



Darrin Brown Law Office, PLLC

633 Maple Street, Suite 5
Hopkinton, N.H. 03229

Tel: 603-228-7700 Fax: 1-866-903-1082

www.drblawoffice.com

email: Darrin@drblawoffice.com

Darrin R. Brown, Esq., N.H. Bar # 16827

Date: May 07, 2020

[via:hand-delivery / drop-box]

Zoning Board of Appeals
Town of Wilton
42 Main Street, P.O. Box 83
Wilton, N.H. 03086

RECEIVED
MAY 08 2020
TOWN OF WILTON, NH



Re: 834 Mason Road: Appeal of April 9, 2020 received Notice of Violation issued by Norma Ditri, Building Inspector/ Code Enforcement Officer

Dear Board,

Enclosed please find an appeal packet, inclusive of abutter list. I have also enclosed a check in the sum of \$160.00 to cover the \$100 filing fee plus the \$6.00 per sum for each of the ten (10) abutters.

Please contact me directly on my work mobile phone number at 603-545-2706 if there are any questions, concerns, or follow-up.

Thank you in advance for your kind consideration in this matter.

Very Truly Yours,

Darrin R. Brown, Esq. (Bar #: 16827)

DRB/sem

Cc: Client (Trustees)
Christopher Krol
File



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

General Information, Page 1 of 3

Property Information

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 H-80 Lot Size 16.8 acres

Street Address 834 Mason Road, Wilton, N.H. 03086

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 The Krol Family Revocable Trust of 2018; Frank J. Krol & Charlene P. Krol, Trustees

Mailing address 834 Mason Road

Mailing address _____

Town, State, ZIP Wilton, N.H. 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 Frank J. Krol Trustee Date 05/06/2020

Charlene P. Krol Trustee

(continued on the next page)

clerk use only	
Date and time received: _____	
Received by: _____	Amount paid: _____
Case #: _____	<input type="checkbox"/> Abutter list and labels included



Town of Wilton, NH
Application to the Zoning Board of Adjustment
 (Revised January 2011)
General Information, Page 2 of 3

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 _____

Mailing address _____

Mailing address _____

Town, State, ZIP _____

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 _____ Date 05/06/2020

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 Darrin R. Brown, Esq.

Mailing address 633 Maple Street, Suite 5

Mailing address _____

Town, State, ZIP Hopkinton, N.H. 03229

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 *Frank J. Lord Trustee* Date 05/06/2020

Charles P. Lord Trustee

(continued on the next page)



Town of Wilton, NH
Application to the Zoning Board of Adjustment
(Revised January 2011)
General Information, Page 3 of 3

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.

Daytime phone 603-545-2706 (M) Evening phone 603-545-2706 (M)

Work E-mail darrin@drblawoffice.com 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):

Appeal of building inspector's notice dated April 8, 2020



Darrin Brown Law Office, PLLC

633 Maple Street, Suite 5
Hopkinton, N.H. 03229

Tel: 603-228-7700 Fax: 1-866-903-1082

www.drblawoffice.com

email: Darrin@drblawoffice.com

Darrin R. Brown, Esq., N.H. Bar # 16827

Date: May 7, 2020

[via: hand-delivery / drop-box]

Zoning Board of Appeal
Town of Wilton
42 Main Street, P.O. Box 213
Wilton, N.H. 03086

Re: 834 Mason Road, Wilton: Response to April 8, 2020 dated letter to Frank & Charlene Krol

APPEAL OF ALLEGED VIOLATIONS IN APRIL 08, 2020 LETTER

Section A) ORDINANCES, REGULATIONS, PROVISIONS, SEPCIFICATIONS OR CONDITIONS WHICH ARE BEING VIOLATED

Appeal of incorrect “determination” A) **1. Land Use Laws Section G, Driveway regulations for having three driveways.**

Please see attached Exhibit A, Response Letter of December 04, 2019.

1. The Krols replaced the boulders blocking the eastern driveway entrance prior to the submission of the December 4, 2019 response letter. It isn't possible for that driveway to be used.
 - a. The Krols prepared a driveway permit application in order to re-open that driveway. Our office placed an RSA 91-A Right-to-Know information request on December 4th, re-iterated on December 10th, 2019.
 - i. Filing that permit application has been held in abeyance pending receipt of that lawfully requested information.
 - ii. The abeyance was predicated on reviewing information in the Town's file to ensure satisfactory application.
 - iii. It has now been six (6) months, and the Town has unlawfully failed to provide the information pursuant to that statutorily authorized request. (A request places a lawful obligation on the municipality to provide the requested information within five (5) days.)
 - b. The eastern driveway entrance has not been used at all during the interim; there is no driveway regulation violation.
 - c. The Krol's solely use one (1) driveway for the home.
 - d. What Ms. Ditre has alleged is a third driveway the Town previously accepted as an access road and not a driveway.
 - i. It does not go to the home.

- ii. It is an access road to the rear portion of the 16.80 acre parcel of land owned by the Trust.
- iii. When Mr. Shepardson previously held Ms. Ditri's role, he issued a similar notice of violation on March 28, 2016, shortly after the Krol's purchased the property.
 - 1. The Krols attended a Board meeting subsequent to Mr. Shepardson's letter. Also present, among others, were now select-board member Kermit Williams as well as resident Frank Edelblut. The conclusion then was that the access-way to the rear portion of the property acreage was determined to not be a driveway servicing a residence, instead it was concluded to be a pre-existing private access road serving a legitimate function and not needing of a driveway permit by these new owners (the Krols.)
 - 2. The access road was determined to not have any structural impediments that could possibly affect Mason Road negatively.
 - 3. The doctrine of municipal estoppel applies.
 - 4. And lastly, had the Town officials complied with the December 4, 2019 RSA 91-A Right to Know Request, said documentation would be appended to this document.

Appeal of incorrect "determination" A) **2. Wilton Zoning Ordinance Section 4.66 Performance Standards.**

Alleged "determination" 2.a. "4.6.2 Noise has become a nuisance to adjacent properties."

What noise? From what? This office specifically asked the Town for more particularized allegation – page 2 of Exhibit "A" – in order to timely address said allegation. The Town official Ditri has ignored, neglected, or refused to supply – in the intervening six (6) months – any evidence to substantiate that allegation.

Recent investigation by this office with a NIOSH-approved decibel meter at the street revealed the loudest noise from any truck or tractor started and operated in any usual manner on the farm property failed to crest 68 db. For comparison, an average conversation is 60-70 db.

Ms. Ditri's "determination" of noise nuisance is squarely contradicted by the NIOSH decibel meter.

Alleged "determination" 2.b. "4.6.4 Smoke reportedly degrades the quality of the air in the immediate vicinity."

The Town official Ditri has – once again – failed to supply any supporting evidence or documentation of this allegation.

The min-excavator, tracked skid-steer, and 1-ton truck that Frank Krol uses on the farm property, to maintain the farm property and remove snow, all have fully functioning OEM exhaust systems. They do not emit unlawful levels of exhaust particulate, period.

The dump truck that Chris Krol drives to and from work is not "used" on the property, meets all Federal and State motor carrier requirements as well as has a well-maintained and fully functional OEM exhaust system. It likewise does not emit unlawful levels of exhaust particulate, period.

The excavator that Chris Krol hauls on the trailer is likewise new, has well-maintained and fully-functional exhaust system. Moreover, it is only trailered and not “used” on the property. Logically then, there is no conceivable basis for a “determination” that piece of equipment “degrades” the air in the vicinity. Ms. Ditri’s “determinations” are without factual basis.

Moreover, RSA 125-C preempts local regulation of air quality through zoning ordinances.

Alleged “determination” 2.c. “4.6.5 Discharges: A variety of heavy equipment emits hazardous waste in the immediate vicinity.”

First; there is NO heavy equipment being operated on the property. To re-iterate, Frank Krol has a min-excavator and a skid-steer that he lawfully uses on property maintenance tasks on the property. Neither tractor constitutes “heavy equipment”. The midi-excavator that Chris Krol trailers home overnight is not used on the property. All three pieces are in very clean working order, and do not “discharge” any hazardous waste, as alleged.

Second: the commercial truck that Chris Krol lawfully drives to and from work meets all federal and state motor carrier laws, is in very clean mechanical condition, and likewise does not “discharge” any hazardous waste, as alleged.

Ms. Ditri’s “determinations” are without factual basis.

Appeal of incorrect “determination” A) 3. Wilton Zoning Ordinance Section 6.1 Permitted Uses in the General Residential Agricultural District.

3.a. “6.6 The following uses will only be allowed as special exceptions by the Zoning Board of Adjustment (ZBA) and site plan review and approved by the Planning Board.”

The above is simply a regurgitation of the text of 6.6. It does not allege a fact or assertion; thus, it does not need a reply. To the extent anyone may believe it alleges any particularized fact or allegation as against the Krol Trust, it is denied.

3.b. “6.6.1 Home Occupations: This property has no approval by ZBA or Planning Board for a Home Occupation.”

No home occupation is being conducted at the property. Here are the unassailable facts:

- Frank and Charlene Krol are retired. Frank putters on improving the property and pursuing his hobbies.
- Teri Krol works as a nurse – in Manchester, N.H.
- Chris Krol works as an excavation contractor – *anywhere but at the 834 Mason Road property.*
 - No “excavation” is done on the property.
 - No aggregates for use in Chris’ excavation business are stockpiled on the property for use on customer jobs elsewhere.
 - No fabrication is done on the property for customer jobs elsewhere.
 - No materials are stored on the property for customer jobs performed elsewhere.
 - No deliveries by package services or motor carriers are made to 834 Mason Road of materials or aggregates for use on customer jobs elsewhere.

- Chris does not ship any materials by package service or motor carrier from 834 Mason Road.
- Chris does not meet with clients /customers at 834 Mason Road.
- No retail sales are performed on the property. No wholesale sales are performed on the property.
- Chris Krol does not employ anyone, and thus there aren't even any employee parking at the 834 Mason Road property.

Summation of Appeal as to Section B) Corrective Action Required

1. The Krol's have exclusively used a single driveway since receipt of the November 2019 letter. The second driveway – the existing boulders were replaced blocking that drive. The access road was a pre-existing and permitted access when the Krols bought the property. It is not used, nor can it be used without damaging lawn, to access the existing driveway. It provides access to the rear of the Krol's property on infrequent occasions for property maintenance, recreation, and potential emergency access for (brush) fire and medical responders only.
2. There is no heavy construction equipment on the premises associated with a construction business.
 - a. There is no construction business activity being conducted on the property.
 - b. The two mini-call machines which retired Trustee Frank Krol owns are used for property maintenance and animal husbandry.
 - c. The 1-ton dump truck is for his personal use, property maintenance, and for snow-removal.
 - d. There are only a couple of transport trailers. Possession of those is likewise not prohibited in the GR&Ag District.
 - e. Driving a commercial vehicle to and from work, as Chris Krol does, is likewise neither (a) conducting a "home occupation"; nor (b) prohibited in the GR&Ag District. If it were, then no tradesmen such as plumbers, electricians, log-truck drivers, bread-route of Fed-Ex delivery drivers – could drive to and from home in their work vehicles, either, could they?
3. There is no noise, smoke, or discharges from heavy equipment to "clean-up or otherwise remedy".

Six months ago I put in a formal request pursuant to RSA 91-A and Part 1, Article 8 of the New Hampshire Constitution – for the following information:

834 Mason Road, property owned by the Krol Revocable Family Trust of 2018

For the period from 07/10/2015 to 12/10/2015

1. Any complaint(s) in their entirety to any Town Department, elected official, or employee by any person regarding the property use.
2. All email, text message, or other memoranda to or from any town elected official, employee regarding #2, above.

3. Any photographs, maps, diagrams, in any Town file regarding #2, above.
4. All emails sent or received by a Town employee regarding #2, above.
5. Any memorandum, notes, research by any town elected official or employee you contend support your allegation #1 of your letter dated November 5, 2019 alleging violation of "Section 4.6, Performance Standards"
6. Any case law, research, or legal memorandum regarding #6, above.
7. Any memorandum, notes, research by any town elected official or employee you contend support your allegation #2 of your letter dated November 5, 2019 alleging violation of "Section 6.1, Permitted Uses in the General Residential Agricultural District"
8. Any case law, research, or legal memorandum regarding #8, above.

If you deny any portion of this request, please cite the specific exemption used to justify the denial to make each record – or part thereof – available for inspection.

If you need additional time to acquire any portion of the documentary record requested above, please fulfill the portion of the document request that you can within five (5) business days and provide an estimate of the time needed to fulfill the remainder of the document request with your partial production. *See RSA 91-A:4.*

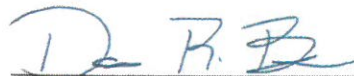
Per RSA 91-A, government records means "any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

See Exhibit "B". The statute imposes on the Town an affirmative obligation to provide this information within days. Failure to provide it in over six months is inexcusable. Moreover, it unfairly prejudices my client's ability to either respond, remedy, or defend against the Town officials alleged "determinations".

Conclusion & Appeal Request:

My client respectfully requests a full Hearing to present its case that the "determinations" made by Ms. Ditri in her April 8, 2020 "Notice of Violation Letter" should be declared void or unfounded.

Very Truly Yours,



Darrin R. Brown, Esq. (Bar #: 16827)

DRB/sem

Cc: Client; File

834 Mason Road – Abutter List

May 08, 2020

#	Address	Lot #	Owner of Record
1.	820 Mason Road	H-79	Dery Revocable Trust Agreement c/o Karola Dery, Trustee 820 Mason Road Wilton, N.H. 03086
2.	Stephens Road	H-83-5	Society for the Protection of N.H. Forests 54 Portsmouth Street Concord, N.H. 03301
3.	20 Stephens Road	H-83-2	PM & JA Clark Revocable Trust c/o Paul & Judith Clark, Trustees 20 Stephens Road Wilton, N.H. 03086
4.	44 Stephens Road	H-83-1-1	Stephen & Debra Yurcak 44 Stephens Road Wilton, N.H. 03086
5.	858 Mason Road	H-83-1-3	Thomas Beck & Tracey Cobb 858 Mason Road Wilton, N.H. 03086
6.	857 Mason Road	H-58	Lawrence D. Kimball 857 Mason Road Wilton, N.H. 03086
7.	843 Mason Road	H-58-1	Wesley & Vien Lawrence 843 Mason Road Wilton, NH 03086
8.	835 Mason Road	H-58-2	Kenneth & Betsey Davis 835 Mason Road Wilton, N.H. 03086
9.	829 Mason Road	H-58-3	Dawn Ohlund 829 Mason Road Wilton, NH 03086
10.	811 Mason Road	H-59	Paula Burke 811 Mason Road Wilton, NH 03086

- *Two sets of adhesive mailing labels 1 1/2" x 3 1/4": These will be sent under separate cover the beginning of the week of May 11, 2020. Due to the business disruption and work adaptations necessitated by the Covid-19 emergency orders, this office is temporarily out of this supply and awaiting replenishment. Thank you.*



Darrin Brown Law Office, PLLC

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www.drblawoffice.com

email: Darrin@drblawoffice.com

Darrin R. Brown, Esq., N.H. Bar # 16827

A

Date: December 4, 2019

[via: Priority Mail]

Norma Ditri
Building Inspector/Code Enforcement Officer
Town of Wilton
42 Main Street, P.O. Box 213
Wilton, N.H. 03086

Re: 834 Mason Road, Wilton: Your November 5, 2019 Letter to Frank & Charlene Krol

Dear Ms. Ditri,

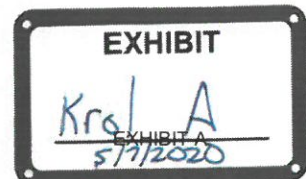
I have been recently retained to represent the Krol Family Revocable Trust of 2018 in regards to your letter dated November 5, 2019.

I write to you seeking a mutually agreeable resolution of the three alleged Town of Wilton Zoning Ordinance violations. In order to do so, we will need to exchange further documentation. I have not received an email with the photographs you stated you have in the Town's file, as per our agreement on December 5, 2019. Thus, accompanying this letter is a RSA 91-A request, in a more formalized format.

A. Response to November 5, 2019 letter's allegation of violation #3:
(Land Use Laws Section G, Driveway Regulations)

- I have instructed my clients to close and cease use of the second driveway downhill from the house's main driveway. It is my understanding that has already occurred.
- I have instructed my clients to complete a driveway permit application to be submitted to the Town to formally permit a second drive in that location.
 - In the interest of life and safety, a second driveway in that location is desirable and justifiable.
 - My clients have articulated a life-safety stemming from inadequate line-of-sight when vehicles coming down Mason Road are travelling in excess of the posted speed limit. I have reviewed the May 18, 2015 Stipulation concluding the case bearing docket # 458-2015-CV-00107

My Trust client agrees to temporary cessation of use of that second driveway until the Town approves the driveway permit application eliminates that Wilton Zoning Ordinance Violation.



It is my understanding the Town has already ceded, and recognized, that what is an access way to the back property - separate and distinct from the two driveways serving the residential area - is not a *third* driveway. If you are in possession of contradictory information, please produce it forthwith so I can advise my client and respond appropriately to the Town's concern(s) related thereto. Thank you.

**B. Response to November 5, 2019 letter's allegation of violation #1:
(Section 4.6 Performance Standards)**

- Your letter is devoid of description of how the property owner is allegedly exceeding its obligation to minimize impacts to neighboring properties from emissions of smoke, noise, odors, vibrations, discharges or storm water run-off and thereby not in compliance with State and Federal regulations.
- Your letter is devoid of reference to any evidence thereof, as well.

My Trust client respectfully demands a bill of particulars supporting the Town's allegations, or a formal written rescission of this unsupported allegation.

**C. Response to November 5, 2019 letters' allegation of violation #2:
(Section 6.1 Permitted Uses in the General Residential Agricultural District)**

"Cease operating a business at your residence."

"Remove all construction equipment and vehicles within thirty."

i. "Remove all construction equipment and vehicles within thirty."

In order to squarely address the alleged violation #2, first I must address your improper inclusion of, and reliance upon, the Milford District Court Stipulation. It is not legally enforceable against someone not party to that litigation.

1. That Stipulation is exclusive to the Town of Wilton and the Shattucks.
2. My client was never a party to that litigation.
3. The Stipulation was binding on those Parties only.
4. Nothing in it purports to be a covenant running with the land.
5. The Stipulation does not circumscribe the rights of my client.

It is evident that the Shattucks, in order to buy peace and settle a controversy, agreed to exceed any existing regulation on their right to possess heavy equipment on their property. At the time, their house was under purchase agreement. The Town's triumph was illusory. The Shattuck's concession was hollow.

But the Stipulation with the Shattucks is not binding on a subsequent owner of the property. The Town has no legal right to require this property owner to forego their right to have (within reason) any number of pieces of heavy equipment on their property.

ii. "Cease operating a business at your residence."

Kris Krol Excavating is not a business "operating at" my client's residence. A hair-dressing salon can be "operated at" the business owner's residence. Clients and product vendors can

come and go from the business owner's residence. Employees can perform services at the owner's residence on customers. A bookkeeping service can be "operated at" the business owner's residence. Clients and office-supply vendors can come and go from the business owner's residence. Employees can perform services at the owner's residence on customers. A machine shop can be "operated at" the business owner's residence. Clients, vendors, shippers and receivers – all can come and go from the business owner's residence. Employees can make parts for customers at the owner's residence on customers.

An excavating company, by contrast, is not "operated at" the business owner's residence. Is it possible for Kris Krol to excavate a foundation for a somebody else's house at the 834 Mason Road residence? No, that is an impossibility. Can Kris Krol excavate a pipeline that serves a new development for a gas company at the 834 Mason Road residence? No, that likewise is an impossibility. The bottom line is, Kris Krol Excavation does not "operate at" 834 Mason Road. It "operates" elsewhere.

An owner-operator having heavy equipment, even multiple pieces, at one's residence, that is used to perform excavation services elsewhere, anywhere other than 834 Mason Road, is not a violation of Wilton Zoning Ordinance 6.1. Moreover, that same equipment is useful on the property – located in the General Residence and Agricultural District – for residential maintenance and agricultural uses by the property owners. It is not "operating a business at the residence."

Parking a heavy truck, even multiple trucks, owned by an owner-operator - at his residence - that is used to perform excavation services elsewhere, anywhere other than 834 Mason Road, is not a violation of Wilton Zoning Ordinance 6.1. It is not "operating a business at the residence."

Driving away to work in the morning, driving home in the afternoon, and parking the heavy truck and equipment that he used to perform excavation services elsewhere, anywhere other than 834 Mason Road, outside the residence where Mr. Krol lays his head overnight, is not a violation of Wilton Zoning Ordinance 6.1. It is not "operating a business at the residence."

Nor is it a violation of Section 5.3.1, if that is what the Town will next infer. Virtually every tradesman, tow truck operator, bread-delivery route driver, etc., drives their owner-operated business vehicles home to park them overnight, every night. Those businesses are not "home occupations" subject regulation under Section 5.3.1. Mr. Krol's performance of excavation services elsewhere each work-day, then driving his owner-operated vehicles home to park them overnight likewise is not a "home-occupation".

The ineluctable conclusion is the Town of Wilton does not have legal grounds to require Mr. Krol to remove any piece of construction equipment from the 834 Mason Road property, let alone all of them.

Conclusion

At this time I am unaware of any legal authority supporting the Town's demands that my Trust client remove equipment from the 834 Mason Road property. I am unaware of any legal

authority concluding that Kris Krol Excavation's business model is prohibitable under Wilton Zoning Ordinance Sections 6.1, 5.3.1, or any other regulatory power.

I respectfully request you confer within your Town offices and/or with town counsel and then let me know if there are factors existing which undermine the foregoing analysis. If so, please promptly provide me with all case law supporting any contrary legal position.

If the Town can provide copies of legally binding authority backing the demands made in the November 5, 2019 letter, I will share those reference materials and legal memoranda with my Trust client, along with the materials responsive to the accompanying RSA 91-A request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "D. R. B.", written over a horizontal line.

Darrin R. Brown, Esq. (Bar #: 16827)

DRB/sem

Cc: Client
File



Town of Wilton

Building Department

42 Main Street • P.O. Box 213 • Wilton, NH 03086

Phone: (603) 654-3960 • Fax: (603) 654-6663

November 5, 2019

Frank and Charlene Krol
834 Mason Road
Wilton, NH 03086

Subject: Re-opening of prohibited driveways and commercial use of residential property.

Dear Mr. & Mrs. Krol:

As you are aware, you are in violation of a court order from Milford District Court order dated May 18, 2015 stipulates specific actions to be taken. A copy is attached to this letter.

You are in violation of Town of Wilton Zoning Ordinance as follows:

1. Section 4.6 Performance Standards
2. Section 6.1 Permitted Uses in the General Residential Agricultural District.
3. Land Use Laws Section G, Driveway Regulations

On March 28, 2016 you received a letter from the Building Inspector outlining the above violations of Town Zoning and District Court Order.

We have received many complaints regarding your use of your property. It appears you continue to use up to 3 driveways and have heavy equipment in and out of your driveways.

Violation of Zoning Ordinance is a misdemeanor, for which you may be subject to civil penalty of \$275 for the first offense and \$550 for subsequent offenses for each day the violation continues after written notification, in accordance with state statute RSA 676:17.

Upon receipt of this letter, you will be allowed thirty days from receipt to:

- Cease operating a business at your residence.
- Close off two of the three driveways and reconstruct the stone wall where it originally existed.
- Remove all construction equipment and vehicles within thirty.

If you do not comply with this order, the Select Board will issue a formal Cease and Desist Order enforceable under the provisions of RSA 676:17-a.

Sincerely,

Norma Ditri, Building Inspector/Code Enforcement Officer

Encl: Wilton Zoning Ordinance, Wilton Land Use Laws, Milford District Court Order, Letter from Building Inspector June 20, 2014 and March 28, 2016.

Cc: Wilton Select Board
Town Administrator



Town Of Wilton
Building Department
42 Main Street • P.O. Box 83 • Wilton, NH 03086
Phone: (603) 654-3960 • Fax: (603) 654-6663

COPY

March 28, 2016

Frank Krol & Charlene Krol
834 Mason Road
Wilton, NH 03086

Subject: Re-opening of prohibited driveway

Dear Mr. & Mrs. Krol,

This letter is to inform you that the Town of Wilton Zoning Ordinance, Section G, 3.0, a. 13., limits the number of driveway entrances per lot to one (1) unless otherwise permitted by the Planning Board.

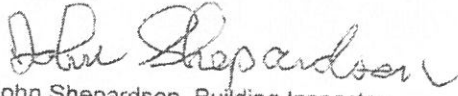
You have recently reopened a driveway near the west boundary of your lot. This driveway is the subject of a stipulation signed by the previous owner of your property which states in Item 1., "The 2nd and 3rd driveways have been closed off and shall not be reopened without appropriate permits from the Town of Wilton." The stipulation was approved and so ordered by the Milford District Court on May 18, 2015. A copy of the signed stipulation is attached to this letter.

You are in violation of the court order. To avoid further prosecution you must immediately cease use of the driveway. You must permanently close the driveway by reconstructing the stone wall that originally existed at the location of the driveway entrance within thirty (30) days of receipt of this order.

If you do not comply with this order, the Selectmen may issue a formal Cease and Desist Order, enforceable under the provisions of RSA 676:17-a. It is in the best interests of both the town and yourself to avoid this procedure.

Your cooperation in this matter will be greatly appreciated.

Sincerely,


John Shepardson, Building Inspector

Encl: 1

cc: Wilton Selectmen, Town Attorney



**Town Of Wilton
Building Department**

42 Main Street • P.O. Box 83 • Wilton, NH 03086
Phone: (603) 654-3960 • Fax: (603) 654-6663

COPY

June 20, 2014

Melissa Shattuck
834 Mason Road
Wilton, NH 03086

Dear Ms. Shattuck,

A second driveway has been recently constructed at your property at 834 Mason Road. It appears to be primarily used by Mr. Shattuck's business equipment. This driveway violates the Wilton Zoning Ordinance, Section G, which is the Driveway Entrance Regulation. This regulation requires a permit for the construction of any driveway. Since your business is constructing driveways, this requirement is assumed to be known to you.

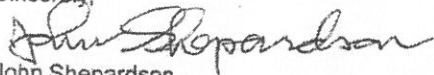
A second requirement in the regulation is that the maximum number of driveway entrances allowed per lot is one (1) unless otherwise permitted by the Planning Board.

In addition to the violations of the Zoning Ordinance, the modifications to your property associated with this driveway appear to violate wetlands protection regulations.

You are directed to immediately cease any vehicular use of this driveway and to construct a barrier at the entrance to the driveway to prevent such use. You may not resume use of the driveway until you have approval from the Planning Board and any questions regarding wetlands incursion have been resolved.

Please contact me at my office phone, 654.3960, if you need any more information relating to this request.

Sincerely,


John Shepardson
Building Inspector, Code Enforcement Officer

cc: Selectmen, Conservation Commission

encl: Zoning Ordinance, Section G



Darrin Brown Law Office, PLLC

633 Maple Street, Suite 5
Hopkinton, N.H. 03229

Tel: 603-228-7700 Fax: 1-866-903-1082

www.drblawoffice.com

email: Darrin@drblawoffice.com

Darrin R. Brown, Esq., N.H. Bar # 16827

Date: December 10, 2019

[via: Priority Mail]

Norma Ditri, Building Inspector
Custodian of the Records
42 Main Street, P.O. Box 83
Wilton, N.H., 03086

B

Re: RSA 91-A and Part 1, Article 8 of the New Hampshire Constitution Request:

Dear Ms. Ditri,

Pursuant to New Hampshire Right to Know Law, RSA Ch. 91-A, et seq., I am requesting public access, within 5 business days, to the governmental records reasonably described as follows:

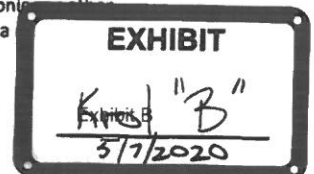
1. All documents and document records in any form, including but not limited to, printed documents, electronic documents, emails, text record logs, land-line and cellular telephone logs, or any other form of document record regarding:

834 Mason Road, property owned by the Krol Revocable Family Trust of 2018

For the period from 07/10/2015 to 12/10/2015

2. Any complaint(s) in their entirety to any Town Department, elected official, or employee by any person regarding the property use.
3. All email, text message, or other memoranda to or from any town elected official, employee regarding #2, above.
4. Any photographs, maps, diagrams, in any Town file regarding #2, above.
5. All emails sent or received by a Town employee regarding #2, above.
6. Any memorandum, notes, research by any town elected official or employee you contend support your allegation #1 of your letter dated November 5, 2019 alleging violation of "Section 4.6, Performance Standards"
7. Any case law, research, or legal memorandum regarding #6, above.
8. Any memorandum, notes, research by any town elected official or employee you contend support your allegation #2 of your letter dated November 5, 2019 alleging violation of "Section 6.1, Permitted Uses in the General Residential Agricultural District"
9. Any case law, research, or legal memorandum regarding #8, above.

Per RSA 91-A, government records means "any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."



If you deny any portion of this request, please cite the specific exemption used to justify the denial to make each record – or part thereof – available for inspection.

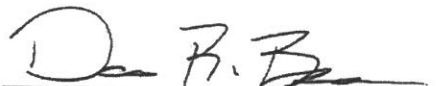
If you need additional time to acquire any portion of the documentary record requested above, please fulfill the portion of the document request that you can within five (5) business days and provide an estimate of the time needed to fulfill the remainder of the document request with your partial production. See **RSA 91-A:4**.

Please email these records to me directly at darrin@drblawoffice.com as .pdf, .jpg, .bmp, .docx, etc., documents attached to email. This production method will minimize costs and maximize efficiency for both our offices.

For any over-size documents such as maps, plans, or bound materials not transmissible as email attachments, please schedule a date/time with my office for in-person inspection, photographic reproduction, and review. If any costs are to exceed \$20.00 for actual reproduction costs, I will tender payment for an itemized invoice reflecting the breakdown of the copying or reproduction costs.

Thank you for your lawful attention and cooperation in this matter. Should you have any questions please do not hesitate to contact this office.

Very Truly Yours,


Darrin R. Brown, Esq. (Bar #: 16827)

DRB/sem

Cc: Client
File

Per RSA 91-A, government records means "any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

Darrin R. Brown

Subject: 834 Mason Road (Krol)
Date: Thursday, December 5, 2019 at 2:30:27 PM Eastern Standard Time
From: darrin@drblawoffice.com <darrin@drblawoffice.com>
To: NDitri@Wiltonnh.org <NDitri@Wiltonnh.org>
CC: Suzanne Morris <paralegal@drblawoffice.com>
Category: 01 CLIO Filed

Hi Norma,

It was a pleasure speaking with you on the phone a moment ago. As per our discussion, you mentioned you have photographs, and I asked if you could send copies to me as email attachments. It will really help me visualize and complete advising my clients while also helping me finish the response for your office. Any other documents you feel may be helpful to emphasize the Town's legal and/or factual underpinnings, feel free to send also (at your discretion), but the pics are really what (I think) will be helpful.

It was a pleasure speaking with you, I hope you have a great weekend, and I look forward to resuming with you next week.

Sincerely,

Darrin R. Brown, Esq.
633 Maple Street, Suite 5
Hopkinton, N.H. 03229
T: 603-228-7700
C: 603-545-2706
Darrin@drblawoffice.com
www.drblawoffice.com

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<https://reg.usps.com/xsell?app=U:psTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st>

Tracking Number: 9405503699300190675445

Remove X

Your item has been delivered and is available at a PO Box at 9:36 am on December 12, 2019 in WILTON, NH 03086.

USPS Premium Tracking™ Available v

Delivered

December 12, 2019 at 9:36 am
Delivered, PO Box
WILTON, NH 03086

*12 business days = 12/30/19 (subtract 12/25 + 12/26 for legal holidays)
Monday*

Feedback

- Tracking History v
- Premium Tracking v
- Product Information v

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

Darrin R. Brown

Subject: Re: RSA 91-A Request
Date: Monday, December 16, 2019 at 3:57:19 PM Eastern Standard Time
From: Norma Ditri <nditri@wiltonnh.gov>
To: darrin@drblawoffice.com <darrin@drblawoffice.com>
Category: 01 CLIO Filed

You're welcome.
Norma

Sent from my iPhone

On Dec 16, 2019, at 3:47 PM, "darrin@drblawoffice.com" <darrin@drblawoffice.com> wrote:

Good Afternoon,

If they only have you there 3 days/week, that sounds reasonable. No worries. Thank you for letting me know.

Regards,
Darrin R. Brown, Esq.
633 Maple Street, Suite 5
Hopkinton, N.H. 03229
T: 603-228-7700
C: 603-545-2706
Darrin@drblawoffice.com
www.drblawoffice.com

From: Norma Ditri <nditri@wiltonnh.gov>
Date: Monday, December 16, 2019 at 3:44 PM
To: "Darrin Brown Law Group, PLLC" <darrin@drblawoffice.com>
Cc: "jpasay@dtclawyers.com" <jpasay@dtclawyers.com>, Michele Decoteau <mdecoteau@wiltonnh.gov>, Paul Branscombe <wiltonta@wiltonnh.gov>, Jane Farrell <jfarrell@wiltonnh.gov>
Subject: RSA 91-A Request

Dear Mr. Brown,
I am in receipt of your RSA 91-A and Part 1, Article 8 of the NH Constitution Request regarding property at 834 Mason Road, Wilton, NH.
The package containing three letters from you was received on Thursday Dec. 12, 2019. I work three days per week.
In accordance with the Town of Wilton's Policy for Request for Governmental Documents and Records I acknowledge the request and will grant said request within ten (10) business days.

Please confirm your receipt of this email.

Sincerely,

Darrin R. Brown

Subject: RE: RSA 91-A Request
Date: Tuesday, December 31, 2019 at 4:57:36 PM Eastern Standard Time
From: Norma Ditri <nditri@wiltonnh.gov>
To: darrin@drblawoffice.com <darrin@drblawoffice.com>
CC: Paul Branscombe <wiltonta@wiltonnh.gov>, Michele Decoteau <mdecoteau@wiltonnh.gov>, Jane Farrell <jfarrell@wiltonnh.gov>, Justin L. Pasay <jpasay@dtclawyers.com>
Attachments: Krol 1.JPG, Krol 2.JPG, Krol 3.JPG, Krol 4.JPG, Krol 6.JPG, Krol 7.JPG, Krol 8.JPG, Krol 9.JPG, Krol 12.JPG, Krol 13.JPG, Krol 14.JPG, Krol 16.JPG, Krol 20.jpg, Krol 21.jpg

Dear Mr. Brown,

By my count, the 10 day window ends today. I am writing to ask for an extension to fulfill your 91-A request. Would Friday January 10, 2020 be acceptable to you? This would give us seven more days to prepare. Our IT Support company is in the process of searching for e-mails during the time frame requested. This process alone will take several more days.

Attached are photographs of the property at 834 Mason Road.

Thank you for your consideration.

Norma Ditri

From: darrin@drblawoffice.com <darrin@drblawoffice.com>
Sent: Monday, December 16, 2019 3:47 PM
To: Norma Ditri <nditri@wiltonnh.gov>
Cc: jpasay@dtclawyers.com; Michele Decoteau <mdecoteau@wiltonnh.gov>; Paul Branscombe <wiltonta@wiltonnh.gov>; Jane Farrell <jfarrell@wiltonnh.gov>
Subject: Re: RSA 91-A Request

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Regards,
Darrin R. Brown, Esq.
633 Maple Street, Suite 5
Hopkinton, N.H. 03229
T: 603-228-7700
C: 603-545-2706
Darrin@drblawoffice.com
www.drblawoffice.com

From: Norma Ditri <nditri@wiltonnh.gov>
Date: Monday, December 16, 2019 at 3:44 PM

To: "Darrin Brown Law Group, PLLC" <darrin@drblawoffice.com>
Cc: "jpasay@dtclawyers.com" <jpasay@dtclawyers.com>, Michele Decoteau
<mdecoteau@wiltonnh.gov>, Paul Branscombe <wiltonta@wiltonnh.gov>, Jane Farrell
<jfarrell@wiltonnh.gov>
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Please confirm your receipt of this email.

Sincerely,
Norma Ditri

--

Norma Ditri
Building Inspector
Town of Wilton NH
603-654-3960 office
603-801-1640 cell

Hours: M&T 9-4 TH 11-6 PM

Darrin R. Brown

Subject: RE: RSA 91-A Request
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To: darrin@drblawoffice.com <darrin@drblawoffice.com>
CC: Paul Branscombe <wiltonta@wiltonnh.gov>, Michele Decoteau <mdecoteau@wiltonnh.gov>, Jane Farrell <jfarrell@wiltonnh.gov>, Justin L. Pasay <jpasay@dtclawyers.com>
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1/10/2020
Follow-up notes.

Dear Mr. Brown,
By my count, the 10 day window ends today. I am writing to ask for an extension to fulfill your 91-A request. Would Friday January 10, 2020 be acceptable to you? This would give us seven more days to prepare. Our IT Support company is in the process of searching for e-mails during the time frame requested. This process alone will take several more days.

Attached are photographs of the property at 834 Mason Road.

Thank you for your consideration.

Norma Ditri

Missing: Krol 5. JPG
Krol 10. JPG
Krol 11. JPG
Krol 15. JPG
Krol 17. JPG
Krol 18. JPG
Krol 19. JPG

From: darrin@drblawoffice.com <darrin@drblawoffice.com>
Sent: Monday, December 16, 2019 3:47 PM
To: Norma Ditri <nditri@wiltonnh.gov>
Cc: jpasay@dtclawyers.com; Michele Decoteau <mdecoteau@wiltonnh.gov>; Paul Branscombe <wiltonta@wiltonnh.gov>; Jane Farrell <jfarrell@wiltonnh.gov>
Subject: Re: RSA 91-A Request

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Regards,
Darrin R. Brown, Esq.
633 Maple Street, Suite 5
Hopkinton, N.H. 03229
T: 603-228-7700
C: 603-545-2706
Darrin@drblawoffice.com
www.drblawoffice.com

From: Norma Ditri <nditri@wiltonnh.gov>
Date: Monday, December 16, 2019 at 3:44 PM

To: "Darrin Brown Law Group, PLLC" <darrin@drblawoffice.com>
Cc: "jpasay@dtclawyers.com" <jpasay@dtclawyers.com>, Michele Decoteau
<mdecoteau@wiltonnh.gov>, Paul Branscombe <wiltonta@wiltonnh.gov>, Jane Farrell
<jfarrell@wiltonnh.gov>
Subject: RSA 91-A Request

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Please confirm your receipt of this email.

Sincerely,
Norma Ditri

--

Norma Ditri
Building Inspector
Town of Wilton NH
603-654-3960 office
603-801-1640 cell

Hours: M&T 9-4 TH 11-6 PM



Darrin Brown Law Office, PLLC

633 Maple Street, Suite 5
Hopkinton, N.H. 03229

Tel: 603-228-7700 Fax: 1-866-903-1082

www.drblawoffice.com

email: Darrin@drblawoffice.com

Darrin R. Brown, Esq., N.H. Bar # 16827

Date: December 10, 2019

[via: Priority Mail]

Norma Ditri, Building Inspector
Custodian of the Records
42 Main Street, P.O. Box 83
Wilton, N.H., 03086

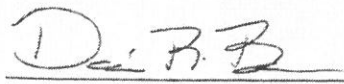
Re: Unfulfilled RSA 91-A request made Thursday, November 5, 2019

Dear Ms. Ditri,

1. State law does not require incantation or invocation of the phrase "Right-to-Know" or the "RSA 91-A" phrase to constitute a valid Rule 91-A request. If the request can reasonably be construed as a request for information not confidential in a government file for a legitimate purpose, that is sufficient.
2. Nor does State law require a Right-to-Know request to be in writing.
 - a. But I did follow up on our Thursday November 5, 2019 telephone conversation wherein I requested copies of the photographs you stated are in the file purporting to depict the current property owner's having impermissible construction equipment on the property, with a written email.
 - b. I have attached a copy of my email sent to you Thursday December 5, 2019 at 2:30 PM after our telephone conversation as a reference.

To remove any potential ambiguity, I am sending an accompanying formal and expanded RSA 91-A request. Thank you in advance for your department's anticipate compliance with the statute.

Very Truly Yours,


Darrin R. Brown, Esq. (Bar #: 16827)

DRB/sem

Cc: Client
File

Darrin R. Brown

Subject: 834 Mason Road (Krol)
Date: Thursday, December 5, 2019 at 2:30:27 PM Eastern Standard Time
From: darrin@drblawoffice.com <darrin@drblawoffice.com>
To: NDitri@Wiltonnh.org <NDitri@Wiltonnh.org>
CC: Suzanne Morris <paralegal@drblawoffice.com>
Category: 01 CLIO Filed

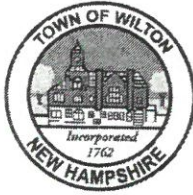
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It was a pleasure speaking with you, I hope you have a great weekend, and I look forward to resuming with you next week.

Sincerely,

Darrin R. Brown, Esq.
633 Maple Street, Suite 5
Hopkinton, N.H. 03229
T: 603-228-7700
C: 603-545-2706
Darrin@drblawoffice.com
www.drblawoffice.com



Town of Wilton

Building Department

42 Main Street • P.O. Box 213 • Wilton, NH 03086

Phone: (603) 654-3960 • Fax: (603) 654-6663

COPY

NOTICE OF VIOLATION

April 8, 2020

SENT VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED AND FIRST-CLASS MAIL

Frank and Charlene Krol
834 Mason Road
Wilton, NH 03086

KROL FAMILY REVOCABLE TRUST

RE: 834 Mason Road, Wilton NH Map H Lot 80

Dear Mr. & Mrs. Krol,

Pursuant to New Hampshire RSA 676:17 and the Town of Wilton's Zoning Ordinance, Sections 4 (Performance Standards) and 6 (Permitted Uses) or, pursuant to Wilton Land Use Laws Section G Driveway Regulations, you are hereby notified that you are in violation of the above referenced ordinance regarding the Property.

A) ORDINANCES, REGULATIONS, PROVISIONS, SPECIFICATIONS OR CONDITIONS WHICH ARE BEING VIOLATED

It has been determined that you are in violation of:

1. Land Use Laws Section G, Driveway regulations for having three driveways.
 - a. G 4.0 b: No driveway permit has been submitted to Town of Wilton Director of Public Works or the Planning Board.
 - b. G 4.0 c: No inspection of driveway(s) was conducted by Wilton DPW.
 - c. G 4.0 g: Exceed the maximum number of driveway entrances. Maximum number is one unless otherwise permitted by the Planning Board.
 - d. G 5.0 Driveway Entrance Requirements
2. Wilton Zoning Ordinance Section 4.6 Performance Standards
 - a. 4.6.2 Noise has become a nuisance to adjacent properties.
 - b. 4.6.4 Smoke reportedly degrades the quality of the air in the immediate vicinity.
 - c. 4.6.5 Discharges: A variety of heavy equipment emits hazardous waste in the immediate vicinity.
3. Wilton Zoning Ordinance Section 6.1 Permitted Uses in the General Residential Agricultural District.
 - a. 6.6 The following uses will only be allowed as special exceptions by the Zoning Board of Adjustment (ZBA) and site plan review and approved by the Planning Board.
 - b. 6.6.1 Home Occupations: This property has no approval by ZBA or Planning Board for a Home Occupation.

COPY

B) CORRECTIVE ACTION REQUIRED

You are hereby ordered to:

1. Immediately cease use of two of the three driveways by putting up permanent barriers to entry on two.
2. Remove all heavy construction equipment, trucks, trailers, and such that are associated with a Construction Business and;
3. Clean up or otherwise remedy the violation[s] described above – Take all necessary steps to prevent noise, smoke, & discharges from heavy equipment which impact the neighborhood.

If you have any questions regarding your obligation to perform the above corrective actions, please contact me at (603) 654 - 3960 or nditri@wiltonnh.gov

C) TIME FRAME TO COMPLETE CORRECTIVE ACTION

You must complete the above-referenced corrective action no later than Tuesday April 14, 2020.

Failure to comply with the above orders within that time frame will result in the Town of Wilton pursuing all legal and equitable remedies available against you pursuant to RSA 676:15 and RSA 676:17, to include injunctive relief in Superior Court. In the event that you fail to take the above corrective actions, this Notice of Violation constitutes notice that the Town will pursue fines in the form of civil penalties for **each day** that the property remains in violation after Tuesday April 14, 2020 pursuant to RSA 676:17, I. Furthermore, the Town will seek reimbursement of its costs and reasonable attorney's fees incurred by the Town resulting from the enforcement of this matter through the courts pursuant to RSA 676:17, II. RSA 676:17, I and II, state as follows:

I. Any person who violates any of the provisions of ... any local ordinance, code, ... or any provision or specification of any ... any local ... land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty not to exceed \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier. (Emphasis added).

II. In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or regulation adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses. (Emphasis added).

COPY

D) CONTINUING VIOLATIONS

Should the above referenced violation(s) continue to exist on the Property after April 14, 2020, **each day thereafter will constitute a separate zoning violation, for which this Notice of Violation makes you aware. Pursuant to RSA 676:17 I, you will be subject to a civil penalty of \$550 for each additional day that the subject violation remains on the property.**

This Violation Notice constitutes notice to you of each subsequent violation and the potential for significant civil penalties therefor.

If you have any questions regarding this **NOTICE OF VIOLATION** you should promptly contact me at (603) 654 - 3960.

TOWN OF WILTON



Norma Ditri

Building Inspector/Code Enforcement Officer

cc: Select Board

Assessor

Town Administrator