



Town of Wilton, NH
Application to the Zoning Board of Adjustment
 (Revised January 2011)

General Information, Page 1 of 3

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JUL 26 2011

Property Information

TOWN OF WILTON NH

Describe the lot involved in the application (the lot that you want to build a building on, subdivide, conduct a business or other activity on, etc.). If more than one lot is involved, then describe them all in this space if it is convenient, or attach additional copies of this page.

Tax Map and Lot Number F-166 Lot Size 1.216 acres

Street Address 572 Gibbons Highway

Zoning District (check one):

- Residential General Residence and Agricultural
- Commercial Industrial Office Park

Relevant Overlay Districts (check any that apply):

- Research and Office Park Floodplain Conservation Watershed
- Wetlands Conservation Aquifer Protection Elderly Housing

Owner

If the application involves multiple lots with different owners, attach additional copies of this page.

Name Abby L. Mac Farland

Mailing address 572 Gibbons Highway

Mailing address _____

Town, State, ZIP Wilton, NH 03086

This application must be signed by the owners of all lots involved in the application.

I approve the submission of this application. If an applicant or representative is named on the next page, the person named there has my permission to represent me before the Wilton Zoning Board.

Signature Abby L. MacFarland Date 7/26/11
 Abby L. MacFarland

(continued on the next page)

clerk use only	
Date and time received: <u>3pm</u> <u>7/26/11</u>	
Received by: <u>D. McElh</u>	Amount paid: <u>160.00</u>
Case #: _____	<input type="checkbox"/> Abutter list and labels included



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Applicant

The applicant is the person who actually wants to build the building, conduct the business, etc. This is usually the same as the property owner, but might be a tenant, someone who plans to purchase the property, etc. If the applicant is the same as the owner, just check "Same as owner" and leave the rest of this section blank.

Same as owner

Name ~~Dana LaFlour~~ Abby MacFarland

Mailing address 572 Gibbons Highway

Mailing address _____

Town, State, ZIP Wilton, NH 03086

Signature of Applicant or Owner

I certify that to the best of my knowledge and belief, all information provided in this application is accurate.

Signature Abby MacFarland Date 7/26/11

Representative

Fill out this section if the application is being submitted by a realtor, surveyor, engineer, attorney, etc., on behalf of the actual owner or applicant.

Name Robert Todd, LLS

Mailing address P.O. Box 190

Mailing address _____

Town, State, ZIP New Boston, NH 03086

I authorize the above-named representative to submit this application and to speak before the Zoning Board on my behalf.

Signature of applicant or owner

Signature Abby MacFarland Date 7/26/11

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Contact Information

How can we get in touch with the applicant or the applicant's representative, if there are questions about or problems with the application? Provide at least one of the following. If you provide more than one, please check your preferred form of contact.

This information is for: the applicant the representative. Robert Todd

Daytime phone 487-2996 Evening phone _____

Work E-mail _____ Personal e-mail _____

Proposed Use

Explain what you want to do with the property. (Do you want to build a building, subdivide a lot, have a business, ...).

Explain why you need the Zoning Board to let you do it. (The building will be too close to the lot line; the Planning Board wouldn't approve your subdivision; your lot is in a zoning district where businesses aren't allowed; ...).

Be specific. Identify the section or sections of the Zoning Ordinance that apply. If lot sizes or configurations or building placements are relevant, provide a scale drawing or plan showing all relevant information, such as lot lines, setbacks, present and proposed structures on your lot and neighboring lots, etc.

Description of proposed use and need for ZBA approval (use this page; attach additional pages as necessary):

See attached MEMORANDUM Re: Equitable Dimensional Waiver application
and attached MEMORANDUM Re: Application for Variance to Section 8.2.8 Access



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Application for an Equitable Waiver, Page 1 of 2

When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by the Zoning Ordinance, the Zoning Board can grant an "Equitable Waiver" from the requirement. See RSA 674:33-a.

What requirement of the Zoning Ordinance is violated? Building setback

What section of the Zoning Ordinance is the requirement in? Section 8.2.4

It is your responsibility to prove each of the following facts to the Zoning Board. Please explain why you believe that each of the following statements is true. (Use additional sheets of paper if necessary.) See the note on "Burden of Proof" in the "General Information" section at the beginning of this application.

1. Either:

(a) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value: _____

and

(b) The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority: _____

see attached MEMORANDUM

Or:

(c) The violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected. _____

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Application for an Equitable Waiver, Page 2 of 2

2. The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. _____

3. Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. _____

MEMORANDUM

TO: Wilton Zoning Board of Adjustment

FROM: Robert Todd, LLS/LPF/CEPSC; Agent for Abby MacFarland *RBJ*

RE: Equitable Dimensional Waiver application

DATE: July 20, 2011

This is attached to the official Town of Wilton Application to the Zoning Board of Adjustment (revised January 2010) for an Equitable Waiver.

Statement of Facts

1. (b) The owner, Abby MacFarland, engaged her son-in-law, Dana Lefleur, to erect a steel hoop structure on a concrete foundation on her property. The layout of the 32.5 feet wide building relative to the 30 feet wide building envelope resulted in an encroachment of 2.5 feet into the required 35 feet setback from the property line.

Since the rear lot line is not visibly marked, Mr. Lefleur established the location of the front setback by measuring 150 feet from the observed center line of Route 101 and then staked the building location in accordance with the measurement he made from said center line.

The method used is a reasonable approach to accomplishing the task and Mr. Lefleur showed sincere intentions to comply with the setbacks.

2. The magnitude of the dimensional violation is 2.5 feet; not an encroachment that would be a measureable depreciation factor in the value of the adjoining property. This magnitude of error will not adversely affect the use of the remaining portion of the property which is already severely constricted by setbacks. The property may now be at its maximum use potential. Lastly, it is unlikely that the encroachment would be discernible to the public eye or amount to any more of a nuisance than it would have if it had been constructed in compliance with setback requirements.

3. The construction of the building is complete and the cost to dismantle the structure, remove the existing foundation construct a new foundation, and rebuild the structure would far outweigh the value of public benefits to be gained thereby.

Thank you for your kind consideration of this equitable waiver request.



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Application for a Variance, Page 1 of 2

When, because of the specific characteristics of your property, the Zoning Ordinance unreasonably restricts your use of your property without a corresponding public benefit, the Zoning Board may grant a Variance, which modifies or sets aside particular requirements of the Ordinance.

The specific section of the Zoning Ordinance to be varied: 8.2.8 Access

The requirement in that section that you want to change, and how you want it changed:

See attached MEMORANDUM

To grant a variance, the Zoning Board must decide that it will satisfy each of the following five conditions. Please explain why you believe that each of the following statements is true. (Use additional sheets of paper if necessary.)

1. Granting the variance would not be contrary to the public interest: _____

2. Granting the variance would be consistent with the spirit of the Ordinance: _____

3. Granting the variance would do substantial justice: _____

4. The proposed use will not diminish surrounding property values: _____

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5. Literal enforcement of the provision of the ordinance would result in unnecessary hardship.
Complete just one of sections 5(a), 5(b), or 5(c):

5(a) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:

ii. The proposed use is a reasonable one:

iii. The hardship is a consequence of special conditions of the property that distinguish it from other properties in the area:

5(b) i. The property cannot be reasonably used in strict conformance with the ordinance:

ii. The hardship is a consequence of special conditions of the property that distinguish it from other properties in the area:

5(c) Hardship resulting from a physical disability.

i. The variance is necessary to make reasonable accommodations to allow a person with a recognized physical disability to reside in or regularly use the premises:

ii. The variance is in harmony with the general purpose and intent of the zoning ordinance:

MEMORANDUM

TO: Wilton Zoning Board of Adjustment

FROM: Robert Todd, LLS/LPF/CEPSC; Agent for Abby MacFarland *RBJ*

RE: Application for Variance to Section 8.2.8 Access.

DATE: July 20, 2011

This is attached to the official Town of Wilton Application to the Zoning Board of Adjustment (revised January 2010) for a variance.

Following are the rationale supporting the five variance criteria for granting a variance to Section 8.2.8 which limits access to one curb cut on lot F-166 so as to allow a second access to N.H. Route 101 to serve a proposed commercial use.

1. Granting the variance would not be contrary to the public interest:

The subject lot has status as a sub-standard lot used historically as a residence served by a driveway accessing Route 101. The lot is zoned Industrial and the proposed use, automotive repair, is allowed. The proposed use is not at a scale which the zoning requirement would typically regulate in the public interest and the site plan developed for this use addresses all other requirements which protect the public interest.

2. Granting the variance would be consistent with the spirit of the ordinance:

Limitation of access to Route 101 to one curb cut is considered to be an attempt to maintain the character of the landscape and to promote safe travel along the highway. There is one access to said highway which serves the existing residence and to ~~add~~ the commercial use to the existing driveway will pose a danger to the children who live in the residence. The proposed commercial use of the property is allowed, but the property may be at its full potential with the proposed use in place. The scale of the use is of relatively small scale and will generate minimum

entries on to the highway, even the proprietor of the proposed use will walk to work.

3. Granting the variance would do substantial justice:

Allowing the proposed access would not decrease any public benefit which outweighs the loss of this use by the landowner.

4. The values of surrounding properties are not diminished:

Commercial use in an Industrial zone is a permitted use and the proposed use is on a lot which is demonstrated by a site plan to satisfy other commercial development requirements. Surrounding properties are similarly used. The scale of the use is relatively small and real estate appraisal techniques are not sensitive enough to show any significant depreciation resulting from granting of this variance.

5. Literal enforcement of the provision of the ordinance would result in unnecessary hardship:

- (a) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:

The proposed access will have a frequency of use so limited relative to the access that the provision would typically regulate that it is unreasonable to apply that provision in this case. The owner walks to the repair shop from his home on the lot. He has no employees and the number of customers served daily is limited by the owner's ability to service them. To combine the access to the proposed use with the driveway serving the residential use would be detrimental to the residential functions and values and would be a safety issue for children living in the residence.

- ii. The proposal is a reasonable use:

An auto repair use is a commercial use that is allowed in the Industrial district. The site plan shows that the proposed use is at a scale which the lot can reasonably accommodate in accordance with regulations. This lot is unique in that there is a

long-standing residential use served by an existing driveway accessing Route 101 and combining the commercial access with the residential access is an incompatible mix of uses. Since the zoning regulation states that the Industrial District purpose is to provide a location for industrial facilities to improve employment opportunities, a denial of the variance would be unreasonable and contradictory.

- iii. The hardship is a consequence of special conditions of the property that distinguish it from other properties in the area:

This property is not like most other properties in the district because it has an existing residential use and it is relatively small. Eight properties in the I District along the south side of Route 101 for a distance of about 2000 feet easterly and westerly of the subject lot were observed and the land uses thereon noted. Of the eight properties the subject lot is one of only two that are used as a residence. Further, the subject lot is one of the three smallest in the group of 8.

The regulation prevents the lot owner from using the property as it is allowed to be used. For as long as the subject lot has a residence it can not be used for the proposed use, or other use that would be served by a separate driveway. The regulation applied to the subject lot creates a hardship.