



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



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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)



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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.*

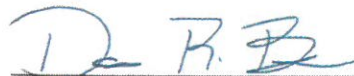
Per RSA 91-A, government records means "any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written 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