



# Town of Wilton, NH Zoning Board of Adjustment

## Notice of Decision

The appeal of the Krol Family Revocable Trust of 2018 of a Notice of Violation from the Wilton Building Inspector has been granted in part. The Notice of Violation stated that the property at Lot H-80, 834 Mason Road:

1. has more than one driveway, in violation of Section G, “Driveway Regulations,” of the Town of Wilton Land Use Laws and Regulations;
2. is being used in such a way as to violate the performance standards set forth in sections 4.6.2 (“Noise”), 4.6.4 (“Smoke”), and 4.6.5 (“Discharges”) of the Wilton Zoning Ordinance; and
3. is the site of an unapproved home occupation per section 6.6.1 of the Wilton Zoning Ordinance.

The first point of the Notice of Violation involves the application and interpretation of the Town of Wilton Driveway Regulations, which are not a part of the Wilton Zoning Ordinance. The Zoning Board therefore has no jurisdiction to consider an appeal of that point, and it is unaffected by this decision.

The Zoning Board found that the second point of the Notice of Violation contains only a conclusory statement of violations of certain performance standards in the Ordinance, but does not offer any facts supporting the alleged violations, nor identify what activities on the property give rise to the violations and need to be modified in order to resolve them. The second point of the Notice is therefore vacated, without prejudice to the right of the Town to issue a future Notice of Violation which resolves these deficiencies.

The third point of the Notice of Violation appears to claim that the property is the site of an unapproved home occupation, but the Zoning Board found that this is not a meaningful classification. A use is either permitted or not permitted in a zoning district. Some otherwise non-permitted uses in the General Residence and Agricultural District may be permitted as Home Occupations by obtaining a special exception under Section 6.6.1, but section 6.6.1 is applicable only when determining whether to grant such a special exception. It has no relevance to the status of a use which is not the subject of an application for a special exception. If the intent of the third point of the Notice is to claim that a commercial use, not permitted in the district, is in existence on the property, then that is too much of a stretch for the Zoning Board to infer from the language of the Notice; and, in any case, the third point would still be subject to the same deficiency as the second point, that it does not identify what activities on the property constitute

the non-permitted use. The third point of the Notice is therefore vacated, without prejudice to the right of the Town to issue a future Notice of Violation specifically identifying a non-permitted commercial use of the property.

The selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing of this decision. A request for a rehearing must be filed in writing with the Zoning Board of Adjustment on or before Thursday, July 9, 2020, and must fully specify all grounds on which the rehearing is requested. (N.H. RSA 677:2)

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Faiman". The signature is fluid and cursive, with a long horizontal flourish at the end.

Neil Faiman, Chairperson  
Wilton ZBA

Case #6/9/20-2, decided Tuesday, June 9, 2020