



TOWN OF WILTON ZONING BOARD OF ADJUSTMENT  
Draft 2 Minutes

- 7
- 8 **DATE:** July 13, 2021
- 9 **PLACE:** Wilton Lyndeborough Cooperative High School, 57 School Street, Wilton
- 10 **BOARD:** Neil Faiman (Chair), Joanna Eckstrom (Vice-chair), Jeff Stone, Paul Levesque, Judith
- 11 Klinghoffer (Alternate), Peter Howd (Alternate)
- 12 **Absent:** Andy Hoar
- 13 **Staff:** Michele Decoteau, Land Use Administrator & Board Secretary
- 14 **Attendees:** Tom Barnett, Violet Blake, Peg Blanchard, Steve Blanchard, Sue Bloom, Cal Bloom,
- 15 Amanda Bosse, Randy Bosse, Andy Burnes, Ralph Buschmann, Jim Callahan, Dan Dillon,
- 16 Sam Foisie (Fieldstone Land Consultants), Gail Hernandez, Raymond A. Homes, Greg
- 17 Ikerd, Melodie Jones, Sandy Lafleur, Marjorie Lemay, Paul Lemay, Kenny Lehtonen (San-
- 18 Ken Homes), Shannon Linn, Silas Little, Robin Maloney, Bruce Nelson, Tedo Rocca, Eric
- 19 Rantamaki (applicant), Roy Tilsley, Jessie Salisbury (Milford Cabinet), Jon Rokeh, Joan
- 20 Ross, Kathryn Rockwood, Tim Sullivan, Tim Wyllie;
- 21

22 **I) Call to order by the Chairperson**

23 N. Faiman opened the meeting at 7:30PM. He introduced the Board Members

24

25 **2) Minutes from previous meetings**

26

27 05.11.21

28 **P. Howd MOVED to accept the redline version of the minutes from 05.11.21. P. Levesque**

29 **SECONDED.**

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

- 31 Roll call vote:
- 32 N. Faiman – aye
- 33 P. Levesque – aye
- 34 J. Eckstrom – aye
- 35 J. Stone – aye
- 36 J. Klinghoffer - aye
- 37 P. Howd – aye. (6-ayes, 0-nays, 0-abstain). Motion carried.
- 38

39 06.05.21

40 **P. Levesque MOVED to accept the redline version of the minutes from 06.05.21. J.**

41 **Eckstrom SECONDED.**

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

- 43 Roll call vote:
- 44 N. Faiman – aye
- 45 P. Levesque – aye
- 46 J. Eckstrom – aye
- 47 J. Stone – abstain
- 48 J. Klinghoffer - aye
- 49 P. Howd – aye. (5-ayes, 0-nays, 1-abstain). Motion carried.
- 50

51 06.08.21

52 **J. Eckstrom MOVED to accept the minutes of 06.08.21 as presented. P. Levesque**  
53 **SECONDED.**

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

55 Roll call vote:

56 N. Faiman – aye

57 P. Levesque – aye

58 J. Eckstrom – aye

59 J. Stone – abstain

60 J. Klinghoffer - aye

61 P. Howd – aye. (5-ayes, 0-nays, 1-abstain). Motion carried.

62

63 **3) Determination of the potential for regional impact**

64 Case #05/11/21 - I

65 **J. Eckstrom MOVED to find that there is no potential for regional impact from Case**  
66 **#05/11/21 – I. P. Levesque SECONDED.**

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

68 Roll call vote:

69 N. Faiman – aye

70 P. Levesque – aye

71 J. Eckstrom – aye

72 J. Stone – aye

73 J. Klinghoffer - aye

74 P. Howd – aye. (6-ayes, 0-nays, 0-abstain). Motion carried.

75

76 Case 07/13/21 - I

77 The Board discussed the impacts of traffic from the development.

78

79 **J. Eckstrom MOVED to find that traffic is a concern but it doesn't rise to a finding of**  
80 **potential regional impact. P. Leveque SECONDED.**

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

82 Roll call vote:

83 N. Faiman – aye

84 P. Levesque – aye

85 J. Eckstrom – aye

86 J. Stone – nay

87 J. Klinghoffer - aye

88 P. Howd – aye. (5-ayes, 1-nays, 0-abstain). Motion carried.

89

90 **4) Public hearings continued from previous meetings**

91 Case #05/11/21-I

92 N. Faiman opened the public hearing by reading the public notice. The voting members on this case are:

93 N. Faiman, J. Eckstrom, P. Levesque, J. Stone, P. Howd will sit in for A. Hoar who is a neighbor and not  
94 present ~~abutter~~.

95

96 N. Faiman observed that a variance was denied on the same property in 2006. According to the Fisher  
97 doctrine, the ZBA is not even allowed to consider a request for the same variance on the same lot  
98 unless there is a material change in circumstances - either the lot or the proposal is different in nature  
99 and magnitude.

100

101 The Board agreed to listen to the attorneys for the applicant and abutters only.  
102  
103 R. Tislely spoke for the applicant. He said that this current application materially differs in magnitude  
104 and degree. First, in 2006 the application dealt with the un-subdivided lot. Second, the application in  
105 2006 was entirely different in nature, degree, and scope - involved complete elimination of the hill and  
106 making a flat lot. R. Tislely said the current application is to remove a much smaller amount of material.  
107 The current proposal is for a driveway and a reasonable building envelope with the excavation being  
108 strictly incidental to building a single family home. He says that the board has the authority to hear the  
109 case.  
110  
111 R. Tislely said the case law had changed. In 2006 the case law changed and again in 2009 the definition  
112 of hardship was changed.  
113  
114 P. Levesque asked how many yards have been removed from the lot so far? The applicant said that less  
115 than 5,000 cubic yards have been removed with an additional 25,000 planned to be removed.  
116  
117 S. Little, representing abutters, said the Board needs to consider that the only difference between the  
118 old case and this case is that the applicant is calling this is incidental. S. Little referred to C. Owen's  
119 letter (in the case file). S. Little said that 500 cubic yards of material is all that was necessary to  
120 construct a single family home. The two points that the ZBA found in its 2006 decision: traffic and the  
121 spirit of the Ordinance, remain the same.  
122  
123 Questions?  
124 N. Faiman asked about the magnitude difference and if it was material. S. Little said that the magnitude  
125 isn't the issue.  
126  
127 J. Klinghoffer asked S. Little to address the change in law subsequent to 2006. S. Little said the change in  
128 the law was in regard to hardship and this decision was not based on that finding of hardship. The  
129 gyration between area and use variances, wasn't really the turning point of the 2006 decision. J.  
130 Klinghoffer said that the board did not find anything unique in the lot. S. Little said that in the decision of  
131 the Board they found that there was nothing unique about the property. He said he was present at the  
132 site walk when Mr. Lehtonen said that this property is not unique.  
133  
134 J. Eckstrom said she said she believes the current application is significantly different from the 2006 case.  
135 The 2006 case was for gravel removal over 8-10 years to complete and this operation will take 12 to 18  
136 months to complete at which point this will be reclaimed with a single family house.  
137  
138 **J. Klinghoffer MOVED to close the public hearing to testimony and to deliberate. P.**  
139 **Levesque SECONDED.**  
140 Discussion: Hearing none the chair asked for a roll call vote.  
141 Roll call vote:  
142 N. Faiman – aye  
143 P. Levesque – aye  
144 J. Eckstrom – aye  
145 J. Stone – aye  
146 J. Klinghoffer - aye  
147 P. Howd – aye. (6-ayes, 0-nays, 0-abstain). Motion carried.  
148

149 The Board discussed the difference in scale; the order of magnitude difference between the cases. The  
150 Board discussed that Wilton has regulations limiting incidental excavations to 500 cubic yards and as  
151 soon as gravel is removed it is commercial.  
152

153 The Board considered the similarities between the reasons for denial in 2006 and current case. The  
154 Board saw that there was a difference in magnitude between the two cases and the difference in  
155 magnitude between what is defined as incidental and what was removed. The Board discussed if these  
156 differences were material to the reasons for denial and if those reasons had changed.  
157

158 The Board considered if the magnitude of the excavation was part of the reasons for the denial of the  
159 case in 2006 and concluded there was no reference to the magnitude in either the decision or the  
160 minutes.  
161

162 **P. Howd MOVED that the ZBA not hear this case on the finding of *res judicata* and that it**  
163 **doesn't meet the standard for a new case. J. Stone SECONDED.**  
164

165 R. Tisley interrupted by saying he withdrew the application without prejudice.  
166

167 Discussion:

168 J. Stone (as a point of order) ~~asked-stated when we have had~~ a motion that ~~is-was~~ open, there was a call  
169 for discussion, we typically had taken -engage in discussion on the motion,- this was interrupted by the  
170 applicant. The Board took input from the attorneys and we have the option to open the discussion to  
171 public comment. The Board discussed this and decided to proceed with the vote.  
172

173 R. Tisley interrupted and said that there is no application before the board and there is nothing to vote  
174 on.  
175

176 Vote:

177 N. Faiman – yes

178 P. Levesque – no

179 J. Eckstrom – no

180 J. Stone – yes

181 P. Howd – yes. (3-ayes, 2-nays, 0-abstain). Motion carried  
182

183 R. Tisley asked to withdrawal of the application. He said that he had the right to withdraw and there  
184 was nothing before the Board. He said he made the request before the vote. The Board decided to  
185 follow the normal practices and procedures.  
186

187 **J. Eckstrom MOVED to accept the withdrawal of the Application by the applicant without**  
188 **prejudice. P. Levesque SECONDED.**  
189

189 Discussion:

190 The Board discussed the need for clarification and if there was an application in place when the vote was  
191 taken or not. If the meeting was closed to comment can the applicant comment?  
192

193 R. Tisley said he has every right to withdraw his application at any point. His comments are not public  
194 comments. This Board cannot vote and has no jurisdiction.  
195

196 There was a public comment saying that the applicant's attorney was heard from twice and the Board  
197 should hear from the neighbors and abutters attorney twice.  
198

199 The Board agreed to consult with their attorney.

200

201 **J. Klinghoffer MOVED to open the meeting to public comment. P. Howd SECONDED.**

202 Discussion:

203 The Board discussed if there was an application for the public to comment upon.

204 P. Howd - yes

205 P. Levesque - yes

206 J. Stone - yes

207 J. Klinghoffer - abstain

208 J. Eckstrom - yes

209 N. Faiman – yes. (5-ayes, 0-nays, 1-abstain). Motion carried.

210

211 R. Tislely said he made a motion to withdrawal the application before the vote. He said that this was  
212 done before the vote was complete on *res judicata*. He said the Board had no authority to vote on the  
213 application.

214 The Board discussed if they wanted to accept input.

215

216 **J. Klinghoffer MOVED to ask Board attorney if an applicant has the right to withdraw and  
217 application at any point including during a vote and during a board deliberation period. P.  
218 Howd SECONDED.**

219 Discussion:

220 The Board discussed if they wanted to hear from Attorney Little but decided there was no case to  
221 comment upon.

222 J. Stone – yes

223 J. Klinghoffer - yes

224 J. Eckstrom - yes

225 P. Howd - yes

226 P. Levesque - yes

227 N. Faiman - yes. (6-ayes, 0-nays, 0-abstain). Motion carried.

228

229 J. Klinghoffer asked for a brief clarification of meetings – public sessions, deliberative session, close  
230 sessions, etc. N. Faiman reviewed when public input in allowed and not allowed per the ZBA bylaws.

231

232 D. Dillon ~~voiced-voiced~~ his concerns about the driveway. He said he would wait 30 days, and if it is not  
233 in progress HE will finish it. If anyone tries to interfere, they will be dealt with severely. That is not a  
234 threat – that is a promise!

235

236 Case #07/13/21-1

237 N. Faiman opened the public hearing by reading the public notice. The voting members on this case are:

238 N. Faiman, J. Eckstrom, P. Levesque, J. Stone, J. Klinghoffer for A. Hoar.

239

240 T. Sullivan, the applicant attended and was represented by J. Callahan, and S. Foisie.

241

242 J. Callahan started with a few questions to the Board. The property is in the Downtown Commercial  
243 District but this is a residential use and a density question. Which set of regulations pertain to this lot?  
244 Does the board want to consider if limitations to three dwelling units should be applicable to  
245 development in the Downtown Commercial District. This is a pure interpretation,

246

247 With a straw poll, the Board decided to answer this question first without hearing from the applicant  
248 about the variance. The Board read Section 7A and discussed.

249  
250 **J. Klinghoffer MOVED to decide that the maximum of three dwelling units per lot applies**  
251 **to Downtown Commercial District. J. Eckstrom SECONDED.**  
252 Discussion:  
253 J. Stone said that all the other uses and restrictions apply.  
254 Roll Call vote:  
255 J. Stone - yes  
256 J. Eckstrom - yes  
257 J. Klinghoffer - yes  
258 P. Levesque - yes  
259 N. Faiman - yes. (5-ayes, 0-nays, 0-abstain). Motion carried  
260  
261 J. Callahan described the property and its importance to the community. The property has some historic  
262 significance. The applicant is committed to saving the mural and possibly keeping it on site. EcoDev  
263 Team noted some of the characteristics of property and many of those issues would be dealt with at  
264 Planning. The owner desires to build more housing. He described some of the concerns about hardship  
265 on the lot.  
266  
267 J. Callahan said he looked at the Master Plan. He shared the goals and objectives and read a few  
268 pertinent points. He said that there is the potential for hardship to be economic - this is an expensive  
269 lot to redevelop. There has to be some sort of return on investment.  
270  
271 J. Callahan said they were requesting four variances  
272 1. 5.l.c density – the maximum allowed is three dwellings per lot  
273 2. Height 5.2.5 – this will be 39 feet tall but two stories over a garage  
274 3. Section 7a.5.2 - this is for side or rear setback not frontage setbacks  
275 4. Section 7a.5.e - portion of the parking area will encroach into the setback  
276  
277 J. Callahan said this building and use are non-conforming currently. Some of the building is in the right of  
278 way. This application will make the lot less non-conforming.  
279  
280 J. Callahan reviewed how granting this variance is in the public interest. He read six points from the  
281 master plan and S. Foisie said this project will improve traffic safety and storm water drainage. The  
282 applicant presented a traffic study in the application. A residential use will have less traffic than a  
283 hardware store. J. Callahan said there is some concern about the selling price per unit but the dwelling  
284 unit price will in the end, reflect the costs and building is expensive at the moment.  
285  
286 Next, J. Callahan addressed granting these variances upholds the Spirit of the Ordinance. He read the  
287 preamble to the Zoning Ordinance and the Residential District. He said this development will improve  
288 the area and this project will be a dynamic addition to the down town.  
289  
290 J. Callahan reviewed how granting these variances will result in Substantial Justice. He said this project  
291 would provide increased housing and downtown redevelopment.  
292  
293 J. Callahan reviewed how granting these variances will not reduce surrounding property values. He  
294 reviewed the letter from the real estate agent who will be selling these units.  
295  
296 J. Callahan reviewed the Hardship criteria of the variance application. He said that said that Section  
297 5.l.c - as noted density is limited to 3 dwelling units/lot and the purpose of the Residential District is to

298 provide a mixed density of housing. He said density is in the eye of the beholder. The square footage of  
299 what is there is slightly more than what is proposed.

300

301 J. Callahan said it is appropriate to consider cost. There is asbestos on the lot and this is expensive to  
302 dispose of properly. The demo of the building with the preservation of historical things like the mural is  
303 expensive for this extensive work.

304

305 J. Callahan reviewed Section 5.2.5 - height. That provision says 45 feet or 2 stories. This project is still  
306 less than 45 feet but will have two stories over the garage. It is unclear if this will need to be addressed  
307 or not, but the Board will have to determine the answer.

308

309 J. Callahan reviewed Section 7A and setbacks. The existing condition is more non-conforming and this  
310 will be more in line with the setbacks aside from the back corner of the lot.

311

312 The Board asked some details on the final product. The question was raised about the number of units  
313 and applicant said 11 is the smallest number that is economically feasible that they can put there.

314 The Board discussed the density and the view from Pleasant Street. The density was a concern for traffic  
315 as well.

316

317 The Board asked questions about impervious surface. S. Fossie said that the impervious surface will  
318 decrease by about 10% on the lot

319

320 The Board asked about the open space and square footage the condos. T. Sullivan said about 0.42 acres  
321 of open space ~~and, and the each~~ units will be about 1560 square feet.

322

323 The question was asked about the flood plain and how that affects building. S. Fossie said that flood  
324 plain is for livable space and the garage isn't livable space.

325

326 **J. Eckstrom MOVED to extend the meeting time to 11pm. J. Stone SECONDED.**

327 Discussion - none

328 Roll Call vote:

329 J. Stone - yes

330 J. Eckstrom - yes

331 J. Klinghoffer - yes

332 P. Levesque - yes

333 N. Faiman - yes. (5-ayes, 0-nays, 0-abstain). Motion carried

334

335 Public Questions

336 M. Jones (45 Forrest Road) said she was concerned density and traffic. Her primary concern was school  
337 bus stops and the locations of the mailboxes. She asked about asbestos and the proximity of the river.

338

339 T. Sullivan said that the sight lines will be improved and meet DOT standards. The asbestos is in the tile  
340 floor and it will be removed by professionals so there will be no dust risk even if it flooded.

341

342 M. Lemay (32 Park Street) said she was concerned about preserving the character of the downtown and  
343 shared a picture of a condo development in Milford. She was concerned about the price of the units

344

345 B. Nelson (3 Samantha Way) was concerned about this being a big change to the Downtown  
346 Commercial District and only the ZBA being able to vote on it. He thought it was going to set a  
347 precedent. The Board said that a Variance is unique to a property.

348  
349 G. Ikert (11 Blood Road) expressed concerns about the curb cut, traffic, trees and sewer and water  
350 impacts.  
351  
352 K. Rockwood (34 Park Street) expressed concern about a lot in the Downtown Commercial District  
353 being used for a residential use. She also expressed concern about historic preservation.  
354  
355 E. Rantamaki (owner) said that other potential buyers were unable to secure financing and that other  
356 than the mural, there is little historic value. The building is a detriment to the property.  
357  
358 M. Lemay asked about cost and was concerned that the units would remain unsold.  
359  
360 R. Maloney (10 Stage Coach Road) was concerned about the traffic.  
361  
362 The Board had some concerns about the driveway entrance and fire safety.  
363  
364 **J. Eckstrom MOVED to have a site visit. P. Levesque SECONDED.**  
365 Discussion:  
366 The Board ended with a tie vote and agreed to a Site Visit at 10 AM on 07/17/21.  
367  
368 **J. Eckstrom MOVED to continue the case to August 10, 2021. P. Howd SECONDED.**  
369 Discussion: None.  
370 Vote: All in favor  
371  
372 **5) Adjournment**  
373 **J. Eckstrom MOVED to adjourn at 11:13 PM. J. Stone SECONDED.**  
374 Discussion: None  
375 Vote: All in Favor  
376  
377 List of any Exhibits from the meeting  
378 07.13.21.Exhibit A.Topographic base plan prepared for Timothy Sullivan dated June 16, 2021  
379 07.13.21.Exhibit B.Intervale Commons Condominiums Site Plan dated June 24, 2021  
380 07.13.21.Exhibit C.Intervale Commons Condominiums Site Plan with existing buildings dated June 24,  
381 2021  
382 07.13.21.Exhibit D.print out of two sets of condos  
383 Respectfully submitted by Michele Decoteau, Board Secretary and Land Use Administrator  
384 Approved on XX.XX.XX