

Town of Wilton
Zoning Board of Adjustment
Final

Date: August 9, 2022
Time: 7:30 p.m.
Place: Wilton-Lyndeborough Cooperative High School Cafeteria
Present: Neil Faiman (Chair), Joanna Eckstrom (Vice Chair); Andy Hoar; Paul Levesque; Peter Howd (alternate) remote; Judith Klinghoffer (alternate)
Absent: None
Attendees: Susan M. Latham

1) Call to order by the Chairperson

N. Faiman opened the meeting at 7:55pm and introduced the board members.

Peter Howd is attending remote. He is out of state and in quarantine.

2) Minutes

J. Eckstrom requested the minutes be deferred until after the Public Hearings.

3) Public Hearings

Case#6/14/2022-1 -Continued

Susan M. Latham has requested variances to sections [5.1\(d\)](#), [5.5.1](#), and [5.5.3\(b\)](#) of the Wilton Zoning Ordinance to allow construction of a detached garage containing an accessory dwelling unit on Lot K-89, 23 Clark Court, where the ordinance allows accessory dwelling units only in the same dwelling as the primary dwelling unit.

Voting board members: J. Eckstrom, J. Klinghoffer, P. Levesque, N. Faiman, P. Howd

Chairman Faiman read suggested findings of fact concerning the case.

- The subject lot is 0.22 acres in a district where the minimum lot size is 0.5 acres per dwelling unit. (Ordinance 5.2.1)
- It has a grandfathered nonconforming single-family home with a detached two-car garage and a (relatively) large, attractive, enclosed backyard.
- The house is inhabited by the applicant, her partner, daughter, and grandchild.
- The owner would like to create a second dwelling unit for her daughter and grandchild.
- A second dwelling unit in the existing dwelling might be permitted either by a special exception under Ordinance 5.3.7, "Multi-family," or under Ordinance 5.5, "Accessory Dwelling Units."
- The owner believes that enlarging the existing dwelling for a second dwelling unit would unreasonably impinge on the existing rear deck and/or back yard.
- The owner therefore wishes to create the second dwelling unit by demolishing and rebuilding the garage with a second story and extending two feet farther forward.

- A dwelling unit in the garage would not be allowed by either Ordinance 5.3.7 or 5.5, both of which require the second dwelling unit to be in the existing dwelling, and would also violate Ordinance 5.1(d), which allows only one dwelling on a lot.

N. Faiman asked Ms. Latham is there was any questions or additional information to provide. Applicant wants to rebuild garage and including a dwelling apartment.

J. Klinghoffer asked if there was any consideration of putting an apartment in the existing house. Application suggests detached garage with an apartment built above the garage. J. Klinghoffer then asked if the footprint of garage is same dimensions of the current garage. Applicant responded that the new garage would include a 2ft extension and it would be difficult to add attached apartment to existing house.

P. Howd asked if it would be possible to attach the garage to the existing house. Applicant responded that it was not possible because they would lose all of the driveway. P. Howd then ask what the unique hardship of the lot was and was the hardship the position on the lot.

P. Levesque stated that the lot was small and the request is to place two houses on one lot.

N. Faiman explained hardship as something special or different which makes complying to the zoning ordinance unrealistic. For example: if the garage was to be attached to the house, you would lose the whole driveway.

J. Klinghoffer pointed out that variances were granted in the past. A. Hoar asked how this was different from the case regarding Intervale which allowed a finished space. It was pointed out that the building was set back from the river and the house could not be attached.

J. Klinghoffer stated that on this small lot the existing garage is already detached. If it was attached to existing building, it would decrease the open space. It is best to rebuild on existing foundation and not take away from the existing open space. Applicant was asked how many other houses are on Clark Court. Applicant replied 5.

N. Faiman stated that there is a procedure change and board is required to make a formal finding of fact to back up decisions made by the board.

P. Levesque asked what the new dimensions if they would rebuild the garage. Planned dimensions would be 24' x 20'. Current dimensions were 22' x 20'.

J. Eckstrom MOVED to close public meeting to go into deliberations. J. Stone SECONDED. Vote: J. Eckstrom yes, J. Klinghoffer yes, P. Levesque yes, N. Faiman yes, P. Howd yes.

N. Faiman stated that he did not see the hardship. P. Howd stated the problem with the hardship is that it is possible to attached a garage with a second floor.

J. Klinghoffer asked where they could put an attachment. P. Howd responded "against the mud room" and that he didn't see hardship for not attaching.

N. Faiman stated that he could see the desire to not build off the yard. J. Klinghoffer asked if making changes would impact neighbors creating an adverse hardship. P. Howd stated that adding the 2nd floor would have a greater negative impact. Moving the plan does not make less backyard but only changes the shape of the backyard. J. Eckstrom asked the Applicant if it would impose financial hardship by suggesting the new garage must connect, where leaving the garage at its current location would preserve the landscape.

N. Faiman stated that the .22-acre lot is already overbuilt. Adding a 2nd dwelling requires .5 acre. Multi-family unit building allows adding to existing dwelling. Adding a 2nd dwelling unit on a separate building is not permitted.

J. Stone added that by adding a 2nd unit above the garage, it becomes 2 units. A new owner could rent out to strangers.

A. Hoar added that there was no mention of relations in ADU. How different is this from the Intervale case. J. Eckstrom agreed.

J. Klinghoffer has concern for hardship already grandfathered – small lot. P. Levesque added that attaching the new garage would be more expensive than the current plan of using the current location. J. Klinghoffer stated they should be allowed to use the existing footprint. P. Howd reminded that the current garage would be torn down anyway.

J. Klinghoffer stated that they should not have to destroy the current backyard (referring to the trees). J. Stone asked about the right of selling. Can the second 2nd building be sold separately? J. Eckstrom stated that it could not be split. A. Hoar stated there is no ground for granting a subdivision.

J. Klinghoffer asked again about the impact on neighbors. Then asked what would happen if the application was denied, could they postpone vote to learn more about the 2nd site. What would a not vote mean? Could they reconsider the cons?

P. Levesque asked about the setback. 18 feet is grandfathered. Then asked if the footprint is enlarged and someone responded from 15-18 feet on the far side.

N. Faiman stated the variance is not justified. J. Klinghoffer asked if there was another way. N. Faiman responded yes, (note: I did not understand the response – waiting for understanding). J. Eckstrom stated that the ADU on Intervale couldn't attach a garage because there was 4 ft space between. N. Faiman stated that it was not a new building and the ADU already existed.

A. Hoar asked where the stairs would be. Response was that an entrance would be the stairs from an outside doorway. J. Stone asked if the roof was lifted, would it make a difference. A. Hoar responded that the modification would have an impact on neighbors. P. Levesque stated that this was new construction but not a new building.

Discussion continued regarding Abbot Hill Rd property. J. Klinghoffer stated that the garage and house needed to be connected to be considered an ADU. Need for heated living space also.

P. Levesque asked about definition of ADU and if it must be one family or could it be two families. J. Eckstrom stated that the owner must live in the ADU or main living space. P. Howd added there was a sq. ft. requirement. N. Faيمان stated that the Abbott property had more than 800 sq ft. He continued that if we allowed something, then others will want a slightly different thing.

J. Eckstrom MOVED to close the discussion and reopen public hearing. J. Stone SECONDED. Vote: P. Levesque yes, P. Howd yes, J. Eckstrom yes, J. Stone yes, N. Faيمان abstain.

J. Klinghoffer asked about the height of the addition. Applicant believes it would increase by 10 ft.

J. Klinghoffer asked if the garage would be connected to main house through an enclosed way. Applicant responded that they would be at different levels. There is a screened porch and angled breezeway.

J. Stone added that they must be connected with a shared interior wall with the house. An ADU (Additional Dwelling Unit) is not the only way. A reference was made to 5.3.7. N. Faيمان added that the unit had to be in existence in 1989.

N. Faيمان asked if they could rearrange the existing plan. Breezeway/mud room is conceivable.

J. Stone asked if an ADU with special exception is all that is needed or does this require additional variances and J. Eckstrom asked what the contractor estimate was. Applicant responded that the contractor quoted 125K to take down the existing structure, build dry wall above existing foundation.

J. Stone asked where the door would be located. Applicant responded outside the garage with an outside staircase.

P. Howd MOVED to close public hearing and reenter discussion. J. Eckstrom SECONDED. Vote P. Levesque yes, P. Howd yes, J. Eckstrom yes, J. Stone yes, N. Faيمان yes.

Committee discussed the question of hardship. J. Eckstrom stated it is a hardship. J. Klinghoffer stated that based on the size of the lot, the new structure should be built as proposed and there was no other reasonable place to comply where it doesn't detract from the yard. P. Howd believes there is a place to build which would make it comply. J. Eckstrom stated the cost to comply would be the hardship. P. Levesque added the size of the structure would become 24x20. J. Klinghoffer added that by moving the structure they would be losing open space which would affect neighbors.

P. Howd asked about clarifying if voting "for" means it does meet the criteria for a variance.

J. Klinghoffer asked if the lack of open space to neighbor is a hardship. N. Faيمان stated it does not directly impede on their lot. J. Klinghoffer asked if the application has sections for a

variance. N. Faiman referred to the application which included additional emails for clarification.

J. Kinghoffer asked if there is any special variance for personal variance such as RSA 33.a Persons with Physical hardship law. N. Faiman stated that the hardship law only pertains to the person and goes away when the person leaves the property.

P. Levesque MOVED a call to approve/disapprove application as presented. J. Eckstrom SECONDED.

N. Faiman read motion: To grant variance to allow demolition and reconstruction, with an additional 2ft extension to the width, and the addition of a second floor making it a 2nd dwelling with an ADU.

J. Eckstrom MOVED to remove from hearing. P. Levesque SECONDED. Vote: P. Levesque yes, P. Howd yes, J. Eckstrom yes, J. Stone yes, N. Faiman yes.

Motion to approve/disapprove application: Vote: P. Levesque no, P. Howd no, J. Eckstrom yes, J. Klinghoffer yes, N. Faiman no. Motion was defeated.

P. Howd MOVED to deny because there was no hardship. P. Levesque SECONDED. Vote: P. Howd yes, J. Stone abstain, J. Eckstrom no, P. Levesque yes, N. Faiman yes.

N. Faiman stated that the applicant has the right of rehearing if applicant believes a mistake was made, legal error occurred, or additional information can be provided. Applicant must file within 30 days of this date in writing. Otherwise, this decision is final. There is no fee to request rehearing for application. After 30 days, a new application would be required.

J. Eckstrom requested that minutes be deferred to immediately preceding Public Hearing of next meeting.

N. Faiman continued discussion on property for sale: Rubio Sprague, 47 Maple Street variance where 2 apartments are in the rectory and 3 apartments are in the basement of church. He noted that construction hasn't started, site plan was granted and the variance has expired. J. Stone asked if occupants have to leave. N. Faiman pointed out only the church units were not constructed.

J. Eckstrom MOVED to review all minutes at next meeting. SECONDED by J. Klinghoffer. Vote: A. Hoar yes, J. Eckstrom yes, P. Levesque yes, P. Howd yes, J. Stone yes, J. Klinghoffer yes, N. Faiman, abstain.

Note: Correction on prior July minutes that J. Stone was remote.

J. Eckstrom MOVED to adjourn. P. Levesque SECONDED. Vote: All yes.

**Respectfully submitted by Margaret A Duggan, Acting Secretary
Approved on 09.13.2022 Amended 10.12.2022**