

Department of Planning and Zoning

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7142 (TTY)

*David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Senior Planner
Mary O'Neil, AICP, Senior Planner
Anita Wade, Zoning Clerk
Elsie Tillotson, Department Secretary*



TO: Development Review Board
FROM: Scott Gustin
DATE: November 4, 2015
RE: 16-0363NA; 1300 North Avenue

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: RL Ward: 7N

Owner/Appellant: Ray & Sharon Lones / Mark Davidson

Request: Appeal of zoning denial for continuation of nonconforming residential/commercial use.

Overview:

The appellants are seeking approval to establish a scooter sales and repair shop within an existing TV sales and repair space at 1300 North Avenue. The existing TV sales and repair shop is a nonconforming use approved in 1959 by the zoning board of adjustment. The appellants assert that there is essentially no change in use and that the proposed scooter sales and repair shop is merely a continuation of the nonconforming use. Zoning staff found, however, that the proposed use constitutes a change in use, and the request for continuation of an existing commercial and residential use was denied.

Recommendation: Uphold zoning denial based on the following findings and conditions:

I. Findings:

On September 14, 2015, the appellants inquired about applying for a zoning permit to continue the nonconforming commercial and residential use at 1300 North Avenue. It was explained to the appellants that such a request does not need a zoning permit (they were asserting no change in use) and were advised to file their request via a “non-applicability of zoning permit requirements.” The proposal amounted to establishing a scooter sales and repair shop (the motorcycle sales and service at their present location would not be carried over to the proposed location) in the rear building and living in the house onsite. The apparent change in use was pointed out to the appellants, and appeal procedures were discussed. The appellants had an interest in pursuing their request with the Development Review Board. A denial and subsequent appeal were anticipated.

On September 23, 2015, the appellants submitted a request for continuation of an existing commercial and residential use via a “non-applicability of zoning permit requirements” form. Their request outlined the existing conditions – a TV sales and repair shop behind the owner-occupied single family home fronting North Avenue. It, of course, noted the request to change to scooter sales and repairs, still owner-occupied. The request noted some minor proposed renovations, days and hours of operation (M-F, 9:00 AM – 5:00 PM), employees (1-2), and

anticipated traffic impacts. The appellants noted that an estimated 85% of customers are expected to arrive on scooters or motorcycles as opposed to cars or trucks.

The request for continuation of an existing commercial and residential use was denied September 23, 2015 for the following reasons:

The subject property is located in the low density residential (RL) zone. The existing commercial use (TV sales and repair) is nonconforming. The residential use, however, is conforming. On September 22, 1959, the Zoning Board of Adjustment approved an expansion of the present building and associated commercial use subject to the following conditions:

1. That the only business that could be operated at that address would be TV Sales and Service.
2. That this permit would apply only to the present owners.
3. That the present owners would have to live there in order to operate this TV Sales and Service.

The owners at the time were Mr. and Mrs. Conrad Alaire. The present owners are Raymond and Sharon Lones. In light of the conditions of the 1959 approval, the existing TV sales and service is arguably in violation of the decision. More important, however, is the nature of the approved use. Under the present Comprehensive Development Ordinance (CDO), TV sales and service would be classified as “general merchandise/retail – small < 4,000 sf.” The proposed “small scooter and motorcycle sales and repair shop” constitutes a different use. The described use is not defined in the CDO, nor does it exactly match any of the uses in *Appendix A – Use Table – All Zoning Districts*. The closest matches in *Appendix A* are “automobile/vehicle repair” and “automobile sales, new & used” or “bicycle sales/repair.” Section 5.1.1, *Uses, (e) Uses Not Permitted*, of the CDO states “a use in any district denoted by the letter ‘N,’ or any use not listed, shall not be allowed in any zoning district unless the administrative officer determines that the use is substantially equivalent in use, nature, and impact to a listed permitted or conditional use.” Arguably, the proposed “small scooter and motorcycle sales and repair shop” could be substantially equivalent to the “bicycle sales/repair” use; however, this use is prohibited in the RL zone, as are the noted automotive uses.

The proposed “small scooter and motorcycle sales and repair shop” use is not allowed in *Appendix A* of the CDO. Trying to assert substantial equivalency with a defined use such as noted above ends with the same result. “Automobile/vehicle repair” and “automobile sales, new & used” or “bicycle sales/repair” uses are all prohibited in the RL zone. The proposed “small scooter and motorcycle sales and repair shop,” therefore, cannot be approved.

The appeal of the zoning denial was filed within 15 days as required.

The appeal reiterates, in condensed form, the assertion that the proposed sales and repair of scooters is effectively the same as the existing use. It asserts that the property would be owner

occupied, and that there would be no change in perception along North Avenue except for a new sign.

The appeal does not address the conditions of approval in the 1959 zoning board of adjustment decision. While decades old, the decision and related conditions remain valid. There have been no subsequent zoning permits for any changes to the use. The denial of the present zoning request for scooter sales and repair should be upheld for the following reasons:

- The property is specifically and exclusively approved for a single dwelling in the front building and a TV sales and service commercial use in back.
- The approved use is specifically and exclusively tied to the owners/operators of the property who received the 1959 zoning board of adjustment approval for TV sales and service.
- The proposed scooter sales and repair use is most closely related to the “bicycle sales/repair” use in Appendix A of the CDO and is prohibited in the RL zone wherein the property is located.

II. Recommended Motion:

Uphold the denial of “non-applicability of zoning permit requirements” 16-0363NA.

