



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 Review

Findings and Decision

Permit Application No.: #23.02.08.ZBA.1
Applicant Name: Susan Kissel
Landowner Name: Carl Wyman
Project Location: Harvest Park Road, Lot 4
Parcel ID#: 5A-01-43

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a zoning permit for Site Plan Review submitted by Susan Kissel under the Town of Weathersfield Zoning Bylaws.
2. The application was received by Land Use Administrator, Ryan Gumbart. The application is dated March 29, 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 dated April 4, 2023
 - 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 considered by the Zoning Board of Adjustment at a public hearing at approximately 6:30 PM on April 11, 2023. The hearing was closed at 8:35 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 July 1, 2022 (the Zoning Bylaw).
9. Present at the site hearing were the following members of the Zoning Board of Adjustment:
 - a. David (Todd) Hindinger, Chair;
 - b. Joseph Bublat, Vice-Chair;
 - c. Willis Wood (Alternate Member).
10. Also present at the hearings were:



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- a. Susan Kissel, Applicant;
 - b. Carl Wyman (via remote access), Landowner;
 - c. Ryan Gumbart, Land Use Administrator;
 - d. Mike Todd;
 - e. Darrin Spaulding;
 - f. Brandon Gulnick, Town Manager;
 - g. Jason Rasmussen (future board member).
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. Susan Kissel, Applicant;
 - b. Carl Wyman, Landowner.
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. Susan Kissel;
 - b. Carl Wyman;
 - c. Darrin Spaulding;
 - d. Mike Todd;
 - e. Brandon Gulnick.
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
 - b. Exhibit #2 – Certification of Posting
 - c. Exhibit #3 – Site Plan
 - d. Exhibit #4 – Application for Site Plan Review
 - e. Exhibit #5 – Permit Navigator Results
 - f. Exhibit #6 – 2019 Subdivision Decision
 - g. Exhibit #7 – 2014 Highway Access Permit
 - h. Exhibit #8 – Water Capacity Letter
 - i. Exhibit #9 – Wastewater Permit
 - j. Exhibit #10 – Subdivision Project Review Sheet
 - k. Exhibit #11 – Act 250 Abandonment Order
 - l. Exhibit #12 – Water Line Letter



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- m. Exhibit #13 – Site Photos
 - n. Exhibit #14 – Email from Peter and Weona LeClair.
 - o. Exhibit #15 – Community Facility Project Review & Sign-off Sheet (superseded by #15R)
 - p. Exhibit #15R – Revised Community Facility Project Review & Sign-off Sheet with Fire Chief Signature
 - q. Exhibit #16 – Email from Darrin Spaulding, AVFD Fire Chief
 - r. Exhibit #17 – Letter from Brandon Gulnick dated April 3, 2023
 - s. Exhibit #18 – Subdivision Plan for Wyman 2017
16. This application was reviewed under the following sections of the Weathersfield Zoning Bylaws:
- a. Section 2.5.6 – Highway Commercial (HC)
 - b. Section 3.5 – Off-Street Parking
 - c. Section 3.5.2 – Specific Standards
 - d. Section 3.6 – Outdoor Lighting
 - e. Section 3.7 – Performance Standards
 - f. Section 3.8.6 – Signs
 - g. Section 5.1.2 – Site Plan Review – Application Items
 - h. Section 5.2 – Site Plan Review
 - i. Section 5.2.1 – Compatibility with Surrounding Development
 - j. Section 5.2.2 – Traffic
 - k. Section 5.2.3 – Protection of Natural Resources
 - l. Section 5.2.4 – Stormwater Management
 - m. Section 5.2.5 – Landscaping and Screening

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# 5A-01-41 is located on the north side of the intersection of Cemetery Road and Harvest Park Road. It has not been given a 911 address as the lot is currently under common ownership with abutting parcels. Its size is 1.04 acres.
- F2. The property is owned by Carl Wyman who owns various adjacent lots to the south and west.
- F3. The property is located in a Highway Commercial Zoning District.
- F4. This use is “Highway Commercial”, a Permitted Use as determined by the Board in its Decision dated February 28, 2023, in the 4.3.2(f) Highway Commercial Zoning District. Site Plan Review is required. Certificate of Occupancy is required. General/Special Provisions Apply.
- F5. The property is currently vacant with no existing infrastructure on the lot.
- F6. Access to the property is via Harvest Park Road, a private road off of Cemetery Road.



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- F7. The Applicant proposes to complete the following major items:
1. Construct a veterinary clinic building and associated parking lot.
 2. Operate a veterinary clinic as a commercial business.
- F8. The project will be arranged on the property as shown on the Site Plan – Site Plan For Veterinary Clinic, Susan Kissel, Weathersfield Vermont, dated January 9, 2023.
- F9. Section 2.5.6 Highway Commercial (HC): Relevant sections of this section were reviewed. The Front setback required is 40ft, Side/Rear setbacks required are 20ft. The applicant represented that the project meets these setbacks.
- F10. 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 current use, nor the proposed use, was or would exceed the Performance Standards for the district.
- F11. Section 3.5 Off-Street Parking. Relevant sections of this section were reviewed.
1. Section 3.5.1.1: Off-street parking spaces shall be provided when any use is established or enlarged and shall adequately accommodate the proposed development. Such accommodation shall include all owners, occupants, employees, customers, delivery vehicles, and/or other persons expected to be on the premises.
 2. Section 3.5.1.2: All standard parking spaces shall have a minimum width of ten (10) feet and a minimum length of twenty (20) feet.
 3. Section 3.5.1.3: Nonresidential parking lot shall be effectively landscaped in accordance with Section 5.2.5 of these Bylaws (site plan review).
 4. Section 3.5.1.4: Handicap parking spaces shall be provided in a size and number in accordance with current ADA requirements.
 5. Section 3.5.2.2: Commercial or industrial parking lots adjacent to residential uses shall be set back a minimum of thirty (30) feet. A four (4) foot high, solid fence may be used in lieu of a 30-foot setback. Effective landscaping and plantings may be used in lieu of the 30-foot setback and shall be evaluated by the Land Use Administrator or the Zoning Board of Adjustment. The Site Plan demonstrates compliance with this requirement.
 6. Section 3.5.3.2: Commercial, Small Enterprise, Business and Unspecified Uses - One parking space for every motorized vehicle used in business, plus one parking space for every four hundred (400) square feet of floor area. $2747\text{sft}/400 = 7$ spaces required. 6 employees and two Veterinarians, one spot each = 8 spaces required. Total required = 15. Spaces provided = 17 spaces. The Site Plan demonstrates compliance with this requirement.
 7. Section 3.5.3.4: Accessible parking spaces shall be provided as follows: for Commercial structures - (excludes Home Occupations and Home Industries.) A minimum of one accessible space with one additional accessible space for every twenty-five are to be provided. One is provided. In this document the word “accessible” is used to replace the word “handicapped” in the Zoning Bylaws. The Site Plan demonstrates compliance with this requirement.
- F12. Section 6.7 – Certificate of Occupancy. A certificate of occupancy is required as one of the Special Provisions applicable to Site Plan Review in this District.



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- F13. 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.
- F14. Section 5.2 - Site Plan Review.
1. Section 5.2.1 Compatibility with Surrounding Development – The proposed use as “Highway Commercial” (veterinary clinic), and including the proposed improvements, is consistent with the established trends and patterns in the surrounding area. No building plans were submitted, but the applicant described the buildings as: one story with two overhangs on each side. The style of the building will be similar to the Wyman Insurance building. The architecture, height and material are compatible with other similar simple commercial structures. Abutting land uses include:
 - a. Wyman Insurance building;
 - b. Residential, single-familyThe Board finds that the project is compatible with the surrounding development.
 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 add 1 access point to Harvest Park Road and is the only access point to the property. The traffic circulation within the project site is simple and defined by the parking layout.
 3. Section 5.2.3 - Protection of Natural Resources. There are no significant natural resources on the lot that require the Zoning Board of Adjustment to adjust the development layout so as to avoid negative impacts.
 4. 5.2.4 Storm Water Management and Drainage. The site currently discharges stormwater without passing through or over a stormwater treatment system. The Board is concerned that stormwater from the parking lot surfaces and roof surfaces can leave the site without treatment and could degrade the adjacent town road. The Site Plan does not show a stormwater management system. 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 included a narrative that indicates drainage will flow towards Cemetery Road and grass swales will be installed to absorb any runoff and that the other side of the building and parking lot will drain toward Harvest Park Road and will be absorbed by grassed areas. They also indicate that the surrounding area and existing buildings have had no adverse impacts regarding drainage. The Board finds that the stormwater management plan does not meet the bylaw requirement. The Board also reviewed the original subdivision site plan, Exhibit #18 specific to stormwater. That plan includes item 5 “State of Vermont Stormwater Runoff and Construction General (Erosion Control) Permits will be obtained as the lots are developed.” The Applicant and Owner testified that the project is under the state threshold to trigger a state permit and as such the State does not have jurisdiction.



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5. 5.2.5 Landscaping and screening. The site is open grass with an existing tree line to the north, including butternut trees. The Site Plan shows the following plantings: six 5'-6' lilac bushes, four 3-6' crabapples, and a 4' landscaped buffer between the parking lot and the proposed structure. 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 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 plan does not meet the meet the bylaw requirement. The Board finds that the landscaping proposed in the original site plan, Exhibit 18, Item 3 "An assortment of 2-3" deciduous trees will be planted about 30-50 feet apart along both sides of Harvest Park Road" has not yet been planted.

- F15. 3.8.6 Signs in the HC district: The Board did not have exhibits provided regarding proposed signs. The applicant did state that there would be two signs, one on the building and one in the sign easement area shown on the plans. The Board makes no findings about the existing signs and any proposed signs.
- F16. Section 3.6 - Outdoor Lighting. The site plan shows recessed lights under porch 10' on center and two pole mounted lights on the western side of the parking lot. The site plan also includes the statement that the lights will "conform to class 1 lighting levels as set forth in section 3.6 of the Weathersfield Zoning ByLaws".
- F17. Community Facility Project Review Sheet and Sign-Off, Exhibit #15. Prior to the hearing all department heads signed the form and indicated that the proposed project would have no adverse impact on their department, with the exception of the fire department. The Fire Chief of the Ascutney Village Fire Department provided the following comments via an email



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"Good afternoon,

I'm very shocked that I have had 2 people at the town office tell me that I need to sign off on the proposal of this permit.

First there is no blue print of this building, second there no sign off the building from the state of Vermont , 3rd is this piece of property is turning into a development which I understand there is a another building waiting to be built, 4th we have not seen any proposal to put in a water tank for firefighting purposes. We all know this is a real problem in the village of Ascutney of no water. When the Ascutney fire station was built we had to put one in as did the school, the church, Green Mtn Power, Running bear campground, Gateway campground, Daneils construction and the list goes on.

Other things not listed is what type of building, is it sprinkled and can the water system handle it? (Wendy Smith at a meeting said the water system could not handle anymore customers) is there a fire alarm panel , security panel because they probably going to have medication for the animals and I hope they are locked in a safe for the safety so people don't break into the building and stealing the meds. How floors , how many people are they employing.

So these are just some of the questions. I hope in the future this doesn't become a habit to rush this through. At this time as fire chief I will not be signing off on this project.

Chief Darrin Spaulding

The Zoning Board discussed in detail each of the concerns listed by the Fire Chief and the Applicant provided additional information on these topics. The Board finds that the State of Vermont Division of Fire Safety has jurisdiction over most of these items and compliance with their permit process is necessary. The applicant described the building type and geometry, the security measures for the medications, that there will be a lock box for the fire department, the type of water connection, noted that this was an existing subdivision and described the remaining lots in this subdivision to Chief Spaulding. The Applicant agreed to send a copy of the building plans to the Fire Chief for their information. There was a discussion regarding whether or not this project required a water storage tank. After these discussions Chief Spaulding reconsidered the Community Facility Project Review Sheet and Sign-Off on the project.

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*



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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.

- CL1. Section 2.5.6 Highway Commercial (HC) Zoning District was reviewed. Within the HC district Veterinary Clinic use was determined by the Board on February 28, 2023, to be a permitted use requiring Site Plan Review. Site Plan Review is required and was completed. Certificate of Occupancy is required and is included in the Conditions. As conditioned, the Zoning Board concludes that the proposed project use is consistent with the HC district and that the applicable reviews have been completed.
- CL2. Section 3.5 – Off-Street Parking was reviewed. The number and configuration of the parking is sufficient for the proposed project. The Zoning Board concludes that the Off-Street Parking shown on the Site Plan satisfy the bylaws.
- CL3. Section 3.6 Outdoor Lighting. The exhibits and testimony provided some but not all of the information needed to demonstrate compliance with the provisions of the bylaws. The Zoning Board concludes that the lighting, when installed and operational must be field checked by the Land Use Administrator to verify that it complies with the bylaws.
- CL4. 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.
- CL5. Section 3.8.6 Signs – There were no proposed signs to review. The Zoning Board concludes that all signs must be submitted for review and approval by the Land Use Administrator prior to installation.
- CL6. 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.
- CL7. Section 5.2.4 – Stormwater Management. The Site Plan and narrative provided by the applicant were reviewed in detail. The plan does not adequately assure the stormwater provisions of the bylaws are met. The Board concludes that sufficient requirements can be included as conditions, such that as conditioned, the Zoning Board can conclude that the Stormwater Management system can satisfy the bylaws. Stormwater management measures are to be incorporated into the final site design to ensure that no additional storm water runoff is generated beyond the boundaries of the property and so that the storm water cannot impact neighboring properties, town highways or surface waters.
- CL8. Section 5.2.5 – Landscaping and Screening. The Site Plan and narrative provided by the applicant were reviewed in detail. The plan does not adequately assure the landscaping provisions of the bylaws are met. The Board concludes that sufficient requirements can be included as conditions, such that as conditioned, the Zoning Board can conclude that the landscaping can satisfy the bylaws.



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DECISION AND CONDITIONS

On April 11, 2023, at a deliberative session all three of the deliberating members of the Zoning Board of Adjustment voted unanimously to Approve the application for Site Plan 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.
- C4. Comply with State of Vermont permitting requirements of the Department of Environmental Conservation. The existing water/wastewater permit is to be amended to match the project. The State Stormwater Management Program is to be consulted to assure that this project, as part of the common development, does not require a permit.
- C5. Stormwater management measures are to be incorporated into the final site design to ensure that: All storm water generated on the site is to be made free of sediment and pollutants before leaving the site. Storm water may not impact neighboring properties, town highways or surface waters. No sediment laden stormwater may leave the site or accumulate with adjacent property flows with sufficient velocity to scour the Town Roads or their ditches. The Land Use Administrator is to verify conformance with this condition as part of the Certificate of Occupancy process.
- C6. The landscaping is to include the plantings shown on the plan. In addition, the parking lot is to be screened along Harvest Park Road and Lot 3 using the same or greater density and species as proposed along the Northerly and Easterly Boundaries. The landscaping scope for this parcel is to include the relevant plantings referenced on the original site plan, Exhibit 18, Item 3 "An assortment of 2-3" deciduous trees will be planted about 30-50 feet apart along both sides of Harvest Park Road." The Land Use Administrator is to verify conformance with this condition as part of the Certificate of Occupancy process.
- C7. The light locations as shown on the Site Plan are approved. The fixtures and installation locations are to conform to section 3.6 of the bylaws and 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.



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Dated at Weathersfield, Vermont, this 05 day of May, 2023.

BY:

David (Todd) Hindinger, Chair

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

David (Todd) Hindinger, Chair
Joseph Bublat, Vice-Chair;
Willis Wood (Alternate Member).

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.

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