



TOWN OF WILTON ZONING BOARD OF ADJUSTMENT

Approved Minutes

DATE: December 8, 2020
TIME: 7:30 PM
PLACE: Remote
PRESENT: Neil Faiman_(Chair), Joanna Eckstrom (Vice-chair), Jeff Stone, Andy Hoar, Paul Levesque, Judith Klinghoffer (Alternate), Peter Howd (Alternate)
Staff: Norma Ditri, Building Inspector; Michele Decoteau, Land Use Administrator
Attendees: David Langton (applicant), Dawn Ryan (applicant), David Pinsonneault (applicant’s representative), Jason Bolduc (Meridian Land Services), Joe Coffey, Bart Hunter, Robin Maloney, Kathy Maddock, William Ryan, Corrine Ryan, Chris Greeley, Audrey Robinson

1) Call to order by the Chairperson

N. Faiman opened the meeting at 7: 30PM. He read the Emergency Declaration and Rules of Procedure.

The Board had a roll call attendance.

- P. Levesque - here, alone
- J. Stone - here, with Lynne Stone
- A. Hoar - here, alone
- J. Eckstrom - here, alone
- N. Faiman - here, with Lynn Pentler
- P. Howd - here, alone
- J. Klinghoffer - here, alone

It was noted that the meeting was being recorded by the Land Use Administrator and David Pinsonneault.

2) Public hearings

The Board discussed the Regional Impact of the cases on the Agenda.

J. Eckstrom MOVED to find that there is no regional impact from any of the cases before the Board. P. Levesque SECONDED.

Discussion: Hearing none the chair asked for a roll call vote.

- Roll call vote:
 - P. Levesque - aye
 - J. Eckstrom - aye
 - A. Hoar - aye
 - N. Faiman - aye
 - J. Stone - aye
 - J. Klinghoffer - aye, voting only on Cases 2 and 3
 - P. Howd - abstain.
- The Motion carried.

The Board and all the applicants, discussed what order to take the cases in and decided to change the order from the agenda.

Doodle Land LLC has applied for a variance to section 4.2.1 of the Wilton Zoning Ordinance, to allow the replacement of a septic system on Lot C-112, 66 Temple Road, where the replacement septic system would be closer to Blood Brook than is allowed by the Ordinance.

J. Klinghoffer recused herself as an abutter. Voting members for this case will be J. Eckstrom, A. Hoar, P. Levesque, J. Stone, and N. Faiman.

J. Bolduc, Meridian Land Services, will be representing the applicant. J. Bolduc designed the septic system for the four bedroom duplex on 0.31 acres and that abuts Blood Brook. The Tax Card from the Town showed that this house was once a five bedroom house. J. Bolduc showed the septic plan.

J. Eckstrom asked if this was the approved design. Approved by the state? J. Bolduc said yes, the plan he was showing was just approved today.

J. Eckstrom asked if this was an appropriate size for a four bedroom house? J. Bolduc said yes, but this is a duplex and the size needs to be slightly greater than for a four bedroom house. This system is designed for the duplex. He said it was a Biocon system that is designed to work in a small location near the water table. It works more like a small municipal system.

A. Hoar asked if the system could be moved to a location closer to the garage? J. Bolduc said that the topography of the lot is such that if the system was moved to the area near the garage, it would have to be raised and would require additional space for a pump. The seasonal high water table is closer to the surface near the garage.

K. Maddock (64 Temple Road) said she was an abutter and this system is being put right next to her lot line. She was concerned about the vent being put next to her lot line. J. Bolduc said the vent could be moved.

K. Maddock asked if putting parts of a septic system right on the property line was allowed? J. Bolduc said yes, the state allows it right up to the line. K. Maddock asked if any of this could be moved back from her property line. J. Bolduc said that the vent could be put anywhere. It was just for air flow.

K. Maddock asked about what parts of the system would be above ground. J. Bolduc said the tank would be above grade from what grade is now and the vent pipe.

J. Eckstrom asked how far K. Maddock's house is from the lot line. She said her house was about 10-15 feet. D. Langton said 30-40 feet.

N. Ditri, Building Inspector, asked for clarification on the location of the existing septic and gray water systems. J. Bolduc showed where they were located on the plan. N. Ditri asked for clarification of what was going to happen to these tanks once the new system is installed. J. Bolduc said that they will be pumped then crushed and removed when the new system is installed and all the effluent from the house will be plumbed into the new system.

J. Klinghoffer, speaking as an abutter, said she was concerned about the installation. She wanted proof that all the tanks were removed and the system that was installed was in compliance. She said that the applicant had not respected the stop work order and had backfilled over the gray water tank. She said she was concerned that they would not be inclined to comply with all the requirements. J. Klinghoffer asked if this was the best possible septic system design given the size of the house and the proximity to the brook. J. Bolduc said he spoke with Travis Guest at DES to discuss using an Enviroseptic system, but

they couldn't get it to fit. The system chosen is a balance between the Brook and drinking water. He moved the system around to stay out of the well radius.

J. Eckstrom asked if there was a transition collection system between the removal of the old system and the installation of the new system. J. Baldor said no. The old system will be disconnected and removed, then the new system will be put in. The water will be disconnected during the process.

N. Faiman asked about how this system, since it has an electric pump, will it fair in an extended power outage. J. Bolduc said it won't work but without power, the water pump won't work either. It will take a lot of time for the tank to fill up.

J. Klinghoffer asked about driving over the new system. If you needed to drive from the driveway to the other side of the yard, could that be done? J. Bolduc said you would be able to drive something through that was less than 13 feet wide or you could add more fill to the top of the tank to distribute the weight.

J. Eckstrom asked about "As Built" plans. J. Bolduc said that the state has their own inspectors and once the system has been installed, the inspector will issue an operational date. If the plans are different from what is installed, the inspector will note that.

A. Hoar said the front of the property has a very steep slope. How does that affect the placement of the system? J. Bolduc said that the yard is fairly flat in the back and the system will be obvious. With the lot constraints and the seasonal high water level, the tank will be sunk but the leach field will be slightly above grade. This will be sloped but still obvious.

N. Ditri said that even though the state will do the final inspection and approval, she would like to be part of that final inspection and have a way to confirm that the tank was put in according to plan and the old tanks removed.

J. Eckstrom MOVED to close the Public Hearing and enter deliberations. P. Levesque SECONDED.

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom- aye

J. Stone- aye

P. Levesque - aye

N. Faiman - aye. Motion carries.

The Board discussed granting the variance but with conditions. The conditions discussed were to confirm that N. Ditri can inspect the final tank installation, adjusting the location of the vent pipe to be less visible, and requiring the decision or the "As Built" plans be recorded with the property deed.

The Board discussed the standards for granting a variance.

Public Interest & Spirit of the Ordinance

The Board agreed that protecting ground water and drinking water wells were in the public interest and that this was part of the spirit of the Ordinance.

Substantial Justice

The Board agreed that having a well-functioning septic system protected the residents and the neighbors as well as the environment.

Hardship

The Board agreed that the configuration of the lot, the proximity of the house to Blood Brook and the age of the house were all hardships.

J. Eckstrom MOVED to reopen the Public Hearing. P. Levesque SECONDED.

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom– aye

J. Stone- aye

A. Hoar - aye

P. Levesque - aye

N. Faiman - aye. Motion carries.

J. Eckstrom MOVED to find that the conditions for a variance have been met and to grant the variance to Section 4.2.1 of the Wilton Zoning Ordinance with the following conditions:

1. any existing septic system, including all tanks and gray water treatment systems, be removed
2. the Building Inspector my observe the installation of the new septic system
3. The ZBA decision be filed with the Registry of Deeds
4. An “as built” plan be recorded at Town Hall, and
5. The vent pipe be moved away to an acceptable and functional location.

P. Levesque SECONDED.

J. Eckstrom MOVED to re-open the Public Hearing. P. Levesque SECONDED.

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom– aye

A, Hoar

J. Stone- aye

P. Levesque - aye

N. Faiman - aye. Motion carries.

J. Klinghoffer asked about the timing of the removal of the tank that was added in September and that it be coincidental with the installation.

D. Langton asked why this needed to be recorded in some way on the deed. N. Faiman said that this will make it easy to find if someone does a title search. The Board discussed if the plan or if the decision alone would be acceptable.

J. Eckstrom amended her motion to require recording of the decision, not the plan. P. Levesque still SECONDED.

J. Stone said that these systems that are being installed have a greater failure rate and this is a sensitive area being close to drinking water wells and a brook. The shorter distance to the house should be recorded. The Board discussed that plan, either the current proposed plan or the final “as built” plan if there are changes, be filed at Town Hall with the case materials.

Roll call vote

J. Eckstrom - yes

J. Stone - yes

A. Hoar - no

P. Levesque - yes
N. Faiman - yes. Motion carried.

N. Faiman reviewed the appeal process.

Case #12/08/20 -3 —Ryan

Dawn Ryan has applied for a variance to sections 6.2.4 and 17.1(e) of the Wilton Ordinance, to allow the construction of an 8'x12' addition and an open porch attached to the house on Lot A-47-1, 74 Stagecoach Road, which is nonconforming because it is closer to Stagecoach Road than is allowed by the Ordinance.

N. Faiman opened the public hearing by reading the public notice. The voting members on the case will be J. Stone, P. Levesque, A. Hoar, J. Eckstrom, and N. Faiman. J. Klinghoffer will be participating as an Alternate Member. P. Howd recused himself as he is on the Conservation Commission. It was clarified that J. Stone is no longer a member of the Conservation Commission.

D. Pinsonneault, representing the applicant, summarized why D. Ryan was seeking relief from the ZBA today. He shared her project plans for renovating her home. He said that there were some issues with the wetlands but that was not before the ZBA. He said that this project in no way impacted wetlands.

D. Pinsonneault said that the house was built before zoning and that it was enlarged in 1987 without a variance. The house is non-conforming because it sits closer to the road than is allowed. He said that the enlargement of the master bath and open porch in the back of the house will not encroach on the front setback.

The Board asked some clarifying questions about the exact location of the addition – the bathroom will be expanded and a porch added. J. Eckstrom asked about the stone wall and it was confirmed that it was still in place.

D. Pinsonneault said that addition was put on the house in 1987 and at that time no variance was required.

D. Pinsonneault reviewed how this would impact the neighborhood. He said there would be no further encroachment on wetlands and no impairment to natural conditions. He said the improvement would increase the value of the house.

D. Pinsonneault said that the variance is consistent with the spirit of the ordinance. He said the spirit of the Ordinance is derived from the purpose to promote health, safety, prosperity, and convenience. He said that by allowing these minor additions will not be contrary to the spirit of the Ordinance.

D. Pinsonneault said granting the variance would result in substantial justice because literal interpretation of 17.1e interferes with a person using their property considering the unique property, the age of the house, and the historic setting. This type of change will promote substantial justice. He said he cannot conceive how this will impact neighboring properties or their value.

D. Pinsonneault said the greater issue with the use of the property is not before the Board. The Greater issue is with clearing of vegetation beyond the pond and Ms. Ryan is committed to remedying that situation.

J. Eckstrom asked for clarification of what is the carriage house. D. Pinsonneault said that is the single story portion of the house.

N. Faiman opened the Public Hearing to public questions and comments.

J. Coffey, 29 Stagecoach Road, said he saw this as a “no- brainer” because this would not move the house closer to the road. He said it was good to encourage people to expand their houses and improve the value.

R. Maloney, 10 Stagecoach Road, said she was more concerned with how this impacts the neighborhood. The road has been blocked many times. The house looks much worse than it had in the past. Not sure what substantial justice means. She was curious why D. Ryan bought the house since it has been non-stop construction since she moved in. R. Maloney said she was curious at all the building. Why did she start to demolish the carriage house before she had a permit? She said Dawn Ryan has no respect for the neighborhood. It has been non-stop trucks. There have been many trucks going in and out of the neighborhood that are over 3 tons using Stagecoach Bridge. Traffic has increased.

C. Greeley said he grew up in the area. He said that his family has been in the neighborhood for generations and he knew all the additions that were not supposed to be there from previous owners. D. Ryan has done everything in an exceptional manner, hiring attorneys to keep her path clear. She just wants to make her dreams come true and have a goat. He said he grew up with horses. He said he understood due diligence and wanted his voice heard. He said he trusted the ZBA Board members and wanted to support a new member of Wilton. He wanted everyone to work together. He said supported the proposed addition on the plans he has seen.

B. Hunter, representing the Conservation Commission that holds an easement on an abutting property, shared some of the history of the area. He and his wife have been in the area a long time and he said he has been dismayed by some of the changes, but change is hard. He said he is not opposed to an addition off the back of the house.

C. Ryan, 54 Stagecoach Road, and not related to the applicant, said they are not opposed to the addition off the back of the house.

N. Faiman asked D. Ryan if she had any further comment and she declined.

A. Hoar MOVED to close the Public Hearing and enter deliberations. J. Eckstrom SECONDED.

Discussion:

P. Levesque asked to clarify the reason for this house being non-conforming. N. Faiman said it was closer than 35 feet from the road and the Ordinance says you cannot expand a non-conforming structure. J. Eckstrom added that the addition will be on the back and will not increase the non-conformity.

C. Greeley added that the house is only 31 feet from the road and we were looking for 35 feet. J. Klinghoffer said that the addition proposed will in no way exacerbate the non-conformity. C. Greeley said that the law is the law.

Roll call vote:

J. Eckstrom– aye

A. Hoar - aye

J. Stone- aye

J. Klinghoffer - aye

P. Levesque - aye

N. Faiman - aye. Motion carries.

N. Faiman started the discussion with the question, is a variance needed here?

He said he thought it was fuzzy in this case. He cited Laughlin Land Use Practice. N. Faiman quoted from a footnote on how older buildings often don't comply with the front setback. This prohibits construction that encroaches further in the front setback and doesn't violate other parts of the zoning ordinance. Then N. Faiman cited Bernie Waugh who says something different in the discussion of the Granite State Materials v City of Portsmouth. Granite State Materials wanted to add additional stories to a building that was encroaching on setbacks. The ordinance in Portsmouth said non-conforming buildings cannot be expanded except as permitted by a variance. This is similar to our Ordinance in plain language.

J. Klinghoffer asked what the difference was between saying they don't need a variance and granting a variance? N. Faiman said that the language of 17.1e is stringent. It doesn't say that a non-conforming structure cannot encroach further into the setback, it says that a non-conforming building or structure cannot be enlarge. J. Eckstrom cited a recent case of McDonough where a variance was requested to further expand their house into the front setback.

A. Hoar requested that that this be discussed on the merits and either grant or deny the variance.

J. Klinghoffer asked if it made any difference between granting a variance and saying no variance is needed? What is the path of least resistance? The Board discussed this and determined that there would be practically no difference.

J. Eckstrom said that the Board should grant the variance because it was on the back of the house and would not make the non-conformity worse. She said that even if this did expand a non-conforming building, it was not infringing on the setback. A. Hoar said that is not what the law says. He said that we need to grant a variance and that is not the same as her not needing one.

P. Levesque said if we take the path of least resistance here that would be setting a precedent. N. Faiman agreed. N. Faiman said we have to interpret 17.1e and determine if that means no expansion or if it means no expansion which increases the non-conformity. J. Eckstrom said she agreed that it should mean that no increase in the non-conformity. N. Faiman said he agrees with the plain language of the Ordinance to mean no increase period. A. Hoar said he agreed with P. Levesque that if we say no variance is needed, we are interpreting the Ordinance with a lot of latitude and that will set a precedent. J. Eckstrom said this case has no encroachment into the setback.

A. Hoar MOVED to grant the variance based on the reasons provided by the applicant and allow the construction. J. Eckstrom SECONDED.

P. Levesque MOVED to reopen the public hearing. A. Hoar SECONDED.

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom- aye

A. Hoar - aye

J. Stone- aye

J. Klinghoffer - aye

P. Levesque - aye

N. Faiman - aye. Motion carries.

Motion on granting the Variance.

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom- aye

A. Hoar - aye

J. Stone- aye
P. Levesque - aye
N. Faiman - aye. Motion carries.

N. Faiman reviewed the appeal process.

9:52 PM. The Board took a 5 minute recess.

9:57 PM. The Board reconvened.

Case #12/08/20 –2 — Ryan

Dawn Ryan has applied for a variance to sections 6.2.4 and 17.1(e) of the Wilton Ordinance, to allow the construction of a shed attached to the garage on Lot A-47-1, 74 Stagecoach Road, which is nonconforming because it is closer to Stagecoach Road than is allowed by the Ordinance. In addition, this barn violates wetland setbacks but the proposed addition doesn't violate either of the setbacks.

N. Faiman said he spoke with D. Pinsonneault and in the event that the appeal in ZBA Case #11/10/20-1 is denied and the garage is found to be additionally nonconforming because it is attached to the barn, which is closer to open water than is allowed by the Ordinance in the Watershed District, Ms. Ryan has also applied for a variance to section 14.3.3 of the Ordinance. The Board and applicant discussed the order in which to proceed and if the Variance would still be required if the appeal was denied. They all agreed that a variance would still be required even if the appeal were denied.

D. Pinsonneault said that the appeal was technical and complex and the variance was simpler. N. Faiman said that the setbacks that are important to the requested variance are similar to the ones in the previous case.

A. Hoar is not in favor of this ordering. He expressed concerns about animal waste disposal near water in this area. Also wants to get into the defining the body of water. J. Eckstrom said she would like to know if it was man-made as well. They both wanted to know if it had an outflow. N. Faiman said the proposed shed is not within any wetlands setback. It is purely a question of enlarging a non-conforming structure. J. Stone said this building is an aquifer protection zone.

N. Faiman opened the public hearing by reading the public notice. The voting members on the case will be J. Stone, P. Levesque, A. Hoar, J. Eckstrom, and N. Faiman. J. Klinghoffer will be participating as an Alternate Member. P. Howd recused himself as he is on the Conservation Commission.

D. Pinsonneault said the facts have just been laid out very clearly and he had little to add. The shed is a reasonable use and doesn't impact anyone. It was the same arguments he made for the addition to the house. It was ironic that if the shed were to be built as a standalone structure, it wouldn't need a variance.

J. Eckstrom asked where the pond drains. D. Pinsonneault said to the best of his knowledge it doesn't drain. J. Eckstrom asked if this was a fire pond? D. Pinsonneault said he doesn't know. He said if he were to guess, he would guess it was a fire pond. B. Hunter asked if he could comment and said he knew the answer. Everyone agreed. B. Hunter said his wife grew up in the house across the street and she remembers that it was built by the Godleys about 65 years ago as a skating and swimming pond. It does have a drain but only drains when the stream is high enough to cover the pond. The Godleys also used it to water their sheep.

J. Eckstrom asked about Mill Brook. B. Hunter said it is about 30 feet from the brook. M. Decoteau shared a map of the area. The map identified the stream as Mill Stream. J. Eckstrom asked if this pond drained into Mill Stream. B. Hunter said it drains into Mill Stream when it is high water.

D. Pinsonneault said that he didn't think the location of the stream or pond were important. B. Hunter said that the location of the aquifer might be more important and the more current maps showed a slightly different location than the maps being shown. D. Pinsonneault said there is no regulation that prohibits the shed in the Aquifer Protection District.

There was discussion about permitted uses in the Aquifer Protection District and if animals were allowed. N. Faiman read the allowed uses – and the only limitation was that manure and chemicals be stored with best practices to protect the water.

P. Levesque asked about the proposed use of the shed. D. Pinsonneault said that as far as he knew, it would be to shelter one or two horse or a goat or two. He said she could have horses without the shed.

N. Faiman said that having animals is an allowed use and the only concern is to make sure the byproducts don't pollute the water ways or water table. The structure is an allowed use but it is attached to a non-conforming building. The shed itself is not violating the setback. B. Hunter said that as a separate issue, DES may have grazing guidelines.

N. Faiman invited the abutters to comment.

J. Coffey, 29 Stagecoach Road, said he supported her building the shed. It doesn't impact Stagecoach Road or his property.

There were no other comments.

A. Hoar MOVED to close the Public Hearing. P. Levesque SECONDED.

Roll call vote:

J. Eckstrom– aye

A. Hoar - aye

J. Stone- aye

P. Levesque – aye

J. Klinghoffer - aye

N. Faiman - aye. Motion carries.

N. Faiman said this was just like the last case. It is not in the setback and is not in any way harmful the public. J. Eckstrom said she agreed. The Board discussed the hardship of the historic location.

J. Eckstrom MOVED to grant the variance based on the reasons provided by the applicant. P. Levesque SECONDED.

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

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom– aye

A. Hoar - aye

J. Stone- aye

J. Klinghoffer - aye

P. Levesque - aye

N. Faiman - aye. Motion carries.

N. Faiman asked if there were any further public comments. Hearing none, the Board returned to the motion on granting the Variance.

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom– aye

A. Hoar - aye

J. Stone- aye

P. Levesque - aye

N. Faiman - aye. Motion carries and Variance is granted.

N. Faiman reviewed the appeal process.

Case #11/10/20 –1 — Ryan

Dawn Ryan has appealed an administrative decision of the Wilton Building Inspector that a proposed shed on Lot A-47-1, 74 Stagecoach Road would be in violation of Section 14.3.3 of the Wilton Zoning Ordinance because it would be less than 200 feet from open water in the Watershed District.

N. Faiman asked D. Pinsonneault what they wanted to do with the appeal. D. Pinsonneault said what he will do is consult with his client and expects to file a written withdrawal.

J. Stone MOVED to continue the case to January 12, 2021, at 7:30 PM. J. Eckstrom SECONDED.

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote:

J. Eckstrom– aye

A. Hoar - aye

J. Stone- aye

P. Levesque - aye

N. Faiman - aye. Motion carries

3) Other new business

Application Fees

M. Decoteau shared memo regarding ZBA fees charged by other towns. N. Faiman asked the Board if they wanted to discuss this or continue the discussion. J. Eckstrom said she wanted to continue it but when the Board discusses this, the Board should take in to account M. Decoteau’s time on case.

P. Howd said there was some concerns raised by the Select Board about fees always being collected. M. Decoteau said that the Town Clerk’s office shares the income on a monthly basis and that includes the ZBA application fees. J. Eckstrom said she does not want a case noticed until the fees get paid. N. Faiman said that the Bylaws state an application is not complete until the fees are paid.

4) Correspondence

M. Decoteau shared that each of the ZBA members received a letter at Town Hall. M. Decoteau shared her letter. She offered to put them in the outbox at Town Hall.

M. Decoteau said she would email the calendar.

B. Hunter said that the Sand Hill Subcommittee shared their final report at the Select Board meeting.

5) Minutes

The Board decided to table the minutes until next month.

6) Meetings

The Board discussed meeting in person or staying on Zoom. The Board is going to stay virtual for the time being.

7) Adjournment

A. Hoar MOVED to adjourn at 10:42 PM. J. Eckstrom SECONDED.

Discussion: The Board wished everyone Happy Holidays!

Roll call vote:

J. Eckstrom– aye

A. Hoar - aye

J. Stone- aye

P. Howd - aye

J. Klinghoffer - aye

P. Levesque - aye

N. Faiman - aye. Motion carries.

Respectfully submitted by Michele Decoteau, Land Use Administrator

Approved on 03.09.21