



**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 Lot A-47-1 Lot Size 14.5 acres

Street Address 74 Stagecoach Road

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 Dawn Ryan

Mailing address 74 Stagecoach Road

Mailing address \_\_\_\_\_

Town, State, ZIP Wilton, NH 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 *Dawn Ryan* Date October 17, 2020

(continued on the next page)

**clerk use only**

Date and time received: \_\_\_\_\_

Received by: \_\_\_\_\_ Amount paid: \_\_\_\_\_

Case #: \_\_\_\_\_ ☐ Abutter list and labels included



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**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 *David K. Pinsonneault* Date October 27, 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 Atty. David K. Pinsonneault

Mailing address Winer and Bennett, LLP

Mailing address 111 Concord Street

Town, State, ZIP Nashua, NH 03064

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 *David K. Pinsonneault* Date October 27, 2020

(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 603-493-6304 (mobile) ☒ Evening phone 603-484-4623 (Office Direct Dial)

☒ Work E-mail dpinonneault@winerbennett.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):

See accompanying Appeal of an Administrative Decision form and its Appendix and Exhibits

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**Town of Wilton, NH**  
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**Appeal of an Administrative Decision**

If any Town official or board has denied you permission to do something, refused to issue you a permit or other approval, or has taken enforcement action against you, and the decision or action is based on what you believe to be an incorrect interpretation or application of the terms of the Wilton Zoning Ordinance, you may appeal that decision to the Zoning Board.

The Zoning Board does not have any authority to review a discretionary decision to commence formal or informal enforcement proceedings, or a decision based on any law or regulation other than the Wilton Zoning Ordinance.

If you wish to appeal an administrative decision to grant a permit or other approval for the use of property not belonging to you, please use the *Third-Party Appeal of Administrative Decision* Form.

For more information, please refer to RSA 674:33, I(a) and RSA 676:5.

**An appeal of an administrative decision must be filed within 30 days of when the decision was made.**

You must attach a copy of the decision notice with this appeal. If the decision was made by a board, you should also attach a copy of the minutes of the meeting at which the decision was made. **The Zoning Board cannot review an informal or verbal decision.**

What is the decision that you are appealing? \_\_\_\_\_

October 1, 2020 denial of a building permit to construct a 12' x 42' shed to be attached to an existing barn.

What Town official or board made the decision? Norma Ditri, Building Inspector

What sections of the Zoning Ordinance was the decision based on? 14.3.3

Why do you believe that the decision was incorrect? \_\_\_\_\_

See attached Appendix and exhibits

\_\_\_\_\_  
\_\_\_\_\_

## APPENDIX TO DAWN RYAN'S APPEAL OF AN ADMINISTRATIVE DECISION

### Summary

Reference is made to attached Exhibit 1. The Building Inspector's decision is based upon an erroneous characterization of Ms. Ryan's barn as being a non-conforming structure because it is purportedly located 190 feet from open water (a man-made water impoundment measuring approximately 100' x 175'). The Building Inspector's decision presumes that the applicable setback under §14.3.3 of the Town of Wilton Zoning Ordinance ("ZO") is 200 feet.

This decision is erroneous because:

1. The 200-foot setback in ZO §14.3.3 applies only to perennial streams (a defined term) and open water (which is not defined in the ordinance);
2. The 150-foot setback in ZO §14.3.3 applies to a water body (defined to include a pond);
3. The impoundment is not "open water" within the meaning of ZO §14.3.3;
4. Assuming without admitting that ZO §14.3.3 applies to the impoundment, then the impoundment can, at most, be deemed (as the Building Inspector labelled it) to be within the definition of a water body and therefore the applicable setback is 150 feet; and
5. The barn is more than 150 feet away from the "pond".

All told, the barn is not a non-conforming structure and the building permit should be issued.

### Pertinent Zoning Ordinance Articles and Definitions

**Setbacks.** No residence, building, structure, feed lot, outflow from building drainage, septic system or its containment area shall be located less than two hundred (200) feet from open water and perennial streams nor less than one hundred-fifty (150) feet from intermittent streams, the 100 year floodplain, the deeded flowage rights to the State of New Hampshire Flood Control System, or any wetland or water body. ZO 14.3.3

**Open Water** is not defined in the Zoning Ordinance.

**Perennial streams** are defined as "Any stream with a minimum drainage area of one (1) square mile, 640 acres." ZO §3.1.24

A **water body** is defined any pond, lake, river, stream or similar area up to its Mean High-Water Level." ZO § 3.1.34-a. Emphasis added.

**Mean High Water Level.** The line on the shore, running parallel to the water body, that defines the high level of the water body, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank,

shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the mean high water level is not easily discernable, the mean high water level may be determined by the NH Department of Environmental Services. **ZO § 3.1.21-a**

#### Reasons for reversing the Administrative Decision

Ms. Ryan wishes to construct a 12' by 42' shed to accommodate animals for her daughters and herself. *See Exhibit 2 for a depiction of the shed.*

The Building Inspector measured the distance between the barn and the impoundment as being 190 feet. *See Exhibit 3* (a plan with notes prepared by the Building Inspector). Therefore, the shed would shorten the distance between the barn and the impoundment to 178 feet, which means the barn (with the shed) would be more than 150 feet from a pond.

The Building Inspector did not explain why she used the open water setback when the 150-foot setback for a pond applied.

As further discussed below, when looking at the Zoning Ordinance as a whole, the Ordinance is intended to protect naturally occurring water bodies and water courses and not a man-made impoundment that appears to be in the nature of a fire pond. Accordingly, ZO §14.3.3 is not a basis for denying Ms. Ryan's building permit.

But even if ZO §14.3.3 applies to the impoundment, the 150-foot setback applies because the impoundment is "water body" (a pond) and not "open water." The Building Inspector herself calls it a pond.

The Zoning Ordinance provides no express language to distinguish "open water" from "water body". Accordingly, these terms must be put in context to explain why the authors of the ordinance concluded there should be two different setback requirements.

The Zoning Ordinance provides no definition for "open water". However, for the purpose of determining what water is subject to the 200-foot setback, "open water" is linked with "perennial streams". Perennial streams are defined as "Any stream with a minimum drainage area of one (1) square mile, 640 acres." ZO §3.1.24. The impoundment is not remotely comparable with a perennial stream. At best the impoundment can relate only to a "water body".

However, the impoundment is not even a "water body". The ordinance defines a water body "as any pond, lake, river, stream or similar area up to its Mean High-Water Level." ZO § 3.1.34-a. Clearly, the impoundment is neither a pond, nor a lake, nor a river or nor a stream. It is not reasonable to conclude that the impoundment is a "similar area" especially because it does not have a Mean High-Water Level within the meaning of the ordinance taken as a whole.

Alternatively, if the impoundment is something to be included within the scope of ZO §14.3.3 it certainly can be no more than a water body (a pond) and therefore the 150-foot setback provision applies.

To sum up, the Building Inspector labelled it a pond; consequently the 150-foot setback would apply. Second, water body is a defined term while open water is not. A standard rule of construction is that the specific governs the general. With the defined term "water body" including the term "pond", coupled with the impoundment likely being a fire pond and the Building Inspector labeling it a pond, it can only, at best, be a pond.

Accordingly, the building permit should issue because the barn, as extended by the shed, would be beyond the 150-foot setback.

## ABUTTERS LIST

Lot A-47-1  
Dawn Ryan  
74 Stagecoach Road  
Wilton, NH 03086

Lot A-47-2  
William Ryan  
Corinne Ryan  
54 Stagecoach Road  
Wilton, NH 03086

Lot A-47-3  
Heidi B Robichaud, Trustee  
Heidi B Robichaud Rev Trust  
126 Burton Highway  
Wilton, NH 03086

Lot A-48-2  
Mitchell R. Young  
77 Stagecoach Road  
Wilton, NH 03086

Lot A-48-1  
Joseph J. Coffey  
Shannen L. Coffey  
29 Stagecoach Road  
Wilton, NH 03086

Lot A-46  
Audrey Robinson  
10 Stagecoach Road  
Wilton NH 03086

Lot A-45  
JN & AM Occhialini Trustees  
Occhialini 2015 Family Trust  
189 Burton Highway  
Wilton, NH 03086

Lot A-58-5  
Mark W. Thompson  
Danielle T. Thompson  
107 Davisville Road  
Wilton NH 03086



Lot B-125

Theodore Waterman, Jr.  
Robin M. Waterman  
910 Isaac Frye Highway  
Wilton NH 03086

Lot B-126

Gerald O'Reilly Jr  
Alysia Pearce  
922 Isaac Frye Highway  
Wilton NH 03086

Lot C-42

Hubert Hoover Trustee  
HM Hoover Rev Tst of 4/28/1988  
15227 SE 366<sup>th</sup> PL  
Auburn WA 98092

Lot C-40

D. Rachel Hunter  
W. Bart Hunter  
129 Davisville Road  
Wilton NH 03086

Lot D-1

Hubert Hoover Trustee  
HM Hoover Rev Tst of 4/28/1988  
15227 SE 366th PL  
Auburn WA 98092