

Town of Weathersfield Vermont

Zoning Board of Adjustment

Application for Conditional Use

Findings of Fact, Conclusion of Law and Decision

Permit Application No.: 22.07.13.CU  
Applicant Name: Greg and Mandy Martel  
Landowner Name: Heidi Mitchell  
Project Location: 7228 VT Route 131  
Parcel ID#: 07-02-03

**INTRODUCTION AND PROCEDURAL HISTORY**

1. This proceeding involves review of an application for a zoning permit for a Conditional Use, submitted by Greg and Mandy Martel under the Town of Weathersfield Zoning Bylaws.
2. The Conditional Use Permit application was received by Land Use Administrator Ryan Gumbart. The application is dated 07-13-2022. The Conditional Use Permit Application included Zoning Permit Application 22.07.13.A.1, dated 07-15-2022 by Owner Heidi Mitchell and 07-13-2022 by Applicant Mandy Martel.
3. Notice of the public hearing was posted at the following places:
  - a. Town of Weathersfield, VT Office at Martin Memorial Hall
  - b. Ascutney Post Office
  - c. Perkinsville Post Office
  - d. The Town Website
  - e. The local newspaper as designated by the Selectboard.
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 7:24 PM on Thursday August 18, 2022.
8. The Zoning Board of Adjustment (ZBA) 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 hearings were the following members of the Zoning Board of Adjustment:
  - a. David (Todd) Hindinger, Chair;
  - b. John Broker Campbell, Vice-Chair;
  - c. Willis Wood
  - d. Joseph Bublat
10. Zoning Board of Adjustment members Recusing themselves:
  - a. Jaimie Wyman.
  - b. David Gulbrandsen.
11. Also present at the hearings were:
  - a. Greg and Mandy Martel, Abutter and Applicant;
  - b. Jaimie Wyman, Abutter;
  - c. David Gulbrandsen;
  - d. Ryan Gumbart, Land Use Administrator;
  - e. Diana Stillson, who takes the minutes of the meeting;
  - f. Jessica and Kalem Taft (did not participate – present for item later on the agenda);
  - g. Nancy and Dwight Phelps (did not participate – present for item later on the agenda);
  - h. Chris Yurek (did not participate – present for item later on the agenda);
  - i. Jessica Louisosjeyer (did not participate – present for item later on the agenda);
12. 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 following were determined to meet the definition of interested persons:

- a. Greg and Mandy Martel, Abutter and Applicant
- b. Jaime Wyman, Abutter.

13. 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. Greg and Mandy Martel
- b. Jaime Wyman

14. Board members were asked to disclose any potential conflicts of interest. Potential conflicts of interest were disclosed. Neither the Applicant nor any member of the Zoning Board expressed concern about conflicts of interest.

15. Board members and the applicant were asked to disclose any potential ex parte communications. No one attending the hearing expressed concerns with ex-parte communications.

16. During the course of the hearing the following exhibits were submitted to the Zoning Board of Adjustment:

- a. Exhibit #1 – Notice of Public Hearing and Certification of Posting, 2 pages
- b. Exhibit #2 – Conditional Use and Zoning Permit applications, seven pages.
- c. Exhibit #3 – Letters from Landowner dated 07/13/2022 and 02/07/2022.
- d. Exhibit #4 – email from ANR Fish and Wildlife to Martel, 2 pages.
- e. Exhibit #5 – Survey – Mitchell Subdivision – Revised 07/12/2022.
- f. Exhibit #6 – Zoning district map excerpt of area. 1 page.
- g. Exhibit #7 – ANR Permit Navigator sheets, 10 pages.
- h. Exhibit #8 – ANR Natural Resources Atlas aerial photo of area, 1 page.
- i. Exhibit #9 – Conditional Use Worksheet provided by Land Use Administrator.
- j. Exhibit #10 – Zoning Permit Application Review Checklist by Land Use Administrator, 3 pages.
- k. Exhibit #11 – Community Facility Project Review Sheet, 3 pages.

17. This application was reviewed under the following sections of the Weathersfield Zoning Bylaws:

- a. Section 2.3 – Lot in Two Districts
- b. Section 2.5.6 – Highway Commercial District (HC)
- c. Section 2.5.5 – C-10 Conservation District (C-10)
- d. Section 3.2.4 – Habitat Areas
- e. Section 3.7 - Performance Standards
- f. Section 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 # 07-02-03 is located (accessed from) 7228 VT Route 131. The subject parcel, Lot 1, is 3.51 acres. It was recently created (or in the final stages of being created as part of the Subdivision process) from the larger 17.33 acre parcel of Mitchell. Lot 2 retains the majority of the acreage at 13.82 acres and is not subject to this review.
- F2. The Applicants are Greg and Mandy Martel.
- F3. The property is owned by Heidi Mitchell. The owner did not attend the hearing. The Martels submitted letters, Exhibit 3, and provided testimony that they had permission to represent the Owner in this hearing. The Owner signed the Zoning Permit Application.
- F4. The property is located in both the HC district and the C-10 Zoning District. The proposed residence is located in the HC district.
- F5. Development of a single family dwelling in the HC district requires Conditional Use Permit Review.
- F6. The parcel is currently undeveloped.
- F7. Access to the property is via a driveway within a Right-Of-Way, over Lot 2, from an existing curb cut along VT 131.
- F8. The Applicant proposes to complete the following major items:

1. Development of the parcel, Lot 1, with a single family dwelling and associated infrastructure including a driveway, well, wastewater disposal system, and utilities. The house size is not yet determined but it will be somewhere between 1200 sft and 1500 sft.
- F9. The project will be arranged on the property as shown on the project plans. There is a site plan included in the application on the last page of Exhibit 1 with hand written setback dimensions and there is a survey as Exhibit #4, which shows the project arrangement.
- F10. Section 2.3 – Lot in Two Districts. Where a zoning district boundary line divides a lot of record in single ownership at the time of the adoption of the district line, permitted uses for each of the divided parts shall be as required within the district in which the land is located. The proposed use, a single-family dwelling, is to be located in the HC district. The remaining lands are part of the C-10 district.
- F11. Section 2.5.6 – Highway Commercial District (HC). Within the HC district Single Family Dwellings must meet the Area, Land and Structural Requirements of the RRR 3-5 Zone. In the RRR3-5 district:
1. The lot area minimum listed in the bylaws is 3 acres and the parcel size is 3.51 acres.
  2. Frontage requirement is 200ft, land is accessed via a Right-Of-Way and has no frontage.
  3. Front Setback requirement is 40ft, Rear and Side Setback Requirements are 50ft. Exhibit 1 shows that the nearest property line is “>50” from the proposed structure.
- F12. Section 2.5.5 – C-10 Conservation District (C-10). By virtue of the previous finding, the proposed use is found not be located in the C-10 district.
- F13. Section 3.2.4 - Habitat Areas. This section was reviewed at the hearing. Deer wintering habitat is identified in the area of the proposed development.
1. Mandy Martel reached out to the Vermont Agency of Natural Resources to clarify the deer wintering habitat issue. Ryan Smith, a Fish & Wildlife Specialist for the Agency completed a site visit to look at potential deer wintering area impacts in relation to the development of a single family home. Ryan made the following findings in an email, Exhibit 4, “I made a site visit and determined in fact the area in which the house site is planned is not within the deer wintering areas, it is approximately 100 feet further down the slope and is in the open hardwoods, not critical habitat. The planned driveway is also below the deer wintering area and will follow an existing road. I feel that the planned location, although within the 300 foot buffer of the deer wintering area will have very

minimal to no impacts on over wintering deer and could precede as planned. I did mention to Mandy, that the only potential impact that might occur which would be detrimental to over wintering deer would be if they had a dog and would let it run loose and uncontrolled during periods of deep snow and cold temps, she insured (assured) me that wouldn't be a concern as their dog is always on a lease (leash) and would surely not be allowed to roam free.”

2. The Conservation Commission did not provide comment regarding the habitat.

F14. Section 3.7 - Performance Standards. This section was reviewed at the hearing. The Interested Persons, the Public and the Zoning Board were given the opportunity to express any concerns specific to this bylaw.

1. 3.7.1 Adjoining Properties. The abutter present for the hearing did not express any concerns.

2. 3.7.2. Nuisance Standards. There was no other evidence provided that the proposed activity would exceed the Nuisance Performance Standards for the district. The lighting standard was discussed briefly and the applicant testified that the lighting which would be used on the residence would be minimal and would meet the standards.

F15. Section 5.3 – Conditional Use Review. This section was reviewed at the hearing to determine whether the proposed use will result in an undue adverse effect on:

1. (a) The capacity of existing or planned community facilities. The Community Facility Project Review and Sign-Off Sheet was reviewed by the appropriate departments and signed off by each. The proposed use, a project that involves the development of a single-family dwelling, adjacent to other single family dwellings, will not have an adverse impact on the capacity of the existing or planned community facilities.

2. (b) The character of the area; and/or traffic. The proposed use, a single-family dwelling, does not have the potential to adversely affect the safety of the travelling public and the condition of the town road network.

3. (c) as well as whether all applicable general and special provisions of these Bylaws would be met. The ZBA finds that it has reviewed the bylaws and does not find any other applicable that are not contained herein.

F16. The Martel's own a parcel and operate a structure and business along VT 106 downhill of the proposed residence. The parcel this business is located on abuts the subject parcel, Lot

1. There is a steep slope between the business building and the proposed residence. The primary vehicle access to the parcel, Lot 1 will be from VT 131. The Martels are not proposing to construct a driveway between the structures due to the steep slopes. Since no road was proposed in this location the steep slope criteria of 3.2.7 were not reviewed.

F17. A permit is required from the State for the proposed water supply and wastewater disposal system to serve this residence. Exhibit 7. The Martel's are aware of this requirement and are pursuing this permit.

F18. The board discussed stormwater management and permitting. Exhibit 7 identifies that a State Operational Stormwater Discharge Permit could be required. It was the Land Use Administrator's opinion that one was not required.

#### 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 9.6.3). Based on the Findings of Fact, the Zoning Board of Adjustment makes the following Conclusions Of Law regarding the proposed project, as conditioned.

- g. Section 2.3 – Lot in Two Districts
- h. Section 2.5.6 – Highway Commercial District (HC)
- i. Section 2.5.5 – C-10 Conservation District (C-10)
- j. Section 3.2.4 – Habitat Areas
- k. Section 3.7 - Performance Standards
- l. Section 5.3 – Conditional Use Review

CL1. Section 2.3 – Lot in Two Districts was reviewed. For a lot in two districts permitted uses for each of the divided parts shall be as required within the district in which the land is located. The Zoning Board concludes that the proposed project use, a single-family dwelling, is in the HC District.

CL2. Section 2.5.6 – Highway Commercial District (HC) was reviewed. For this project within the HC district Conditional Use Review was completed. The Zoning

Board concludes that the proposed project use is consistent with the HC district and that the applicable reviews have been completed.

1. Section 2.5.5 – C-10 Conservation District (C-10). By virtue of the previous conclusion, the proposed use is found not be located in the C-10 district.

CL3. Section 3.2.4 - Habitat Areas was reviewed in detail. The Interested Persons, the Public and the Zoning Board were given the opportunity to express any concerns specific to this bylaw. A potential adverse impact that that would be detrimental to over wintering deer would be if the occupant of the dwelling had a dog and would let it run loose and uncontrolled during periods of deep snow and cold temps. The Zoning Board concludes that the project can be completed such that provisions of section 3.2.4 are upheld so long as the Occupants always have their dog(s) on a leash so they cannot roam free during the winter months.

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 this bylaw. The Zoning Board concludes that the project can be completed such that the Performance Standards of section 3.7 are upheld.

CL5. Section 5.3 – Conditional Use Review. The Conditional Use Review process was completed in detail. The Interested Persons, the Public and the Zoning Board were given the opportunity to express any concerns specific to this bylaw. As conditioned, the Zoning Board concludes that the Conditional Use, can satisfy the bylaws.

### DECISION AND CONDITIONS

On September 21<sup>th</sup>, 2022 at a deliberative session, and based on the foregoing Findings of Facts and Conclusions of Law all four of the deliberating members of the Zoning Board of Adjustment voted unanimously to Approve the application for a Conditional Use to construct a single family dwelling from by the Martels made on behalf of the Owner, Heidi Mitchell for Application 22.07.13.CU on Parcel 07-02-03 in the HC district with the following conditions:

C1. Obtain State of Vermont water and wastewater permit prior to commencing construction.  
Obtain any other State permits which may be required prior to commencing construction.

- C2. Primary vehicle access is approved from VT 131. No driveway access from Route 106.
- C3. Approval expires one year from the effective date if the permitted project has not been started and five years from the effective date if the project has been started but not completed.
- C4. Any deviation from the application documents, facts and plans 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 29th day of September, 2022.



BY:

David (Todd) Hindinger, Chair

Members participating in the hearing, and deliberations:

David (Todd) Hindinger, Chair

John Broker Campbell, Vice-Chair

Willis Wood

Joseph Bublat

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

