

My name is Andy Burnes and I live at 202 Wilson Rd. My property abuts the IFH property along my southern border.

As I understand it there are five conditions that must be satisfied in order for this board to consider granting this variance.

Because these five conditions must be satisfied, and it is the applicant who seeks relief through the agency of this variance, the applicant should be compelled to prove, or provide sufficiently persuasive evidence, in support of the claims made to establish satisfaction of each condition. The applicant assumes this burden in applying for this variance.

Looking at the applicants answers to these five conditions, I see some issues that simply don't make sense. Or, at the very least, do not provide sufficient evidence to support the claims made.

- 1) "Granting the variance would not be contrary to the public interest."

IFH has already dug down, in places, 40 to 50 feet below the surface in the Aquifer Protection Zone. And more excavation is planned.

These aquifer protection zones exist because of their importance as a fundamental human need. Aquifers are complex and delicate, and they require strict regulation because of their importance and fragility. As such, any potential harm to the aquifer should be considered as contrary to the public interest.

The applicant's answer completely fails to treat the issue of Aquifer disturbance, and the resultant possible damage the proposed, and current, excavation could, or has already, caused. Not a single word.

New Hampshire 155-E provides for regulators to establish and include reasonable provisions for the protection of water resources.

And in Wilton zoning ordinance "Aquifer Protection District" section 12.4 "prohibitive uses" paragraph "1" indicates that excavation is prohibited if:

- 1) minimum depth to groundwater is 10 feet

There are most likely other ordinances that govern the interaction between excavations and Aquifers that more directly address the preservation of the functioning and water quality of the Aquifer, but I unable to find them.

Nonetheless it seems that certain questions need to be answered before a claim to uphold the integrity and functioning of the aquifer, and thus the public interest, can properly be made.

As far as I know no Hydro-geological survey indicating the depth to ground water at the new elevation, no documentation establishing that no harmful disturbance to the aquifer function and water quality have taken place, have been submitted. Absolutely no evidence is provided to satisfy the burden of establishing the current, and future, excavation is not harmful to the aquifer and therefore not contrary to the public interest.

Condition 2) the spirit of the ordinance is observed.

The spirit of the ordinance is to protect the community from builders coming into Wilton and commencing operations, absent of any regulatory constraint, and to prevent the substantial harm these unregulated activities are likely to cause. That is the spirit and intent of the ordinance.

And that is exactly what has happened in this case. The very situation that the spirit and intent of this ordinance serves to protect against is exactly what IFH has done.

IFH's decision to begin excavation operations without proper permitting, without filing a site plan, or any attempts towards regulatory compliance, constitutes the most direct and egregious violation of the spirit and intent of the ordinance that is possible. It is a slap in the face to all assembled here who have invested their time, their resources, and their deliberate thoughtfulness to help ensure the safety and prosperity of this community. It's a hard slap. It makes inseparable the previous violations and this application for a variance.

As such no rightful claim to observance of the spirit and Intent of the ordinance, as is required to grant this variance, can possibly be made.

Condition 3) Substantial Justice is done.

Here the applicant writes "substantial justice is done when the loss of denying the variance is greater than the gain of the public by strictly enforcing the ordinance."

Oddly enough, the applicant has created the very condition that makes possible the significant gain to the public denying this variance would provide. IFH's decision to commence operations, willfully and with reasonable foreknowledge of violating, and without any regulatory compliance, will be observed by others contemplating doing business in Wilton. IFH's ability to operate unlawfully with impunity, such as the granting of this variance will partially infer, will set a dangerous precedent. That being: That it is in your best interest, when building in Wilton, to ask for forgiveness, rather than permission. The denying of this variance sends a clear message indicating the ZBA's commitment to enforcement, and will actively deter future builders, who may demonstrate the same disregard for Wilton and the ordinances designed to protect the community. This resulting enforcement/deterrent paradigm will create a significant public gain that is certainly greater than the loss of denying the variance. In accordance with the applicant's own calculus for substantial justice to be done, If the demonstrated gain to the public is greater than the loss of denying the variance this application must be denied.

5) denying the variance will result in unnecessary hardship.

Chapter 674:33 Powers of the ZBA

1:B:2 provides:

"An unnecessary hardship will be deemed to exist if, and only if, or when to specific conditions of the property they distinguish it from other properties in the area, the property cannot be reasonably use in strict conformance to the ordinance."

Other than a loose description of the lot topography, the applicant has offered no proof, no topographical maps, no engineering surveys, or any other form of persuasive evidence that establishes:

- 1) That there were no alternative suitable building sites on this 8+ acre lot that could have facilitated building a single-family house while maintaining strict accordance to the ordinance.
- 2) That there was no possibility that on-site materials could have been re-distributed in such a way as to create a serviceable building site.
- 3) That there was no alternative to the removal of excavated materials that would have been suitable

IFH has offered no evidence whatsoever that establishes that the site cannot be reasonably used in strict conformance to the ordinance, and therefore has not met the burden of claiming unnecessary hardship. For this reason they failed to satisfy the unnecessary hardship condition contained in the application, therefore it must be rejected.

And while we can speculate as to why IFH chose to behave in the way it did, we do know some facts:

IFH knew excavation was prohibited - it's in the deed!

IFH knew there was valuable gravel on site that could not be lawfully mined.

IFH commenced mining the gravel without any regulatory oversight or accountability.

IFH removed approx. 3000yd³ that was used at another commercial site.

IFH benefitted from the materials already removed, and stands to benefit from the planned continuation of removed materials in the future.

These are facts. And taken together with what has transpired on Lot F/3-2 it begins to look like there are more nefarious motivations for how things unfolded.

I believe that it IFH's intentional strategy to commence unlawful and unregulated removal of these valuable materials, and to remove as much as possible before the appropriate regulatory agency could respond. They wanted to find out what they could get away with and how much they could remove in the process. It feels to me like we are being scammed, like we are being hoodwinked, if that is a nicer way to put it.

I know that this forgiveness-rather-than-permission approach can not be acceptable to anyone present. I know that this approach should not be sanctioned by our beloved ZBA. This cannot be an approach that is encouraged by granting this variance. Because if you do, this board, and this community, will become far more vulnerable to the reoccurrence of unlawful excavations moving forward. Let's all work together to ensure that this cannot happen...again.

