

# Town of Weathersfield, Vermont

Zoning Board of Adjustment, P.O. BOX 550, ASCUTNEY, VT 05030  
Martin Memorial Hall, 5259 US Route 5  
Telephone: (802) 674-2626 Fax: (802) 674-2117  
Email: [zoning@weathersfield.org](mailto:zoning@weathersfield.org)  
Website: <http://www.weathersfield.org>

## Zoning Board of Adjustment NOTICE OF DECISION

### *Application for a Variance*

*May 2<sup>nd</sup>, 2018*

**Application No.:** #18-04-09C  
**Applicant:** Neil H Daniels Inc, represented by Mark Thompson  
**Landowner(s):** Neil H Daniels Inc  
**Project Location:** 4344 Route 5, Ascutney VT  
**Parcel(s) Involved:** 10.00.02

### INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for an 8 foot Front Setback Variance submitted by Daniels Construction under the Town of Weathersfield, Vermont Zoning Bylaws.
2. A copy of the application is available at Weathersfield Town Office.
3. Notice of a public hearing was published in the Valley News.
4. Notice of a public hearing was posted at the following places:
  - a. The municipal clerk's office.
  - b. Town of Weathersfield VT Website
  - c. Proctor Library web site and bulletin board
  - d. Ascutney and Downers Post Offices
5. A copy of the notice of a public hearing was mailed to abutting property owners.
6. The application was considered by the Zoning Board of Adjustment at a public hearing on April 25th, 2018. The Zoning Board of Adjustment reviewed the application under the Town of Weathersfield Zoning Bylaws, as amended October 21<sup>st</sup>, 2013
7. The following members of the Zoning Board of Adjustment were present at the public hearing:
  - Willis Wood
  - Dave Gulbrandsen
  - Ethan McNaughton

8. At the outset of the hearing, the Zoning Board of Adjustment afforded an opportunity for persons wishing to achieve status as an interested person under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that subsection are met. The Zoning Board of Adjustment granted interested person status to the following persons:
- Mark Thompson

All interested parties were sworn in by the Zoning Board Chair at the beginning of the public hearing.

Persons present not wishing to achieve status as an interested person:

- Allison Thompson
- Hal Wilkins

9. During the course of the hearing the following exhibits were submitted to the Zoning Board of Adjustment:
1. Exhibit #1: Application #18-04-09C
  2. Exhibit #2: Revised Site Plan as presented by the applicant during the hearing
  3. Exhibit #3: Design criteria of existing septic; 2 pages
  4. Exhibit #4: Photograph of existing office

These exhibits are available for review at the Weathersfield Town Office.

10. A site visit was conducted by the Zoning Board on April 25th, 2018 at 6:45 pm with the following people present:
- Mark Thompson
  - Ed Morris, Acting Land Use Administrator
  - Hal Wilkins
  - Willis Wood
  - Ethan McNaughton
  - David Gulbrandsen

## FINDINGS

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

1. According to the acting Land Use Administrator and the Weathersfield Zoning Bylaws, the application requires review under the following sections of the Town of Weathersfield Zoning Bylaw:
  - Section 4.3.2(g) Industrial District (I)
  - Section 9.4 Variance
  - Section 9.6 Public Hearings
2. The applicant seeks a Variance for the construction of a 30ft x 30ft addition to the South side of the existing business office at 4344 VT Route 5. The property that the business office resides on consists of an estimated +/- 8 acres in the Industrial (I) Zoning District, tax map parcel No. 10.00.02, and is located on the West side of Route 5. There also exists additional property associated with the business that is located on the East side of Route 5

3. Town of Weathersfield Zoning By Laws currently in effect require a 40 foot front setback from the road right of way, 25 foot side and 25 foot rear setback in the Industrial (I) district
4. Small office space is a permitted use in the Industrial (I) district
5. The existing office was constructed as residence in 1810 prior to adoption of the Weathersfield Zoning By Laws. The existing office currently exists as a non-conforming structure on the grounds that the structure does not comply with the front setback.
6. Exhibit #2 delineates the location and 50 foot setback boundaries of the existing wetlands.
7. The applicant presented Exhibit #3 which defines the capacity of the existing Waste Water system.
8. The proposed addition would not result in any additional non-conformance to (East) front setback.
9. The applicant seeks the proposed addition for the growth of the business which includes the employment of additional office based personnel.
10. The proposed addition will allow for additional office space, conference room, break room and restroom.
11. The applicant testified that the appearance of the proposed addition will match that of the existing office. In that similar window style, roof pitch and exterior appearance will be utilized
12. The applicant testified the proposed addition includes an employee entrance to the rear (West). There will not be an additional front (East) entrance to the proposed addition
13. The applicant testified that ADA compliant handicap access will be addressed during the construction of the proposed addition.
14. An addition to the rear (West) of the pre-existing structure would encroach on the 50 foot wetland setback.
15. An addition to the left (South) of the pre-existing structure would encroach on the septic and the wetlands setback.

## CONCLUSIONS

In conformance to the Town of Weathersfield Zoning By Laws in effect on this date, Section 9.4.1, in order to grant a variance, the Board shall find that five specific facts are found to exist. In summary, these five criteria are as follows:

### Variance Criteria 1:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or physical condition peculiar to the particular property, and that unnecessary hardship is due to the conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;

**Conclusion 1:** Parcel #10.00.02 is a pre-existing lot. There is a spring, stream and wetland located in close proximity to the rear (West) of the existing office, which navigates around the left (South) of the existing office. The waste water management system is located to the left (South) of the existing office.

### Variance Criteria 2:

Because of the physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable reasonable use of the property

**Conclusion 2:** The development is needed to enable the reasonable use of the property as an Industrial Use as prescribed within Section 4.3.2(g) Industrial District (I): Areas suitable in terrain and proximity to transportation facilities and house commercial activities that do not depend on highway traffic for customers. Provides employment for local residents and broadens the Town tax base. Currently located in areas partially so developed and considered to be appropriate for such use.

### Variance Criteria 3:

The unnecessary hardship was not created by the applicant

**Conclusion 3:** The office pre-exists as a non-conforming structure prior to the adoption of the Town of Weathersfield By Laws. The Board concluded that the Appellant is free of any responsibility in regards to the creation of the condition

### Variance Criteria 4:

The variance, if authorized, shall not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to the renewable energy resources, or to be detrimental to the public welfare

**Conclusion 4.** The Board concluded that the proposed project will not have an undue adverse effect on the character of the area as defined by specifically stated policies and standards of the municipal plan. The applicant also testified that the proposed addition would be of similar style to the existing historic building with attempts to

match the architecture, style and aesthetics as closely as reasonably possible There exist Industrial Use properties to the North of the site

Variance Criteria 5:

The variance, if authorized will represent the minimum that will afford relief and will represent the least deviation possible from the regulations and from the plan

**Conclusion 5:** The Board has concluded that Exhibit #2 defines the minimum variance required to enable the reasonable use of the property as an Industrial Use. The proposed addition will adjoin the existing office front and mid rear boundary walls. Deviation from the existing architecture would alter the character of the proposed addition, to the detriment of the site and the neighborhood.

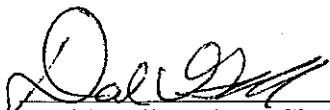
Further, it is the Boards finding that attempts to develop the site to enable its reasonable use as an Industrial Site which more strictly conformed with the front setback requirements would alter the essential character of the site and thereby the neighborhood in violation to Criterion 4.

### DECISION AND CONDITIONS

On April 25th, 2018, at a deliberative session, and based on the foregoing Findings of Fact and Conclusion of Law, the Zoning Board of Adjustment by unanimous vote of the deliberating members approve the application No. 18-04-09C subject to the following conditions:

- 1) The project shall be completed as shown on application No. 18-04-09C
- 2) Upon completion, architectural plans of the proposed addition to be filed with the Town of Weathersfield.
- 3) A Certificate of Occupancy must be obtained before the proposed addition can be occupied
- 4) Any deviation from the permit as presented in the Facts of the Decsion shall constitute a violation of the permit and the Land Use Administrator will be required to take enforcement action to correct the violation.

Dated at the Town of Weathersfield, Vermont, this 2nd day of May, 2018

  
\_\_\_\_\_  
David Gulbrandsen, Chair

Zoning board members participating in this decision:

- Dave Gulbrandsen
- Willis Wood
- Ethan McNaughton

**NOTICE:** This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the [planning commission/Zoning Board of Adjustment/development review board]. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.