

Town of Wilton, New Hampshire
Zoning Board of Adjustment
Draft 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

46 of the garage and none of the family members have disabilities – neither of those sections
47 could qualify. The applicant is left with subsections 1 & 2:
48 *No fair and substantial relationship exists between the general public purposes of the ordinance*
49 *provision and the specific application of that provision to the property and ii. The proposed use*
50 *is a reasonable one.*

51
52 Then he reviewed question 1 and 2: *Granting the variance would not be contrary to the public*
53 *interest and granting the variance would be consistent with the spirit of the Ordinance.* Any
54 variance is contrary to the Public Interest and the spirit of the ordinance to some degree by
55 definition. The correct standard to use is if the variance is unduly and markedly in conflict
56 with the Ordinance. Would this alter the character of the neighborhood or impact the safety,
57 health and welfare of the community? T. Quinn reviewed the Residential Agriculture
58 characteristics and the Intervale “neighborhood.” There are about 45 lots, with two owned
59 by the Town. Ten have been approved with two or three families or an ADU. Of the five
60 direct abutters, one is commercial and one is a two family.

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

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

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

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

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

73
74 T. Quinn went on to discuss the questions of changing the essential character of the
75 neighborhood. This ADU will not change the number of occupants in the house or the
76 appearance of the house and garage. It won't change the amount of traffic on the road. All of
77 this is consistent with the neighborhood.

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

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

85
86 P. Levesque asked if this will set a precedent. T. Quinn said, no the ZBA is not a precedent
87 setting board. The property has an existing two-story building and a single story garage could
88 not easily be converted to a two story ADU.

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

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

93 The proposed use will not diminish surrounding property values. This will just deny the use.
94 J. Eckstrom asked if this were granted, the Ordinance talks about a single owner or a single deed
95 not a condo and an owner who lives on site. T. Quinn said these regulations are from the
96 RSA. J. Eckstrom said but he could rent to anyone. T. Quinn agreed.
97

98 A. Hoar MOVED to close the public hearing. P. Levesque SECONDED. All in Favor.
99

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

102 N. Faiman said the Hardship argument is convincing.
103 1. The Setback is small
104 2. This is a grandfathered building in the set back
105 3. Attempting to build a garage in front of the barn would be silly
106 No one made the choice that prevented the future use

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

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

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

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

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

121 N. Faiman said he was not completely happy with the setting aside the one lot one dwelling.
122

123 J. Eckstrom MOVED to GRANT the Variance to allow for a detached ADU as described in the
124 plans submitted with the application. J. Stone SECONDED.
125

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

128 J. Eckstrom MOVED to reopen the public hearing. J. Stone SECONDED. All in Favor.
129

130 T. Quinn asked if they will still need to get a building permit for the deck. The Board
131 suggested that this was a better question for the Building Inspector, N. Ditri.
132

133 The Board Voted on the Motion to Grant:
134 N. Faiman yes
135 J. Stone yes
136 A. Hoar no

137 J. Eckstrom yes
138 P. Levesque yes. Motion is approved, Variance is granted.
139
140 The Board noted that secondary effects on the wetlands need to be address by a separate
141 variance and the Building Inspector.
142
143 N. Faiman reviewed the appeal process. The Applicant, T. Quinn and attendees left at
144 9:37PM.
145
146 The Board reviewed the reasons for granting the Variance:
147
148 Property
149 The Board found the unique character of the property was ideally suited to a detached ADU
150 because of the wetland setbacks causing a small building envelope and it has the two-story
151 preexisting barn.
152
153 Spirit of the Ordinance
154 This is a reasonable use of the barn and will allow for something that is majorly allowed by
155 the Ordinance
156
157 Substantial Justice
158 Not be just not to allow him to use his property in the way he wants. There is no evidence of
159 an impact on the values to surrounding properties.
160
161 J. Eckstrom MOVED to accept these reasons to grant the Variance to G. Dimery on 142
162 Intervale Road, F-37-2. J. Stone SECONDED. All in Favor.
163
164 OTHER BUSINESS:
165 Invoices were signed.
166
167 ADJOURN:
168 P. Levesque MOVED to adjourn at 9:45 PM. J. Stone SECONDED. All in Favor
169
170 Respectfully submitted by Michele Decoteau, Land Use Administrator
171
172 Approved on XX,XX
173
174 Exhibits on file at the Land Use office:
175 Approved Minutes form 06.12.18 Site Walk 1, 06.12.18 Site Walk 2, 06.12.18 Meeting, 07.30.18
176 Rehearing Meeting
177 Sign in sheet for 09.18.19
178 Exhibit 1: Subdivision Plan of Land Thomas G Homes Wilton, New Hampshire dated July 31,
179 1989 revised August 10, 1989
180 Exhibit 2: Proposed Plot Plan Lot F-37-2 Thomas G Holmes Wilton, New Hampshire dated
181 September 23, 2016

182 Exhibit 3: Letter from James Spellman, no date, from Berkshire Hathaway Home services
183 describing the impact of an ADU at 142 Intervale and the impact on the abutters' property
184 values - 5 pages
185 Exhibit 4: Letter from John Kukukla, Granite Town Real Estate, Inc. dated September 18, 2018
186 outlining his opinion of adding an ADU to 142 Intervale and the impact on the abutters'
187 property values - 2 pages
188 Exhibit 5: Letter from John Kukukla, Granite Town Real Estate, Inc. dated September 18, 2018
189 outlining the cost of removing the current garage and replacing it with a similar structure
190 within the building setbacks – 2 pages
191 Exhibit 6: Letter from Todd Granger, 148 Intervale Road, dated September 18th, 2018 – 1 page
192 Exhibit 7: Seven photographs of the outside of 142 Intervale and inside of the garage.
193 Exhibit 8: Applicant's Memorandum submitted by Gareth Dimery by Thomas F. Quinn, Esquire
194 – 11 pages
195 Exhibit 9: Rough graphic of the proposed ADU
196 Exhibit 10: Sign in Sheet for 08.18.18
197
198