



Town of Wilton, NH Zoning Board of Adjustment MINUTES

**Tuesday, June 11, 2024
7 PM
Town Hall Courtroom
42 Main Street**

ATTENDEES

Board Members Present:

Neil Faiman (chairperson); Joanna Eckstrom (co-chairperson; remote); Andy Hoar; Jeff Stone; Judith Klinghoffer; Peg Duggan (alternate); Linda Jennings (alternate)

Board Members Absent:

n/a

Board Secretary:

Caryn Case

Attendees:

Thomas Ryan; Mark Haman (applicant); Lee Muir-Haman (applicant); Tristan Haman; Savanna Lavasseur; Doug Seppala

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4. Other Business
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MINUTES

I. Call to Order

Chairman Faiman called the meeting to order at 7:05 p.m.

39 Chairman Faiman read the Zoning Board of Adjustment's Mask Wearing Policy and noted there were two
40 (2) Attendees who chose not to wear masks.

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42 Chairman Faiman read the Meeting Speaking Protocols.

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44 Chairman Faiman read the Testimony of Law Statement.

45
46 Chairman Faiman introduced the Board members by roll call and declared a quorum was present. He
47 announced that one (1) Board member was participating remotely due to concerns that made it impractical
48 for her to participate in-person. As a result, he said voting would be conducted by roll call vote.

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50 Chairman Faiman read the Meeting Time Protocols.

51

2. Minutes

a. 05.14.2024

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55 The Board reviewed the site visit minutes of May 14, 2024. Required edits were identified in the following
56 lines: 107, 114, 315, 149, 150, 198, 284, 291, and 326.

57
58 **P Duggan MOVED to accept the May 14, 2024, minutes with the edits identified in**
59 **lines 107, 114, 315, 149, 150, 198, 284, 291, and 326.**

60 **J Stone SECONDED.**

61 **Discussion:** None

62 **Roll Call Vote:** A Hoar yes
63 N Faiman yes
64 J Stone yes
65 P Duggan yes
66 L Jennings yes
67 J Klinghoffer yes
68 JK Eckstrom abstain

69 **Motion:** Carried 6/0/1

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b. 05.28.2024

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73 The Board reviewed the site visit minutes of May 28, 2024. Required edits were identified in the following
74 lines: 45 and 73.

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76 **J Stone MOVED to accept the May 4, 2024, minutes with the edits identified in lines**
77 **45 and 73.**

78 **J Klinghoffer SECONDED.**

79 **Discussion:** None

80 **Roll Call Vote:** A Hoar abstain
81 N Faiman yes
82 J Stone yes

83 P Duggan yes
84 L Jennings yes
85 J Klinghoffer yes
86 JK Eckstrom yes

87 **Motion:** Carried 6/0/1
88

89 **c. 06.08.2024**

90 The Board reviewed the site visit minutes of June 8, 2024. Required edits were identified in the following
91 lines: 4, 5, 10, 16, 18, 43, 44, 46, 56, and all lines where Higginson was misspelled, and a statement was
92 added that cited Chairman Faiman limiting the discussion to site visit features relative to the application.
93

94 **J Klinghoffer MOVED to accept the June 8, 2024, minutes with the edit identified in**
95 **lines 4, 5, 10, 16, 18, 43, 44, 46, 56, and all lines where Higginson was misspelled, and**
96 **a statement was added that cited Chairman Faiman limiting the discussion to site**
97 **visit features relative to the application.**

98 **J Stone SECONDED.**

99 **Discussion:** None

100 **Roll Call Vote:** A Hoar yes
101 N Faiman yes
102 J Stone yes
103 P Duggan yes
104 L Jennings yes
105 J Klinghoffer yes
106 JK Eckstrom yes

107 **Motion:** Carried 7/0/0
108

109 **3. Mark Haman & Lee Muir-Haman, 369 Gibbons Highway**

110 Public Hearing, *continued from a previous meeting*

111 **Case 5/14/2024-02**

112 *Mark Haman and Lee Muir-Haman have requested variances to sections 8.1 and 8.5 of the Wilton Zoning*
113 *Ordinance to allow the construction of a single-family dwelling on Lot F-024, 369 Gibbons Highway, where*
114 *residential uses are not permitted in the Industrial District.*
115

116 Chairman Faiman opened the hearing by reading the applicant's request for a special exception.
117

118 Chairman identified the sitting Board: Andy Hoar, Neil Faiman, Jeff Stone, Linda Jennings, and Judith
119 Klinghoffer, and noted that Joanna Eckstrom and Peg Duggan would participate in the discussion but not in
120 the vote.
121

122 Chairman Faiman stated that the Board first heard the case on May 14, 2024, when the reasons for the
123 request were described. He noted that the Board members desired visuals to help understand what was
124 going on and attended a site visit on June 8, 2024.
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126 The Applicant, Lee Hamon-Muir distributed an exhibit to the Board.ⁱ

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Chairman Faiman reviewed a point made in a previous meeting about the road frontage which the Board was unclear about. He said the board understood that Lot F-023 owned all the frontage for the combined lots of F-023 and F-024. He added it was understood that the driveway was entirely on Lot -F-024.

Lee Muir-Hamon stated that the 700 feet of road frontage runs along Lot F-024 and stated she believed the driveway went with this lot. To which Neil Faiman indicated that meant that Lot F-023 has some frontage along Gibbons Highway.

Joanna Eckstrom confirmed that the 700 feet of road frontage ran along the lot in question (F-024) and added that Lot F-023, where the driveway accesses, also has significant road frontage along Gibbons Highway. However, Lee Muir-Hamon said that Lot F-023 only has road frontage on Gibbons Highway, equal to the width of the driveway there. Neil Faiman noted that the minimum feet of frontage for a back lot, is 50 feet.

Chairman Faiman said the lot overview, prepared by Mr. Higginson, implies that the driveway is entirely on Lot F-023, though the drawing was not to scale. He added the concern about the location of the driveway was not critical or significant for this application but was a bit of a perplexing fact.

Lee Muir-Hamon requested that two (2) items be cited in the minutes, (1) that they dropped off five (5) documents and maps to add to the application, and (2) there have been two (2) prior requests, with approval granted for the variance, to build a private residence on this same lot in 2004 and 2007.

Mark Hamon read from the July 13, 2004, minutes when the first approval for the variance to build a private residence took place: "Miss Eckstrom said that after her site visit, she couldn't understand how the Town could have zoned that land or the abutting properties, Industrial. Mr. Faiman said he had the same reaction when he visited the site." Neil Faiman noted that that application was different, but the issue was the same. The application proposed a lot line adjustment to address the road frontage but ultimately hinged on the question of whether to allow a second residential use on that combined property.

Peg Duggan asked about the separateness of the two (2) lots. Neil Faiman confirmed they were separate, distinct tax lots. Andy Hoar added that Lot F-023 would need to provide an access easement for Lot F-024 for use of the driveway. Neil Faiman notes that this situation has attributes of a subdivision proposal, except that there is no subdivision, as such there is no requirement to go to the Planning Board and the Zoning Board of Adjustment ends up addressing issues that would normally be picked up by the Planning Board if it were a subdivision.

Linda Jennings questions if the driveway, due to the proposed expanded use and its length, requires modifications to be compliant. Neil Faiman said that a driveway permit application will be required and that the Driveway Regulations includes an extensive collection of requirements that must be met. Caryn Case addressed some of the driveway requirements that might be addressed once that application was submitted.

170 Chairman Faiman commented that if the Board approves the variance there should be a condition to obtain
171 an easement for the driveway and comply with the driveway regulations.

172
173 There was a brief discussion as to when the Industrial District was established and if the Applicant's deed
174 may have reference to any required zoning.

175
176 There was a brief discussion on the issue of a driveway easement and which lots would be affected by it.
177 Caryn Case informed the Board that the GIS maps do not show 'perfect' lines and that a plan from an
178 actual ground survey would serve to define what would be proposed for that. Neil Faiman confirmed that
179 the Applicants Surveyor would be their first source to identify this.

180
181 Joanna Eckstrom states there has hardly been any interest in in putting industrial use onto the lots along
182 Gibbons Highway on the opposite side of the Souhegan River which has primarily served as pasture and
183 excavation land. Neil Faiman points out the Town wants to have industry and it makes sense to designate
184 land along major arteries for this use.

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186 FINDINGS of FACT

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188 Chairman Faiman states the facts are based on testimony from the plan submitted by the Applicants and by
189 Dan Higginson, Land Surveyor & Septic Designer, and on observations made by the Zoning Board during
190 the site visit. (1) The applicant own Lots F-023 and F-024 in the Industrial District, (2) Lot F-024 has 700
191 feet of road frontage along Gibbons Highway and is undeveloped, (3) F-023 has limited or no road frontage
192 along Gibbons Highway for its driveway access, (4) residential uses are not permitted in the Industrial
193 District, (5) the residential dwelling unit on Lot F-023 is grandfathered and predates the Zoning Ordinance
194 by approximately 250 years, (6) the Applicants propose to build a residential dwelling unit on Lot F-024
195 accessed by the same driveway as the residential dwelling unit on Lot F-023, and (7) variances were granted
196 in 2004 and 2007 to allow a use similar to the use proposed by the Applicant's, and have expired. Andy
197 Hoar added (8) that there is uncertainty about the location of the existing driveway, and Jeff Stone added
198 (9) that residential use has been prohibited in the Industrial District at least as far back as 1981.

199
200 CLOSE the PUBLIC HEARING

201
202 **A Hoar MOVED to close the Public Hearing.**
203 **J Klinghoffer SECONDED.**

204 **Discussion:** Chairman Faiman explained that the Public Hearing is the part of the meeting
205 where testimony is taken. He states that when a Public Hearing is closed, the meeting is still
206 public, and the Board deliberates among themselves with no further public input.

207 **Roll Call Vote:** A Hoar yes
208 N Faiman yes
209 J Stone yes
210 L Jennings yes
211 J Klinghoffer yes
212 **Motion:** Carried 5/0/0

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DELIBERATIONS

Andy Hoar says that his initial reservations were based upon not knowing where the residential dwelling unit would be placed and how much of a buffer there would be. He feels that the 80 feet to the boundary line and the required minimum setback of 35 feet, for a total equaling a 155-foot buffer to the adjacent lot is fair and substantial and would not deter anyone from developing that neighboring lot for its intended industrial use.

Chairman Faiman said that the question of hardship relies on the unique/unusual special characteristics of the property that make it unusable to use as zoned and that the proposed use by the Applicant's does not interfere with the purpose of the ordinance.

Joanna Eckstrom states there are far more residential uses on industrial zoned land that already put a burden on what you can and cannot do. She questions if zoning of some industrial areas has been entirely reasonable. She states that the property is not served by town water and town sewer which puts a burden on any prospective landowner for an industrial use, thus it is a lot more reasonable, and cost effective, to put a private well and private septic system on the lot than it would be to construct new sewer and water lines.

Chairman Faiman states that the determination of zoning districts is not a matter of the Zoning board to consider.

Neil Faiman said you must consider both lots because you cannot ignore the fact that one lot relies on the other lot. He says there are two (2) lots in common ownership where one lot has an existing residential dwelling unit and residential driveway, and the other, with its proposed use, basically "coordinates" the two (2) lots making it an unusual special condition of the property.

Judith Klinghoffer describes the fact there are wetlands on the property and that the property is steeply inclined making it difficult to develop for industrial use. She notes that there is a strip of land running parallel to Gibbons Highway, directly across from The House by The Side of The Road, before the property inclines, where it might be possible for a small commercial establishment however, that developable area might significantly limit the scale of any proposed establishment. Andy Hoar noted that the 100-foot required setback would be further limiting. Neil Faiman disagreed citing that the area Judith Klinghoffer referred to measures about 450 feet deep and 700 feet wide and was more than adequate for commercial or industrial use.

Neil Faiman points out that the lot has conditions which make it challenging for industrial development, and since it is part of a two (2) lot common ownership complex in which one is already in use as residential, the proposed residential use of the other lot is a natural result. Additionally, it does not appear to substantially interfere with the purposes of the ordinance even though it does remove one (1) 12-acre lot from the Industrial District, the buffers are such that if somebody wanted to put one of the neighboring lots into industrial use it would not be impaired by this proposed use.

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The Board agreed that the proposed use would not substantially change the character of the neighborhood, affect surrounding property values, and substantial justice would be done by granting the variance.

Judith Klinghoffer said the Town needs housing, and this proposal is not trading an existing practical industrial lot for residential use because the lot has never come to fruition as a workable industrial lot. She said granting the variance would be a benefit to the Town rather than a detriment.

MOTION

J Klinghoffer MOVED to grant the requested variances to sections 8.1 and 8.5 of the Wilton Zoning Ordinance to allow the construction of a single-family dwelling on Lot F-024, 369 Gibbons Highway, where residential uses are not permitted in the Industrial District.

N Faiman interjected wanting to condition the approval on obtaining any necessary easements for use of the existing driveway across Lot F-024 and compliance with the Town of Wilton Driveway Regulations.

J Klinghoffer amended her MOTION to grant the requested variances to sections 8.1 and 8.5 of the Wilton Zoning Ordinance to allow the construction of a single-family dwelling on Lot F-024, 369 Gibbons Highway, where residential uses are not permitted in the Industrial District, subject to a comment regarding the need for a driveway permit and a condition to obtain any necessary easements for use of the existing driveway across Lot F-024.

L Jennings SECONDED.

OPEN the PUBLIC HEARING

A Hoar MOVED to re-open the Public Hearing.

J Stone SECONDED.

Discussion: None

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|------------------------|---------------|-----|
| Roll Call Vote: | A Hoar | yes |
| | N Faiman | yes |
| | J Stone | yes |
| | L Jennings | yes |
| | J Klinghoffer | yes |

Motion: Carried 5/0/0

Chairman Faiman addressed the Applicant's asking them if they felt the Board had adequately discussed their application request.

VOTE on the MOTION

299 **Discussion:** Chairman Faiman states that with no further discussion on the MOTION, a vote
300 of “Yes” is a vote to approve the request.

301 **Roll Call Vote:** A Hoar yes
302 N Faiman yes
303 J Stone yes
304 L Jennings yes
305 J Klinghoffer yes

306 **Motion:** Carried 5/0/0
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308 Chairman Faiman states the Zoning Board has approved the variance request with a condition and a note,
309 among other reasons. He tells the Applicant they will receive a written Notice of Decision (NOD) both
310 electronically and in the mail. He reminds everyone that the Select Board, the Applicant’s Abutters, and
311 anyone directly affected by the decision has a right to request the Zoning Board to hold a rehearing to
312 reconsider its decision to grant the variance. Such a request must set forth all the reasons why the decision
313 should be changed and must be received within 30 days of when the decision was made. In the absence of
314 such a request for reconsideration, the decision made becomes final. He cautions the Applicant of potential
315 consequences if the work is started and the decision is appealed.
316

4. Other Business

318 Judith Klinghoffer informed the Board that an Attendee was recording the meeting and asked about the
319 policy on that.
320

321 Chairman Faiman said that the recording of public meetings is permissible under RSA 91-A:2, Meetings
322 Open to Public. He added it would be courteous to let the Board, and the Public, know a recording is
323 taking place.
324

325 The Board advised an announcement about recording public meetings should be included in the reading of
326 the meeting protocols.
327

328 Joanna Eckstrom left the meeting.
329

5. Adjournment

331 **A Hoar MOVED to adjourn at 9:08 p.m.**
332

333 **J Stone SECONDED.**

334 **Discussion:** None

335 **Voice Vote:** Yes 7
336 No 0
337 Abstentions 0

338 **Motion:** Carried 7/0/0
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342 **APPROVED: 08.13.2024**

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¹ Site Plan title "Property Exhibit, Mark Hamon, Gibbons Highway, Tax Map F Lot 24, Wilton, NH" prepared by Higginson Land Services and dated June 10, 2024.