

1 **TOWN OF WILTON ZONING BOARD of ADJUSTMENT**
2
3

4 **Location:** **Remote ONLY**

5 **Date:** **April 14, 2020**

6 **Start time:** **7:30 PM**

7 **Board:** Neil Faiman, Joanna Eckstrom, Paul Levesque, Jeff Stone, Andy Hoar, Bob Spear
8 (alternate), Judith Klinghoffer (alternate)

9 **Attendees:** Chad Brannon (Fieldstone Land Consultants), Nikki O’Neil, Lynn Pentler, Ashely
10 Saari, Norma Ditri (Building Inspector), Leo Trudeau (Building Inspector),
11 Kenny Lehtonen, Randy King, Susan Bogdan, Don Bogdan, Lynne Stone, Sandy
12 Gallo (applicant)

13
14 **Preliminaries**

15 N. Faiman opened the meeting at 7:30pm by reading the Emergency Declaration.

16 Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu’s Emergency
17 Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

18 In accordance with the Emergency Order, we are utilizing the Zoom platform for this electronic
19 meeting.

20
21 Please note that there is no physical location to observe and listen contemporaneously to the
22 meeting. You can participate in one of two ways:

- 23 • Online (audio and video) at <https://tinyurl.com/ZBA041420>
24 • By telephone at (646) 558-8656, using Meeting ID: 219-031-092 and Password: 179909

25
26 Further details of the meeting procedure are available at www.wiltonzba.org/emeeting.html.

27 If you have issues accessing the meeting, please call our Land Use Administrator, Michele
28 Decoteau, at (603) 654-9451 x309, or email her at mdecoteau@wiltonnh.gov.

29
30 Roll call attendance:

31 Jeff Stone - here, Lynne Stone

32 Paul Levesque - here

33 Andy Hoar - here

34 Joanna Eckstrom - here

35 Judith Klinghoffer - here

36 Bob Spear - here

37 Neil Faiman - here, Lynn Pentler

38
39 N. Faiman asked everyone to be patient with each other. This is new to everyone. Non-board
40 members should stay muted other than during public comment periods. Use chat or email to
41 MDecoteau@wiltonnh.gov for comments or questions. Use this for the meeting only and part of
42 the public record.

43
44 Five regular members: J. Stone, P. Levesque, A. Hoar, J. Eckstrom, N. Faiman. Alternate
45 members will be participating but not voting.

47 N. Faiman shared that the Quinns have filed a lawsuit against the town to have the variance
48 denial decision overturned. This was filed on the same day the Quinns filed their rehearing
49 request.

50

51 **Minutes of previous meetings**

52 04.07.20 – these were tabled until next month

53

54 **Public hearings**

55 a) Kathryn Rockwood has applied for a special exception under section 5.3.1 of the Wilton
56 Zoning Ordinance, to allow the hosting of small events (up to 30 people) as a home
57 occupation on Lot J-29, 34 Park Street. (Case #2/18/20-1, continued from March 17)

58 **This will be continued to May in the absence of the applicant.**

59

60

61 **Regional Impact**

62 2) Before the hearing, the Board will determine, as required by RSA 36:55-58, whether any of
63 the new cases might have a regional impact.

64

65 The Board discussed the potential for regional impact. J. Eckstrom said that 101 is a state
66 highway but this case doesn't have regional impact. P. Levesque asked about traffic flow. He
67 was concerned about traffic flow. N. Faiman said his impression is that this does not have the
68 magnitude of traffic impact that would have regional impact. A. Hoar said he concurred.

69

70 J. Eckstrom MOVED to find that there is no regional impact from case #3/17/20-1. J. Stone
71 SECONDED.

72 Roll Call Vote:

73 J. Eckstrom - yes

74 P. Levesque - yes

75 A. Hoar - yes

76 J. Stone - yes

77 N. Faiman - yes. The motion carried.

78

79 N. Faiman opened the Public Hearing by reading the Public Notice.

80 Roger G. Chappell (owner) and Glendale Homes, Inc. (applicant) have applied for a variance to
81 section 6.4.2 of the Wilton Zoning Ordinance, to allow a cluster development on Lot D-99, 304
82 Gibbons Highway, which has only 326 feet of frontage on a Class V highway, where the
83 Ordinance requires 500 feet of frontage. (Case #3/17/20-1, continued from March 17)

84

85 C. Brannon, representing the applicant, presented the case. He said they are requesting a variance
86 on D-99 for a cluster subdivision. This lot has 326 feet of frontage where the Ordinance requires
87 500 feet. He reminded the Board that he had been before the board in August with a similar
88 project with a 55 and over development and the elderly ordinance at the time was 65 years and
89 older. After discussions that meeting and with staff, this proposal will meet similar needs. He
90 shared a conceptual plan for a cluster subdivision - a 19 unit subdivision with the current house
91 shown on a separate lot. These houses are clustered to provide adequate buffers from neighbors
92 and the Souhegan River.

139 C. Branon said that granting the variance would not affect the surrounding property values.
140 Cluster subdivisions are a permitted use in this area and the surrounding properties are generally
141 residential and this would be consistent with the neighborhood. The buffering would provide
142 significant buffering and protection for the river. In his experience, new developments with good
143 buffering have increased the value of the surrounding properties.

144
145 C. Brannon said that the relief they are seeking is just for the frontage and the plan that was
146 submitted, was very conceptual. Even so, they are not planning to put any development at the
147 front of the lot. The closest property to the proposed development would be over 250 feet away.

148
149 There was some question about whether cluster subdivisions are allowed in the Residential
150 District. After consulting the Cluster Subdivision Regulations, the Board found that 5.1.d alludes
151 to the Cluster Development Ordinance. The Board discussed if this was a regulation or part of
152 the Ordinance.

153
154 C. Brannon continued to discuss unnecessary hardship owing to special conditions of the
155 property that distinguish it from other properties in the area would cause undue hardship.
156 Granting the variance would allow for the productive use of the subject property. This property
157 has special conditions - it is irregular in shape and parallels the Souhegan River it is large in size
158 and there is 1500 feet of frontage on the river. The Town owns the property on the southeast. The
159 nearest buildable lot is over 250 feet away. The general public purpose of this Ordinance is to
160 ensure adequate separation and this will have significant buffering and this project will meet that
161 spirit even with the reduced frontage. Strict enforcement of this ordinance would limit reasonable
162 development of this large property and the best development for this property which would be
163 inconsistent with the general ordinance and create a hardship.

164
165 C. Brannon said that the proposed use is a reasonable one because it will allow for the productive
166 use of the land, the project meets the objectives of the cluster regulations with the exception of
167 the frontage, adjacent town owned land and the internal buffers create significant buffering
168 between this lot and other buildable lots in the neighborhood, this project will not result in
169 negative property values. The development proposed is a great use of the lot. There will be open
170 space along the river that will provide continuity and meet goals for local and state entities.

171
172 C. Brannon said the hardship that distinguish it from other properties - the geometry and layout
173 of this site is the hardship. The irregular nature of this lot and this this clearly distinguished from
174 other properties by its size, and frontage along the river and the surrounding undevelopable land.

175
176 S. Bogdan, an abutter said that frontage limitations could be a way of preventing an over buildup
177 of driveways and traffic pouring on to 101. Granting this variance would promote potentially 40
178 more vehicles entering 101. This variance is 20% difference. N. Faiman asked her to hold her
179 comments to later in the process. This was a time for questions.

180
181 J. Stone asked if C. Brannon had addressed Substantial Justice. C. Brannon said that it was the
182 first prong of the hardship clause. J. Eckstrom said she heard C. Brannon say this project will be
183 sensitive to the surrounding areas. C. Branon said basically that a denial of the request would

184 cause an undue hardship to his client with no gain to the general public. This would allow for the
185 reasonable use of the property with no measurable negative impacts to the neighborhood.

186
187 A. Hoar had questions about how firm the plan was that was presented. The plan presented had
188 the current house lot removed and was showing the frontage. A. Hoar said there were a lot of
189 pieces still unknown. C. Brannon said that if this variance was not granted, none of the rest of the
190 project would proceed. A. Hoar asked the rest of the Board how they felt about putting
191 restrictions on Variance decision namely that the frontage remaining intact. N. Faiman said he
192 would want to go further and not just require the frontage remain intact but to require the current
193 house to have shared access.

194
195 R. King how many feet separate the existing driveway to Intervale Road? C. Brannon said it was
196 275 feet between. R. King asked if this complied with DOT regulations.

197
198 B. Spear left the meeting at 9:08PM.

199
200 N. Faiman asked if there were any other public comments.
201 R. King had some additional questions about slopes and their steepness and C. Brannon said his
202 questions were Planning Board questions and that would be addressed in Planning Board review.
203 He did confirm that a jurisdictional areas were mapped and a topographic survey is complete.
204 They are very familiar with the land and are confident in the preliminary design. C. Brannon said
205 that if any issues come up they will address them.

206
207 K. Lehtonen said as a builder and developer, he has walked this lot before. And he felt this was
208 an acceptable use of the land.

209
210 S. Bogdan said she and her husband have two major concerns about this proposal. One is traffic.
211 With a 55 and up development, you can anticipate two cars per unit and this will be a potential of
212 50 more vehicles and this is close to Intervale Road. There have been many accidents on 101 in
213 this area and adding more drivers on this section, the danger would be exponentially worse. Two,
214 when C. Brannon mentions river-views, all we are going to see is the backside of houses. C.
215 Brannon clarified that any development on this property will have an impact on the traffic on
216 101. Traffic is really a Planning Board topic and will be reviewed in detail with DOT and the
217 Planning Board. He said that they are planning on using land preservation along the river and it
218 has Shoreland Protections that restrict how close development can come to the Souhegan River.
219 They will also need a DOT permit, Shoreland Protection Permit, an Alteration of Terrain permit.
220 These questions are valid but they will better suited to the Planning Board.

221
222 C. Brannon had one request – he asked for the Board to deliberate this evening so his client can
223 move forward. He offered to let the other case go first and then deliberate. The Board discussed
224 if they were able to render a decision tonight or if they felt this would be a longer discussion. The
225 Board agreed to deliberate.

226
227 A. Hoar MOVED to close the public hearing for deliberations. J. Eckstrom SECONDED.

228 Roll Call Vote:
229 J. Eckstrom - yes

230 P. Levesque - yes
231 A. Hoar - yes
232 J. Stone - yes
233 N. Faiman - yes. The motion carried.
234

235 J. Eckstrom said she thought this is an existing lot of record with an existing entry way and there
236 is no way possible that they can meet the 500 foot frontage requirements but the Board could
237 consider granting the variance with a restriction that there be no new construction allowed along
238 the frontage. N. Faiman shared the town tax map. There is a long large lot with lots of frontage
239 along the river and with a limited amount of frontage. He said it was essentially land locked by
240 little lots along the sides and effectively limiting what can be done with the property. P.
241 Levesque said that there is a rocky hill near the driveway and the lack of visibility on 101. He
242 said that he wanted DOT to be aware of the Board's concerns. J. Eckstrom said what about
243 limiting any new construction along route 101 and requiring no new curb cuts. This would mean
244 the existing house would have access through the new road. N. Faiman said that this would be an
245 important starting point. N. Faiman said he thought that restricting any future subdivision of the
246 existing house from the lot would be a requirement in his mind. N. Faiman said, based on other
247 members concerns, that no new construction be in front of the existing house and all access to
248 the lot be from the new road and he would also say no new subdivision of the lot. The Board
249 discussed future subdivision of the lot.
250

251 N. Faiman asked what the purpose of the frontage requirement is? The applicant has suggested
252 the purpose was about frontage density. N. Faiman said he thought it was partially to do with
253 traffic and is a density restriction. Because of the shape of the lot and size, this may not have as
254 much meaning.
255

256 J. Eckstrom said this is an existing lot of record, they are not asking to subdivide and there are
257 physical limitations to being able get more frontage on Route 101. She thinks this is a reasonable
258 use and there should be restrictions starting with no further development on Route 101 and
259 access to the existing house be taken from same driveway or roadway as the rest of the
260 subdivision.
261

262 The Board discussed various ways of wording the restrictions they all agreed on.
263

264 J. Eckstrom MOVED to reopen the public hearing. J. Stone SECONDED.

265 Roll Call Vote:
266 J. Eckstrom - yes
267 P. Levesque - yes
268 A. Hoar - yes
269 J. Stone - yes
270 N. Faiman - yes. The motion carried.
271

272 J. Eckstrom MOVED to grant the variance subject to the following conditions:

- 273 • No future subdivision of the lot
- 274 • No new construction closer to 101 than the back of the existing dwelling
- 275 • All access to the lot, including the existing dwelling is by way of the existing access road

276 P. Levesque SECONDED.

277 Roll Call Vote:

278 J. Eckstrom - yes

279 P. Levesque - yes

280 A. Hoar - yes

281 J. Stone - yes

282 N. Faiman - yes. The motion carried.

283

284 N. Faiman reviewed the standard appeal process. Requests for rehearings must be in to Town
285 Hall within 30 days of today.

286

287 At 9:30PM, the Board discussed if they wanted to move forward given the time. The Board
288 agreed.

289

290 **New Case #4/14/20– 1**

291 N. Faiman read the public notice: Sandra Gallo has appealed a decision of the Wilton Building
292 Inspector, pursuant to sections 3.1.1-a, 3.1.7, 5.5, and 25.4 of the Wilton Zoning Ordinance, that
293 a finished basement in her home at Lot D–40, 120 Holt Road, is a second dwelling unit and
294 should be subject to impact fees as such. (Case #4/14/20– 1)

295

296 S. Gallo presented her case. She is joined by N. O’Neil and K. Lehtonen from SanKen Homes.
297 She wanted to finish her basement to make more for her office. S. Gallo submitted the plans in
298 October 2019 and if there had been a problem, she expected N. Ditri to have told her if there
299 were problems with the plans at that time and informed them of the additional fees at that time.

300

301 SanKen finished the basement, 724 square feet with a living room, office, bathroom, and
302 kitchenette. It was built to accommodate a sink, refrigerator, counters, and a microwave. While it
303 meets the IRC for a kitchen and meetings the definition for a dwelling unit from the Town of
304 Wilton. L. Trudeau did the final definition. S. Gallo said that she is using this space as an office
305 and not as a bedroom. She does not think her basement is an ADU. She might have to pay
306 more in terms of an upgrade to her septic system.

307

308 K. Lehtonen said that normally at the time of a building permit application. He said that they
309 completed the construction was completed as permitted and doesn’t see how occupancy can be
310 held up.

311

312 L. Trudeau, Building Inspector and Code Enforcement Officer said he performed an inspection
313 on Jan 29. The area that was constructed is easily livable in the way it is set up. To say we could
314 remove a shelf or not put in the microwave is wrong. The room that is called an office, but meets
315 all the criteria for a bedroom. It has a lockable door, it has a closet, and a full sized egress
316 window. Someone could go in to the space, never go through the rest of the building, and live –
317 they can cook, bath, and reside. Therefore it meets every requirement of an ADU.

318

319 K. Lehtonen said that could be said about any walk out basement that is finished.

320

321 N. Ditri, Building Inspector and Code Enforcement Officer, said the original permit said 724
322 square feet of finished space. The drawings provided are of the house. When the other permits
323 added on to the description of what this going to be, she used the electrical permit and the
324 plumbing permit to build that picture. The sink was supposed to be a small, about a square foot.
325 She asked about the refrigerator, and was told it would be an apartment size or dorm sized
326 refrigerator. When you get it all together, and all the pieces are in place, things emerge. Yes,
327 someone could live here, it is an ADU.

328

329 J. Eckstrom said maybe but if someone wanted to put in a family room and there was a wet bar
330 in it, and a bathroom, that doesn't necessarily make it an ADU in her mind.

331

332 K. Lehtonen said that in real estate, a stove makes it a second unit. If you look at the permit, it
333 says no stove. We built the basement exactly how it was shown on the application.

334

335 N. Ditri said her said that she felt the original drawing wasn't clear. As the building process
336 progressed, she had to ask for more information. K. Lehtonen said that the basement was built
337 according to plan.

338

339 There was further discussion about if this was built according to plan or not and how to classify
340 the rooms.

341

342 N. Faiman said whatever there is now, is it a dwelling unit or not? That is the question need to
343 ask. P. Levesque said no, it isn't a dwelling unit. Some board members felt that without a stove,
344 no one could cook. Others felt that if the owner arranged the rooms to be an office, then that is
345 what it was.

346

347 N. Faiman asked the Board to consider if this is a dwelling unit. If it is, then it has an impact fee.

348

349 J. Eckstrom MOVED to close the Public Hearing. J. Stone SECONDED.

350 Roll Call Vote:

351 J. Eckstrom - yes

352 P. Levesque - yes

353 A. Hoar - yes

354 J. Stone - yes

355 N. Faiman - yes. All in Favor

356

357 J. Klinghoffer asked about how expensive this would be to make the changes needed to no
358 longer look like an ADU. P. Levesque asked if there were plans submitted and was this built
359 according the plan.

360

361 A. Hoar said this is not an ADU, they didn't ask for a Special Exception to be an ADU. J. Stone
362 said an office alone wouldn't typically have all these amenities. He said it has everything. J.
363 Klinghoffer said that there is a certain fuzziness. It is not clear cut. She said that the approval of
364 the building permit was relied upon by the applicant and once approved, they proceeded. They
365 relied on what was determined. P. Levesque said he didn't think S. Gallo misrepresented what
366 she wanted to do.

367 J. Stone asked why would this not get approved as a building permit application? It has all the
368 necessary components.
369

370 N. Faiman said it looks like a dwelling unit. To what extent does intent play a role? And at what
371 point is the only different between an office and a bedroom merely the furniture?
372

373 The Board continued to discuss if this could be a dwelling unit and if the furniture is what the
374 Ordinance means when discussing how rooms are arranged to create a dwelling.
375

376 N. Faiman MOVED that the Board find the downstairs is not a separate dwelling unit provided
377 the applicant file a notice with the deed for the property at the Registry of Deeds specifying that
378 the downstairs does not contain, and may not contain, any bedrooms. This notice must be placed
379 with the property information at Town Hall.
380 Discussion

381 J. Eckstrom added that the downstairs not contain a bedroom without securing a septic upgrade.
382 J. Klinghoffer said, no – that would make it a dwelling unit.
383

384 J. Stone SECONDED.
385

386 J. Eckstrom MOVED that the Board return to Public Hearing. A. Hoar SECONDED.
387 Roll Call Vote:
388 J. Eckstrom - yes
389 P. Levesque - yes
390 A. Hoar - yes
391 J. Stone - yes
392 N. Faiman - yes. All in Favor
393

394 N. Faiman asked S. Gallo about the proposed solution. K. Lehtonen said that if in the future
395 someone wanted to turn this in to an ADU, if it is restricted in deed, but if they went to the
396 Building Inspector to do so. N. Faiman discussed various options.
397

398 L. Trudeau expressed that he was unhappy with the decision. This is an ADU no matter what you
399 call it. Any other inspector would come to the same conclusion.
400

401 A. Hoar said he would have trouble voting for the motion that contained codicil about the ADU
402 being applied for in the future. It weakens the stance that this is not an ADU and makes it easier
403 for someone in the future turning this into an ADU and having septic issues.
404

405 J. Eckstrom said that mortgage inspectors would find that information out upon the sale.
406

407 N. Faiman revised his motion. N. Faiman MOVED that the Board find the downstairs is not a
408 separate dwelling unit subject to the notice the applicant file a notice with the deed for the
409 property at the Registry of Deeds specifying that the downstairs is not, and may not be a
410 downstairs bedroom unless the owner obtains a building permit to add a separate bedroom and
411 create a separate dwelling unit.
412 Discussion

413 J. Klinghoffer wanted to add in more language about a change of use. N. Faiman asked N. Ditri
414 if she would understand what someone was asking for if a future owner asked for a change of
415 use. N. Ditri said she wouldn't expect someone to ask. They will use it however they want to use
416 it.

417 There was further discussion about how to make sure this information is retained for the future.
418

419 N. Faiman provided the text of his motion in the chat function of Zoom:

420 The Board finds that the downstairs space is not a separate
421 dwelling unit, subject to the requirement that a notice be filed
422 with the deed in the registry of deeds and with the tax card in
423 the Town Office that there is not and may not be a downstairs
424 bedroom unless the owner obtains approval from the building
425 inspector for a change of use.

426 J. Eckstrom SECONDED.

427 Discussion:

428 J. Eckstrom asked about the Impact Fee. If there is no additional dwelling, there would be no
429 impact fee.

430

431 Roll Call Vote

432 J. Eckstrom - yes

433 A. Hoar - yes

434 J. Stone - yes

435 P. Levesque - yes

436 N. Faiman - yes. All in Favor

437

438 N. Faiman reviewed the standard appeal process.

439

440 Adjournment

441 A. Hoar MOVED to Adjourn at 11:25 PM. P. Levesque SECONDED.

442 Roll Call Vote:

443 J. Eckstrom - yes

444 P. Levesque - yes

445 J. Klinghoffer

446 A. Hoar - yes

447 J. Stone - yes

448 N. Faiman - yes. All in Favor

449

450 Respectfully submitted by Michele Decoteau, Land Use Administrator

451 Approved by XXXXXXXXXXXXXXXXXXXX