=
5 spaces/1,000 sf gross floor area x 2,400 sf = 12 spaces

Duplex Apartment
Basis of calculations – Town of Essex Zoning Regulations, Table 3.3
Residential
2.3 spaces/unit x 2 units = 5 spaces

Total Required Parking Spaces = 50 spaces

The building proposed for the mixed use shop has its own curb cut off Center Road (Route 15), and has a parking lot with 8 spaces. The other two buildings on this parcel are served by a second curb cut to the east, which provides access to both a parking area along Center Road with 25 spaces, and a parking area to the south of the commercial building with 19 spaces. This results in a total of 52 spaces currently serving this site. As can be seen, the existing spaces exceed the calculated required spaces of 50. Currently, because of the vacancy of the lease space in the large building to the east, there will be even more parking available on the site to accommodate the new shop. If the 8 spaces in the western parking area become full, overflow parking can be accommodated in the other parking areas. There is an existing 8' wide paved path along Center Road linking both driveways. This path could be used by pedestrians to walk between the two parking areas. Signage may be required to direct the new shop visitors to use the adjacent parking lot if needed for overflow parking.

The peak parking periods are as follows:

Daycare

- *Weekdays early in the morning and right after working hours.*

Proposed Mixed Use Shop

- *After dinner period and weekend afternoons and evenings*

Vacant commercial spaces

- *Unknown*

Duplex residential building

- *Before and after typical business hours*

Music Instruction

- *Typical business hours, weekdays only, and some limited night hours for the music instruction*

Mentoring Office

- *Typical business hours, weekdays only*

Shared Parking Summary *- In our opinion, the existing number of parking spaces serving this site can adequately accommodate the proposed new mixed use shop, in addition to accommodating the existing and anticipated (martial arts studio) uses. This conclusion is based on the fact that there are 2 more spaces existing over what is calculated to be the parking needs in the future, but more importantly, that the peak parking demand periods for the various uses are not concurrent.*

Staff Comments:

The Recreation Director has no concerns with the proposal.

The Fire Chief is concerned with creating congestion and potential accidents. He does not believe that people would know to use the main entrance and would have difficulty existing the smaller parking lot and that people would park on Saybrook Road.

The Police Chief agreed with the Fire Chief's concerns and asked the applicant to offer specifics on signage and its placement.

Public Works requested that the applicant receive approval from the State and submit results to the Town regarding the proposed traffic changes. Public Works noted that the making of ice cream and/or custard may require a license from the VT Dept. of Health or the Agency of Agriculture. Information regarding licensing for frozen desserts was provided to the ZBA. Public Works requires a grease trap be installed should a commercial sink be necessary on the premises.

A copy of staff emails or memos was provided to the ZBA and is in the file of record in the Planning & Zoning office.

<u>Applicant's comments regarding Section 5.7-Conditional Use criteria</u>:

(A)(1)- Capacity of existing or planned community facilities – It is our opinion that the proposed 1,000 s.f. mixed use shop will not place additional demands on existing or planned community facilities. There are no proposed site improvements such as new curb cuts which would affect the Town roads. Further, the site has access to the existing 8' wide multi-use path which runs along the entire frontage of the parcel.

(A)(2) – Character of the area affected- This project will utilize existing buildings and site improvements which have, over the years, been used for many different uses. No new buildings or infrastructure are proposed. The proposed mixed use is consistent with the commercial nature of this area, with businesses located along Essex Way to the west and Route 15 to the east. It is our opinion the proposed retail and ice cream shop will be an amenity to the area. The proposed use is a neighborhood scale commercial use that will primarily serve the surrounding residents.

(A)(3) – Traffic on roads and highways in the vicinity- As this project is only proposing to occupy a 1,000 s.f. existing building, it is not anticipated that the new use will have an undue adverse impact on the local road system, or along Center Road. This building was once occupied by a hair salon, and it is not anticipated that traffic generated from the proposed use will be significantly different from previous uses.

(A)(4) – Bylaws and Ordinances in effect – We are unaware of any violations to existing municipal bylaws or ordinances which would apply if the proposed mixed use shop were approved.

(A)(5) – Utilization of renewable resources – We are unaware of any

interference this proposed use of this building would have on the sustainable use of renewable energy resources, including the existing and future availability of, and access to, such resources on adjoining properties. There are no structural modifications proposed to the existing exterior of the building.

(B)(1) – Conformance with the Town Plan- The 2016 Town Plan includes goals to increase the tax base by encouraging economic development and diversity. This project meets this goal by providing a diverse use and increasing the tax base. It also proposes a neighborhood scale retail use within the Town Center.

(B)(2) – Site Plan Review Criteria - An existing conditions Site Plan is enclosed with this application prepared in 2006. The current site conditions are substantially the same as what is depicted on the 2006 plan. There are no site improvements proposed with the occupancy of this existing building. Eight existing parking spaces are adjacent to this building.

(B)(3)- Conformance with community character- It is our opinion that a neighborhood style mixed use retail/ice cream shop will enhance the character of the community by providing a place where young and old can gather to enjoy a snack and enjoy sports memorabilia from today and the past. This use is envisioned to be a throwback to the 1960's neighborhood corner store where you could buy a deck of baseball cards while enjoying a candy bar or ice cream cone.

PROPOSED FINDINGS:

1. The applicants, Eric & Rebecca Koval, are residents of the Town of Essex, and the Town is a municipality located in Chittenden County.

2. The applicants are proposing to utilize an existing 1,000 sq. ft. commercial building located on a parcel of land housing two other buildings (one commercial and a residential duplex) at 51 Center Road, Essex Jct., Vermont. There are no proposed changes to the physical characteristic of the site.

3. The applicant has submitted the following plan:

   Center Road Properties LLC. Essex VT 51 Center Road, Essex, VT Existing Conditions, dated 5-15-06, drawn by DuBois & King.

4. The property is located in the Residential-Business (RB) Zoning District. The purpose of this District is to provide for residential and limited commercial uses within a greenway setting along the VT Route 15 corridor. This area includes properties, which are predominantly residential in nature located on the south side of VT Route 15 in Essex Center. Home occupations, accessory dwellings and limited office development are encouraged in this district to enable some expansion of uses, preserve the predominantly residential character of the area, minimize traffic and congestion and avoid strip development. The RB district was established to protect existing residential uses while allowing for limited commercial uses that are low traffic generators and are compatible with neighboring residences.

5. Pursuant to state statute a 'Notice of Hearing' was provided to the applicant for posting on the property and the abutting property owners were notified of this meeting by certified mail.

6. This proposal was reviewed under Article II, Section 2.3(C)(3) 'Unspecified Use' and Article V, Section 5.7 'Conditional Use' of the Official *Town of Essex Outside the Village of Essex Junction Official Zoning Regulations*.

7. At its 6/23/16 Planning Commission meeting, the PC reported that they were satisfied with a ZBA review of the site plan components of the proposal.

8. The applicant will be required to submit any permits from the VT Dept. of Fire & Safety, Dept. of Health, or Agency of Agriculture that may be necessary to start up the business.

9. The applicant will be required to install a grease trap should a commercial sink be installed on the premises.

10. The parcel has two existing curbcuts and a pathway that connects one parking lot to the other. This applicant advised that this use will have access to both parking lots. The applicant will be required to work the Zoning Administrator on signage, including directional signage, and its placement.

11. The parcel has two existing curb cuts located off Route 15. The applicant will be required to provide a sign-off on the proposed use from the Agency of Transportation.

12. _____ spoke on behalf of this application.

13. No one from the public spoke on behalf of this application. OR _____, made the following comments regarding the proposal.

FINDINGS OF FACT ANALYSIS (SECTION 5.7)

The Board of Adjustment, after public notice and public hearing, may grant Conditional Use Approval, provided that the proposed conditional use shall not adversely affect:

a) The capacity of existing or planned community facilities;
b) The character of the area/neighborhood affected;
c) Traffic on roads and highways in the vicinity;
d) By-laws now in effect;
e) Utilization of renewable energy resources;
f) Is in conformance with the Town Plan.

Staff Evaluation of Above Required Findings:

a) With proper conditions the proposed use will not adversely affect the capacity of existing or planned community facilities;
b) With proper conditions the proposed use will not adversely affect the character of the area/neighborhood affected;
c) With proper conditions the proposed use will not adversely affect the traffic on roads and highways in the vicinity;
d) The proposed use will not adversely affect the by-laws now in effect;
e) The proposed use will not adversely affect utilization of renewable energy resources;
f) The proposed use is in conformance with the Town Plan.

Further, regarding specific standards, the ZBA finds the applicant has met the burden of Section 5.7(B1)(B2)&(B3) as the proposed use meets the Town Plan goal by providing a diverse use and increasing the tax base; no site improvements are proposed; adequate parking serves all the buildings located on the parcel; and a neighborhood style mixed use retail/ice cream shop fits with the residential uses surrounding the property.

PROPOSED CONDITIONS:

1) The applicant shall file a Zoning Permit for the use and any fit-up necessary to operate this use.
2) A Certificate of Occupancy inspection shall be required from both the State and Town prior to opening for business.
3) Prior to the issuance of a Zoning Permit, the applicant shall submit a letter from VTrans confirming a State 1111 permit is not required.
4) The applicant shall have access to both curbcuts associated with the parcel. Signage, including directional signage, and its placement shall be approved by the Zoning Administrator. The line stripping to the existing parking spaces shall be maintained so that they are visible at all times.
5) A copy of the Health Permit, or letter from the Health Department stating a

permit is not required for the custard/ice cream use, shall be submitted with the Zoning Permit application.

6) Prior to the issuance of a Certificate of Occupancy, a grease trap shall be installed if a commercial sink is located in the unit.
7) All Findings and stipulations from previous approvals not affected by these amendments shall remain in effect.
8) By accepting the conditions of this approval without appeal, the applicant confirms and agrees for itself and all assigns and successors in interest that the conditions of this approval shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the applicant and all assigns and successors in interest.

Attachments: Staff Emails/Memos

g:/commdev/zba/reports/Center Rd. 51-July16