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July 8, 2021

Town of Wilton
Zoning Board of Adjustment
42 Main St., P.O. Box 83
Wilton, NH 03086

Re: Variance Application of Isaac Frye Holdings, LLC - Tax Map F, Lot 3-2

Dear Members of the Board:

Please be advised that this office represents the interests of Isaac Frye Holdings, LLC with regard to the above-referenced Application. I will be appearing on behalf of my client at the upcoming ZBA meeting on July 13, 2021. I am writing to provide some additional material in support of the Application, as well as to address concerns which have been raised by Attorney Silas Little on behalf of local property owners and residents, Shannon Lynn and Andrew Burns.

Atty. Little suggests in his letter that the ZBA should not consider my client's Variance Application as a result of a variance denied by your Board in July 2006. The 2006 application sought a variance for Lot No. F-3 to allow removal of gravel from the site. Lot F-3 was an approximately 13-acre lot, which was subsequently subdivided into Lot F/3-1, and my client's Lot F/3-2. The variance requested in 2006 to remove gravel from the combined lot was denied. Attorney Little has suggested that this denial precludes my client from seeking the current variance.

Attorney Little has asked this Board to consider the case of Brandt Development Company of New Hampshire, LLC v. City of Somersworth, 162 NH 553 (NH 2011). The Brandt case interprets the doctrine set forth in Fisher v. City of Dover, 120 NH 187 (1980), in which the New Hampshire Supreme Court stated that a Board of Adjustment could not lawfully reach the merits of an application seeking the same relief as a prior application unless there had been a material change of circumstances affecting the merits of the application, or the application is for a use that materially differs in nature and degree from the predecessor application. In the Brandt case, the court analyzed whether changes in the zoning statutes between 1994 and 2009 created a material change in circumstances affecting the merits of the application. The Supreme Court concluded that the law had changed sufficiently such that the Board had jurisdiction to consider the subsequent application. Presumably, Attorney Little is arguing that since the Town of

Wilton's Zoning Ordinance concerning excavation has not changed materially since the 2006 application, the Board cannot consider my client's application.

Attorney Little's argument entirely ignores the other opening created by the Fisher v. City of Dover case. In addition to a material change of circumstances affecting the application, the Fisher court also stated that an application could be considered if the use materially differs in nature and degree from the predecessor application. That is exactly the situation in the current case and therefore this Board has the authority to consider my client's application.

As an initial matter, the 2006 case considered the combined 13-acre lot, and not just my client's approximately 9 acre lot which was created by the 2015 subdivision. As the Board is aware, the lot in question is on a hill and has an elevation of approximately 345 feet. According to the Minutes of the May 9, 2006 ZBA meeting, the applicant in the 2006 variance was proposing to excavate gravel from its current elevation down to 210 feet. Such an excavation would necessarily involve the removal of the entire hill and would reduce the elevation of the entire lot by 135 feet.

By contrast, the current application involves excavation limited only to the home site and not to the entire lot. Moreover, my client is proposing to create a building area at an elevation of 324 feet, a reduction of 21 feet from the lot's high point of 345 feet. Not only is my client proposing a much smaller excavation in terms of reducing the elevation of the lot, but my client's excavation also will be limited to the home site and will not involve the removal of the entire hill. In order to reduce the hill to 210 feet as proposed in the 2016 application, the entire lot would need to be excavated. As you can see from the attached Cut Reports, our engineer has calculated that the amount of material to be removed in conjunction with the present application, 26,766 cubic yards, is less than 10% of the amount of material proposed to be removed in the 2006 application, 292,431 cubic yards.

As such, our proposed variance is for a use that materially differs in nature and degree from the 2006 variance. The 2006 proposal was essentially for a commercial gravel pit operation of the entire lot reducing the entire lot by approximately 135 feet. Our application is for a much smaller portion of the lot and only involves a reduction of approximately 21 feet. The amount of gravel which my client is proposing to remove is only a small fraction of the amount which would have been removed had the 2006 variance been granted. As such, this proposal to allow my client to create a small building pad, with a small reduction in elevation is materially different in nature and degree from the 2006 variance request which involved excavation of the entire lot to reduce it to an elevation of 210 feet. This Board clearly has jurisdiction to consider my client's much more limited application.

I should note that while the excavation proposed by my client is not exempt from the Town's Site Plan Review Regulations because the incidental excavation necessary to build a single-family home exceeds 500 cubic yards, that the excavation proposed is in fact incidental to the construction of the single-family home. Unlike the 2006 variance application, my client is not

seeking to remove gravel on the entire lot but is simply seeking to remove enough gravel to accommodate the driveway and building site.

In his second correspondence, Attorney Little also indicates that he believes my client needs variances which go beyond the request for variances from Section 4.1 and in Section 12.4 Zoning Ordinance. I would point out that our variance application was filed in response to the cease-and-desist letter from the Town which identified these particular provisions. Based on the cease-and-desist letter, my client sought the variances which the town brought to its attention.

Finally, please find the following additional information in support of my client's application:

- Updated Presentation Plan
- 2006 ZBA Overlay Plan
- Current Volume Cut Report
- Final Site Cut Report
- 2006 Proposed Excavation Cut Report

Thank you for considering this additional material. I look forward to the upcoming meeting on July 13, 2021.

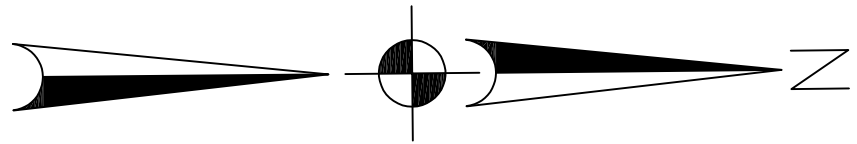
Sincerely yours,

/s/ Roy W. Tilsley, Jr.

Roy W. Tilsley, Jr.

RWT/pjm

Enclosures



PROPOSED DRIVEWAY ALIGNMENT

PROPOSED SEPTIC SYSTEM

TAX LOT F/2 - 4

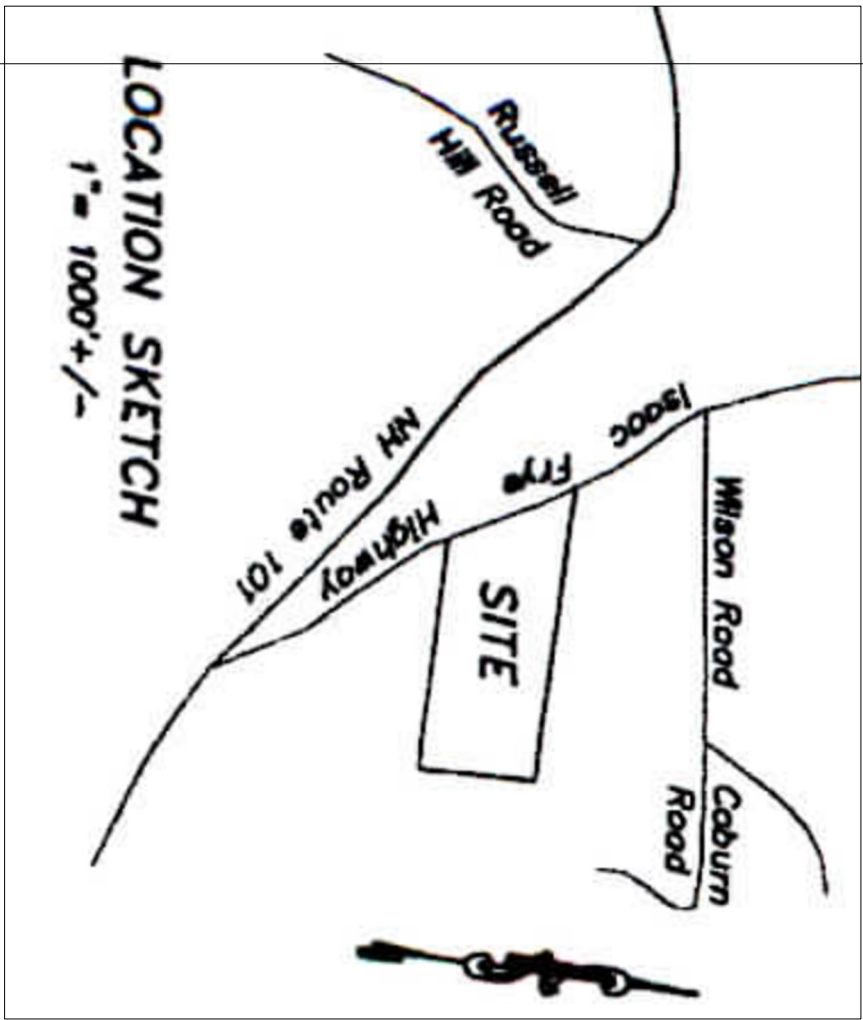
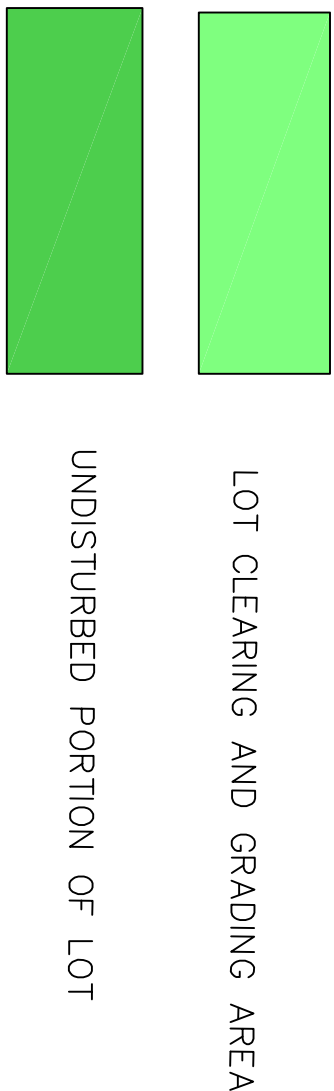
TAX LOT F/2 - 5

TAX LOT F/2 - 3

TAX LOT E/16

TAX LOT F/3 - 1

TAX LOT F/4

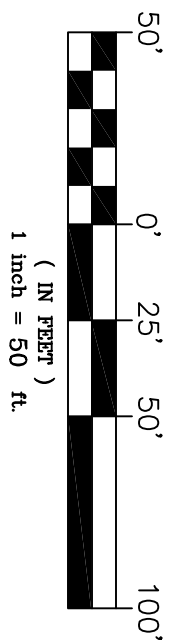


PLAN REFERENCES:

- "SUBDIVISION PLAN, TAX LOT F/3 FOR H. JAMES KENNEDY, 539 ISAAC FRYE HIGHWAY, WILTON, NH HILLSBOROUGH COUNTY, SCALE: 1"=60'. DATED DECEMBER 2015, PREPARED BY ARTHUR F. SICILIANO JR., LAND SURVEYOR AND RECORDED IN THE HILLSBOROUGH COUNTY REGISTRY OF DEEDS AT PLAN NUMBER 3882. TOPOGRAPHICAL VERSION OF PLAN IS UNRECORDED AND ON FILE AT THE TOWN OF WILTON.
- "PROPOSED SEWAGE DISPOSAL SYSTEM PLAN, TAX MAP F LOT KEN HOMES, INC., PREPARED BY FIELDSTONE LAND CONSULTANTS, DATED FEBRUARY 22, 2021. UNRECORDED.

NOTES:

- OWNER OF RECORD: ISAAC FRYE HOLDINGS, LLC, 586 TURNPIKE ROAD, NEW IPSWICH, NH 03071
- THE EXISTING TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM SURVEY OF PARCEL. 1 AND DOES NOT REPRESENT A GROUND AND SEPTIC WERE TAKEN FROM REFERENCE PLAN NO. 2.
- THE PURPOSE OF THE PLAN IS TO SHOW THE PROPOSED HOUSE LOCATION AND THE GRADING THAT IS PROPOSED AROUND THE HOUSE. GRADING AND ESTIMATED QUANTITIES WERE MADE TO THE EXISTING SURFACE OF REFERENCE PLAN NO. 1 FOR THE PURPOSE OF PROVIDING ESTIMATES FOR A ZBA APPLICATION ADJUSTMENT.



OWNED BY:

ISAAC FRYE HOLDINGS, LLC
NEW IPSWICH, NH

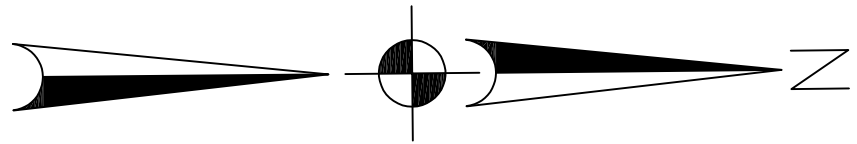
LOT PLAN TAX MAP F/3 LOT 2

TAX MAP F/3 LOT 2 - ISAAC FRYE HIGHWAY
TOWN OF WILTON, COUNTY OF HILLSBOROUGH
NEW HAMPSHIRE

DATE	REVISIONS DESCRIPTION	DWN BY	CK BY

ROKEH CONSULTING, LLC
89 KING ROAD, CHICHESTER, NH
PH: 603-387-8688

SCALE: 1" = 50'
DATE: JUNE 2, 2021
DR. BY: JR
JOB NO.
SHEET
1 of 1



PROPOSED DRIVEWAY ALIGNMENT

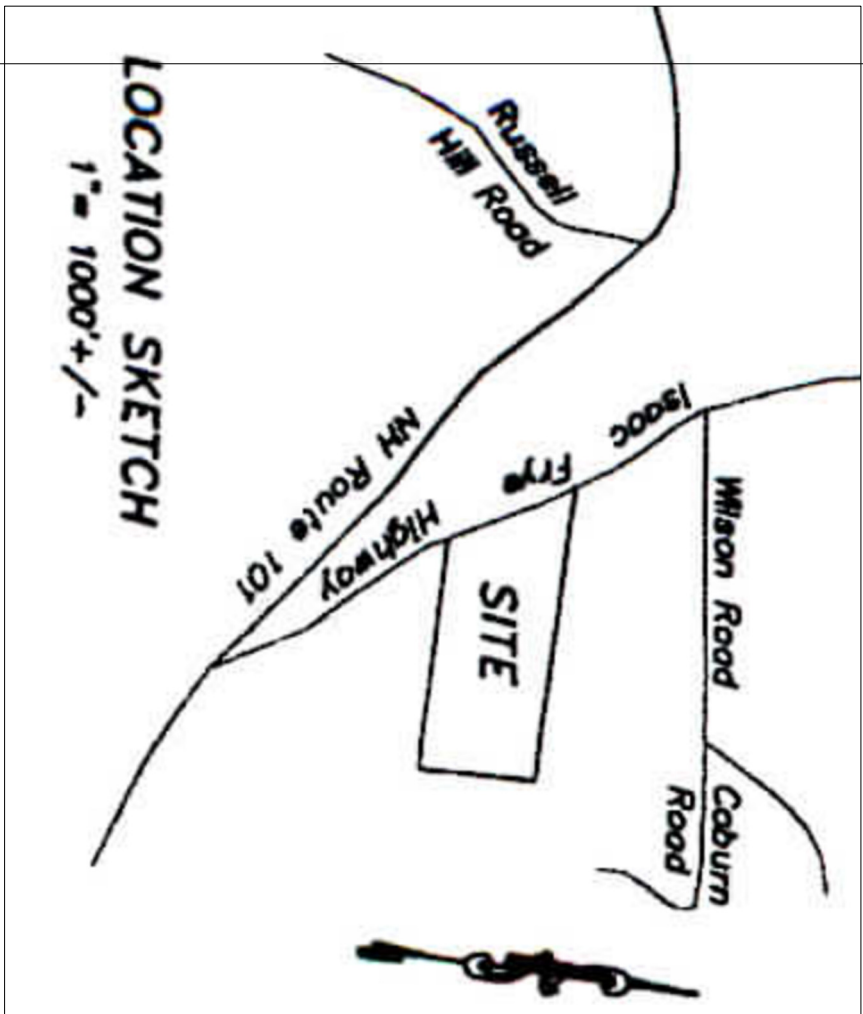
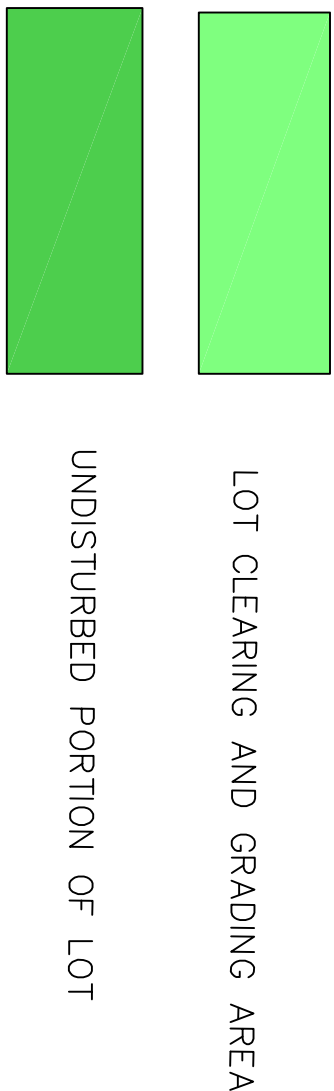
PROPOSED SEPTIC SYSTEM

PROPOSED WELL

PROPOSED HOUSE LOCATION
FINISH FLOOR ELEVATION = 324.0

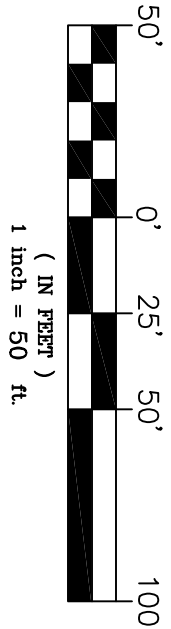
PROPOSED LIMIT OF CLEARING

APPROXIMATE LIMITS OF 2006
EXCAVATION ZBA APPLICATION
292,440 CU YDS (ESTIMATE)



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- "SUBDIVISION PLAN, TAX LOT F/3 FOR H. JAMES KENNEDY, 539 ISAAC FRYE HIGHWAY, WILTON, NH HILLSBOROUGH COUNTY, SCALE: 1"=60', DATED DECEMBER 2015, PREPARED BY ARTHUR F. SICILIANO JR., LAND SURVEYOR AND RECORDED IN THE HILLSBOROUGH COUNTY REGISTRY OF DEEDS AT PLAN NUMBER 3882. TOPOGRAPHICAL VERSION OF PLAN IS UNRECORDED AND ON FILE AT THE TOWN OF WILTON.
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OWNED BY:
ISAAC FRYE HOLDINGS, LLC
NEW IPSWICH, NH

LOT PLAN TAX MAP F/3 LOT 2

TAX MAP F/3 LOT 2 - ISAAC FRYE HIGHWAY
TOWN OF WILTON, COUNTY OF HILLSBOROUGH
NEW HAMPSHIRE

REVISIONS		DATE	DESCRIPTION	DWN BY	CK BY

ROKEH CONSULTING, LLC
89 KING ROAD, CHICHESTER, NH
PH: 603-387-8688

SCALE: 1" = 50'
DATE: JUNE 2, 2021
DR. BY: JR
JOB NO.
SHEET
1 of 1

Cut/Fill Report

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Volume Summary							
Name	Type	Cut Factor	Fill Factor	2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
Existing Excavation	full	1.000	1.000	44010.46	5972.29	788.40	5183.89<Cut>

Totals				
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* Value adjusted by cut or fill factor other than 1.0

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Volume Summary							
Name	Type	Cut Factor	Fill Factor	2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
Volume Check	full	1.000	1.000	78108.66	26974.00	207.54	26766.46<Cut>

Totals				
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* Value adjusted by cut or fill factor other than 1.0

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Volume Summary							
Name	Type	Cut Factor	Fill Factor	2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
Gravel Cut 2006	full	1.000	1.000	329042.15	292440.54	8.88	292431.65<Cut>

Totals				
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Total	329042.15	292440.54	8.88	292431.65<Cut>

* Value adjusted by cut or fill factor other than 1.0