



TOWN OF WEATHERSFIELD

ZONING BOARD OF ADJUSTMENT

(802)674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

Town of Weathersfield Vermont

Zoning Board of Adjustment

Application for Site Plan and Conditional Use Review

Findings and Decision

Permit Application No.: #24.0124.Dan
Applicant Name: Neil H. Daniels Inc.
Landowner Name: Neil H. Daniles Inc.
Project Location: 4409 US Route 5
Parcel ID#: 10-00-02

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a zoning permit for Site Plan Review and Conditional Use Review submitted by Neil H. Daniels Inc. under the Town of Weathersfield Zoning Bylaws.
2. The application was received by Land Use Administrator, Ryan Gumbart. The signed application is dated January 31, 2024. Application fee was received February 7, 2024. A copy of the application is available at the Weathersfield Town Office.
3. Notice of the public hearing was posted at the following places:
 - a. Eagle Times Newspaper in issue dated January 27, 2024
 - b. Town of Weathersfield, VT Office at Martin Memorial Hall
 - c. Weathersfield Proctor Library
 - d. Perkinsville Post Office
4. A copy of the notice of a public hearing was mailed to the Applicant.
5. A copy of the notice of public hearing was mailed to the owners of properties adjoining the property that is the subject of the application.
6. The Zoning Board conducted a Site Visit at 6:00 PM on February 13, 2024, prior to the hearing. Present were Todd Hindinger, Grace Knight, Andrea Murray, Ryan Gumbart, and Matthew Belden.
7. The application was considered by the Zoning Board of Adjustment at a public hearing at approximately 7:49 PM on February 13, 2024. The hearing was closed at 8:38 PM on the same night.
8. The Zoning Board of Adjustment reviewed the application under the Town of Weathersfield Zoning Bylaw, adopted by the voters on March 5, 1974 and including all subsequent amendments through August 21, 2023 (the Zoning Bylaw).
9. Present at the hearing were the following members of the Zoning Board of Adjustment:
 - a. David (Todd) Hindinger, Chair
 - b. Grace Knight, Vice-Chair



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- c. Andrea Murray
10. Also present at the hearings were:
 - a. Matthew Belden, Applicant's representative
 - b. Ryan Gumbart, Land Use Administrator
 - c. Diana Stillson, Recording Secretary
11. At the outset of the hearing, the Zoning Board of Adjustment afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. The Zoning Board determined that the following met the definition of interested persons and were granted interested persons status:
 - a. Matthew Belden, Applicant's representative
12. At the outset of the hearing, the Zoning Board of Adjustment asked if there were any persons present who wished to give evidence or testimony during the hearing. The following were sworn in by the Chair:
 - a. Matthew Belden
13. Board members were asked to disclose any potential conflicts of interest. All were disclosed and indicated that the Applicant would be treated fairly without any conflicts. Neither the Applicant nor any member of the Zoning Board expressed concern about conflicts of interest.
14. Board members and the applicant were asked to disclose any potential ex parte communications. No one attending the hearing expressed concerns about ex parte communications.
15. During the course of the hearing the following exhibits were submitted to the Zoning Board of Adjustment:
 - a. Exhibit #1 – Notice of Public Hearing – 1pg
 - b. Exhibit #2 – Newspaper Tear Sheet – 1pg
 - c. Exhibit #3 – Administrative Review Forms – 8pgs
 - d. Exhibit #4 – Application #24.0124.Dan – 8 pages originally, A revised Site Plan was provided during hearing, for a Total of 9 pgs.
 - e. Exhibit #5 – Additional materials – 5pgs
 - f. Exhibit #6 – 1980 State Permit #PB-2-0453 – 9pgs
 - g. Exhibit #7 – 1999 State Permit #WW-2-1144 – 3pgs
 - h. Exhibit #8 – 2012 State Project Review Sheet – 2pgs
 - i. Exhibit #9 – 2012 Town Zoning Permit #ZP-2012.02.08 – 8pgs
 - j. Exhibit #10 – 2012 State Permit #6710-9020 Termination – 2pgs
 - k. Exhibit #11 – Subdivision Decision dated July 3, 2019 – 1pg
 - l. Exhibit #12 – 2018 State Permit #C-2917-17.1 – Water supply permit – 2pgs
 - m. Exhibit #13 – 2018 ZBA Notice of Decision #18-04-09C – 6pgs
 - n. Exhibit #14 – Community Facilities Sign Off Sheet – 4pgs
16. Zoning Bylaws:
 - a. Section 2.5 – Table of Districts and Uses
 - i. 2.5.7 – Industrial (I)
 - b. 3.2 Conservation of Natural Resources



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- c. 3.5 Off-Street Parking
- d. 3.6 – Outdoor Lighting
- e. 3.7 – Performance Standards
- f. 5.1.2 – Site Plan Review
- g. 5.2 – Site Plan Review
- h. 5.3 – Conditional Use Review

FINDINGS OF FACT

The following findings of facts are deemed relevant to the Board's decision on this application. These facts are compiled from the application project documents including the written application, the items listed in the exhibits, testimony and evidence provided by the Applicant and other parties present at the hearing.

- F1. Parcel #10-00-02 is located on the east and west sides of US Route 5 about $\frac{3}{4}$ mile from the intersection of US Route 5 and VT Route 131 in Ascutney. The 911 emergency address is 4409 US Route 5. The parcel is 20.1 acres.
- F2. The property is owned by Neil H. Daniels Inc.
- F3. The property is located in an Industrial Zoning District.
- F4. Industry and Contractor's Storage Yards are Conditional Uses in the Industrial District. Site Plan Review is required. Conditional Use Review is required. Certificate of Occupancy is required.
- F5. The property is currently developed with several buildings used for storage of equipment and materials as well as machine repair and other uses related to the construction business.
- F6. Access to the property is via US Route 5, a public road.
- F7. The Applicant proposes to complete the following major items:
 - 1. Demolish the existing 40'x40' portion of the existing structure labeled on the site plan in the application – Exhibit #4 as "1969 Cold Storage".
 - 2. Construct in its place a 40'x60' building to be used as unheated storage space.
 - 3. Demolish a portion of the structure labeled on the site plan as "Exist. Sheds" to make room for the new building.
 - 4. Regrade the site surrounding the new structure for easier access and grounds maintenance.
- F8. The project will be arranged on the property as shown on the site plan contained in the application – Exhibit #4 dated January 29, 2024. A revised Site Plan was provided by the Applicant during the hearing which includes the location of the water supply pipe, the subsurface stormwater conveyances, the existing and proposed lighting and the oil and water separation tanks.
- F9. Section 2.5.7 Industrial (I): Relevant parts of this section were reviewed. The Front setback required is 40ft, Side/Rear setbacks required are 25ft. The applicant represented that the project meets these setbacks. The Site Plan shows setbacks that are greater than those required on all sides.



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- F10. Section 3.2.1 – Agricultural Zoning was discussed at the hearing. Based on the Land Use Administrator’s Review Forms – Exhibit #5 the amount of impervious surface on State mapped prime agricultural soils and soils of statewide significance is approximately 33% as measured on the ANR Atlas GIS mapping program. The bylaw allows for no more than 10% of the protected soils to be developed with impervious surfaces. The applicant represented that the area of the proposed new building footprint expansion (southerly) was previously disturbed and did not have any original surface soils remaining. The large area of disturbance that represents the area currently used by the applicant is an existing impact which occurred prior to this application. The applicant was made aware of the other protected agricultural soils on the property and notified that further expansion into these areas would require application and review.
- F11. Section 3.2.2 – Biological Natural Areas Survey, 1992 was discussed at the hearing. Site number 10 in the report is the edge and shoreline of the Connecticut River which runs across the eastern edge of the property. It identifies the area as being of high significance locally and to the State. It identifies a presence of 3 rare plants and a globally rare species of mussel. The proposed work will occur approximately 200 feet from the Connecticut River.
- F12. Section 3.2.3 – Connecticut River was discussed at the hearing. This bylaw states that “Any development along the Connecticut River shall be evaluated for the impact it will have on the scenic, recreational, ecological, and agricultural value of the River.” The board finds that the overall changes proposed on the property would have a de minimis impact on the stated resources.
- F13. Section 3.2.4 – Habitat Areas was discussed at the hearing. Subsection 2 specifies that development near areas that have been designated by the State as near sites of plants or animals on the Vermont Endangered and Threatened Species list shall be permitted as a conditional use subject to limitations contained in the bylaw. Those limitations are: “Any road or development shall be sited to have the least amount of negative impact on the viability of the area.” “Applicants shall submit a plan for leaving the sensitive area undisturbed.”
1. The State does not publicly publish the species and protection needs and the applicant and Land Use Administrator did not provide any further information. Lacking this information, the Zoning Board finds that the proposed work will occur approximately 200 feet from the Connecticut River and the other mapped species of concern. Because the project is small and discrete it is unlikely to affect whatever is there.
- F14. Section 3.5 – Off-Street Parking was discussed at the hearing. Parking is labeled on the site plan in the application – Exhibit #4. Parking is also available along the front of the “Maintenance Shop” and across from the “Maintenance Shop.” The site contains obvious large gravel areas to park. The applicant testified that the current parking is sufficient and that the proposed changes to the storage building would not alter the parking needs.
- F15. Section 3.6 Outdoor Lighting. A revised site plan was provided during the hearing which shows one proposed exterior light on the south side of the proposed building, along with seven other existing exterior lights on the other buildings. The applicant testified that the new light would be motion activated, that a lighting fixture which complies with this section



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will be used, and that the light will not be left on all night. The Zoning Board finds that the lighting plan complies with this section.

F16. Section 3.7 – Performance Standards was discussed at the hearing. The Interested Persons, the Public and the Zoning Board were given the opportunity to express any concerns specific to the ongoing use of the property and the proposed changes to the property. There was no evidence provided that the proposed use would exceed the Performance Standards for the district.

F17. Section 5.1.2 – Site Plan Review – Application Items. The Board reviewed the exhibits and testimony and did not require submittal of any additional items.

F18. Section 5.2 - Site Plan Review.

1. Section 5.2.1 Compatibility with Surrounding Development – The proposed use as Industry is consistent with the established trends and patterns in the surrounding area. No building plans were submitted, but the applicant described the proposed building as: One story, 15 feet tall. The 40'x60' building will be a 4 side uninsulated and unheated storage structure. The style of the proposed buildings offers no architectural elements of interest that can be reviewed. The abutters offered no comments in opposition to the buildings. The architecture, height and material are compatible with other similar simple commercial structures. Abutting land uses include:

- a. Transco electricity transmission facility
- b. Hodgdon Brothers salvage yard
- c. Residential, single-family to the north
- d. The landowner owns the lot across the road which is used for storage, office space, parking and as a contractor's storage yard.

2. Section 5.2.2 Traffic Access and Circulation. The Zoning Board of Adjustment, the Applicant and Interested Persons, discussed traffic access and circulation. The proposed project will not alter access to the property. The traffic circulation within the project site may include regrading of the land immediately surrounding the building to improve access for foot traffic and grounds maintenance. Traffic to and from the property will be unchanged.

3. Section 5.2.3 - Protection of Natural Resources. The board finds that no alterations to the site plan are necessary for the protection of natural resources.

4. Section 5.2.4 - Storm Water Management and Drainage.

- a. The overall site utilized by the Owner/Applicant is a relatively large area of buildings, gravel driveways, gravel parking and gravel contractor storage yard areas. Currently, stormwater from the impervious areas on the site either runs off into the surrounding vegetated areas or collects in the operating stormwater system on the property which includes: A series of catch basins which collect stormwater into subsurface piping. The subsurface pipe network includes two oil and water separation tanks. The discharge from this system is to a vegetated area southwesterly of the proposed building. Other than the oil and water separator tanks there is no treatment of the stormwater prior to discharge. The applicant did not know if the site has a State of Vermont Operating Stormwater Permit for runoff from impervious areas but indicated he did not think they did. The Board finds that there will be no change to this



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- operating stormwater system as a result of this project. The system requires ongoing upkeep and maintenance.
- b. Section 5.2.4 of the Weathersfield Zoning Bylaws state, “Adequate provisions shall be made for the management of erosion, sedimentation and storm water runoff. For all projects undergoing Site Plan Review, except one- or two-family dwellings, appropriate storm water management measures shall be incorporated into the final site design to ensure that no additional storm water runoff is generated beyond the boundaries of the property and that existing drainage patterns are not altered in a manner which impacts neighboring properties, town highways or surface waters.” The Applicant testified that they will install erosion prevention and sediment control systems during construction so that no stormwater laden runoff could leave the construction site and that the system would be maintained until vegetation was established. The Board finds that the proposed structure is located in a previously disturbed area and that the site work, if completed as proposed, will be adequate management of the construction runoff in the building area.
 - c. Exhibit A State Stormwater Permit #6710-9020 was previously issued in 2012. According to a March 5, 2018 Notice of Termination letter from the Vermont Department of Environmental Conservation, Stormwater Management Section, the Stormwater Permit #6701-9020 was terminated upon completion of final stabilization of the site following a previous construction project. This construction stormwater permit is found not to be relevant to this project and is mentioned here solely because it was included in the documents reviewed.
5. Section 5.2.5 - Landscaping and screening. The property is currently lightly screened along Route 5 with naturally occurring trees and shrubs which extend along the road as you drive southerly on Route 5 until the driveway entrance. The proposed new building site is mostly screened by the existing 60’x24’ barn and the existing sheds on the road side, to the south and east by existing rough vegetation.

Section 5.2.5 of the Weathersfield Zoning Bylaws state “Landscaping shall enhance the features and conditions unique to each site and shall include a combination of shade and street trees, shrubs, planting beds, well-kept grasses and ground covers. Landscaping is required in front and side yards, adjacent to parking areas, where rear yards abut residential properties or public roads, and as otherwise necessary to provide adequate screening and without compromising vehicular and pedestrian safety by blocking visibility and site lines. Landscaping plans shall emphasize the following:

- a) The preservation of existing ground cover and trees, especially those that are mature or determined to be of special horticultural or landscape value.
- b) The use of both deciduous and coniferous shade trees in available yard area, especially front and side yards and parking areas. Shade trees shall be placed to interrupt the facades of buildings, break-up expanses of parking, visually reduce the scale and bulk of large buildings, integrate the site with the surrounding landscape and to enhance environmental



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quality (e.g. wildlife habitat, soil stabilization, storm water retention, air quality, energy conservation).

c) The use of street trees along well-traveled roads. Street trees should be planted where site conditions make such planting practical. Such trees shall be planted along the edge of the road right-of-way to create a canopy effect and shall be indigenous, deciduous species tolerant of road- salt, soil compaction and drought.

A three-year plan for all proposed landscaping shall be prepared and bonding or other surety may be required to ensure installation and maintenance. The Zoning Board of Adjustment may require a professional landscape architect to prepare a plan on a case-by-case basis.”

The Board finds that the landscaping system in place and the existing buildings in place adequately screen the proposed structure.

- F19. Section 5.3 Conditional Use Review – The conditional use was discussed and the Community Facilities Sign Off were reviewed. The Board was not clear on whether or not the overall project was best described as an Industrial Use or as a Contractor’s Storage Yard. In either case, since both are Conditional Uses in this district, the Board shall base its decision on: a) whether the proposed use will result in an undue adverse effect on the capacity of the existing or planned community facilities or the character of the area and/or traffic; and b) whether other general and special provisions of the bylaws are met.
1. The Board finds that the project will not have an undue adverse impact on any of the bylaw criteria.
 2. The Board finds that both the Industry Use and the Contractor’s Storage Yard are Conditional Uses and similar enough when considering their presence in an Industrial District as not to need any change to the application at this time. The Board recommends that the Land Use Administrator consider further development on this parcel under the Industry Use.
- F20. Section 6.7 – Certificate of Occupancy. A Certificate of Occupancy is found to be required as part of the Conditional Use Review process.

CONCLUSIONS OF LAW

It is not the aim or duty of the Zoning Board of Adjustment to favor one individual over another, nor to approve or disapprove any specific activity. Rather, it is to interpret the above findings of facts which *“shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions should be based on the findings of fact.”* (Bylaws 6.3.3). Based on the Findings of Fact, the Zoning Board of Adjustment makes the following Conclusions of Law regarding the proposed project, as conditioned.



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- CL1. Section 2.5.7 Industrial (I) was reviewed. Within the I district an Industry use was determined by the Board to require Conditional Use Review and Site Plan Review. Conditional Use Review and Site Plan Review was completed. As conditioned, the Zoning Board concludes that the proposed use is consistent with the Industrial district and that the applicable reviews have been completed.
- CL2. Section 3.2.1 – Agricultural Zoning was discussed at the hearing. Based on the Land Use Administrator’s Review Forms – Exhibit #5 the shows that the large area of disturbance that represents the area currently used by the applicant is an existing impact which occurred prior to this application. The Board concludes that the area of the proposed new building footprint expansion (southerly) was previously disturbed and did not have any original surface soils remaining. The Board concludes that the large area of agricultural soil disturbance which exists was present prior to this Site Plan Review and thus is not subject to this review, and that the applicant was made aware of the other protected agricultural soils on the property and notified that further expansion into these areas would require application and review.
- CL3. Section 3.2.2 – Biological Natural Areas Survey, 1992 was discussed and reviewed at the hearing. The Zoning Board concludes that the proposed work will occur approximately 200 feet from the Connecticut River, a sufficient distance, and due to the small project size and discrete project activity will not have a measureable effect on the features identified within the Survey.
- CL4. Section 3.2.3 – Connecticut River was reviewed. The setback requirement is 100ft. The Zoning Board concludes that, as conditioned, the proposed development is located 200ft from the river and due to the small project size and location the potential impacts of the project to the scenic, recreational, ecological and agricultural value of the river are not a concern.
- CL5. Section 3.2.4 – Habitat Areas was discussed at the hearing. The Zoning Board concludes that the proposed work will occur approximately 200 feet from the Connecticut River and the other mapped species of concern. Because the project is small and discrete it is unlikely to affect whatever is there.
- CL6. Section 3.5 – Off-Street Parking was reviewed. The Zoning Board concludes that the Off-Street Parking area within the project site is sufficient in size to satisfy the bylaws.
- CL7. Section 3.6 Outdoor Lighting. The Zoning Board concludes that the revised Site Plan and the testimony of work to be completed for the site operation and lighting plan complies with this section.
- CL8. Section 3.7 Performance Standards was reviewed. The Interested Persons, the Public and the Zoning Board were given the opportunity to express any concerns specific to the ongoing use of the property and the proposed changes to the property. The Zoning Board concludes that the project can be completed such that the Performance Standards of section 3.7 are upheld.
- CL9. Section 5.1.2 – Site Plan Review – Application Items. The Board reviewed the exhibits and testimony and concludes that it does not require submittal of any additional items.
- CL10. Section 5.2 - Site Plan Review. The Site Plan review process was completed in detail. As conditioned, the Zoning Board concludes that the Site Plan can satisfy the bylaws.



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CL11. Section 5.2.4 – Stormwater Management.

1. The existing operating stormwater system for the impervious areas was discussed in detail. Maintenance of the catch basins, subsurface pipe network, two oil and water separation tanks and the surface discharge outlet is to be completed by the Applicant. The Board concludes that there will be no change to this operating stormwater system because of this project, therefore so long as the system is maintained, the Operating Stormwater Management system satisfies the bylaws.
2. The applicant testified that during construction they will install erosion prevention and sediment control systems so that no stormwater laden runoff could leave the construction site and that the system would be maintained until vegetation was established. The Board concludes that if completed as proposed there will be adequate management of the construction runoff in the building area.

CL12. Section 5.2.5 – Landscaping and Screening. The property is currently lightly screened along Route 5 with naturally occurring trees and shrubs which extend along the road as you drive south on Route 5 until the driveway entrance. The proposed new building site is mostly screened by the existing 60'x24' barn and the existing sheds on the road side, to the south and east by existing rough vegetation. The Board concludes that as long as the existing buildings and vegetated screening are maintained the landscaping can satisfy the bylaws.

CL13. Section 5.3 – Conditional Use Review was reviewed. Within the Industrial District a Contractor's Storage is a Conditional Use. During the Conditional Use Review Process the Board concluded that the proposed use will not result in an undue adverse effect on: the capacity of existing or planned community facilities; the character of the area; and/or traffic; as well as whether all applicable general and special provisions of the Bylaws. The Board concludes that future development proposed on this parcel should be considered under the Industrial Use category.

DECISION AND CONDITIONS

At a deliberative session on March 25, 2024, all three of the deliberating members of the Zoning Board of Adjustment voted unanimously to Approve the application for Site Plan Review and Conditional Use Review with the following conditions:

- C1. Any deviation from the application documents, facts and Revised Site Plan without prior written approval of the Zoning Board of Adjustment shall constitute a violation of the Weathersfield Zoning Bylaws and the Administrative Officer shall be required to take appropriate enforcement action.
- C2. Construction shall begin within one year of approval. The permit is valid for 5 years to complete construction if the project has been started but not completed, unless renewed as required by section 6.2.7 of the Bylaws.
- C3. Comply with State of Vermont permitting requirements of the Department of Public Safety, Division of Fire Safety.



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- C4. Comply with State of Vermont permitting requirements of the Department of Environmental Conservation. The existing water/wastewater permit is to be complied with. The State Stormwater Management Program is to be consulted to assure that this project does not currently require a permit.
- C5. The Operating Stormwater System, which collects stormwater from the impervious surfaces on the site via the collection system, subsurface collection, oil water separator and surface discharge on the hillside above the Connecticut River, is to be regularly inspected and maintained by the applicant. The discharge point and downstream swale are to be maintained in a densely vegetated condition. During construction no sediment laden stormwater may leave the site.
- C6. The existing landscaping, the existing building screening and vegetated screening are to be maintained. The existing vegetation along Route 5 may not be reduced. The land surface south of the proposed building shall be allowed to grow so that there are trees and shrubs sufficient to screen the southerly side of the building.
- C7. The proposed light is approved provided that it is motion activated and conforms to section 3.6 of the bylaws. The Land Use Administrator is to verify conformance with section 3.6 as part of the Certificate of Occupancy process.
- C8. A Certificate of Occupancy is required for the project. The applicant/landowner is to contact the Land Use Administrator (Administrative Officer) for a site visit to review the completed project and to confirm that each condition is met. No use or occupancy of the items subject to this permit is allowed until a Certificate of Occupancy is issued by the Administrative Officer and recorded in the Land Records for the property.

Dated at Weathersfield, Vermont, this 25th day of March, 2024.

BY:

David (Todd) Hindinger, Chair

Members participating in the site visit, hearing, and deliberations:

David (Todd) Hindinger, Chair
Grace Knight, Vice-chair
Andrea Murray

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. 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.



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Copies of this decision will be distributed to:

Applicant (via certified mail)

Landowner

Every person or body appearing and having been heard at the hearing

Administrative Officer

Town Clerk