



TOWN OF WILTON ZONING BOARD OF ADJUSTMENT

Approved Minutes

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

1) Call to order by the Chairperson

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

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

Roll call vote:	N. Faiman - aye
P. Levesque - aye	J. Klinghoffer – aye.
J. Eckstrom - aye	J. Stone – aye. Motion carried.
P. Howd - aye	

At 7:53 PM Public session reconvened.

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

Roll call vote:	N. Faiman - aye
P. Levesque - aye	J. Klinghoffer – aye.
J. Eckstrom - aye	J. Stone – aye. Motion carried.
P. Howd - aye	

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

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

Discussion: None

Roll call vote:	P. Howd - nay
P. Levesque - aye	N. Faiman - aye
J. Eckstrom - aye	J. Stone – aye. Motion carried.

This will be reheard at the next regularly scheduled meeting.

2) Public hearings continued from previous meetings

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

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

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

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

Public Comments on the number of units

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

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

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

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

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

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

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

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

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

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

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

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

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

J. Klinghoffer MOVED to go into deliberation to address the density variance. J. Stone SECONDED.

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

Vote:

J. Stone - yes

J. Klinghoffer - yes

N. Faiman – no

J. Eckstrom – no

P. Levesque – no. Motion fails.

Continuing

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

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

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

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

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

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

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

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

The Board discussed the rear lot line setback.

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

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

Vote

N. Faiman – no

Roll Call vote

J. Eckstrom – yes

J. Stone - yes

P. Levesque – yes. Motion passes.

J. Klinghoffer - yes

N. Faiman reviewed the rules of procedure for deliberations.

J. Klinghoffer said she has concerns as to whether this project, in this location is in the public interest. J. Eckstrom echoed this; eleven units on this small lot not a good mix for the surrounding properties, and she would prefer to see a lower number of units. P. Levesque agreed that the density is too much for such a small lot. J. Klinghoffer expressed concern about the intensity of use of this small lot.

The Board discussed changes the character of the neighborhood and violates the spirit of the ordinance. The Board said this proposal doesn't protect the character of the neighborhood. There was concern about the hardship being cost. The Board discussed the fair and substantial relationship between the downtown commercial ordinance and this project. The Spirit of the Ordinance was discussed and how that was made clear in the recently adopted Downtown Commercial District which, uses the Residential District density for residential uses.

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

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

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

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

Vote:

J. Stone - yes

J. Klinghoffer - abstain

J. Eckstrom - yes

N. Faiman - yes

P. Levesque – yes. Motion carried.

The Board discussed the finding of facts.

Spirit of the Ordinance and Public Interest

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

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

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

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

Hardship

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

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

Vote:

J. Stone - yes

J. Klinghoffer - yes

J. Eckstrom - yes

N. Faiman - yes

P. Levesque – yes. Motion carried.

3) Other business continued from previous meetings

Work sessions

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

Bylaws

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

4) Adjournment

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

Discussion: None

Vote: All in favor.

Respectfully submitted by Michele Decoteau, Board Secretary

Approved on 09.14.21