

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

DATE: June 11, 2019
TIME: 7:30 PM
PLACE: Town Hall
PRESENT: Joanna Eckstrom; Jeff Stone; Paul Levesque, Peter Howd (Alternate)
Absent: Andy Hoar
Staff: Land Use Administrator Michele Decoteau
Attendees: Kevin Patterson, Brett Mayes, Tedo Rocca, Violet Blake, Sam Proctor

PRELIMINARIES

N. Faiman opened the meeting at 7:35 PM. P. Howd will sit in for Andy Hoar.

MINUTES

The Board reviewed the minutes from May 28, 2019.

P. Howd MOVED to postpone the minutes until next month. P. Levesque SECONDED. All in favor.

CASES

Case #06/11/19-1

Kevin S. and Rina T. Patterson have applied for special exceptions under sections 5.3.1 and/or 5.3.2 of the Wilton Zoning Ordinance to allow the creation and short-term rental of a second dwelling unit as a home occupation in their home on Lot K-93, 57 Maple Street.

J. Stone left the board and sat in the audience.

N. Faiman opened the hearing and read the public notice. He reviewed the process for the hearing and the four member board. K. Patterson asked if the Board was familiar with the application. The Board said they were all familiar with the case. He decided to go ahead.

K. Patterson introduced himself and gave some history of the property and how it has been used in the past. The carriage house was renovated by the previous owner and might be a nice ADU but he explained he would prefer to be a host and not a landlord. He described the kitchen facilities and having a microwave, mini-fridge and sink. He said they don't provide any food.

The second floor has two bedrooms. The second bedroom is accessed through the first bedroom. He wants to rent this through airB&B but other ways as well. They are modestly priced and they have gotten good reviews from customers. In the beginning there was a lot of short one and two night stays. Now they have a two night minimum but he'd like to connect with other organizations in town and have longer term rentals. The airB&B platform does allow hosts to review guests and he can decide who he rents to. This has resulted in nice, responsible, quiet guests.

Why is he coming before the ZBA? This is a commercial transaction; it is home sharing along the lines of Uber, but the town treats it as a Home Occupation. Is home sharing in a residential district allowed

46 here? It is good for the town, good for people who need a place to stay, and good for the local economy
47 as he recommends other local business. There are many big homes in Wilton. If they are chopped up into
48 small rentals that are not cared for, that isn't good for community. But airB&B and ADUs are a good
49 option.

50

51 P. Levesque said he drove by and asked which side of the house the carriage house was on. K. Patterson
52 said the carriage house is on the left, behind the yellow door. It looks like a garage and it has a separate
53 entrance.

54

55 J. Eckstrom asked if the kitchen is a full kitchen? K. Patterson said No. There is a coffee pot, mini
56 fridge, and sink. J. Eckstrom asked if they were providing meals? K. Patterson said No they were not
57 providing meals.

58

59 P. Levesque asked if there was a separate bathroom. K. Patterson said yes, it is a very nice bathroom too.

60

61 P. Howd asked what is K. Patterson's definition of short term? K. Patterson said in the state of NH it is
62 14 days and on the 15th day, guests have some tenant rights. So 14 days is the state's answer. With
63 airB&B, rental length is something the host sets. For him, it is no more than a couple of months. He says
64 that he likes being able to go in every so often to make sure the unit is well cared for.

65

66 J. Eckstrom asked if she could cook a full meal in the kitchen. K. Patterson said yes if you can cook in a
67 microwave and he would also provide a rice cooker and maybe an electric wok. Right now there is a bar
68 type table with three chair, mini fridge, cabinet, sink, drawers, microwave, kettle, coffee maker, shelves
69 with dishes in the kitchen area.

70

71 J. Eckstrom asked if there were laundry facilities. K. Patterson said no.

72

73 J. Eckstrom asked if the apartment has two floors. K. Patterson said yes, the bedrooms are upstairs. The
74 bathroom is downstairs. If he hosted a person with limited mobility they do have a guest bed that can be
75 put in the living room.

76

77 K. Patterson said he files with the state every month for the collection of taxes. Right now that is actually
78 handled with airB& B but having his own license gives him the ability to accept a reservation if someone
79 comes to him directly.

80

81 J. Eckstrom asked why not do use this just as an ADU? Why consider airB&B? K. Patterson said if you
82 want to rent to people long term, you have to want to be a land lord. He said he doesn't like the idea of
83 being a landlord. He loves to think of himself as a host. He likes to keep the place nice and is not as
84 comfortable being a landlord. And financially, there is more money to be made with short term rentals.

85

86 J. Eckstrom asked if the kitchen area is large enough for an electric range. K. Patterson said yes, you
87 could put in a small one but only if you take out the table. You could put in a larger fridge as well.

88

89 J. Eckstrom - why not use it as a rental unit. Kevin part of that is that the utilities are not separated out.
90 He'd have to get a loan to get this done.
91
92 P. Levesque asked if there is heat. K. Patterson said the carriage house has southern exposure so it warms
93 up from the sun and the house and ADU share the same tank of oil.
94
95 N. Faiman asked what the size of the ADU was. K. Patterson said it is around 700 sq feet. K. Patterson
96 said when he thought about renting the ADU to newlyweds in his church, the kitchen just seemed too
97 small.
98
99 N. Faiman asked if any abutters had questions.
100
101 Brett Mayes, 34 Davisville Road, asked if this was a question of sublet? Is that why an application needs
102 to be apply for? N. Faiman said basically any commercial use of property in the residential zones needs to
103 have some review by the town. Home Occupations are allowed as low level commercial use. Both of
104 those sections of the ordinance may be in play tonight.
105
106 N. Faiman said that to his mind this falls in between several different places in the ordinance. What Mr.
107 Patterson is describing is short term rental. What he describes is a dwelling unit but a lodging unit is a
108 place you can't live self-contained. From what he described this fits barely.
109
110 Violet Blake, 60 Maple Street, said she was in favor of a B&B and preferred it over an apartment. She
111 said people are there for a short term. Sometimes people who are renting for a long time might not be
112 people we want as neighbors. This is a very good use for a building like this. We have many older larger
113 homes in Wilton.
114
115 N. Faiman said the ordinance sets out a number of things that are allowed. Here we have a proposal for a
116 dwelling unit that is being used for lodging. It is almost exactly the same as a B&B but not with a kitchen.
117 At one time, Wilton didn't have a B&B ordinance and the ZBA struggled with a B&B applicant. It didn't
118 fit exactly as a Home Occupation. Shortly afterward Wilton passed the B&B ordinance. This is not
119 exactly the same since this really is secondary and incidental.
120
121 K. Patterson said if you say not to turn this in to an actual kitchen, it is a snack area, and I am fine with
122 not adding a stove.
123
124 N. Faiman reviewed the definition of a dwelling unit.
125
126 P. Howd reminded everyone that the airB&B is just a way of making reservations. It is still a B&B.
127 N. Faiman said yes the Board needs to think about the substance. The Board could call it a slightly off
128 kilter B&B or call it a Home Occupation.
129
130 N. Faiman noted that there are four parking places and there configuration. He noted that someone has to
131 move if someone on the inside wants to leave. K. Patterson said his wife and he typically move their cars.
132

133 The Board discussed the ordinances required of a Home Occupation.
134 • Is it carried out by the resident owner? Yes it is. There are no outside employees.
135 • There are no additions or changes to prevent it from being a residence? There were no changes
136 made to the structure.
137 • Exterior storage is prohibited. K. Patterson said there is no exterior storage.
138 • There are adequate parking spaces for guest off street? This was clearly demonstrated in the site
139 plan.
140 • Traffic isn't going to be greater than normal in the neighborhood? The Board felt this was
141 unlikely since it was a small unit.
142 • State licensing must be followed. K. Patterson has demonstrated that he is following those
143 guidelines.

144
145 N. Faiman said his thought is that this is a Home Occupation. The Ordinance make a distinction between
146 transient and non-transient renters. And an ADU is for non-transient renters and Mr. Patterson want
147 transients. It is using part of his home for a home occupation.

148
149 P. Howd said he has been in a Motel 6 with the same amenities. The facilities aren't out of the ordinary. If
150 it has a full stove, he would be more uncomfortable.

151
152 J. Eckstrom she was comfortable but wanted to have reassurance that people aren't going to be visiting
153 more than two months. If they are going to be there longer than two months, it should be converted to an
154 ADU. K. Patterson asked if he could turn this into an ADU in the future? N. Faiman said for that, you
155 would have to come to the Building Inspector and have a change of use inspection.

156
157 N. Faiman asked the Board if they were comfortable with the restriction that the rental would be for no
158 more than two months. K. Patterson said that he was comfortable with that, but what if he have a guest for
159 two months in the fall and two months in the spring? J. Eckstrom said that isn't a problem, it is turn over.

160
161 N. Faiman said the people who are going to police this is are the people who are affected most, the
162 neighbors. Jeff Stone, from the audience, asked if the condition could be confused with 2 month per year.

163
164 J. Eckstrom made a MOTION to approve the use of a portion of the home for a home occupation as
165 described it the application. Individual rental not to exceed 60 consecutive days to the same person P.
166 Levesque SECONDED.

167
168 P. Howd ... yes

169 P. Levesque ... yes

170 N. Faiman ... yes

171 J. Eckstrom ... yes. Motion carries.

172

173 N. Faiman reviewed the appeal process.

174

175 J. Stone returned to the board.

176

177 Case #06/11/19 - 2

178 *Jeremy Greenman, as Trustee of the Janet W Greenman Trust and the Greenman Revocable*
179 *Trust, has applied for variances either to section 17.2 or to sections 14.3.1 and 14.3.3 of the*
180 *Wilton Zoning Ordinance to allow the construction of a house on Lot A-52, Davisville Road and*
181 *Burton Highway, which would be closer to a wetland area than is otherwise permitted in the*
182 *Watershed District. N. Faiman opened the public hearing by reading the public notice.*
183

184 Sam Proctor represented the applicant. He reviewed the history of the lot. The Greenmans' have owned
185 this lot for nearly 40 years. In 1980 it was approved as part of a three lot subdivision. Two of the three
186 lots have been built on.

187
188 A prospective buyer of Lot A-052 tried to get a septic plan and went to Meridian Land Services. S.
189 Proctor brought a letter from Thomas Carr to Jim Buchanan describing the setback. Meridian determined
190 this was substandard lot of record. The ordinance does allow for substandard lots of record that are short
191 on frontage and acreage. But setbacks are not reduced.

192
193 They are asking for relief from Section 17.2 (Substandard Lots of Record) or possibly 14.3.1 (Watershed
194 District, Lot Requirements, Setbacks). Meridian says that DES will approve the septic system since it
195 meets all the requirements. But because the setbacks, Meridian says that they won't submit that until the
196 variance is granted. S. Proctor says that in the past the farmers understood where the good soil was and
197 had and it makes the eight minute per test.

198
199 N. Faiman asked if the plan showed the whole lot. S. Proctor said no, but offered to have that on the next
200 plan. N. Faiman said he would have like to have seen the whole lot and have the wetlands shown. S.
201 Proctor showed where the wetlands are from the setbacks on the map he provided. He said if you move
202 the 150 feet from the wetlands and the 35 foot setbacks from the lot lines that wipes out the buildable
203 area. N. Faiman said that the ZBA could use a special exception to waive the setbacks for the lot lines but
204 not the wetlands.

205
206 The Board and S. Proctor discussed the location of the lot. M. Decoteau provided the 1980 subdivision
207 plans for the Board. The location of a driveway was discussed.

208
209 S. Proctor shared some history of the water supply and the reservoirs. The ordinance that is protecting the
210 reservoir are moot. The Conservation Commission (ConCom) has talked about using the reservoirs for
211 recreation. The ordinance that we are asking for a variance of is moot. N. Faiman said the Planning Board
212 has heard suggestions to change the ordinance and it has declined to do so

213
214 N. Faiman the grandfathered lot of record only gives you waivers for frontage and size. The ordinance
215 that allows waivers of setbacks only for lot line setbacks, not wetlands. J. Stone said if it were just the
216 reservoir it would seem moot, but the wetlands are still protected.

217
218 S. Proctor said the state is the overriding authority for setbacks since we don't have our own septic
219 standards. N. Faiman said yes we do, Section 4.2. He read the specific ordinance and setbacks. It is soils
220 based.

221 The slope of the lot was discussed and it was determined that it was over 8%. N. Faiman said that
222 Meridian should review this and review the soil type.
223
224 N. Faiman read the letter from the Conservation Commission (attached). Since the land is not in aquifer
225 protection district, they didn't see reason to protect the aquifer. The board discussed the stream.
226
227 J. Stone said he left the table of the ConCom when the letter was discussed. He said that the concern was
228 primarily for the stream. P. Howd echoed that as he was at the meeting as well
229
230 P. Howd - Stony brook has some special protection (Shoreland Protection). Mill Brook, the brook on the
231 adjacent lot, is not under Shoreland Protection.
232
233 N. Faiman asked what the proposed distance from wetlands? S. Proctor said 75 feet.
234
235 B. Mayes asked if the standard setback from in the aquifer protection district is 150 feet? N. Faiman said
236 yes.
237
238 P. Levesque asked if there was any reason not to proceed with caution and follow the ConCom's
239 recommendations. N. Faiman said the letter just strikes him the wrong way. The first paragraph is
240 requesting testing the transmissivity of the aquifer. J. Eckstrom asked if the ConCom did a site walk. J
241 Stone said no but they are requesting one. J. Eckstrom said site walk would be in order for everyone to
242 see where on the lot everything is proposed. P. Howd asked if anything was flagged. S. Proctor said no.
243
244 N. Faiman referred to the letter and said that if the aquifer is not the concern, why support the setbacks.
245
246 B. Mayes asked if the town has received many variances to cut setbacks in half for septic systems. N.
247 Faiman said no not many. One was off of 31 and that was a special septic. There was another at the corner
248 of Burton Highway and Isaac Frye Highway but that was lot line set back and a replacement of a septic. It
249 is not a typical request.
250
251 J. Eckstrom said that usually the Board receives engineered plans, had a site walk, and are given a state
252 permit. We usually get this when everyone else has agreed.
253
254 P. Levesque there are several unknowns. J. Eckstrom said that she needs more information too. This was
255 subdivided and it was an approved lot at point point, at one point it had an approved septic. There needs
256 to be a balance. She thinks the standards that the state adopted as far as making septic designs take into
257 consideration that things change over time.
258
259 N. Faiman said that the Board should take a moment and consider that without a variance this is a non-
260 buildable lot. Depriving a lot of all value is the core of hardship. You still have to strike a balance. J.
261 Eckstrom are there alternatives? S. Proctor said no not really. He wants to keep the lot line setbacks to
262 make for a nicer looking lot.
263

264 N. Faiman said that in Section 17, there are provisions for waiving lot line setbacks but not wetland
265 setbacks. You could move the house closer to the lot line and that would reduce the impingement on the
266 wetland setbacks. Not saying you have to do that but it is a possibility.

267
268 J. Stone is there a case where a lot that had an allowed use but then things changed? N. Faiman said that
269 Section 17.3 gives the ZBA the ability to relax lot line setbacks in many cases and Section 17.2 for lots of
270 record the ZBA can relax the size of a lot.

271
272 B. Meyer asked if at one point that there was an approved septic design? J. Eckstrom said that no in those
273 days it was just a soil test not an approved design that was included on the plans.

274
275 N. Faiman there is a lot of bouncing around here. Rezoning matters and we have some sections that
276 protect vested rights and others are not vested like this one. He would like to see a complete plan showing
277 the whole lot. And Meridian might like to review Section 4. 2. A site walk would be in order. J.
278 Eckstrom first it needs to be flagged. F

279
280 P. Howd said there are two test pits mentioned but there is only one set of results shown. As the ZBA
281 evaluates what setbacks are most important, it might be useful to have those characteristics as well. He is
282 interested to see if there is a change with a change in elevation up the slope. It would be useful to see the
283 whole lot. J. Eckstrom said she would like to see a plan that has proximity to other houses as well.

284
285 B. Mayes showed the Board where his house is.

286
287 Action Items:

- 288 • Provide a complete plan with wetlands and entire lot
- 289 • Host a site walk with the ConCom
- 290 • Flag the wetlands, proposed house and septic system

291
292 J. Eckstrom made a MOTION to continue to July 9, 2019, at 7:30 PM and have a site walk on June 15,
293 2019, at 9:30 am to meet at 34 Davisville Road. P. Levesque SECONDED. All in favor.

294
295 ADJOURN

296 J. Eckstrom made a MOTION to adjourn at 9:33 PM. P. Levesque SECONDED. All in favor.

297
298 Respectfully Submitted by Michele Decoteau, Land Use Administrator
299 Approved on XXXXX