

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

DATE: January 14, 2020
TIME: 7:30 PM
PLACE: Wilton Town Hall, Courtroom, 42 Main Street, Wilton, NH
PRESENT: Neil Faiman, Chair; Paul Levesque; Andy Hoar; Jeff Stone; Joanna Eckstrom, Bob Spear (Alternate), Peter Howd (Alternate)
Staff: Michele Decoteau, Land Use Administrator
Attendees: Shannen Coffey, Joe Coffey, Amy Garcia, DJ Garcia, Lynn Pentler, Dodie Finlayson, William Finlayson, Andrew Finlayson, Marilyn Jonas, Richard Kahn, John Zavgren, Chris Balch, Robert Silva, Nancy Wallace, Joanna Gates, Jessie Salisbury, Sherry Jennings, Dan Dion, Andrew Kennedy, Anthony Graham, Sandy Lafleur, Thomas Lafleur, Sussy-Rose Shields, Deb Abrahams-Dematte, Tom Quinn

PRELIMINARIES:

N. Faiman opened the meeting at 7:33 PM and introduced the Board.

MINUTES:

The Board reviewed the minutes from the 12.17.19 meeting.

Line 13 ... Dottie to Dodie

Line 101 ... al to all

Line 102 ... add "Town and ZBA" before websites

Line 103 ... add "Town" before website

J. Eckstrom MOVED to accept the minutes as amended. J. Stone SECONDED. All in favor, P. Howd abstained.

The Board reviewed the minutes from the 1/6/2020 meeting.

Line 18 ... Should read RSA 91-A:3 II (*l*)

J. Stone MOVED to accept the minutes with the one amendment. J. Eckstrom SECONDED. All in favor, P. Howd abstained.

PUBLIC HEARINGS CONTINUED FROM PREVIOUS MEETINGS

P. Howd left the Board at 7:38 PM and joined the audience. A. Hoar will be deliberating but not voting on the case.

J. Eckstrom MOVED to go into Non-public Session at 7:43 PM for statutory reason outlined in RSA 91-A.3 II (*l*) Consideration of legal advice provided by legal counsel. B. Spear SECONDED.

J. Eckstrom – yes
P. Levesque – yes
A. Hoar – yes
J. Stone – yes
B. Spear – yes
N. Faiman – yes. Motion passed.

B. Spear MOVED to leave Non-public Session at 7:56 PM. J. Stone SECONDED. A. Hoar abstained.

J. Eckstrom – yes
P. Levesque – yes
A. Hoar – yes
J. Stone – yes
B. Spear – yes
N. Faiman – yes. Motion passed.

Rehearing request

N. Faiman reminded everyone of the process for rehearings.

P. Levesque MOVED to rehear the case #07/09/19-1. J. Eckstrom SECONDED.

B. Spear - yes
J. Stone - yes
P. Levesque - yes
J. Eckstrom - yes
N. Faiman - yes. A. Hoar abstained. The motion carries.

The Board will rehear the case #07/09/19-1. The Board will accept all the written testimony and all the oral testimony at the beginning of the hearing, including the letter from the lawyer that was supplied from the community. New testimony and legal arguments are welcome.

Regional impact notification

J. Eckstrom said that there is a lot of information in this case that has regional impact. The Board discussed if this required new letters from the public. Anyone notified can, if they choose, write new letters, but the notification is to let them know about the hearing.

D. Finlayson (Heald Road, Wilton) asked about errors or omissions in the minutes. The Board discussed the best way to handle corrections from the public. The Board decided: If someone feels what they said was not correctly recorded, they can submit the correction in writing to M. Decoteau, Land Use Administrator. The Board put a deadline of a week before the meeting to have them included.

B. Silva (Barret Hill Road, Wilton) asked if written comments could be sent before the next meeting or do people have to wait until the hearing? The Board decided that if comments are in to the office a few days before the meeting, they could read the comments.

S. Coffey (Stage Coach Road, Wilton) asked if the public could ask for a new test with illumination. The Board said the public can request anything they like at the new hearing.

The Board discussed some limits on the rehearing request and the public asked a few questions about the process. The Board did not decide on limits at this meeting. P. Howd returned to the Board at 8:12 PM.

PUBLIC HEARINGS ON NEW CASES

N. Faiman opened the Public Hearing for Case #1/14/20-1 and read the public notice.

Voting members: A. Hoar, J. Stone, P. Levesque, J. Eckstrom, N. Faiman

DJ and Amanda Garcia represented themselves, and provided facts about the property and the history of the house. The lot has 300 feet of frontage and the house is 100 feet long. There will be over 500 feet of visibility on either side of the driveway.

DJ Garcia presented their case: The lot, B-62, is already non-conforming. The Ordinance says you need 2 acres per dwelling and they have less. Like 30% of the inventory of the houses in Wilton, it was built between 1970 and 1990. The ZBA should expect to see more people coming for Variances for this age of housing stock as it ages and needs more extensive repairs.

The land use objectives for the Town of Wilton are set forth in the Master Plan. DJ Garcia said they have neighbors with equally non-conforming lots and the Garcias want to respect the vision of the Master plan and keep the footprint of the house. Their plan maximizes the views. By creating a second dwelling unit within the same footprint, this will minimally impact the neighborhood.

DJ Garcia continued. If they had to limit their ADU, this would impact the safety to the ADU. If they were able to have a larger ADU it would be safer and they could have larger income. Their investments will turn their house into the nicest in the neighborhood and positively impact the neighborhood.

DJ Garcia read a short paragraph from the Master Plan on housing. Everything they plan to do, will remain consistent with the rural character of the neighborhood. The footprint won't change. They will be creating housing for a variety of renters. From the Master Plan, he said the town looks to minimize sprawl and protect the environment. This project will support this. The ADU will occupy about 21% of the property.

A. Hoar asked about the ADU dimensions. The Board discussed some needs for construction of the ADU.

B. Spear asked about removing the pool and what it will require. DJ Garcia explained that pool is already gone and this space will become part of the garage. In response to a question from the Board, A. Garcia said that there are 6 to 8 parking places right now that are outside. This project would add parking inside as well.

In response to a question from the Board, DJ Garcia said there will be a door between the units. The Garcias' plan is that the original house will become the ADU and the 1990 addition will be the owner's house.

The Board asked if the applicant wanted a duplex more or the ADU more. The applicants said that bank financing would be easier as a duplex, but felt that the stronger case was for an ADU. If they had to make the ADU conforming to the ordinance, they would have to block off the stairs and the shared wall is in the basement. A new egress would have to be determined as well.

In response to a question by the Board, the Garcias said they had the second driveway constructed but not opened. The Road Agent, Brian Adams, required them to block off one of the two driveways until they had approval for two.

The Board asked who had done a drive by of the house. J. Eckstrom, P. Levesque, and N. Faiman had driven by the house in response to the application. Other Board members already were familiar with the property.

N. Faiman noted that the Master Plan is an aspirational document that the Ordinance is based on. N. Faiman said that a unique circumstances are created historically. He continued, the fact it is a huge house is what makes it unique. But that isn't strong enough justification for a second dwelling unit? But for an ADU, it would make sense to cut the house into an ADU where the addition was made.

A. Hoar said that perhaps the size is designed to limit the number of people in it. The Board discussed limiting the number of bedrooms to two bedrooms.

B. Silva (Barrett Hill Road, Wilton) said he was on the Planning Board when the ADU Ordinance was approved. The ADU requires the owner to live in the house and a duplex does not have the same restriction. The Spirits of the Ordinances are different.

J. Gates (Pead Hill Road, Wilton) said she had a number of concerns. The house is quite large; however, what the Board is not seeing is that both her and the Garcias' properties are on a slope.

The Garcias took out trees that affect drainage, septic, and view. When the Garcias put in the second driveway, this only added more water that goes downhill. Her other concern is that if their current septic isn't adequate and if the Garcias have to enlarge their septic system, she is worried about the septic coming into her yard. She is also worried about the extra people. Their house is huge, but 1600 square feet is a large apartment and it could mean 5 more people. It lends itself to be a family home and she is concerned about the smallness of the area. She asked, where are people are going to go - they will be outside on her side of the property. The extra traffic will have trouble getting out. The Town has an easement that won't be accessible. The buffers that protected their house, are gone. She said that this will disturb the rural nature of Pead Hill. She moved there to be among single family homes. J. Gates asked about precedent and if this would allow everyone to turn their houses into a duplex. J. Eckstrom said that if anyone wants to do this in their own house, they would have to go before ZBA. A. Garcia said that everyone has the right to put in an 800 sq ft ADU.

The Board discussed the need for exact measurements. An engineer or architect is not needed, but a contractor who can provide exact measurements might be fine.

N. Faiman said that if he considered the duplex, the large house would be the hardship and this would be a self-created hardship even though they didn't actually create the hardship.

A. Hoar MOVED to close the Public Hearing. J. Stone SECONDED. All in Favor

The Board discussed the need for a better number for the square footage and what is included and not included. An ADU should be two bedrooms with actual square footage.

A. Hoar said that this is a large ADU and it makes a major difference if it is 1600 square feet. The Ordinance and has limit on the square footage for a reason. Others in the Board agreed that smaller is better. The question of a duplex was discussed. A duplex can have separate owners and this was concerning for the Board. The density was a concern.

B. Spear said that even if he is not voting, he sees this similar to the Abbot case where they asked for an ADU and the footprint of the building didn't change. This is a smaller lot, but this still has adequate parking.

J. Stone discussed the need to look at the existing house as it is as its uniqueness. The external appearance won't change. B. Spear said yes that is true but there might be four cars. N. Faiman said 1600 sq feet isn't guaranteed to be used by 12 people. The Board discussed that they didn't want the third bedroom as it was beyond what is in the current Ordinance. P. Howd said on the hardship side of the variance, what they have proposed makes sense, because if they were to

build it smaller, the burden become prohibitive because you'd have to reengineer and create new egress.

N. Faiman summarized the options before the Board. The Board could say no to everything, yes to a duplex, yes to an ADU, or other options where the Board continues the case for more information and/or a site walk.

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

The Board asked the Garcias about the property and if a smaller ADU was possible. DJ Garcia said that the downstairs area is adjustable. The request to make a two bedroom ADU and to keep it with a 1375 square foot size is acceptable. The downstairs is completely gutted, the basement is down to studs and will be finished back how it needs to be including additional egress.

P. Levesque MOVED to close the Public Hearing. J. Eckstrom SECONDED. All in Favor

B. Spear, said what if they didn't include closets in one of the bedroom and call it an office or make it living space? J. Eckstrom said it was interesting if you look at the assessment card, it is just the exterior space and it is the card that says the number of bedrooms. J. Stone says that somebody someday, may put that partition back. This would be an enforcement issue.

The Board discussed the limits of a variance and how to structure it. They reviewed the 5 criteria.

The Board examined the Spirit of the Ordinance and Public Welfare. The Board discussed what the purpose was of the ordinance, Section 5.5.3: population density, protect the rural character, protect public safety of water resources and septic capacity.

The Board discussed if this variance would maintain the rural character of Wilton. They discussed the number of people who could be living in the house as it stands given the large size and if restricting the ADU to two bedrooms would limit the additional people. The Board discussed other properties with many people living in them which didn't detract from the rural character of the Town.

The Board discussed if this variance would affect property values. The Board discussed that this won't change the property values and they read the letter provided by the applicant from Meghan Hardwick.

J. Eckstrom MOVED to reopen the hearing. P. Levesque SECONDED. All in favor.

J. Gates (Peard Hill Road) said she was a former real estate agent and in her experience, anytime when there was an extra family living in a house, prospective buyers didn't want to live next to it. She would not like to see her assessed value go down. The property is small and their space is very limited. DJ Garcia said that across the street is a large lot that is open. If this lot were to be split up in to housing lots, there would 25 new lots with houses. P. Howd said by state law the Garcias are allowed an ADU. This variance is looking at the extra sized ADU. Is the extra size going to degrade the rural character and affect property values? A. Garcia said this will be our home. We won't rent to people we wouldn't want in our home.

J. Stone MOVED to close the hearing A. Hoar SECONDED. All in favor.

The Board continued their discussion and examined the unnecessary hardship criteria. The Board discussed that the house itself is the unusual condition and that the ZBA is justified in considering the ADU ordinances were not in place when the additions were added. If the owner at the time had the ADU ordinances in place, they might have made other choices.

The Board discussed substantial justice and that the cost of compliance is greater than benefit to the public. The public will benefit from the proposed project.

J. Eckstrom MOVED to grant the Variance to allow for the Accessory Dwelling Unit that has a maximum 1375 sq. feet of living space including a maximum of 2 bedrooms and is otherwise conforming to the ADU Ordinance Section 5.5 of the ZONING Ordinance. P. Levesque SECONDED.

A. Hoar - yes

J. Stone - yes

P. Levesque - yes

N. Faiman - yes

J. Eckstrom - yes. Variance was granted.

J. Eckstrom MOVED to dismiss the requested variance to Section 6. 2.1 J. Stone SECONDED.

A. Hoar - yes

J. Stone - yes

P. Levesque - yes

N. Faiman - yes

J. Eckstrom - yes. The motion carries. N. Faiman reviewed the appeal process.

ADJOURN

A. Hoar MOVED to adjourn at 10:07PM. P. Levesque SECONDED. All in Favor

Respectfully Submitted by Michele Decoteau, Land Use Administrator

Approved 06.16.20