



Town of Wilton, NH
Request for a Rehearing
(Revised January 2010)

Application, Page 1 of 3

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Case Information

ZBA Case Number of the original application: 12/10/13-1

Date of the decision: December 10, 2013

If the original application included more than one specific application, which ones does this request apply to? _____

Requestor

Information about the person who is requesting the rehearing.

Name Joseph Gottstein

Mailing address 489 Abbot Hill Rd

Mailing address _____

Town, State, ZIP Wilton, NH 03086

You are (check one):

- ☐ the original applicant
- ☐ the owner of the property
- ☐ the Board of Selectmen
- ☐ an abutter or other party who was required to be notified of the original application
- ☒ a party directly affected by the decision

If you checked the last box, explain how you are directly affected by the decision: _____

Living in the residential/agriculturally zoned neighborhood where the cafe/restaurant is expanding.

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

Signature Joseph Gottstein Date 1/9/14

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clerk use only

Date and time received: 1/9/14, 6:20 pm

Received by: mg Schuler Amount paid: \$166.00

☒ Abutter labels included



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Representative

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

Name _____

Mailing address _____

Mailing address _____

Town, State, ZIP _____

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

Signature of requestor _____ Date _____

Contact Information

How can we get in touch with the applicant or the applicant's representative, if there are questions or problems about 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.

☒ Daytime phone 654-5855 _____

☐ Evening phone _____

☐ Work E-mail _____

☐ Personal e-mail _____

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Details of Request

You are requesting that the Zoning Board reconsider (check one):

- ☒ its approval of the application
- ☐ its denial of the application
- ☐ the conditions, restrictions, or modifications it imposed when it approved the application

Reasons for a Rehearing

A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the zoning board of adjustment, a board of appeals, or the local legislative body shall be taken unless the appellant shall have made application for rehearing as provided in RSA 677:2; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown shall allow the appellant to specify additional grounds. (RSA 677:3)

Why do you believe that the Zoning Board should hold a new hearing?

Reasons for a rehearing usually fall into two categories:

- You have additional evidence or information that you believe might change the decision.
- The Zoning Board made mistakes in how it applied the law (state law, case law, or the Zoning Ordinance) to the facts of the case.

Parties to a zoning case are expected to have prepared their case before the hearing. Therefore, if you are requesting a rehearing to present new evidence or information, you should explain why you couldn't have presented that evidence or information at the original hearing.

The Zoning Board will usually not grant a rehearing to consider evidence that could have been presented at the original hearing.

Set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable (use this page; attach additional pages as necessary): _____

Please see attached pages labeled "Town of Wilton, NH Request for Rehearing of Case 12/10/13-1" pages 4, 5 and 5a

Town of Wilton, NH Request for Rehearing of Case 12/10/13-1

The following summarizes my grounds for requesting a rehearing.

Capturing the grounds for rehearing are difficult due to the failure of the Wilton Zoning Board of Adjustment (ZBA) to follow proper procedural conduct associated with the original hearing. As is the custom with all hearings and presentations there are formal rules of process and procedure. These procedures include pre-hearing activities, proper hearing processes, and post hearing process. Although the decision of the ZBA was posted within one day of the meeting, as of January 9, 2014 the minutes of the December 10, 2013 meeting have not been made available for the public to review in order to allow for review and consideration and this is in violation of NH RSA 91-A:2 II. Consequently, the right to amend or modify this request within 30 days of the posting is reserved.

I believe the ZBA acted unilaterally without a reasonable exploration of the facts of the case. A proposal that locates and increases an active commercial use in the center of a residential/agricultural zone is a misuse of the jurisdiction of the zoning board of approval and represents Spot Zoning. "Spot zoning is a provision in a general zoning plan that benefits a single parcel of land by creating an allowed use for that parcel that is not allowed for the surrounding properties in the area. Because of implications of favoritism, spot zoning is not favored practice."¹ I have arrived at this assertion because the decision was rendered without the benefit and adequate consideration/evaluation of the following:

1) **Property Values** - There is a need for supporting documentation by a Professional Appraiser on what will happen to property values. On page 1 of 2 of the Application for Variance dated 10/24/13 and received 11/19/13, the applicant merely stated on question 4 that "*no, on the contrary, the proposed use will improve surrounding property values*". Appraisal is a profession, and appraisers are professionals. Unless the applicant is such a professional, there needs to be supporting documentation to this claim. Simply making the statement does not make it true and/or verifiable.

2) **Hardship** - On page 2 of 2 of the Application for Variance dated 10/24/13 and received 11/19/13, question 5 is concerned with unnecessary hardship. "Unnecessary hardship is a term commonly used in zoning law to justify the grant of a variance from zoning regulations. The applicant must demonstrate that under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence"². The applicant proposes that the use is a reasonable one based on *the café being intrinsic to farm related business providing farm related products similar to ice cream, cheese and wool crafts*. The applicant further suggests that *it (the café) benefits the surrounding community*. Again a statement has been made that is not backed up with data. Where is the unnecessary hardship if the café would not expand? It (the café) is already operating and selling baked goods and farm grown vegetables, and I presume from the applicants' statement, ice cream, cheese and wool crafts.

3) **Traffic** - There has been much discussion of traffic in the area and (in the past) the applicant has stated that there would be no increase in traffic and vehicular safety. Rather than the "diverted link" customers as originally stated in the 2010 request for variance (*the café would have the same patrons as the farm and the schools*), that is clearly not the case and was not the intention; I base this on the sign on Route 101 some 2 miles away, pulling patrons into the residential/agricultural neighborhood, and the expanded hours beyond school hours. Also, one need only look on the Internet and can find that there are patrons coming from Peterborough, Nashua and out of state for the café. A traffic study is requested to support the no increase of traffic assertion.

4) **Building Systems** - Data needs to be presented and available to confirm the viability of the operation let alone the expansion of use on the property from:

Fire – what type of provisions for fire suppression are in place in the public (café) area as well as the apartment area of the building?

Septic – what are the limits of the current system in relation to the mixed use of the building (existing apartment use, proposed (increase in) seats, employees etc.)

ADA – does the café have all required components (wheel chair ramp, handicap bathroom etc.) regarding ADA compliance?

5) **Noncompliance** - The forgiveness by the ZBA for the blatant disregard of all conditions and provisions of previous approvals, as well as the disregard for the Rules and Regulations of the Town of Wilton is hard to grasp. The original case 6/8/10-1 granted the applicant a variance to use a portion of Lot F-98-1, 195 Isaac Frye Highway (Four Corners Farm) as a café. The conditions surrounding this variance were **very clearly** stated in the decision:

- 14 seats
- Open Tuesday-Saturday, 8am-5pm
- No changes to the exterior of the building

Since the decision in 2010, the conditions have been pushed aside.

- The amount of cars parked and patrons sitting outside has clearly indicated more than 14 patrons.
- Hours of operation are actually advertised as Tuesday-Saturday, 8am-4pm, Sunday 8:30am-2 (in the summer there was Friday and Saturday dinner at 5:30)
- Pictures were presented at the November 20, 2013 Planning Board meeting showing the changes that had already taken place to the exterior of the building prior to any request for approval.

Until the Planning Board approves the decision of the ZBA allowing for 24 seats, the café must operate under the 2010 approved conditions of 14 seats. The applicant currently has provisions in the building for 30 patrons. A recent visit to the café revealed this total...so the café is out of compliance for what they have just asked for (and were granted) from the ZBA. Clearly the ZBA has no control over café and the applicant has no respect for the process.

6) **Parking** – Opinions were expressed in the meeting in regards to whether parking is required for outside seating. The comment was made that “the state does not require outdoor seats to be counted.” Later review of this testimony has revealed that this was an opinion and furthermore, the municipality, not the state regulates parking requirements.

In closing, I feel strongly that the applicant is not being deprived of any and all use of his property and in fact the applicant has stated that the use provides at best a break even financial outcome insinuating a potential drain on the farm.

In light of the unavailability of the minutes upon which a detailed analysis of the Board’s findings on the five required criteria which must be met in order to grant a variance can be made, as well as the reasons stated above, I respectfully request a rehearing of the referenced approval for case 12/10/13-1. It is the applicant’s intent to supplement and amend this request once the minutes of the December 10, 2013 meeting are available and the errors in the Board’s decision can be specifically set forth.