



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 Change of Use to a Conditional Use

Findings and Decision

Permit Application No.: 2023.08.02.CU
Applicant Name: Richard Davis
Landowner Name: Richard Davis
Project Location: 78 VT Route 131
Parcel ID#: 05-03-36

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application of a zoning permit for a Change of Use for a Conditional Use submitted by Richard Davis under the Town of Weathersfield Zoning Bylaws.
2. The application was received by Land Use Administrator, Ryan Gumbart. The signed application is dated May 2, 2023. 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
 - b. Town of Weathersfield, VT Office at Martin Memorial Hall
 - c. Ascutney Post Office
 - 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 did not conduct a Site Visit.
7. The application was to be considered by the Zoning Board of Adjustment at a public hearing at approximately 6:31 PM on August 22, 2023, at which time there was not a quorum available for the hearing and no hearing took place. The hearing was warned again and the application was considered by the Zoning Board of Adjustment at a public hearing at approximately 6:30 PM on September 26, 2023. The hearing was closed at approximately 7:25 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, 2022 (the Zoning Bylaw).
9. Present at the hearing were the following members of the Zoning Board of Adjustment:
 - a. David (Todd) Hindinger, Chair;
 - b. Jason Rasmussen, Alternate Member, replacing Joseph Bublat, Vice-Chair;



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- c. Grace Knight.
10. Also present at the hearings were:
 - a. Julie Davis as a representative for the Applicant Richard Davis;
 - b. Ryan Gumbart, Land Use Administrator (not present);
 - c. Diana Stillson, Recording Secretary;
 - d. Andrea Murray;
 - e. Beth Corsok
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. Julie Davis as a representative for the Applicant Richard Davis;
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. Julie Davis;
13. Board members were asked to disclose any potential conflicts of interest. All indicated that there were no conflicts of interest and 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, 1 page
 - b. Exhibit #2 – Certification of Posting and Distribution, 1 page
 - c. Exhibit #3 – Land Use Memo to Zoning Board, 2 pages
 - d. Exhibit #4 – Application, 12 pages
 - e. Exhibit #5 – Community Facilities Sign Off Sheet, 3 pages
 - f. Exhibit #6 – 1978 Septic Inspection Form, 4 pages
 - g. Exhibit #7 – 2003 Zoning Permit, 3 pages
 - h. Exhibit #8 – 2008 Complaint Form, 1 page
 - i. Exhibit #9 – 2020 Memo from Land Use Administrator, 1 page
16. This application was reviewed under the following sections of the Weathersfield Zoning Bylaws:
 - a. Section 2.5.6 – Highway Commercial (HC)
 - b. Section 3.4.1 – Existing Small Lots
 - c. Section 3.4.2 – Nonconforming Structures
 - d. Section 3.4.3 – Nonconforming Uses
 - e. Section 5.3 – Conditional Use



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FINDINGS OF FACT

The following findings of fact 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# 05-03-36 is located at 78 VT Route 131. Its size is .3 acres.
- F2. The property is owned by Richard Davis.
- F3. The property is located in a Highway Commercial district (HC).
- F4. For HC districts the Lot Area Minimum is 1 acre, except for residential uses which require 3 acres. The subject parcel is 0.3 acres. It does not meet the area requirements for residential uses or for other non-residential uses.
- F5. For HC districts the setback requirements are: Front = 40ft, Rear = 25ft, Side = 25ft.
- F6. The property is developed with an existing structure. No changes are proposed to the site or to the structure itself.
- F7. The existing structure is used and permitted as a music business and storage space, as permitted in 2003, reference Exhibit #7. The Applicant's Representative indicated that the Owner/Applicant also resides within the structure on the property.
- F8. The structure has an existing well and wastewater disposal system, reference Exhibit #6.
- F9. Access to the property is via an existing curb cut along VT Route 131.
- F10. The Applicant proposes to change the use of this structure from the currently permitted commercial office space and storage use to a single family residential use. The single family residential use is a Conditional Use in the Highway Commercial district, requiring the approval of the Zoning Board of Adjustment.
- F11. The parcel size of 0.3 acres is less than the 3 acres that is required within the Section 2.5.6 – Highway Commercial (HC) for single family residential uses within the HC district.
- F12. There are four Site Plan like items in the application that depict the building or property to some extent. The exhibits included in the application do not include sufficient detail to demonstrate that the existing building meets setbacks and are not legible in some cases. The Board finds that no conclusion can be made regarding setback compliance. The application includes:
 - 1. A hand sketch title "Homecraft, Inc." and is dated 05/25/78. It is not to scale and does not include any setback measurements. It is found that this document is likely from the original application in 1978 and that it was provided for general information about what was proposed to be on the site.
 - 2. An aerial image with the property centered in the frame with a bold "36". The building in this image appears not to meet the rear setback and show the building off the property. It is found that this document is useful solely to locate the property.



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3. What appears to be a survey of the parcel, labelled “VT Route 131” in the top right, is not legible and does not include a depiction of the building.
 4. A handwritten sketch shows setback dimension (dated 05-25-78 with a strike through) of: 80ft front setback, 80ft or greater side setbacks and a 25ft rear setback. If the parcel is less than 95ft wide the dimensions shown, which add up to more than 95ft are not accurate.
- F13. The parcel contains an existing structure used and permitted as a music business and storage space, as permitted in 2003, reference Exhibit #7. The Applicant’s Representative indicated that the Owner/Applicant also resides on the property. There is a Memorandum by the Land Use Administrator, dated 10-13-2020, that states in part “...home occupations are permitted in HC zones and individuals who own and operate such business are allowed to reside at the situs”. And “The Town...has no issues or concerns with Mr. Davis residing at this location, as once again, it is permitted under our Bylaws.” And “...a single-family dwelling is subject to conditional use review by the Zoning Board of Adjustment in cases of new development. Since the parcel is already developed, and the business has been in operation since 2003, there is no new development to review...”. And, finally, “After 10/28/2020, this letter becomes a final order from the Land Use Administrator should there be no timely appeal filed.” There is no record of a timely appeal on this matter. The Board makes the following findings regarding this memorandum:
1. The Land Use Administrator made this determination in error, since:
 - a. Within the definitions of the Bylaws, and established by convention, “Development” includes “any change in the use of any building or other structure”. Accordingly for Conditional Uses in the HC district, such as for a single family residential, there was merit at that time to bringing the issue before the Zoning Board of Adjustment.
 - b. Within the definitions of the Bylaws “Home-Based Occupation” is “Employment activity that is carried on for gain by the resident and is clearly subordinate to the residential structure. See Section 4.5.2.” The logic for Home-Based Occupations requires that the principal use be residential, requiring the existence, or ability to first permit, a residential structure. While part h) of section 4.5.2.1 states that no permit is required for a home-based occupation, this does not mean that you can have a Home-Based Occupation without first having or permitting a residential structure. For this site, there was not an allowed or non-conforming single-family dwelling to enable a Home-Based Occupation.
 - c. Section 4.5.2.1 of Home-Based Occupations states “A home-based occupation that meets these standards shall be considered an allowed use in all districts where a residential structure is a permitted or conditional use”. According to the logic of the Land Use Administrator’s memorandum a landowner in any district (except for Industrial) could, without a permit, by invoking the “allowed use in all districts” language, construct a single-family residence or convert any structure to a single-family residence on any parcel in the Town by first calling



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- it a Home-Based Occupation. This is an incorrect interpretation of the Zoning Bylaws.
2. Although the determination was in error, this official Memorandum on Town letterhead signed by both the Land Use Administrator and Town Manager was ample guidance that use of that existing structure as a single-family residence and associated Home-Based Occupation was allowed.
- F14. The Applicant's Representative testified that she believes the lot was in existence prior to the adoption of zoning bylaws. Exhibits show the parcel dating back to at least 1978. The Board finds that it is reasonable to conclude that the parcel predates the Bylaws.
- F15. Bylaws section 3.4.1. – Existing Small Lots. Nonconforming Lots or Parcels are defined as “Lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.” This section states in part that “Lots...in existence on the effective date of these Bylaws, may be developed for the purposes permitted in the district in which they are located, even though not conforming to minimum lot size requirements, if such lots are not less than one-eighth acre with minimum width or depth dimension of forty (40) feet...”. This parcel is .3 acres. The Board finds that this is an existing small lot. The Board also finds that the lot is already developed, thus satisfying the purpose of this bylaw section.
- F16. Bylaw Section 3.4.3 – Nonconforming Use is defined as “Use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer. 24 V.S.A. §4303(15)”. Nonconforming Use, allows for existing nonconforming uses to be continued indefinitely as follows: The Board of Adjustment, after a conditional use hearing, may permit: moving, enlarging by up to 50% of original size, altering, or changing to another nonconforming use; but increase of external evidence of nonconforming use shall be kept to a minimum. Once the non-conforming use has been discontinued or replaced with a conforming use, it may not be reestablished. For this project, the Memorandum from the Land Use Administrator dated 10/28/2020 was issued in error, but nonetheless establishes a nonconforming use of this property as a single-family residence with an associated home-based occupation.
- F17. Bylaws section 3.4.2 discusses Nonconforming Structures. Nonconforming Structures are defined as “A structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.” Nonconforming structures may be maintained and repaired. Nonconforming structures may be enlarged horizontally in any manner such that the resulting footprint complies with the current setback requirements of the zoning district in which the nonconforming structure is located. Nonconforming structures may be enlarged vertically, so long as



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the vertical enlargement does not exceed the current height limitations stated in the bylaws and the enlargement is made within the existing footprint of the nonconforming structure. The application documents did not sufficiently demonstrate where the structure was on the property, nor what the setbacks are for the structure. No changes are proposed to the structure itself, nor to the surrounding site. Bylaws Section 3.4.23 – Nonconforming Structures was reviewed and it was found that it could not be determined whether or not this was a nonconforming structure and this issue is not material to the change of use decision.

F18. Section 5.3 – Conditional Use was reviewed. The Memorandum dated 10/28/2020 created confusion. As a result of that erroneous determination that was not appealed, there is no proposed change of use.

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.”* Based on the Findings of Fact, the Zoning Board of Adjustment makes the following Conclusions of Law regarding the proposed project, as conditioned.

CL1. Section 2.5.6 – Highway Commercial (HC) was reviewed and it was concluded that the lot is located in the HC district. For HC districts the Lot Area Minimum for single-family residential uses is 3 acres. The subject parcel is 0.3 acres. The parcel does not meet the area requirements for single-family residential uses. The parcel also does not meet the 1 acre are requirements for other (non-residential) uses.

CL2. Section 3.4.1 - Existing Small Lots was reviewed and it was concluded that the lot is an Existing Small lot. The lot is already developed, thus the previously permitted structure has already satisfied the purpose of this bylaw section, and the application does not involve any proposed additions or expansions to the existing structure.

CL3. Section 3.4.2 - Nonconforming Structures was reviewed and it was concluded that it could not be determined whether or not this was a nonconforming structure.

CL4. Section 3.4.3 – Nonconforming Uses was reviewed and it was concluded that the Land Use Administrator’s 10/28/2020 Memorandum erroneously created the use as a single-family residence and associated home-based occupation, without review by the appropriate municipal panel. This is a non-conforming use that may continue.

1. The property was previously permitted and developed with a commercial structure that was used and permitted as a music business and storage space. This principle use as a commercial structure is changed, to a Single-Family Residence with a Home-Occupation. The use may not change again without application to the appropriate municipal panel.



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CL5. Section 5.3 – Conditional Use was reviewed and it was concluded that there is no substantive change or expansion proposed for this nonconforming use, and there is no increase of external evidence of this nonconforming use.

DECISION AND CONDITIONS

On November 1, 2023 at a deliberative session all three of the deliberating members of the Zoning Board of Adjustment voted unanimously to Approve the application for Change of Use.

Condition 1: The Single-family Residential Use with Home-Occupancy Use may continue so long as the provisions of Bylaw Sections 3.4.3 and 4.5.2 are complied with. The use may not change without application to the appropriate municipal panel.

Condition 2: Comply with State of Vermont permitting requirements of the Department of Environmental Conservation. Obtain or amend a water/wastewater permit as necessary for the use.

Condition 3: Any deviation from the application documents and facts 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.

Dated at Weathersfield, Vermont, this 1st day of November 2023.

BY:

David (Todd) Hindinger, Chair

Members participating in the hearing and deliberations:

David (Todd) Hindinger, Chair
Jason Rasmussen, Alternate Member
Grace Knight.

Members not participating in the hearing and deliberations:

Joseph Bublat, Vice-Chair

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,



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pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

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