

TOWN OF MARSHFIELD
DEVELOPMENT REVIEW BOARD
Findings of Fact and Conclusions of Law

Hearing Date:
October 12, 2023

Decision on the application of:

Owner: Catherine McElroy / Applicant: Neal Mulligan

Address/Location: 1906 US Route 2

Zone: Village Residential (VR)

Parcel ID: RT139

Re: Rebuild a nonconforming structure on a nonconforming lot.

Zoning Permit # 23-13

I. Procedural History and Applicant Request

1. On April 6, 2023, Catherine McElroy (Owner) and Neal Mulligan (Applicant) submitted a zoning permit application and supplemental information to replace and expand a nonconforming structure on parcel RT139, a nonconforming lot, owned by Catherine McElroy.
2. Applicant seeks to remove an existing nonconforming structure and build a new structure that will also be nonconforming. A proposal to alter a nonconforming structure beyond the requirements set forth in Section 281(1 & 2) must be approved by the Development Review Board (DRB). Therefore, Zoning Administrator Lorraine Banbury (ZA) referred the application to the DRB for review in accordance with the *Marshfield Zoning Regulations*¹ (MZR), Section 281(3).
3. After due notice, on October 12, 2023, the DRB conducted a warned public hearing to review the project. The hearing was conducted in-person and live-streamed. The hearing was audio and video recorded. The Applicant attested to and provided evidence that all adjoining landowners were properly notified.

In Attendance: DRB members: Dina Bookmyer-Baker (Chair), Les Snow (Vice-Chair), and Gary Leach. Staff: Lorraine Banbury (ZA) and Asher Barnum (DRB Clerk).

Present and sworn in: Cathy McElroy (Owner), Neal Mulligan (Applicant), and Daniel Mulligan (Applicant consultant).

Exhibits: The application materials submitted to the DRB included the following:

- Zoning Permit application # 23-13 received 9/12/23.
- Site plan of current conditions with existing setback distances and showing potential revisions.
- Site Plan for proposed new structure with proposed setbacks.

¹ Town of Marshfield Zoning Regulations: Adopted March 3, 2007, as amended March 2016.

- 2003 survey of the McElroy parcels submitted for reference at the hearing on 10/12/23.
4. Following the review, the DRB closed the proceeding and, following the closing of the public meeting, deliberated the merits of the application.

II. Findings and Conclusions

Below are the DRB’s findings-of-fact, based on the evidence in the record for the proceeding conducted on the above date, which includes the application materials and all testimony provided at the hearing.

5. Existing conditions: Catherine McElroy owns two adjoining lots, 1898 & 1906 US Route 2. 1906 US Route 2 is a 0.14± acre (6,098 SF) lot with ± 54’ of frontage and driveway access on U.S. Route 2, a state highway. The lot was created prior to Zoning Regulations, is now in the VR zoning district, and is nonconforming in size and frontage. The lot is developed with an aging mobile home with enclosed additions and a carport that were added later. The mobile home was possibly installed on the property in the 1970’s. The structure, including the carport, is 32.86’ to the road centerline, 4.53’ from the south-westerly side property line, 0.15’ from the north-easterly side property line, and 6.30’ from the rear property line. The enclosed area of the structure covers 1,037 SF; the roof coverage, including the carport, equals 1,668 SF. The existing structure is nonconforming: it does not meet the front, sides, and rear setback requirements and it exceeds the maximum lot coverage requirement for the VR zoning district. The structure is within 75’ of a stream and therefore, does not meet the minimum setback requirement for the Water Conservation Overlay District (WCOD) [WZR Section 450]. The property is served by municipal water and wastewater systems.
6. Project: Applicant proposes to remove the existing structure and build a new structure. The new structure will be a split-level with an attached garage and a second story over the garage. The structure will measure 62’ long by 22’ wide by 30.5’ high at the tallest point. The proposed structure will meet the front and rear setbacks and *decrease* the encroachments on the side setbacks (see the zoning district requirements table, below). The project makes no change to the lot area or frontage.
7. Zoning district requirements: The proposed lot is in the VR zoning district. The project meets or does not meet the district requirements as follows:

Minimum	Required	Existing	Proposed	Conclusions
<i>Lot size for a one-family dwelling</i>	10,000 SF (0.22 acre)	6,098 SF (0.14± acres)	No change.	The lot does not meet the minimum lot size requirement.
<i>Frontage</i>	90’	54’	No change.	The lot does not meet the minimum frontage requirement.
<i>Setbacks (Front/Sides/Rear)</i>	Front 45’ Sides 15’ / 15’ Rear 15’	Front 32.86’ S 4.53’ / 0.15’ Rear 6.30’	Front 47’ S 5.51’ / 5.44’ Rear 16.63’	The proposed structure will meet the front and rear setbacks but will not meet the side setback requirements.
<i>WCOD vegetative buffer setback</i>	≥ 75’ from a stream	Within 75’ of a stream.	Within 75’ of a stream.	The proposed structure will not meet the minimum WCOD setback requirement.

Maximum lot coverage: ≤ 20% of the lot	≤ 1,220 SF (20% of 6,098 SF lot)	1,037 SF bldg; 1,668 SF roof coverage	1,364 SF bldg; roof coverage not known	The proposed structure will not meet the maximum lot coverage requirement.
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– *Conclusion:* Although the proposed structure will meet the front and rear setbacks and decrease the side setback encroachments, it will be nonconforming relative to the VR minimum setbacks, VR maximum lot coverage, and the WCOD minimum setback.

8. Section 450 Water Conservation Overlay District: *The purpose of this overlay district is to protect surface waters with development setbacks and vegetative buffers. The District includes lands that are within 75 feet from the top of slope of the stream channel. Any existing structure (as of March 3, 2009) within the WCOD shall be considered a nonconforming structure and shall be limited to expansion as prescribed in Section 281.*

The existing mobile home was installed on the property prior to March 2009 and is located within 75' of the top of slope of a nearby stream. The proposed structure will be located in the WCOD, within 75' of the top of slope of a nearby stream.

– *Conclusion:* The proposed structure will replace a nonconforming structure and therefore the project shall be reviewed in accordance with Section 281.

9. Section 281 Non-Conforming Structures: The provisions in Section 281(2) allow a nonconforming structure to continue with routine maintenance and repair or, if damaged by fire, flood, explosion or another casualty, to be rebuilt. Section 281(3) provides that a nonconforming structure may be altered beyond the requirements stated above with DRB approval to address considerations of energy, safety, environment, and health.

Due to the health, safety, and energy challenges posed by the age and degradation of the existing structure, Applicant proposes to remove it and build a new structure that will promote the health, safety, efficiency, and economy of and for its occupants. The proposed structure will be built from new materials, free of mold, mildew, dust, and the like, and will include adequate insulation, and new and safer plumbing and wiring. The design includes a split entry to provide safer ingress/egress and address the slope from the garage level to the dwelling. The proposed structure will consolidate the living areas into a tighter footprint, reducing the existing extent of the nonconforming lot coverage, which will result in reducing the environmental impact and energy needs of the structure.

– *Conclusion:* The project adequately addresses energy, safety, environment, and health considerations.

III. Decision

Based on the findings and conclusions set forth herein and the evidence in the record of the proceedings, the DRB concludes that the proposed project meets the standards in MZR Section 281(3). The project is approved with the following condition:

- (1) No changes, modifications, or other revisions that alter the plan or conditions attached shall be made unless the proposed revisions are first submitted to the DRB and the Board approves the revisions after a public hearing. [MSR Section 2060.]

Voting in favor: Snow, Leach, Bookmyer-Baker.

Voting to deny: None. Absent: Campbell, Warshow.

The decision carries: 3-0.

Approved at Marshfield, Vermont, this 24th day of November 2023.

By: 
Dina Bookmyer-Baker, Chair
Marshfield Development Review Board

NOTICE: State permits may be required for this project. The permittee should contact State agencies (<https://dec.vermont.gov/assistance/permits>) to determine what permits must be obtained before any construction may commence.

NOTICE OF RIGHT TO APPEAL: In accordance with 24 V.S.A. §§ 4471 and 4472, this decision may be appealed to the Environmental Division of the Vermont Superior Court within 30 days of the date of this decision. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy of the appeal to the Marshfield Town Clerk. Failure of any interested person to appeal this decision to the Vermont Environmental Court within the specified 30-day period shall result in such interested person being bound by this decision or act of the DRB. Thereafter, such an interested person shall not contest, either directly or indirectly, the decision or act of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of Title 24, Chapter 117 of the Vermont Statutes Annotated. See also *Town of Marshfield Zoning Regulations* Section 235 (Appeals to Environmental Court).