



TOWN OF WILTON ZONING BOARD OF ADJUSTMENT

Draft Minutes

- 7 **DATE:** August 11, 2021
- 8 **TIME:** 7:30 PM
- 9 **PLACE:** Florence Rideout Elementary School, 18 Tremont Street
- 10 **PRESENT:** Peter Howd, Joanna Eckstrom, Jeff Stone, Judith Klinghoffer, Neil Faiman, Paul
- 11 Levesque
- 12 **Staff:** Michele Decoteau, Board Secretary
- 13 **Attendees:** Melodie Jones, Greg Ikerd, Roy Tilsley, George Ellis, Eric Rantamaki, Tim
- 14 Sullivan, Sam Foisie, Jim Callahan, Amber Lange, Steven Snover, Ashley Saari,
- 15 Jocelyn Benson, Felice Fullam, Lynne J. Pentler, Marjorie Lemay
- 16

1) Call to order by the Chairperson

17 N. Faiman called the meeting to order at 7:30 PM. The Board were introduced and he
18 reminded everyone to speak up.
19

20
21 **At 7:31 PM N. Faiman MOVED to go in to Non-public Session statutory reason outlined**
22 **RSA 91-A:3 II (I) to review advice from Counsel. J. Eckstrom SECONDED.**

- | | |
|----------------------|------------------------------------|
| 23 Roll call vote: | 27 N. Faiman - aye |
| 24 P. Levesque - aye | 28 J. Klinghoffer – aye. |
| 25 J. Eckstrom - aye | 29 J. Stone – aye. Motion carried. |
| 26 P. Howd - aye | |

30
31 At 7:53 PM Public session reconvened.

32 **J. Eckstrom MOVED to seal the minutes as it pertains to legal advice. P. Levesque**
33 **SECONDED.**

- | | |
|----------------------|------------------------------------|
| 34 Roll call vote: | 38 N. Faiman - aye |
| 35 P. Levesque - aye | 39 J. Klinghoffer – aye. |
| 36 J. Eckstrom - aye | 40 J. Stone – aye. Motion carried. |
| 37 P. Howd - aye | |

41
42 Consideration of whether the Board should rehear case #05/11/21-1.

43 **N. Faiman said having received counsel from our attorney, he MOVED to hold a**
44 **rehearing on the question of res judicata. J. Eckstrom SECONDED.**

45 Discussion: None

- | | |
|----------------------|------------------------------------|
| 46 Roll call vote: | 49 P. Howd - nay |
| 47 P. Levesque - aye | 50 N. Faiman - aye |
| 48 J. Eckstrom - aye | 51 J. Stone – aye. Motion carried. |

52
53 This will be reheard at the next regularly scheduled meeting.

54
55 **2) Public hearings continued from previous meetings**

56 Case #07/13/21-1

57 N. Faiman opened the Public Hearing by reading the public notice and provided a brief synopsis
58 of the case. Voting members on the case are: J. Stone, J. Eckstrom, P. Levesque, N. Faiman and
59 J. Klinghoffer (for A. Hoar). The Board agreed no new business after 10:30 PM.

60

61 J. Callahan, representing the applicant reviewed the evidence presented at the last meeting. He
62 reviewed the Master Plan and referred to the housing shortage. J. Callahan summarized the
63 case asking the question: Does the Board believe 11 units is appropriate for this lot?

64

65 J. Callahan continued saying, from an engineering perspective, this site can support this density.
66 He said that other than the mural, there was little of historic value that could be saved. The
67 engineer is available to review the elevations and setbacks. J. Callahan said that at the last
68 meeting, they entered evidence that this meets the 5 Variance Criteria. He said, the concept of
69 density is in the eye of the beholder.

70

71 After a short discussion the Board and applicant agreed to focus only on the number units first.

72

73 Public Comments on the number of units

74 M. Jones (45 Forrest Road) asked when was the RSA written that this be only 3 units. N.
75 Faiman said this lot was part of the Downtown Commercial District adopted in the Wilton
76 Zoning Ordinances in 2019. Prior to that adoption, lot was in the commercial district and this
77 could have been essentially an unlimited number of dwellings. M. Jones said to keep it three
78 dwellings.

79

80 S. Snover (17 Pleasant Street) asked why was three chosen as the max? Will this set precedent?
81 The Board responded that the 3 units has been the maximum in the Residential District since
82 zoning started in Wilton. The Downtown Commercial District adopted the density from
83 Residential zoning district in 2019. No variance sets precedent.

84

85 S. Snover said they must have had a reason to go from unlimited to 3. The Board said that the
86 three maximum came from the large older houses downtown. Many were converted into a two
87 or three family house. The Residential District is the Wilton's high density housing area.

88

89 The Board asked if any of the neighbors were affected by this change. None of the residence at
90 the meeting said they were affected by this.

91

92 J. Lemire said she manages 8 Pleasant Street. She said she cannot imagine the traffic problem
93 with 11 units. If you try to get out from Pleasant Street to Intervale it would be dangerous. T.
94 Sullivan said all the buildings will be coming down so the sight lines will be clear. In addition,
95 there should be no traffic from this development on to Pleasant Street.

96

97 J. Duggins asked about Pleasant Street and the number of cars coming and going from Forest
98 Road. There was a discussion about commercial traffic at a hardware store and residential
99 traffic generated. S. Foisie said he reviewed the traffic study and while the numbers may not be
100 exact, the professional modeling done on traffic has a lot of data behind it.

101

102 Linda Leducer, who works at the Open Cupboard Pantry, said she walks in the area many times
103 a day and there is a lot of traffic on Intervale. She thought the traffic figures were not accurate
104 for a small town like Wilton. There was further discussion about trip data.

105
106 Amber Lange (17 Pleasant Street) said she would prefer fewer than 11 units since the setback
107 encroachment would be less.

108
109 J. Callahan said his clients take the concerns seriously and have presented evidence they meet
110 the five variance criteria. Some concerns are anecdotal and not relevant to this case.

111
112 Steve Snover expressed concerns about the traffic generated. J. Callahan said that the traffic
113 study was correct and if there is speeding that is an enforcement issue. M. Jones said the study
114 was done after school was out for the summer and school staff, busses and students affect
115 traffic in that area. T. Sullivan said the traffic study was obtained from The DOT traffic data and
116 the report was obtained on June 23 but the data was generated before that. These 11 units will
117 add about 2% more traffic.

118
119 K. Rockwood (34 Park St.) asked about the traffic study on hardware stores. The discussion
120 clarified some of the details. S. Foisie said the focus should be on the frontage and access. This
121 will be an improvement on sight lines. N. Faiman summarized the discussion: there is
122 disagreement about the traffic study and the Board will consider the testimony from the
123 applicant, concerns from neighbors, and balance those.

124
125 Elevations were discussed. The applicant provided drawings of the sides of the buildings.
126 Concerns were raised about the view from Pleasant Street. The applicant asked that the
127 discussion focus on the density.

128
129 In response to a question about the builder's experience, the discussion included what was
130 relevant to the application and what was not part of variance.

131
132 **J. Klinghoffer MOVED to go into deliberation to address the density variance. J.**
133 **Stone SECONDED.**

134 Discussion: The Board discussed if they had enough information or needed to ask the applicant
135 more questions.

136	Vote:	139	N. Faiman – no
137	J. Stone - yes	140	J. Eckstrom – no
138	J. Klinghoffer - yes	141	P. Levesque – no. Motion fails.

142
143 Continuing
144 The Board members who voted no were asked to state their remaining concerns or questions.
145 N. Faiman summarized his concerns that after visiting the development the applicant said would
146 be similar, this would be dramatically out of scale to the neighborhood. This development
147 would eliminate the buffer between Pleasant and this lot. One part of the Spirit of the
148 Ordinance is about the character of the neighborhood. There are small multifamily units
149 housing in the area and this is a density of 15 units per acre. So concerned about how this will
150 change the character of the neighborhood. He said he finds the applicant's arguments

151 persuasive that is the only use that has been proposed that seems economically viable, but
152 remains concerned with hardship. When the ordinance has been recently changed in a
153 significant way, he is always loathe to grant a variance to return it to the old zoning. What the
154 downtown commercial district is to scale down the commercial district - turn it to human size.
155 This change made this more like the residential district that surrounds this commercial district.

156
157 The Board and applicant discussed the height variance and if it was needed.

158
159 The Board discussed if a fundamental change in the character of the neighborhood is contrary
160 to the public interest? The applicant said there are at least half a dozen other purposes of the
161 ordinance. The applicants felt they have presented their case, nothing else has been able to get
162 bank funding, and that the master plan addresses the forward thinking of the community.

163
164 N. Faiman said the basis for spirit of the ordinance isn't in the master plan it is in the
165 ordinance. K. Rockwood said that this will not only change the character of the neighborhood
166 but of Wilton.

167
168 P. Levesque asked questions about the lot size and planned retaining wall. The details will be
169 worked out at the planning board stage.

170
171 The amount of the building in the setback was discussed. The setbacks were clarified and the
172 Pleasant Street side of the lot will not be Amber egress or ingress.

173
174 J. Callahan said this is an incredibly non-conforming lot. This project will make it less non-
175 conforming.

176
177 The Board discussed the rear lot line setback.

178
179 **J. Klinghoffer MOVED to close the public hearing and go to deliberations for the**
180 **whole application. J. Stone SECONDED.**

181 Discussion: The opinions of the Board better expressed in deliberative session.

182	Vote	186	N. Faiman – no
183	Roll Call vote	187	J. Eckstrom – yes
184	J. Stone - yes	188	P. Levesque – yes. Motion passes.
185	J. Klinghoffer - yes		

189
190 N. Faiman reviewed the rules of procedure for deliberations.

191
192 J. Klinghoffer said she has concerns that this project in this location if it is in the public interest.
193 J. Eckstrom echoed this I I units on this small lot not a good mix for the surrounding properties,
194 and she would prefer to see a lower number of units. P. Levesque agreed that the density is
195 too much for such a small lot. J. Klinghoffer expressed concern about the intensity of use of
196 this small lot.

197
198 The Board discussed changes the character of the neighborhood and violates the spirit of the
199 ordinance. The Board said this proposal doesn't protect the character of the neighborhood.

200 There was concern about the hardship being cost. The Board discussed the fair and substantial
201 relationship between the downtown commercial ordinance and this project. The Spirit of the
202 Ordinance was discussed and how that was made clear in the recently adopted Downtown
203 Commercial District Ordinance and that standard uses Residential District density for
204 residential uses.

205
206 **J. Eckstrom MOVED to deny the application starting with the number with units as**
207 **described in Section 5.1.c and subsequent variance requests. P. Levesque**
208 **SECONDED.**

209 Discussion: The Board was reluctant do deny the project but it clearly didn't meet the Spirit of
210 the Ordinance, wasn't in the Public Interest and they didn't meeting the Hardship Criteria.
211 Once the density variance is denied, the others are rendered MOOT. The Board agreed to
212 reframe the motion. Motion withdrawn by J. Eckstrom and P. Levesque.

213
214 **J. Eckstrom MOVED to deny the requested variance to 5.1.c on the grounds that**
215 **the Board did not finding hardships, and this was inconsistent with the Spirit of the**
216 **Ordinance and Public interest. P. Levesque SECONDED.**

217 Discussion: J. Klinghoffer wanted to clarify that she doesn't support the lacking public interest. J.
218 Eckstrom said this could be expressed in the finding of fact.

219	Vote:	222	J. Eckstrom - yes
220	J. Stone - yes	223	N. Faiman - yes
221	J. Klinghoffer - abstain	224	P. Levesque – yes. Motion carried.

225
226
227 The Board discussed the finding of facts.

228 Spirit of the Ordinance and Public Interest

229 The proposed development would alter the essential character of the neighborhood, and would
230 therefore be inconsistent with the spirit of the ordinance and contrary to the public interest.

231
232 The subject property is a 0.8 acre lot located in the Downtown Commercial District, which allows “any
233 use permitted in the Residential District [...], under the same provisions as apply to the use in that
234 district ...” (Section 7A.3.1(a).) One of those provisions is Section 5.1(c): “A maximum of three (3)
235 dwelling units per lot is allowed for any new construction on Town water and sewer ...”

236
237 The subject property is directly across Forest Road from three residential lots in the Downtown
238 Commercial District, two residential lots in the Residential District, and a Downtown Commercial
239 District lot containing a presently unused historic industrial building. It abuts a vacant Downtown
240 Commercial District lot and a residential Residential District lot on the same side of Forest Road.
241 Behind it, across Pleasant Street, are three residential lots in the lower-density General Residence and
242 Agricultural District. Eleven units on a single lot of any size, much less one of less than an acre, is a
243 dramatic departure not only from what is permitted in the Residential District and Downtown
244 Commercial District, but from any existing development in those districts.

245
246 Visually, the development would present itself from Forest Road as a continuous “wall” 240' long and 39'
247 high (with a single 20' gap in the middle), and from Pleasant Street as a wall approximately 20' high.

248
249 Hardship

250 Section 5.1(c) is clearly intended to preserve the existing pattern of development in the Residential
251 District, and its inclusion by reference in the Downtown Commercial District and only recently
252 amended, and which is directly adjacent to the downtown portion of the Residential District, appears to
253 reflect the same purpose. There is thus a fair and substantial relationship between that general public
254 purpose of Section 5.1(c) and its specific application to the proposed development of the subject
255 property, and therefore no unnecessary hardship.
256

257 **J. Klinghoffer MOVED to make these the findings of fact that the variance criteria**
258 **are not satisfied. P. Levesque SECONDED.**

259	Vote:	262	J. Eckstrom - yes
260	J. Stone - yes	263	N. Faiman - yes
261	J. Klinghoffer - yes	264	P. Levesque – yes. Motion carried.

265
266 **3) Other business continued from previous meetings**

267 Work sessions

268 J. Eckstrom asked that if the ZBA Schedules another work session where we might be
269 approving minutes, we specifically announce that ahead of time. The Board concurred.

270

271 Bylaws

272 The Board discussed reviewing the Bylaws again and what merited being in the Bylaws and what
273 was procedure. M. Decoteau will send out the Bylaws again before the next meeting.

274

275 **4) Adjournment**

276 **J. Klinghoffer MOVED to adjourn at 10:14 PM. J. Eckstrom SECONDED.**

277 Discussion: None

278 Vote: All in favor.

279

280 Respectfully submitted by Michele Decoteau, Board Secretary

281 Approved on XX.XX.XX