



TOWN OF WILTON ZONING BOARD OF ADJUSTMENT
Approved Minutes

DATE: November 9, 2021
TIME: 7:30 PM
PLACE: Florence Rideout Elementary School, 18 Tremont Street
PRESENT: Neil Faiman (Chair), Joanna Eckstrom (Vice-Chair), Jeff Stone, Paul Levesque, Andy Hoar, Judith Klinghoffer (Alternate), Peter Howd (Alternate)
Attendees: Pam Fedora, Nikki O'Neil, Ben Temple, Lynn Ritter, Andy Burnes, Roy Tilsley, Shannon Linn, Daniel Ross, Chris Owen, Kenny Lehtonen, Sandy Lehtonen, Ashley Saari, Kristen Wright, Peg Duggan

1) Call to order by the Chairperson

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

N. Faiman noted that the two Special Exception cases were improperly noticed and would be continued to December.

J. Eckstrom MOVED to continue both cases, #11/9/21-1 and #11/9/21-2 to December 14, 2021 at 7:30 PM. P. Levesque SECONDED.

Discussion: None

Voice Vote: All in Favor. Motion carried (7-aye, 1-nay, 0-abstain).

2) Minutes of previous meetings

Minutes 10.11.21

J. Eckstrom MOVED to approve the redline version of the minutes as presented and further amended at this meeting. P. Levesque SECONDED.

Discussion: None

Voice Vote: All in Favor. Motion carried (6-aye, 0-nay, 1-abstain (A. Hoar)).

Minutes 10.27.21

J. Eckstrom MOVED to accept the minutes as written. P. Levesque SECONDED.

Discussion: None

Voice Vote: All in Favor. Motion carried (6-aye, 0-nay, 1-abstain (P. Howd)).

3) Public hearings continued from previous meetings

Case #5/11/21-1

Isaac Frye Holdings, LLC (owner) and Kenneth Lehtonen (applicant) have requested variances to sections 4.1 and 12.4 of the Wilton Zoning Ordinance to allow gravel excavation incidental to the construction of a single family dwelling as described in RSA 155-E:2-a on Lot F-3-2, Isaac Frye Highway, which is outside the Gravel Excavation District.

A. Hoar left the table and moved to the audience. N. Faiman opened the public hearing by reading the public notice. Voting members on this case are: P. Howd, P. Levesque, N. Faiman, J. Eckstrom and J. Stone.

N. Faiman reviewed the process. The applicant provided a new plan and with the new plan, the Board asked them to explain the new plan.

R. Tilsley said that in response to a letter from Keach–Nordstrom, an engineering company, the applicant reviewed some alternative locations for a house. One suggestion was rejected as it would result in a very long driveway. Another suggestion was to site the house in the corner using the shared driveway. The location had utility but the shared driveway was not practical as it was very close, less than 10 feet, from the abutter’s house. The applicant decided a manufactured house would eliminate the need for further excavation. This new plan is reasonable, practical, and will need no further material to be removed.

R. Tilsley said they recognize they still need to get Excavation Site Plan approval from the Planning Board. He said the total of 5,183 cubic yards already removed will be the total removed from the site. This excavation will not affect property values since it was short term.

R. Tilsley said the uniqueness and hardship of this property is the steepness of the slopes. Section 12.4 of the Zoning Ordinance. He said that this property will be further developed in conjunction with a Planning Board Excavation Site Plan approval. He said that section of the Zoning Ordinance is designed for long-term gravel operations.

R. Tilsley discussed the relationship between justice to the community and rights of the property owner to use his property. He said this is reasonable use of the property. Manufactured housing is a permitted use in the district. He said he wants to move forward with this practical solution.

The Board asked about the location of the manufactured house. This was confirmed on the plan. The Board asked about reclamation plans. R. Tilsley said that this would result in a stable and appropriate slope and while there might be movement of material within the site, there would be no further removal of material from this site.

The Board asked about a garage or accessory uses planned. R. Tilsley said there is nothing planned at this time. B. Temple, an engineer on the project, said that there could be a garage added to either end of the manufactured house.

The Board asked why a manufactured house and not “stick” built. K. Lehtonen said it was partially cost. This is going to be a very small area and have a small yard and without a yard, you cannot sell it for enough to cover costs of a stick built house.

The Board asked about bedrooms on the manufactured house. K. Lehtonen said it will be two to three bedrooms.

S. Little said that he and his clients wanted to make sure that there was a clear condition on any decision that not one more shovelful of material is to be removed from this site. He said he had concerns about the aesthetics of a mobile home on this lot.

C. Owen (635 Isaac Frye Highway) said that he had three points. First the applicant should admit that the excavation was commercial and there should be no more commercial excavation on this site. Second, the Excavation District is not about duration but location. Third, the applicant uses the facts that they created. It is important to remember they are not taking 21,000 less in materials, but really taking more than 500 cubic yards.

S. Linn (192 Wilson Road) expressed concern about retroactively granting a variance. This is not in the public interest.

R. Tilsley said he appreciates the circumstances but asks that the applicant not be punished. This is a reasonable use of the property and the applicant is working to resolve the issue. There will be no additional commercial excavation.

S. Little said the board should make it clear that there is to be no more material taken off site. S. Little said he was astonished that the applicant ignored the note on the recorded plan and his engineer could not put in a driveway that could meet the driveway regulations. He said it was unfortunate that the material could not be returned.

R. Tilsley said he had no problem with the restriction that no material be removed for this project but didn't want to restrict future owners.

D. Ross (21 Wilson Road) said he doubted the sincerity of the applicant. He said a prefabricated manufactured home is an attack on Wilton Center.

S. Linn said that the Board should keep the public interest in mind. If the mission of the town is to protect the rural character of Wilton, the trajectory of this project will not be in the public interest.

The Board asked the applicant and his engineer to clarify the open space that will be used for the house. K. Lehtonen said it will be about 54,000 square feet.

J. Eckstrom MOVED to close the public hearing for deliberations. P. Levesque SECONDED.

Discussion: None

Voice Vote: 5-aye, 0-nay, 0-abstain.

N. Faiman explained the process for deliberations.

J. Stone wanted clarification on what was in the purview of the Planning Board and what was in the purview of the ZBA. N. Faiman said that what had already been done needed approval retroactively. On this lot, there is a Zoning Ordinance restriction and a Planning Board Restriction.

The Board discussed hardship on this lot and if it was just unusual or unique. The Board stated they were not happy to be asked for retroactive approval.

J. Eckstrom said that this lot is in the residence and agricultural district where residential use is allowed.

N. Faiman said that the Spirit of the Ordinance and Substantial Justice have been tossed around. He explained each one and stated this about the applicant. He said he was skeptical that this lot could be developed without any excavation but the note was added to the recorded plan. The Board discussed possible conditions if they approved the variance and if they could require the applicant to go to the Planning Board for further review.

J. Eckstrom MOVED to approve the Variances to Section 4.1 and 12.4 with two conditions

- **no further earth material may be removed from the lot absent a change in the law or permission duly granted by a Town Board or Body, and**
- **the applicants' acknowledgment that the excavation is subject to Excavation Site Plan Review by the Wilton Planning Board.**

P. Levesque SECONDED.

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

Discussion: None

Voice Vote: 5-aye, 0-nay, 0-abstain.

R. Tilsley said that the Planning Board Site Plan approval will be needed but not a reclamation plan. N. Faiman said that was part of the Site Plan approval process.

S. Little asked the Board to clearly state that no more material be removed from the site.

J. Stone said that normally the Board reviews the five variance criteria.

Hardship. The Board discussed that some amount of excavation would be necessary in order to use this lot for residential use. This could be allowed without impairing the neighborhood or environment.

Spirit of the Ordinance. This would be outside the excavation district and in the aquifer protection district but is not a commercial level of excavation and it is time limited.

Property Values. This will not affect surrounding property values as it will be a single driveway that is already in place, and a house 1500 feet from the road.

Substantial Justice. The cost to the Town to allow the excavation is past. The cost to the applicant of denying it would be that he would have a value-less lot.

Vote on Variance:

Discussion: The Board discussed whether both variances were needed. The variance to Section 12.4 would be unnecessary if the applicant obtains Planning Board approval.

J. Stone - yes

N. Faiman - yes

J. Eckstrom - yes

P. Levesque - yes

P. Howd - yes.

J. Eckstrom MOVED that the Variance to Section 12.4 would be moot since this project will be subject to Planning Board approval. P. Levesque SECONDED.

Discussion: None.

J. Stone - yes

N. Faiman - yes

J. Eckstrom - yes

P. Levesque - yes

P. Howd - yes.

N. Faiman reviewed the appeal process. 8:56 PM. A. Hoar returned to the Board.

4) Correspondence – noted

5) Other Business

The Board discussed the need for a work session. The school is available Dec. 7 and that date was agreed upon.

6) Adjournment

J. Eckstrom MOVED to adjourn at 9:13PM. A. Hoar SECONDED.

Discussion: None

All in favor.

Respectfully submitted by Michele Decoteau, Board Secretary

Approved 12.14.21