

**CHARLOTTE ZONING BOARD OF ADJUSTMENT
CONDITIONAL USE REVIEW
FINDINGS OF FACT AND DECISION**

In Re: ZBA-17-172-CU Conditional Use Review application for Gemini Properties, LLC to redevelop the structure known as the “Wildflower Farm” into a multiple-use commercial operation. The property is located at 3488 Ethan Allen Highway in the Town of Charlotte (M05B05L24).

I. Introduction and Procedural History

On November 20, 2017, Debra Kassabian and Mike Dunbar of Gemini Properties, LLC (the property owning entity) submitted an application for Conditional Use Review to undertake the redevelopment and change of use of a structure known as the “Wildflower Farm” into a multiple-use commercial facility (including a restaurant, retail, and office space), which is located on a 5.3 acre property at 3488 Ethan Allen Highway (i.e. US Route 7) within the Village Commercial (West Charlotte Village – West of Route 7 only) zoning district.

The application proposes converting the use of structure into a 1,532 sq. ft. office complex, a 1,309 sq. ft. retail operation, and a 495 sq. ft. seating area for the restaurant. The change of use of the property triggers a Conditional Use Review with the Zoning Board of Adjustment (ZBA) and a Site Plan Review with the Planning Commission (PC).

The ZBA had initially declined to hear the applicants’ proposal in a joint ZBA and PC hearing. The Conditional Use Review application was warned for a public hearing held on January 10, 2018, while the Site Plan Review with the PC was warned for a public hearing to be held on January 18, 2018. The applicants changed their proposal for the building design between the two hearing dates, so the PC Chair and the ZBA Chair agreed to hear the proposal in a joint public hearing scheduled for March 15, 2018.

Public notification for the joint public hearing was carried out via electronic posting of the notice on the Town website; publication in “The Citizen” newspaper on February 16, 2018; posting hardcopies of the notice at the Town Office, the Brick Store, and Spear’s Corner Store on February 23, 2018; and by direct correspondence to adjoining property owners on that same date.

A site visit was conducted at the property by the ZBA prior to the first public hearing on January 10, 2018 at 6:30 PM. Present at the site visit were the following members of the ZBA; Frank Tenney (Chair), Jonathan Fisher, Matt Zucker, Stuart Bennett, and Andrew Swayze. Also in attendance were Daryl Benoit (ZBA staff), and the applicants Debra Kassabian and Mike Dunbar. During the site visit, the ZBA was shown the schematics of the proposed improvements for the structure.

The aforementioned change in the application precipitated re-warning the public hearing. The joint public hearing took place on March 15, 2018 at 7:30 PM at the Town Offices at 159 Ferry Road in the Town of Charlotte, Vermont. Present at the hearing were the following members of the ZBA; Frank Tenney (Chair), Jonathan Fisher, Matt Zucker, and Stuart Bennett; and Planning Commissioners, Peter Joslin (Chair), Gerald Bouchard, Charlie Pughe, Shawn Coyle, and Marty Illick. ZBA Staff, the applicants

Debra Kassabian and Mike Dunbar, and their consultant Charlie Proutt of Distinctive Landscaping, Inc. also participated in the hearing.

II. Exhibits

The following exhibits were marked and considered:

1. A detailed application, including –
 - A. Landscaping Plan (described in page 2);
 - B. Parking & Loading Service Plan (described in page 3);
 - C. Lighting Plan (described in page 4);
 - D. Traffic access & management letter (email) from VTrans, Highway Division, Right-of-Way, Permitting Services to the applicants (dated October 24, 2017);
 - E. Signage Plan;
 - F. Side Elevation & Floor plans;
 - G. Structural plans (foundation, footings, and framing);
 - H. Photos (current condition);
2. Additional documents related to the Site Plan Review, including –
 - A. Site Plan Map;
 - B. Water Supply & Wastewater plan;
 - C. Stormwater plan;
3. Town of Charlotte Lister File, 2012-2017;
4. Lister Cards, 1982 and 1987-2017;
5. VTrans, Development Review & Permitting Services; Jurisdictional Opinion, Charlotte, US7, Wild Flower Farm (a/k/a Gemini Properties, LLC), dated April 23, 2018;
6. Zoning Board of Adjustment (ZBA) and Planning Commission Minutes from their joint hearing held on March 15, 2018;
7. Zoning Board of Adjustment (ZBA) Minutes of the meeting held May 23, 1990;

III. Standard of Review

The application requires review under the following sections of the Land Use Regulations for the Town of Charlotte (Approved March 1, 2016), hereafter referred to as the Regulations:

1. Chapter II, Section 2.3, Table 2.3 - Application of District Standards; Village Commercial District (VCM) District (West Charlotte Village – West of Route 7 only);
2. Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards;
3. Chapter III, Section 3.13 – Sign Requirements;

IV. Findings

Based on the application, testimony, exhibits and other evidence, the Zoning Board of Adjustment makes the following findings:

1. The proposed area of all uses are:
 - A. Retail use, which has an estimated area of 1,309 sq. ft.

- B. Office use, which has an estimated area of 1,532 sq. ft.
- C. The applicants have reported that the restaurant total Gross Floor Area to be 1,825 sq. ft., of which the following uses are included;
 - 1. Restaurant use, indoor seating which has an estimated area of 495 sq. ft.
 - 2. Also a 1248 sq. ft. outside patio
 - 3. The restaurant shall have a total maximum of 30 seats whether placed inside or outside.

- 2. The new sign will be on the westerly edge of the US Route 7 right of way. This is a reduction of the encroachment of the previous sign into the set back of Route 7.
- 3. The new sign shall be 70 square feet per the definition in Section 3.13(D)(5).
- 4. The primary structure shall be a maximum of 34 feet high.
- 5. The proposed uses of the structure are Mixed Uses and because the restaurant is a conditional use, all other uses shall be reviewed as conditional uses as required in Section 4.12(1).

V. **Conclusions of Law**

- 1. **Chapter II, Section 2.3, Table 2.3 – Village Commerical District (West Charlotte Village – West of Route 7 only)**

(D) Conditional Use:

Restaurant (no fast food or drive-thru) – requires 'conditional use' approval.

The other proposed uses of Retail Store (<3,500 sq. ft.) and Office (<3,500 sq. ft.) fall under 'permitted' uses.

(E) Dimensional Standards: requires the following dimensional standards:

- a. Minimum Setback/Front Route 7, west side: 100 feet (from ROW) / Minimum Setback/Side 15 feet / Minimum Setback/Rear 15 feet:

The current structure is about **78'** from the US 7 right-of-way line. The proposed additions to the building and impervious surface include;

 - i. Expansion of the parking area (within the US 7 setback)
 - ii. A peripheral sidewalk that surrounds the lot (within the US 7 setback)
 - iii. A ~1,300 sq. ft. stone patio at the rear of the bldg. (outside the US 7 setback)
- b. Maximum Height – 35':

From the proposed elevations, it appears the proposed building would stand just over 34 feet high to top of the roof at the eastern (roadside) view. However the building is on a slope where the rear of the building is stated to stand at ~37'4". Considering the average natural grade between the highest and lowest elevation, the proposed height = 33.65'. This **would comply** the VCM district standard of 35' maximum height.
- c. Maximum Building Coverage: lesser of 25% or 10,000 sq. ft. / Maximum Lot Coverage: 40%:

Parking, sidewalk expansion would not maximize the building and lot coverage for the 5-acre lot.

2. **Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards:** stipulates that a proposed conditional use shall not result in an undue adverse effect on any of the following:
 - a. The capacity of existing or planned community facilities and services;
 - There are no known adverse impacts with planned facilities or services. The trails on the property will be kept open for public use. The new Waste Water facility will be expanded. The parking lot will be increased to accommodate all the uses. Other details covered in the landscaping plan, lighting, parking plans, & site map.
 - b. Character of the area affected;
 - As the 30-seat restaurant may have estimable traffic, the office and retail space do not.
 - c. Traffic on roads and highways in the vicinity;
 - This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-17-173-SP Gemini Properties, LLC.
 - d. Bylaws in effect;
 - There are no known non-conformance issues with other Town Bylaws.
 - e. The use of renewable energy resources;
 - The applicant has stated that solar panels will be installed on the southern roof of the structure.
3. **Chapter III, Section 3.9 – Outdoor Lighting**
 - This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-17-173-SP Gemini Properties, LLC.
4. **Chapter III, Section 3.11 – Parking, Loading & Service Area Requirements:**
 - This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-17-173-SP Gemini Properties, LLC.
5. **Chapter III, Section 3.13 – Sign Requirements:**
 - a. The proposed entrance sign location (indicated in Exhibit 1E) abuts the US Route 7 Right-of-Way boundary and does not comply with Section 3.13(E) of Regulations, which states; *"All signs greater than six (6) square feet in size shall be set back at least twenty-five (25) feet from the edge of the highway right-of-way, unless the sign is mounted flush on the wall of an allowed structure."*
 - b. The Signage Plan (Exhibit 1E) calculates the proposed sign as; *14'-9" length x 4'-9" height = 70 square foot sign.* However, the Signage Plan excludes the supporting frame from the calculation. For the determination of signage dimensions, Section 3.13(D)(5) of the Regulations states; *"The sign shall be calculated as the total area of the sign face at the outer edge, including any supporting frame."*
 - c. The Signage Plan (Exhibit 1E) proposes a sign to exceed the signage dimensional requirements of Section 3.13(D)(1), which states; *"With the exception of a sign identifying a Home Occupation or a Home Farm Stand, no sign shall exceed 20 square feet in total area per side."*

However, a decision by the ZBA on May 23, 1990 (see Exhibit 7 above) granted a variance to the former owner of the site Ray F. Allen to allow for *“a sign of 70 square feet on each side with a maximum height of 17’.”*

- d. At the March 15, 2018 joint hearing, the applicants’ consultant, Charlie Proutt of Distinctive Landscaping, Inc. stated that the sign will be reduced to 70 square feet as granted in the 1990 variance.
- e. The proposed Signage Plan (Exhibit 1E) proposed utilizing Gooseneck downlights on both sides of the sign and complies with Section 3.13(C)(3) of the Regulations, which states; *“A sign shall have no internal illumination, and may only be illuminated by a downward directed, shielded, continuous (non-flashing) light.”*
- f. Although the 1990 variance (see Exhibit 7 above) allows for greater height, the sign is proposed to stand just over eight (8) feet in height and therefore complies with the Section 3.13(D)(3) of the Regulations, which states; *“A freestanding sign shall not be higher than ten (10) feet from the average grade of the surrounding ground to the highest point of the sign or the supporting structure, whichever is higher.”*
- g. Additional signs for each use (e.g. restaurant, office, retail) will be located on the building, but are yet to be determined.
- h. The sign shall be illuminated only during business hours, which shall be determined when the space is leased.

VI. Decision and Conditions

Based on the foregoing Findings of Fact and Conclusions of Law, Motion to approve the Gemini Properties LLC, Mike Dunbar & Debra Kassabian application as presented (ZBA-17-172-CU) was made, seconded, and approved subject to the following conditions:

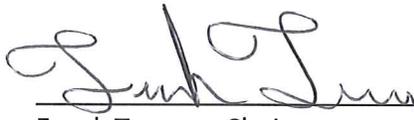
1. The restaurant / bar will have a total maximum of 30 seats either inside or outside.
2. The new sign will be located on the westerly edge of the Route 7 right of way.
3. The sign will be illuminated by a downward directed, shielded, continuous (non-flashing) light only during business hours.
4. The sign shall be limited to 70 square feet on each side. The signage area shall be calculated as the total area of the sign face at the outer edge, including any supporting frame (see definition in Section 3.13(D)(5)).
5. The structure shall be a maximum of 34 feet high.
6. The proposed uses of the structure are Mixed Uses. The restaurant is a conditional use. All other uses shall be reviewed as conditional uses. All uses shall be as presented and defined according to 2.3 Permitted uses, conditional uses, and as defined in Chapter X.
7. An updated drawing sketch indicating the design of the proposed sign, with its overall dimensions as per Condition #4 (above) shall be submitted to the Zoning Administrator in advance of construction.
8. Before executing a lease with any tenant, the applicants shall present the specific details of the proposed use to the Zoning Administrator for administrative review (which will include,

but will not be limited to the proposed; hours of operation, changes in the signage, building design, and amount of square footage). Additional Site Plan Review or Conditional Use Review may be required.

9. Before any proposed change of use, the applicants shall apply for Conditional Use approval for the specific use. Site Plan Approval may also be required.

Vote: 5 Ayes. 0 Nays. 0 Absent.

Dated at Charlotte, Vermont this 26th day of April, 2018.



Frank Tenney, Chairman

Reconsideration: At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B).

Appeals: Decisions of the Zoning Board of Adjustment and Planning Commission may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeals must be taken within 30 days of the date that the permit is issued, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Additional Regulations and Permitting:

The owner and his/her representatives shall abide by the practices in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control (2006) as necessary to ensure that sediment and sediment laden water does not leave the project parcel. Contact 802.540.1748 for a hard copy or you may visit: <http://dec.vermont.gov/watershed/stormwater>.

There may be additional State of Vermont and / or federal permits or approvals needed for the proposed development or use. The applicant may contact the Agency of Natural Resources Permit Specialist at 802.477.2241 for further information.