



# 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.: #23.1018.Len  
Applicant Name: Nikita Lenahan  
Landowner Name: Nikita Lenahan  
Project Location: 4782 Route 106  
Parcel ID#: 03-02-09.1

### **INTRODUCTION AND PROCEDURAL HISTORY**

1. This proceeding involves review of an application for a zoning permit for Site Plan Review submitted by Nikita Lenahan under the Town of Weathersfield Zoning Bylaws.
2. The application was received by Land Use Administrator, Ryan Gumbart. The signed application is dated November 8, 2023. Application fee was received November 9, 2023. The Land Use Administrator worked with the Applicant over the next two plus months to obtain items to complete the application. 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 5:30 PM on February 13, 2024, prior to the hearing. Present were Todd Hindinger, Jason Rasmussen, Andrea Murray, Grace Knight, Ryan Gumbart, Nikita Lenahan, Paul Foley, and Josh Dauphin.
7. The application was considered by the Zoning Board of Adjustment at a public hearing at approximately 6:30 PM on February 13, 2024. The hearing was closed at 7:45 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).



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9. Present at the site hearing were the following members of the Zoning Board of Adjustment:
  - a. David (Todd) Hindinger, Chair
  - b. Grace Knight, Vice-Chair
  - c. Andrea Murray
10. Also present at the hearings were:
  - a. Nikita Lenahan, Applicant
  - b. Paul Foley
  - c. Matthew Belden
  - d. Ryan Gumbart, Land Use Administrator
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. Nikita Lenahan
  - b. Paul Foley
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. Nikita Lenahan
  - b. Paul Foley
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 – Certification of Posting – 1pg
  - c. Exhibit #3 – Newspaper Tear Sheet -1pg
  - d. Exhibit #4 – Project Overview memo – 1pg
  - e. Exhibit #5 – Administrative Review Sheet (4 pages)
  - f. Exhibit #6 – Application #23.1018.Len (11 pages)
  - g. Exhibit #7 – Additional materials packet (8 pages)
  - h. Exhibit #8 – Permit Navigator Results (20 pages)
  - i. Exhibit #9 – Site plan review checklist – 1pg
  - j. Exhibit #10 – Email dated 5-31-2018 from Sven Fedorow, former Zoning Administrator – 1pg



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- k. Exhibit #11 – Correspondence from Marcos Miller, Agency of Transportation (8 pages)
- l. Exhibit #12 – Zoning permit application for house and garage construction dated 4-6-2013 – 4pgs
- m. Exhibit #13 – Community Facility Sign Off sheet (5 pages)
- n. Exhibit #14 – Wastewater Permit – 2pgs
- o. Exhibit #15 – Email chain between Terry Shearer and Ryan Gumbart in regards to the State's Wastewater permit which ended 11-15-2023 – 3pgs

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 3.6 – Outdoor Lighting
- d. Section 3.7 – Performance Standards
- e. Section 4.2.1 – Child Day Care
- f. Section 5.1 – Application Submission Requirements
  - i. Section 5.1.2 – Site Plan Review
- g. Section 5.2 – Site Plan 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# 03-02-09.1 is located on the west side of Vermont Route 106, a public road. It has a 911 address of 4782 Route 106. Its size is 3.16 acres.

F2. The property is owned by Nikita Lenahan.

F3. The property is located in a Highway Commercial Zoning District.

F4. Family Childcare Home is a Permitted Accessory Use in the Highway Commercial District. Site Plan Review is required.

F5. The current use of the property is Residential, Single-family. The lot is developed with a principal dwelling, a mobile home, and an accessory detached garage. The mobile home is used for storage and is not occupied. There was discussion that clarified that the mobile home must be removed and is not permitted for occupancy, because the Town Zoning permit is to replace the trailer with a new home, which is also stated in the State Water/Wastewater permit. There was discussion regarding construction of space within the garage for occupancy and Exhibit #10 was reviewed. The garage is not permitted for occupancy.

F6. Access to the property is via Vermont Route 106, a public road.

F7. The Applicant proposes to complete the following major items:



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1. Convert the lower level of the principal dwelling into a space to be used as a Family Childcare Home.
- F8. The project will be arranged on the property as shown on the Application – Exhibit #6.
- 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 there is no exterior construction proposed and that the project meets these setbacks. The site plan appears to show that the existing trailer does not meet the setbacks.
- F10. Section 3.6 - Outdoor Lighting. The Application – Exhibit #6 shows lights on the northeast and northwest corners of the house and the south side of the house. No specifications on the fixtures were provided. The applicant testified that the lights are existing and do not direct light upward, onto adjacent properties, or onto public highways. The applicant testified that no new lights would be installed. The Zoning Board finds that the lighting plan complies with this section.
- F11. 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. There was discussion regarding making the applicant aware of the potential impact of the abutting industrial use on the child care use, but the applicant was confident there was no conflict or concern.
- F12. Section 3.8.6 Signs – There were no proposed signs to review.
- F13. Section 4.2.1 – Child Day Care was discussed at the hearing. The applicant testified that the proposed Family Child Care Home would be licensed or registered with the State of Vermont. As described in the Application – Exhibit #6 the Family Child Care Home would serve no more than six full-time and four part-time children. The Board finds that the Bylaws allow for a Family Child Care Home Use with the completion of the required State Permitting (a state registered or licensed family child care home), Site Plan Review and a Certificate of Occupancy Required. The Board did not find whether or not the facility would be classified as licensed or registered.
- F14. 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.
- F15. Section 5.2 - Site Plan Review.
  1. Section 5.2.1 Compatibility with Surrounding Development – The proposed use as Family Childcare Home as an Accessory Use to the Principal Residential Use is consistent with the established trends and patterns in the surrounding area. The abutting property to the south is residential and to the north is in a different district, the Industrial district. The principal dwelling and the proposed childcare use is set back and not visible from the road. The applicant testified that there would be no employees, besides herself, at this time but could be in the future. There was some discussion regarding the presence of the abutting Industrial land use, as the Town owns and operates a solid waste transfer station here. The applicant is aware of the abutting land use and is not bothered by it. Children will be generally on the property surrounding the facility, which is relatively remote from the transfer station activity.



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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 utilize the existing access point to Route 106 which is the only access point to the property. The traffic will be controlled through staggered drop off and pick up times to ensure no more than 1 parent's vehicle is on the property at a time. If timing were to overlap due to tardiness or earliness there is sufficient space at the house site and by the garage at the bottom of the hill for a vehicle to wait. There is sufficient space at both locations for vehicles to turn around. The driveway access is steep and the applicant testified that it has never been a problem to access the house in winter or in mud season. The applicant testified that the driveway will be plowed as needed by a contracted service. Traffic to and from the property will increase by approximately 20 trips per day, accounting for the 10 potential children each with a separate drop off and pick up.
3. Section 5.2.3 - Protection of Natural Resources. Exhibit #7 identifies significant natural resources including soils of Statewide Significance, Class 1 and 2 wetlands, slopes greater than 25%, and a protected "Biological Natural Area."
  - a. Based on an estimation by the Land Use Administrator given that the property is a total of 3.16 acres, the implications of section 3.2.1 – Agricultural Zoning are not applicable as the lot does not contain the 3 contiguous acres needed to trigger the bylaw.
  - b. The northeast corner of the property contains State mapped Class 1 wetlands and a small amount of Class 2 wetlands. These areas are protected by section 3.2.9 – Wetlands and the State of Vermont. None of the proposed changes would impact the wetlands or trigger the bylaw. Expansion of any land use activity in this area would require review and permitting and is not allowed.
  - c. There is a band of steep ground with slopes greater than 25% located across the center of the property that divides the lot into an upper west side where the proposed Child Care Home is and a lower east side where the property is accessed from Route 106. Steep slopes are protected by section 3.2.7 – Steep Slopes and High Elevation which prohibits development on slopes greater than 25%. The existing driveway navigates this steep slope at an angle and no development is proposed to occur on slopes greater than 25%. Whether these steep slopes were considered during the permitting process for the residence is unknown, but the applicant was issued a permit for the residence (see Exhibit #12).
  - d. The property is proximate to an area identified in the Biological Natural Areas Survey as being of high ecological significance to the Town. The area is significant due to wetland features, some uncommon plants and forest types. None of this area is mapped on the property and the proposed use if confined to the subject property would not impact the natural area.
4. 5.2.4 Storm Water Management and Drainage. The current site plan depicts the discharging of stormwater without passing through or over a stormwater treatment 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,





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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 Board finds that the stormwater management plan does not meet the bylaw requirement, but was permitted as part of prior development.

5. 5.2.5 Landscaping and screening. From the road the site is open with grass surrounding the gravel driveway and parking area on the lower side of the property. There is a forested strip of land, primarily within the steep slopes area, which screens the house and proposed Family Child Care Home and the parking area shown on the Application – Exhibit #6. No development is proposed in the unscreened lower area along the road.
6. Wastewater and Water Supply:
  - a. The existing State water/wastewater permit does not allow for both the residence and the occupancy of the mobile home. The State permit requires that an installation inspection form be completed and one was not provided.
  - b. The existing State water/wastewater permit does not provide for the additional design flow that would be associated with a change of use such as the occupancy by the 10 children (no more than 6 full time and 4 part time) allowed under the Family Child Care Home or Facility section of 4.2. Exhibit #15 is an email chain between the Land Use Administrator and the State of Vermont employee Terence Shearer regarding this issue. There is some specific language present regarding what would be exempt (a family child care home registered by the Vermont Agency of Human Services, Department for Children and Families) and what would not be exempt requiring a permit amendment (a Child Care Facility licensed by the Vermont Agency of Human Services). The Board finds that the language in the Bylaws allow for both registered and licensed and thus local permitting will be satisfied in either case, so long as there is no violation of rules affecting the wastewater system. Should the applicant plan in the future to increase the occupancy of children to serve more than 10 children (more than 6 full time and 4 part time), they must make application to the Zoning Board for Conditional Use Approval, per 4.2.
  - c. The Board finds that there are issues that need to be resolved in the State permitting process for both of the issues listed above, but so long as they are resolved the project will not conflict with these sections of the Bylaws.
- F16. The Board considered whether or not Conditional Use Review was needed.
  1. As part of the Town’s administrative process The Community Facilities Sign-Off Sheet was reviewed. Prior to the hearing all department heads were given the opportunity to review the application and indicate whether or not the proposed project would have an adverse impact on their department. With the exception of the fire department, the department heads indicated the project would not have an adverse impact. The Fire Chief of the West Weathersfield Fire Department did attend the site visit and submitted in writing that he has no concerns about the impact of the project on the department. This was sent via email and is included in Exhibit #13.



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2. The Board finds further that Conditional Use Review and Approval is not required because, under the definitions of section 4.2, the proposed use is found to be a Family Child Care Home, not a Family Child Care Facility.

### **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.

- CL1. Section 2.5.6 - Highway Commercial (HC) Zoning District was reviewed. Within the HC district a Family Child Care Home use was determined by the Board to be a Permitted Accessory Use. The applicant testified that the proposed Family Child Care Home would be licensed or registered with the State of Vermont.
- CL2. Section 3.5 – Off-Street Parking was reviewed. The Zoning Board concludes that the Off-Street Parking area shown on the Site Plan and the description of the traffic management on the site are sufficient to satisfy the bylaws.
- CL3. Section 3.6 Outdoor Lighting. The applicant testified that the lights are existing and do not direct light upward, onto adjacent properties, or onto public highways. The applicant testified that no new lights would be installed. The Zoning Board concludes that the lighting complies with this section.
- 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 conforms with the Performance Standards of section 3.7.
- 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 4.2.1 – Child Day Care was reviewed. The board concludes that the proposed use meets the definition of a Family Child Care Home use, which is a permitted accessory use. The board concludes that Site Plan Review is required for the use and was completed. The board concludes that a Certificate of Occupancy is required.
- CL7. Section 5.1.2 – Site Plan Review Application Items was reviewed. The board concludes that the application was lacking aspects related to lighting, stormwater drainage and State permitting related to the wastewater disposal system. The board concludes that as conditioned the proposal can meet the bylaws.
- CL8. 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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- CL9. 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 because of the steep slopes present and the proximity of the protected wetland. 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 installed and maintained to ensure that the stormwater generated on the site does not erode the existing steep slopes and so that sediment laden stormwater is not discharged into the protected wetland.
- CL10. Section 5.2.5 – Landscaping and Screening. The Site Plan and narrative provided by the applicant were reviewed in detail. The Board concludes that so long as the existing forested buffer remains between the main residence and the road, the landscaping satisfies the bylaws.
- CL11. Section 5.3 – Conditional Use Review was not completed. The Board concludes that the proposed use is a Family Child Care Home, not a Family Child Care Facility. Within the HC district a Family Child Care Home is a Permitted Accessory Use.

### **DECISION AND CONDITIONS**

On March 25, 2024 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, and to have a functioning Childcare Home in operation, 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 regarding permit WW-2-4910. The applicant is to reach out to the Wastewater Management Division and:
1. Obtain in writing confirmation that they are either exempt from existing water/wastewater permit requirements or amended the permit to match the project for the change of use.
  2. Complete the installation certification form required in their permit and record it in the Land Records.





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- C5. Stormwater management measures are to be installed and maintained to ensure that the stormwater generated on the site does not erode the existing steep slopes and so that sediment laden stormwater is not discharged into the protected wetland.
- C6. Obtain registration or licensing from the Vermont Agency of Human Services, Department for Children and Families for the Child Care Home use.
- C7. The forested buffer between the residence and the road is to be maintained.
- C8. The exterior lighting is approved so long as the fixtures and installation locations conform to section 3.6 of the bylaws.
- C9. 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.

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