



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 Variance

Findings and Decision

Permit Application No.: 23.04.26.ZBA
Applicant Name: Scott Rogers
Landowner Name: Scott Rogers, LLC
Project Location: 6014 US Route 5
Parcel ID#: 06-00-14

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application of a zoning permit for a Variance submitted by Scott Rogers under the Town of Weathersfield Zoning Bylaws.
2. The application was received by Land Use Administrator, Ryan Gumbart. The signed application is dated April 26, 2023. Application fee was received May 03, 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 in issue dated May 6-7, 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 8:06 PM on May 23, 2023. The hearing was closed at 9:22 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 July 1, 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. Joseph Bublat, Vice-Chair;
 - c. Grace Knight.
10. Also present at the hearings were:
 - a. Scott Rogers, Applicant;
 - b. Ryan Gumbart, Land Use Administrator;



TOWN OF WEATHERSFIELD

ZONING BOARD OF ADJUSTMENT

(802)674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

- c. Mike Todd;
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. Scott Rogers, Applicant;
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. Scott Rogers, Applicant;
 - b. Mike Todd;
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. 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 6.10 – Variances

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# 06-00-14 is located at 6014 US Route 5. Its size is 1.9 acres.
- F2. The property is owned by Scott & Nancy Rogers.
- 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.
- F5. For HC districts the setback requirements are: Front = 40ft, Rear = 25ft, Side = 25ft.
- F6. The property is used as a gas station with a convenience market and also used for a detached single family residence. The store and the residence have separate septic tanks connected to a shared leach field shown on Exhibit #4.



TOWN OF WEATHERSFIELD

ZONING BOARD OF ADJUSTMENT

(802)674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

- F7. Access to the property is via multiple curb cuts along US Route 5. The proposal does not show how the single-family home would be accessed.
- F8. The parcel size of 1.9 acres is less than the 3 acres that is required within the Section 2.5.6 – Highway Commercial (HC) for single family dwelling uses within the HC district. Therefore the parcel is regulated by Section 3.4.1 – Existing Small Lots. 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...” The applicant testified that the lot was created prior to 1974, the effective date of the Zoning Bylaw.
- F9. The Applicant proposes to subdivide the lot into two lots. The sizes of the lots have not been determined. The proposed subdivision would separate a lot containing the residence and garage from a lot containing the gas pumps and market. The proposed subdivision is approximately shown on Exhibit #4.
- F10. The distance between the closest corners of the market and the garage is 46 feet as measured by tape by the applicant and Land Use Administrator and is shown on the Application for Variance, Exhibit #4. Exhibit #4 shows the subdivision line being located 25 feet off of the market corner and 21 feet off of the garage corner.
- F11. The application requests a Variance of the setback distance, to be modified from 25ft to 21ft (Exhibit #4). A Variance for this action is thought to be required because the Variance provisions of the Zoning Bylaws are a possible mechanism for this action.
- F12. The submitted site plan does not show the setbacks for the front, side, rear for any of the structures. The closest setbacks of interest are roughly estimated by the Board, from the provided exhibits to be:
1. Existing grocery store – Front = 40’
 2. Single family residence – Front = 90’, side = 35’
 3. Garage – Rear = 60’
- F13. The parcel contains an existing grocery store with a deli and gasoline pumps. This is found to be the principle use. Gasoline/Service Stations are a Conditional Use under current bylaws and Grocery stores and delis would likely be considered an Allowed use in the HC district.
- F14. The applicant testified that the grocery store with a deli and gasoline pumps (Principle Use) and the single-family residence with a detached garage were in existence on this one parcel prior to the adoption of these bylaws. Bylaw Section 3.4.3 – Nonconforming Uses, 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. Bylaws Section 3.4.3 – Nonconforming Uses was reviewed and it was found that the existing uses may continue.
- F15. 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



TOWN OF WEATHERSFIELD

ZONING BOARD OF ADJUSTMENT

(802)674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

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 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 site plan did not identify a specific setback for the existing store, it appears that this could be at or near the 40ft front setback required. The side setback for the single-family dwelling is not shown on the site plan, although it appears to be approximately 35 feet from the property line. The single-family residence does not appear to meet the 50ft setback which is required for the HC district noting that it must meet the same standards as required in the RRR 3-5 district. Bylaws Section 3.4.23 – Nonconforming Structures was reviewed and it was found that the existing structures may continue to be used, however the granting of the proposed variance would allow for a subdivision that would create a parcel that already has a structure(s) that is nonconforming.

F16. The parcel also contains a single-family residence with a detached garage. Within the HC district a Single Family Dwelling is a Conditional Use. A single family dwelling must meet the Area, Land and Structural Requirements of RRR 3-5 Zone. These RRR3-5 requirements include that the parcel be at least 3 acres in size to consider this use, as well as other more strict setbacks than the HC district. The single-family residence does not appear to meet the 50ft setback which would be required in the RRR 3-5 district. Also, the RRR 3-5 district does not allow more than one principle use (without a PUD) adding a single family dwelling to a parcel that already contains a principle use (as found above) would not be allowed and if the lot were created by the proposed subdivision the residential use would not be allowed due to an inability to conform to the property size and setback requirements. It was found that this single-family residence use would not be permitted under current Bylaws on the parcel that is proposed to be created.

F17. The Bylaws section 6.10 Variances contains section 6.10.1 Variance Criteria. The Board may grant a variance and render a decision in favor of the appellant only if all of the facts listed in the variance criteria are found to be true, and the findings are specified in its written decision. There are five criteria listed as follows:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located; (The Board makes this finding.)
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the



TOWN OF WEATHERSFIELD

ZONING BOARD OF ADJUSTMENT

(802)674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

property; (The Board finds that property is already developed and the Bylaws already permit ongoing reasonable use of the property, hence this criteria is not met.)

3. The unnecessary hardship has not been created by the appellant; (The Board finds that there was no unnecessary hardship determined to be in effect)
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare. (The Board makes this finding.) and;
5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan. (The Board finds that the relief requested specific to the Variance of the setbacks between the buildings represented the least deviation possible from the regulations and was in itself not problematic, but rather created other non-conformities that were.)

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.
- CL2. Section 3.4.1 - Existing Small Lots was reviewed and it was concluded that the issuance of a Variance would allow for the subdivision, thus creating a New Small Lot, which is not permitted under our current bylaws.
- CL3. The property is developed with an existing grocery store with a deli and gasoline pumps and a single-family dwelling, driveway and related utilities. The buildings and uses are existing and predate the adoption of these bylaws. Nothing in these bylaws would prohibit the ongoing use as such.
- CL4. Section 3.4.2 - Nonconforming Structures was reviewed and it was concluded that the issuance of a Variance would allow for the subdivision, thus creating a nonconforming structure. Namely the single-family dwelling due to setback limitations.
- CL5. Section 3.4.3 – Nonconforming Uses was reviewed and it was concluded that the issuance of a Variance would allow for the subdivision, thus creating a parcel with a use that would not otherwise be permitted without Conditional Use Review and Site Plan Review.



TOWN OF WEATHERSFIELD

ZONING BOARD OF ADJUSTMENT

(802)674-2626

P.O. BOX 550 ASCUTNEY, VT 05030

landuse@weathersfield.org

Namely review for the use of a single-family residence on a parcel that does not conform to the Bylaws.

CL6. Section 6.10 – Variances was reviewed. The applicant did not meet the Variance criteria and further it was concluded that the granting of this Variance would allow for a subdivision, which would increase the non-conformity of the Uses, the Lot and the Structures.

DECISION AND CONDITIONS

On May 30th, 2023 at a deliberative session all three of the deliberating members of the Zoning Board of Adjustment voted unanimously to Deny the application for a Variance.

Dated at Weathersfield, Vermont, this 7th day of July 2023.

BY:

David (Todd) Hindinger, Chair

Members participating in the hearing and deliberations:

David (Todd) Hindinger, Chair
Joseph Bublat, Vice-Chair;
Grace Knight.

Members not participating in the hearing and deliberations:

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