

Joseph Gottstein  
Abbot Hill Road  
Wilton, NH 03086  
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TOWN OF WILTON NH

Mr. Neil Faiman  
Chairman  
Wilton Zoning Board  
P.O. Box 83  
42 Main Street  
Wilton, NH 03086

Re: Hilltop Café Re-Hearing Request Amendment

Dear Mr. Chairman and Board,

Thank you for the opportunity to amend our request for a rehearing for the above referenced site. Consider this document an amendment, supplement or codicil to the submitted Request for a Rehearing of Case 12/10/13-1. This does not change the original document (these are pages 5b, 5c, 5d and 5e), it merely adds to the reasons for the request. In addition this document is organized by topic with back up reasoning.

In opening, the Zoning Bylaw of Wilton New Hampshire outlines the allowed uses within the agricultural/residential zone. Said uses include residential and traditional agricultural uses such as farming and farm related activities. The bylaw then states uses allowed by special permit. A café or restaurant use is specifically not stated in any way, deeming it in my opinion not allowed by the authors of the bylaw and master plan. The purpose of the master plan is to designate how portions of the town are to be used and plan for the growth of the town overall. The café is an associated use to the farm with separate demised premise and separate lease structure. By allowing such a use without the benefit of professional input and examination of the facts of the operation, creates a dangerous precedent allowing a non-allowed use. To carry this thought to a reasonable conclusion, the Zoning Bylaw is rendered useless. Understandably, pressure to approve an operation may be great, but what is right for the master plan and the town as a whole, needs to be considered over an individual commercial operation.

I have reviewed the December 10, 2013 Meeting minutes and would offer the additional findings to be included with the original Request for Rehearing of Case 12/10/13-1:

**1) Property Values: (from public portion of meeting)**

*"In response to another question, Mr. Geiger stated that he feels that the farm and café will improve property values because of the access to the goods which the farm offers. Laura stated that she has spoken to assessors and they believe that increased signage and traffic will decrease property values. Mr. Geiger noted that he knows of several homes that have been bought in the area because of the draw of the farm and he has spoken to realtors who have stated that it will increase property values. "*

This ZBA public hearing was about the unapproved expanded commercial development of the restaurant and not the Farm. Mr. Geiger stated that people have bought homes in the area due to the draw of the farm. That is not in dispute. It is the expanded restaurant that we feel will

diminish property values...not the farm. The operation of the farm and a farm stand will obviously not decrease property values.

There was testimony from two realtors, one on each side of the issue. The ZBA, in their deliberations, only considered the testimony from the realtor whose opinion stated that she felt that the Café would increase property values. The opinion of the other realtor who stated that she felt that the Café and the commercialization of the area would decrease property values and stated that she had spoken with a certified appraiser who agreed with her, not assessor as stated in the meeting minutes, was never taken into account or even mentioned during the ZBA deliberations.

**2) Hardships (from meeting minutes during deliberations of ZBA)**

*"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 Board found that the incremental effect on properties in the area and on the character of the neighborhood resulting from the proposed expansion would be negligible, while the effect on the Farm of prohibiting the expansion would be severe.*

*"The proposed use is a reasonable one." The Board found that experience with the Café operating under the 2010 variance shows that it fits naturally and reasonably into the Farm, and is compatible with the permitted agricultural use of the property.*

*"The hardship is a consequence of special conditions of the property that distinguish it from other properties in the area." Although the majority of Wilton is zoned residential/agricultural, there are only a small handful of actual operating farms left in town. Both the need for the restrictions and their effects are drastically different when applied to the Farm as compared to any other properties in the area.*

The applicant responded to (answered) only one of the options under this question – 5(a)ii – the proposed use is a reasonable one. The ZBA chose to modify the application (once the public session was closed) responding to 5(a)i and 5(a)iii and in doing so, have presented a more favorable case. This action shows that the ZBA acted with bias/pre-determined opinions. The ZBA in effect, modified the application for the proponent.

**3) Traffic (from public portion of meeting)**

*"In response to a question from a Pierce Lane resident, Mr. Geiger stated that no traffic study has been done but he would like to put more signage up to perhaps alert drivers to slow down"*

*"Mr. Geiger stated that the farm stand has 200 to 250 customers and they might get 100 customers a day."*

The speed is not the issue; it is the generation of traffic associated with the restaurant and the safety issues that this creates.

*"Mr. Geiger stated that the restaurant could be on Main Street but people like to come to the farm and noted that the commercial activities at the farm fall under the agricultural guidelines. Mr. Geiger stated that he is not in the business of running an auxiliary business as well and noted that the café and the farm increases the value for the customer to take a trip up the hill."*



With these statements, Mr. Geiger finds no problem with the increase in traffic that this concern is creating. From the Selectman's Meeting Minutes from the October 7, 2013 Meeting:  
.....Lincoln Geiger stated *"He agrees with the traffic problem and admitted that he struggles with it himself."*

#### **4) Building Systems**

*"Mr. Geiger explained that they do not have plans yet for ADA compliance."*

How can the ZBA rule on an undefined scope unilaterally?

#### **5) Non-compliance**

*"Also he (Mr. Geiger) noted that he asked for a building permit to expand the kitchen, but he did not realize that his previous variance had a stipulation that any exterior changes be approved by the Zoning Board so he is requesting that the changes that have already been made be approved retroactively."*

*"Mr. Geiger confirmed that the café has already expanded to the size for which he is now requesting a variance."*

*"Mr. Geiger stated he did not think about the restrictions of the original variance."*

*"Mr. Geiger stated that he already put the additional seating in and they already have enough space for parking. He noted that he is looking for the variance to retroactively approve the additional seating and exterior changes."*

*"Mr. Geiger stated that he already put the additional seating in."*

Looking at the original case 6/8/10-1 and the variance granted, it was quite clear what would be allowed at the café. Throughout the minutes of the December 10, 2013 meeting Mr. Geiger makes reference to asking for and being granted variances retroactively. Mr. Geiger has not seen fit to stay within the bounds of the original variance and there is no reason to believe that he will adhere to the confines of an expanded use.

#### **Other Thoughts**

*"Mr. Faiman summarized the discussion, He also stated that the Board has heard considerable support from the public who believe the cafe is a desirable thing and culturally enriching as well as an appropriate accessory to the farm."*

There was no mention of the concerns from neighbors not in "considerable support". Once again in its deliberations, the ZBA only took into account the opinions of those in support of the variance and did not mention or consider that opinion of the neighbors who spoke against the expanded use. Much of the "considerable support from the public" was for the Farm itself. The question on the table is not the Farm, but the Café.

*"Mr. Geiger noted that any further expansion will require enlarging the building which could not happen without going before all the Boards of the town."*

This has clearly not been the case, and that is why we are in opposition to this variance request.


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**(From the public portion of the meeting)** *"Mr. Shepardson, Building Inspector, reminded the public that this is a residential/agricultural zone and noted that agriculture is not subservient to the residences."*

This application is about the expanded commercial development of the restaurant. Agriculture and farm stands are not the issue. The stated reasons for this hearing are for the request for amended conditions of the 2010 variance. The further commercial development of the property is not the same as an increase of livestock or farming production. It should be noted that landowners also should not be subservient to a commercial venture in residential/agricultural zoning.

The Request for a Variance for the Café is not a request for a variance for the Farm. The Farm and the Café are two separate entities and the testimony from the public in support of both sides of the restaurant variance issue showed overwhelming support for the Farm. The issue on the table is for the Café and NOT for the Farm. Many members of the public stated that they support the Farm, as do we. It is the expansion of the Café and the commercialization of the Agricultural Residential area that is in dispute.

Sincerely,



Joseph Gottstein