

November 12, 2019

Via Hand Delivery and Email
Town of Wilton Zoning Board of Adjustment
42 Main Street
PO Box 83
Wilton, NH 03086
wiltonzba@wiltonzba.org

Re: Quinn Properties, LLC Application for Variance; Case # 7/9/19-1
Letter of Opposition

Dear Chair Faiman and Members of the Zoning Board of Adjustment,

I write on behalf of Christopher Balch and others to respectfully request the Town of Wilton Zoning Board of Adjustment deny the application for a variance submitted by Quinn Properties, LLC (“Applicant”) for Lot B-10 (known as 50 Quinn Drive) (“Application”). I respectfully request that the Board incorporate this letter into its record of this matter.

1. Granting the Variance Is Contrary to The Public Interest And The Spirit Of The Ordinance Is Not Observed By Granting The Variance.

The first two variance standards are related and can be considered together. See Harborside Assocs. v. Parade Residence Hotel, 162 N.H. 508, 514 (2011). “The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005).

The language of the applicable zoning ordinance is a declaration of public interest, making all variance requests at least somewhat in conflict with the public interest. For a variance request to be sufficiently contrary to public interest such that it must be denied, it “must *unduly and in a marked degree* conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Nine A LLC v. Town of Chesterfield, 157 N.H. 361, 366 (2008) (emphasis added). While judging whether “granting a variance violates an ordinance’s basic zoning objectives, [the court considers], among other things, whether it would alter the essential character of the locality or threaten public health, safety, or welfare” but “such examples are not exclusive.”

Here, the “essential character” of the locality is a zone with structures at or beneath the tree line, not above it as the proposed structures would be. The record contains evidence that the legislative intent of the height restriction was to maintain that essential character. The height restriction was intended to maintain the visual and

aesthetic quality that comes with containing structures, especially industrial structures, beneath the tree line. Varying the legal limits to the height of structures required by the ordinance would “unduly and in a marked degree” conflict with these purposes.

2. *Granting the Variance Is Not Required to Do Substantial Justice.*

“Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007) (citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000)). In analyzing this standard, courts have also considered whether the proposed development was consistent with the area’s present use. See Labrecque v. Town of Salem, 128 N.H. 455, 459 (1986).

The Applicant has not provided any analysis of the potential environmental and ecological impact that may be caused by using the on-site pond for fire suppression purposes. Without that analysis, the Board lacks sufficient, credible information to perform this balancing test of loss to the Applicant versus gain to the public. The Applicant has also not explained how changing operations from those beneath the tree line is consistent with new operations above the tree line.

3. *The Values of Surrounding Properties Are Diminished.*

It is axiomatic that when a view or aesthetic quality changes from containing no structures above the tree line, or at least no industrial structures above the tree line, to containing industrial structures above the tree line that property values will decrease, especially those that are in closest proximity to those industrial structures. Another hit to property values is likely to result from noise from the structures because they are located above the tree line. Structures, even industrial structures, located beneath the tree line have any noises associated with them buffered by the trees. However, when a structure rises above the tree line, that buffering capacity goes away, allowing the noise to travel farther than it would if the structure were beneath the tree line.

With what the Applicant has produced on this point, the Applicant has not met its burden in proving with sufficient, credible evidence that the proposed structures would not diminish property values.

4. *Two Additional Legal Points.*

We respectfully request the Board to additionally consider the following.

First, the prior variance is entirely irrelevant. The Town of Wilton Zoning Ordinance Section 17.4 provides that any expired variance, such as this prior variance, is

“void.” Further, the legal requirements for obtaining a variance have changed substantially and materially since 1988 when the prior variance was obtained.

Second, the Town has supplemental variance criteria about which the Applicant has not provided any information. Town of Wilton Zoning Ordinance Section 10.6(a) requires that “The variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense”. Because the Applicant has not provided any information about this requirement, the Board has nothing upon which to base any determination as to whether the Application does or does not satisfy this requirement.

Conclusion

The Applicant has not provided sufficient, credible information upon which the Board can determine that the Applicant has satisfied all of the required standards to approve the requested variance. The Board has a strong record that supports denial. For all of the above reasons, I respectfully request that the Zoning Board of Adjustment deny the Application.

Very truly yours,



Amy Manzelli, Esq.
Licensed in New Hampshire
(603) 225-2585
manzelli@nhlandlaw.com

Cc: Client