

Town of Wilton, New Hampshire
Zoning Board of Adjustment
Approved Minutes

DATE: September 18, 2018
TIME: 7:30 PM
PLACE: Wilton Town Hall
PRESENT: Neil Faiman, Chair; Paul Levesque; Andy Hoar; Jeff Stone; Joanna Eckstrom
Staff: Land Use Administrator Michele Decoteau
Present from the Community Applicant Gareth Dimery, Thomas F. Quinn, Ruth Anderson, Lance Anderson

PRELIMINARIES:

N. Faiman opened the meeting at 7:30 PM.

MINUTES:

The Board reviewed the minutes from 06.12.18 at 6:30 PM Site Walk.

Line 29 ... joined not jointed

J. Eckstrom MOVED to approve the minutes with the correction. P. Levesque SECONDED. All in Favor.

The Board reviewed the minutes from 06.12.18 at 6:50 PM Site Walk.

J. Eckstrom MOVED to approve the minutes as written. A. Hoar SECONDED. All in Favor.

The Board reviewed the minutes from 06.12.18 meeting.

Line 92 ... CO

Line 109 ... barn not bard

A. Hoar MOVED to accept the minutes as corrected. J. Eckstrom SECONDED. All in Favor.

The Board reviewed the minutes from 07.30.18 meeting.

J. Eckstrom MOVED to approve the minutes as written. Levesque SECONDED. All in Favor.

PUBLIC HEARING:

Case #: 06/12/18 - 2

N. Faiman opened the public hearing, read the public notice, and explained the process. He reviewed the timeline. The application for rehearing was made in a timely fashion. The ZBA voted to rehear the application on 07.30.18. The hearing was set for August 14, 2018, and the applicant postponed to 09.18.18. The procedure for a hearing was reviewed and this was treated as a new application.

Exhibits listed below

T. Quinn, representing G. Dimery, the applicant reviewed the presented exhibits. He reviewed the requirements for a Variance starting with Hardship. They currently have reasonable use

of the garage and none of the family members have disabilities – neither of those sections could qualify. The applicant is left with subsections 1 & 2:

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property and ii. The proposed use is a reasonable one.

Then he reviewed question 1 and 2: *Granting the variance would not be contrary to the public interest and granting the variance would be consistent with the spirit of the Ordinance.* Any variance is contrary to the Public Interest and the spirit of the ordinance to some degree by definition. The correct standard to use is if the variance is unduly and markedly in conflict with the Ordinance. Would this alter the character of the neighborhood or impact the safety, health and welfare of the community? T. Quinn reviewed the Residential Agriculture characteristics and the Intervale “neighborhood.” There are about 45 lots, with two owned by the Town. Ten have been approved with two or three families or an ADU. Of the five direct abutters, one is commercial and one is a two family.

T. Quinn reviewed the exterior changes. Windows would be added on the side of the garage, stairs would be added to the rear of the garage but a new variance might be requested unless it can be included in the current variance. Stairs are not a deal breaker, the changes are largely windows.

J. Eckstrom asked where in town are detached ADUs or multifamily homes in multiple buildings? T. Quinn responded there are none.

J. Stone asked about the stairway inside the building. G. Dimery said it was in place.

J. Eckstrom said it looked narrow between the two buildings. T. Quinn said it is 11 feet but there is also a change in grade. The first floor level is higher in the house. The build a walkway would require a second variance but the change in height of grade would be problematic.

P. Levesque asked about carbon monoxide. Is that an issue with an apartment above a garage? T. Quinn said they would build to code and use a special impervious wall board.

T. Quinn went on to discuss the questions of changing the essential character of the neighborhood. This ADU will not change the number of occupants in the house or the appearance of the house and garage. It won't change the amount of traffic on the road. All of this is consistent with the neighborhood.

P. Levesque asked why is a common wall required? T. Quinn said this arose from a time when ADUs were “in law” apartments and there was a requirement that they be occupied “family” - someone related by blood or marriage. As domestic life evolved, we did away with the “in law” restriction. But the vestiges of these laws are still around and if you could lock the door between the units, it could be rented.

T. Quinn asked the next question: Will this pose a threat to the health, safety, or welfare of the community. This single bedroom will not pose a threat.

P. Levesque asked if this will set a precedent. T. Quinn said, no the ZBA is not a precedent setting board. The property has an existing two-story building and a single story garage could not easily be converted to a two story ADU.

T. Quinn stated that the next question is if granting the variance would do substantial justice. Any loss to an individual that is not outweighed by public gain is injustice. Strict

interpretation would be substantial injustice and a significant burden as the applicant could use this as an ADU if not for the one requirement.

The proposed use will not diminish surrounding property values. This will just deny the use.

J. Eckstrom asked if this were granted, the Ordinance talks about a single owner or a single deed not a condo and an owner who lives on site. T. Quinn said these regulations are from the RSA. J. Eckstrom said but he could rent to anyone. T. Quinn agreed.

A. Hoar MOVED to close the public hearing. P. Levesque SECONDED. All in Favor.

P. Levesque shared that his main opposition to the Variance was the shared wall but now he is rethinking.

N. Faiman said the Hardship argument is convincing.

1. The Setback is small

2. This is a grandfathered building in the set back

3. Attempting to build a garage in front of the barn would be silly

No one made the choice that prevented the future use

A. Hoar expressed concern that they are separate buildings. Two dwellings on a single lot but the ordinance requires a half acre for a second dwelling. N. Faiman said it was a small separate building.

J. Eckstrom said the ADU ordinance was created to help make us of larger homes and to keep people at home. The building is there, use it.

N. Faiman said that this is an unusual situation and he was not feeling that they would be handing out variances for detached ADUs.

A. Hoar said they will need to get a Variance for the deck and stairs or for any structure in the setback.

J. Stone said he buys all the arguments here but not in favor of necessitating the building of an outrageous connection between the house and barn just for the ADU but this is inviting this unit to be rental. N. Faiman said he could rent it now. J. Stone said that if it is part of his home, he is less likely to do that. N. Faiman said the Statute prohibits the restriction on family only. J. Stone said that he came to the same conclusion but didn't like it.

N. Faiman said he was not completely happy with the setting aside the one lot one dwelling.

J. Eckstrom MOVED to GRANT the Variance to allow for a detached ADU as described in the plans submitted with the application. J. Stone SECONDED.

The Board noted that the additional entry way was not in any authorized and neither we any impingements on the wetlands.

J. Eckstrom MOVED to reopen the public hearing. J. Stone SECONDED. All in Favor.

T. Quinn asked if they will still need to get a building permit for the deck. The Board suggested that this was a better question for the Building Inspector, N. Ditri.

The Board Voted on the Motion to Grant:

N. Faiman yes

J. Stone yes

A. Hoar no

J. Eckstrom yes
P. Levesque yes. Motion is approved, Variance is granted.

The Board noted that secondary effects on the wetlands need to be address by a separate variance and the Building Inspector.

N. Faiman reviewed the appeal process. The Applicant, T. Quinn and attendees left at 9:37PM.

The Board reviewed the reasons for granting the Variance:

Property

The Board found the unique character of the property was ideally suited to a detached ADU because of the wetland setbacks causing a small building envelope and it has the two-story preexisting barn.

Spirit of the Ordinance

This is a reasonable use of the barn and will allow for something that is majorly allowed by the Ordinance

Substantial Justice

Not be just not to allow him to use his property in the way he wants. There is no evidence of an impact on the values to surrounding properties.

J. Eckstrom **MOVED** to accept these reasons to grant the Variance to G. Dimery on 142 Intervale Road, F-37-2. J. Stone **SECONDED**. All in Favor.

OTHER BUSINESS:

Invoices were signed.

ADJOURN:

P. Levesque **MOVED** to adjourn at 9:45 PM. J. Stone **SECONDED**. All in Favor

Respectfully submitted by Michele Decoteau, Land Use Administrator

Approved on 10.09.18

Exhibits on file at the Land Use office:

Approved Minutes form 06.12.18 Site Walk 1, 06.12.18 Site Walk 2, 06.12.18 Meeting, 07.30.18

Rehearing Meeting

Sign in sheet for 09.18.19

Exhibit 1: Subdivision Plan of Land Thomas G Homes Wilton, New Hampshire dated July 31, 1989 revised August 10, 1989

Exhibit 2: Proposed Plot Plan Lot F-37-2 Thomas G Holmes Wilton, New Hampshire dated September 23, 2016

- Exhibit 3: Letter from James Spellman, no date, from Berkshire Hathaway Home services describing the impact of an ADU at 142 Intervale and the impact on the abutters' property values - 5 pages
- Exhibit 4: Letter from John Kukukla, Granite Town Real Estate, Inc. dated September 18, 2018 outlining his opinion of adding an ADU to 142 Intervale and the impact on the abutters' property values - 2 pages
- Exhibit 5: Letter from John Kukukla, Granite Town Real Estate, Inc. dated September 18, 2018 outlining the cost of removing the current garage and replacing it with a similar structure within the building setbacks – 2 pages
- Exhibit 6: Letter from Todd Granger, 148 Intervale Road, dated September 18th, 2018 – 1 page
- Exhibit 7: Seven photographs of the outside of 142 Intervale and inside of the garage.
- Exhibit 8: Applicant's Memorandum submitted by Gareth Dimery by Thomas F. Quinn, Esquire – 11 pages
- Exhibit 9: Rough graphic of the proposed ADU
- Exhibit 10: Sign in Sheet for 08.18.18