

Town of Windham, Maine
Zoning Board of Appeals
FINDING OF FACT & CONCLUSIONS OF LAW

Application Number: ZBA 21-007 (Conditional Use)
Date of public hearing: September 16, 2021 continuing October 7, 2021
Name and address of applicant: Port City Architecture- Curtis Robinson
65 Newbury Street, Portland, ME 04101
Zoning District: Commercial District I (C1)
Location of property: 86 Tandberg Trail
Map 67 Lot 81

Board Members Present: Chuck Fleck (Chair), Christopher McDonald (Vice Chair), James Cobb, and Raymond Batchelder. Mr. McDonald participated in the hearing on September 16, 2021, but recused himself for deliberations and decision-making at the continuance held on October 7, 2021.

Port City Architecture applied for a Conditional Use expansion in the Commercial I District (C-1) for the property located at 86 Tandberg Trail, known as Day One/Smart Child and Family Services. Currently in use as a private rehab center, the conditional use expansion would be for a renovation of the existing building to include a residential treatment program for teen* boys. ** a formal e mail request was made to alter this description. The treatment center would be open to all adolescents, not just teen boys.*

Record: The record before the Zoning Board of Appeals consists of the following documents:

1. 86 Tandberg Trl Abutters List and Map.pdf
2. 86 Tandberg Trl ZBA Application Packet.pdf
3. 86 Tandberg Trl ZBA Plan Set.pd
4. Emails from the Town of Windham Fire and Police Chiefs
5. Day One Exhibits A-D (002).pdf
6. Letter to Windham ZBA- DAY ONE- 86 Tandberg Trail.pdf

Testimony: The following individuals presented testimony/comment at the September 16, and October 7, 2021 hearing.

1. Jonathan Rioux, Code Enforcement Director
2. Attorney Kristin Collins, representing the Board of Appeals
3. Greg Bowers, Chief Executive Officer, Day One
4. Becky Humphries, Chief Clinical Operations Officer, Day One
5. Curtis Robinson, Port City Architecture, applicant
6. Kevin Freeman, Board Member, Day One
7. Attorney Thomas E. Schoening, representing the applicant
8. Christopher McDonald, member of the public

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Now, Therefore, based upon the testimony and evidence presented, the Board of Appeals finds as follows:

1. The proposed use will not depreciate the economic value of surrounding properties.
 - a. The Board agreed that this standard is met with the noted condition, which will protect the value of surrounding properties.
 - b. Condition: To reasonably screen view of the facility from Tandberg Trail through installation of a treed and/or vegetated buffer from Tandberg Trail.
 - c. All In Favor 3-0
2. The proposed use will not damage significant wildlife habitat or spawning grounds identified by the Maine Department of Inland Fisheries and Wildlife or by the Town of Windham's Comprehensive Plan.
 - a. All in Favor 3-0 for reasons set forth in applicant's proposed findings.
3. The proposed use will not damage rare or endangered botanical species as identified by the Maine Department of Conservation or by the Town of Windham's Comprehensive Plan.
 - a. All in Favor 3-0 for reasons set forth in applicant's proposed findings.
4. The proposed use has access to potable water.
 - a. All in Favor 3-0 for reasons set forth in applicant's proposed findings.
5. The proposed use will not burden either a groundwater aquifer or public water system.
 - a. Septic report was provided. Applicant will update septic as needed.
 - b. Code Enforcement says that the septic will need to be reviewed by a site evaluator.
 - c. All agree with condition that the plumbing inspector review the system.
 - d. All in Favor 3-0
6. The proposed use has adequate capacity to dispose of sewage waste. A change from one use to another use must show that either: (a) The existing sewage system has adequate capacity for the proposed use, or (b) The existing system will be improved, or a new system will be installed to provide adequate waste disposal capacity.
 - a. All in favor 3-0 for reasons set forth in applicant's proposed findings.
7. The proposed use has adequate sight distance as established by current Maine DOT Highway Entrance and Driveway Rules.
 - a. All in favor 3-0 for reasons set forth in applicant's proposed findings.
8. The proposed use will not overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.
 - a. The application will not overburden emergency services, as stated in letters provided from Police and Fire/EMS.
 - b. Chuck Fleck abstains due to concerns about impacts on the school.
 - c. Approved 2-1 for reasons set forth in applicant's proposed findings as well as the above.

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9. The proposed use will not produce inherently and recurrently generated vibrations that exceed a peak particle velocity greater than 2.0 at the closest “protected structure,” as defined by the Maine Department of Environmental Protection.
 - a. All in favor 3-0 for reasons set forth in applicant’s proposed findings.
10. The proposed use shall meet the noise standards in Section 812.S. of the Site Plan Review Ordinance.
 - a. All in favor 3-0 for reasons set forth in applicant’s proposed findings.
11. The proposed use meets the parking and loading standards of Section 812.C. Site Plan Review.
 - a. Code Enforcement stated that site plan review may not be triggered, and expressed no concern about the provided parking.
 - b. Based on the size of the facility the parking is adequate
 - c. The CEO will review and ensure that the parking space requirement is met
 - d. All in Favor 3-0 for reasons set forth in applicant’s proposed findings as well as the above.
12. The proposed use will not emit noxious or odorous matter in such quantities as to be offensive at the lot boundaries. Town of Windham Land Use Ordinance Sec. 500 Performance Standards 5 – 13.
 - a. All in favor 3-0 for reasons set forth in applicant’s proposed findings.
13. No emission of dust or other form of air pollution is permitted which can cause any damage to health, to animals or vegetation, or other forms of property, or which can cause any excessive soiling at any point, and in no event any emission, from any activity permitted composed of any solid or liquid particles in concentration exceeding three-tenths (0.3) grain per cubic foot of the conveying gas or air at any point.
 - a. All in Favor 3-0 for reasons set forth in applicant’s proposed findings.
14. No discharge at any point into any private sewage disposal system or stream or into the ground of any materials in such nature or temperature as to contaminate any water supply or otherwise cause the emission of dangerous or objectionable elements is permitted.
 - a. All in Favor 3-0 for reasons set forth in applicant’s proposed findings.
15. The proposed use will not cause water pollution, sedimentation, erosion, nor contaminate any water supply, nor reduce the capacity of the land to hold water, so that a dangerous or unhealthy condition may result.
 - a. Code Enforcement will require Soil and Erosion permit if necessary
 - b. All in Favor 3-0 for reasons set forth in applicant’s proposed findings.
16. No use shall for any period of time discharge across the boundaries of the lot wherein it is located toxic and noxious matter in concentrations so that a dangerous or unhealthy condition may result.
 - a. All in Favor 3-0 for reasons set forth in applicant’s proposed findings.
17. The proposed use meets the applicable zoning district standards in Section 400 and the applicable performance standards of Section 500.
 - a. Condition was approved that the facility remain licensed, and license will be displayed at facility, and confirmed prior to Certificate of Occupancy.

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- b. All in Favor 3-0
- 18. The proposed use shall provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
 - a. Facility will use existing dumpster
 - b. Pursuant to Section 554 a Condition was approved that all solid waste must be on concrete pad and fenced.

Decision

Pursuant to Section 516 (I), the Board of Appeals has the authority to impose conditions on conditional use permits.

Upon consideration of the testimony and exhibits admitted, and by a vote of 3-0, the Board of Appeals hereby finds and determines that the application meets the standard for granting a conditional use permit as set forth above, however, certain reasonable conditions must be imposed to minimize adverse effects on other property in the neighborhood.

Therefore, the Board of Appeals GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS.

Conditions:

1. Facility must be reasonably screened using a vegetated or tree buffer from Tandberg Trail.
2. Septic System must be evaluated by a Site Evaluator and approved by the plumbing inspector.
3. Parking Space Requirements must be met.
4. Facility must remain licensed through Department of Health and Human Services (DHHS) and licensed must be displayed at facility. The Code Enforcement Officer will confirm this condition prior to issuance of Certificate of Occupancy.
5. Solid Waste Disposal must meet the performance standard of Town of Windham Land Use Ordinance, Chapter 140, Section 554 Solid Waste Dumpsters.
6. This approval is based upon any plans, sketches, drawings, or other supporting materials presented by the applicant and all representations made by the applicant at the Board of Appeals hearing on the application, as well as any conditions placed by the Board on the approval. No change shall be made from the application, supporting materials, representations, or conditions of approval without the prior approval by the Board of Appeals of an amendment to this approval or a new approval

NOTE: This decision is subject to appeal within forty-five (45) days of this date of decision

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Voting favor: Chuck Fleck, James Cobb, Raymond Batchelder
Voting to deny: None
Recused: Christopher McDonald

Dated: October 27, 2021

Town of Windham Zoning Board of Appeals

Chuck Fleck, Chair