



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 J/79 Lot Size 0.87 Acres

Street Address 63 Forest 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 Eric Rantamaki; Trustee of the Richard A. Rantamaki Trust u/d/t dated 7/25/2020

Mailing address 38 Tower Farm Road

Mailing address _____

Town, State, ZIP Billerica, MA 01821

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 [Signature] Date 6/28/21

(continued on the next page)

clerk use only	
Date and time received: <u>6/29/2021 12:35pm</u>	
Received by: <u>NBD</u>	Amount paid: <u>\$190</u>
Case #: _____	<input checked="" type="checkbox"/> Abutter list and labels included

RECEIVED
JUN 29 2021

BY:



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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 Timothy W. Sullivan and John Harrison, LLP

Mailing address 1550 Center Road

Mailing address _____

Town, State, ZIP Lyndeborough, NH 03082

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 6/29/2021

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 James M. Callahan, Esq.

Mailing address Atkins Callahan, PLLC

Mailing address 20 Depot Street, Suite 220

Town, State, ZIP Peterborough, NH 03458

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 _____

Date 6/29/2021

(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 603-845-1959 ☒ Evening phone 603-491-3971

☒ Work E-mail jcallahan@atkinscallahan.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 attached



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Application for a Variance, Page 1 of 2

When, because of the specific characteristics of your property, the Zoning Ordinance unreasonably restricts your use of your property without a corresponding public benefit, the Zoning Board may grant a Variance, which modifies or sets aside particular requirements of the Ordinance.

The specific section of the Zoning Ordinance to be varied: 5.1c; 5.25; 7A.5.2.a; 7A.5.e

The requirement in that section that you want to change, and how you want it changed:

Please see attached

To grant a variance, the Zoning Board must decide that it will satisfy each of the following five conditions. Please explain why you believe that each of the following statements is true. (Use additional sheets of paper if necessary.)

1. Granting the variance would not be contrary to the public interest: _____

See attached

2. Granting the variance would be consistent with the spirit of the Ordinance: _____

See attached

3. Granting the variance would do substantial justice: _____

See attached

4. The proposed use will not diminish surrounding property values: _____

See attached

(continued on the next page)



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Application for a Variance, Page 2 of 2

5. Literal enforcement of the provision of the ordinance would result in unnecessary hardship.
Complete just one of sections 5(a), 5(b), or 5(c):

5(a) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:

See attached

ii. The proposed use is a reasonable one:

See attached

iii. The hardship is a consequence of special conditions of the property that distinguish it from other properties in the area:

See attached

5(b) i. The property cannot be reasonably used in strict conformance with the ordinance:

ii. The hardship is a consequence of special conditions of the property that distinguish it from other properties in the area:

5(c) Hardship resulting from a physical disability.

i. The variance is necessary to make reasonable accommodations to allow a person with a recognized physical disability to reside in or regularly use the premises:

ii. The variance is in harmony with the general purpose and intent of the zoning ordinance:

**SUPPLEMENTAL SUBMITTAL
TO
THE WILTON ZONING BOARD OF ADJUSTMENT**

CASE NO. _____

TIMOTHY W. SULLIVAN AND JOHN HARRISON, LLP

REQUEST FOR A VARIANCE
63 FOREST ROAD
PARCEL ID NUMBER Map J, Lot 79
(the “**Property**”)

PROPOSED USE. Timothy W. Sullivan and John Harrison, LLP, a New Hampshire limited liability partnership (the “**Applicant**”) is seeking a variance from the dimensional requirements outlined in §§ 5.1 c; 5.2.5; 7A.5.2.a; and, 7A.5.e of the Wilton Zoning Ordinance (the “**Ordinance**”). The Property is located entirely within the Downtown Commercial District. Residential Uses are allowed as a matter of right in the Downtown Commercial District (§7A.4.1 of the Ordinance). The Applicant is seeking relief from setback requirements outlined in Ordinance §7A.5.2.a and §7A.5.e. We’re not entirely sure (and actually don’t believe) that it is the intent of §7 of the Ordinance (pertaining to the Downtown Commercial District) to sweep in the Residential District requirements outlined in §5 of the Ordinance. However, we have included those provisions as part of this variance request in the event that the Board of Adjustment wishes to address these provisions.

The Applicant is under contract to purchase the Property from Eric Rantamaki, Trustee of the Richard A. Rantamaki Trust u/d/t dated July 25, 2020. The Property housed the former Intervale Machinery and Supply/Hardware store. The Applicant proposes to develop the Property as an 11 unit residential condominium.

Ordinance Requirements to be varied and how Applicant wants to change:

The Applicant seeks a variance from several of the dimensional requirements of the Ordinance as outlined above. The Property is a long, thin, 3-sided lot surrounded on two sides by public ways (Forest Road/NH Route 31 and Pleasant Street). Buildings currently on the site not only encroach into front setbacks, but also, encroach over the property line onto the Pleasant Street right of way. The specific Ordinance provisions from which variance relief is sought are:

1. §5.1 c – which is found in the Residential District provisions of the Ordinance and provides that “A maximum of three (3) dwelling units per lot for any new

construction on Town water and sewer, ..." As stated above, we don't think that this provision applies, but, we want to address proactively this requirement.

2. §5.2.5 – which states "Structure height. Not to exceed forty-five (45) feet or two stories." Again, we don't think that this provision applies but want to address proactively this provision. Proposed structures will not exceed forty-five (45) feet in height. Proposed structures will be two (2) stories in height above a garage. Whether this type of structure would be considered three (3) stories isn't clear.
3. §7.A.5.2.a – requiring a twenty-five (25') foot front setback. The Applicant seeks a variance to allow a portion of the buildings to be constructed on the Property to encroach into the setback closest to Pleasant Street.
4. §7.A.5.e. – provides, in part, that no parking areas are to be permitted in the front setback or any setback. The Applicant seeks a variance to allow a portion of the parking area to encroach into the front setback off of Forest Road and into the side setback on the easterly portion of the Property.

New Hampshire law provides that an applicant must meet a five-point test in order to be granted a variance. The facts support the Applicant's request, as outlined below:

1. Granting the variance will not be contrary to the public interest.

The Wilton Master Plan outlines goals throughout, including those outlined below:

- Maintain a balance of diverse and varied housing through innovative zoning techniques, at various densities (Chapter I)
- Encourage new development near existing population centers (Chapter I)
- Guiding new development in a way that encourages commercial investment in the downtown (Chapter I)
- To be a town that supports a climate in which the downtown is thriving (Vision Statement)
- Revise the Downtown Commercial District to address multi-family needs (Population and Housing Chapter)
- Encourage more higher density and infill development where appropriate within the downtown Wilton area (Population and Housing Chapter)

The proposed development of the Property clearly fits within the multiple purposes of the Ordinance and is consistent with goals articulated within the Wilton Master Plan. And, looming in the background is a regional affordable housing shortage. The development plan as proposed by the Applicant is not contrary to the public interest. The former Intervale site is a rundown eyesore. A new housing development will bring people downtown and will materially enhance downtown revitalization.

2. If the variance were granted, the spirit of the ordinance would be observed. The Applicant proposes to redevelop a highly visible parcel of land close to the center of Town. The purpose of the Ordinance as stated in its Preamble is “to promote the health, safety, prosperity, convenience, ... of the inhabitants, ..., and to preserve open space.” The purpose of the Residential District, to the extent applicable, is “to provide opportunities for mixed types of residential development at a high density where appropriate services are available.” The purpose of the Downtown Commercial District is “to concentrate development, allow and encourage a vibrant mix of land uses, encourage infill development, ...”

The Applicant’s proposed development will promote and conserve the health, safety, convenience and general welfare of the inhabitants of the Town of Wilton. This project will provide an opportunity for a mixed residential development served by municipal water and sewer. This development will be a dynamic addition to downtown Wilton. The site will be improved in several notable ways, including, removing buildings that encroach into a public way; reducing traffic, and consolidating the entrance/exit point onto the state highway (Forest Road).

The proposed use will enhance the character of the neighborhood. The residential units will be fully code compliant, energy efficient and attractive.

3. Granting the variance would do substantial justice. The concept of substantial justice is nebulous:

“It is not possible to set up rules that can measure or determine justice. Each case must be individually determined by board members. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications. A Board of Adjustment cannot alleviate an injustice by granting an illegal variance.” *The Board of Adjustment in New Hampshire* (2005).

That said, substantial justice will be done as increased housing opportunities and downtown redevelopment can occur.

In this case there is no public benefit that would outweigh the hardship to the Applicant.

4. If the variance were granted, the values of surrounding properties would not be diminished. The Applicant has consulted with real estate professionals and valuation experts and will provide at public hearing evidence that the value of surrounding properties will not be diminished if the variance is granted.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Property. Looking at each ordinance provision in order:

- §5.1 c, if applicable, limits density to a maximum of three (3) dwelling units per lot for any new construction on Town water and sewer. The purpose of the Residential District is to provide opportunities for mixed types of residential development at a high density where appropriate services exist or are available. The Ordinance limitation is arbitrary and counter to various other parts of the Ordinance and Master Plan that encourage infill and in-town development. 11 Units fit well within this site. The Property is served by municipal water and sewer. The overall square footage of proposed improvements and total impervious surfaces will marginally decrease over what is currently on the Property. Through state of the art engineering and site work, drainage will improve. Concentrating density as proposed will also allow the Applicant to keep construction costs down and contribute to the overall affordability of units located on the Property. This development will be walkable to downtown Wilton, a desired feature and consistent with articulated goals outlined in the Wilton Master Plan.

- §5.2.5, if applicable, states that a structure shall not exceed forty-five (45') feet or two (2) stories. We can't discern whether this provision is applicable to development in the Downtown Commercial District. There is not a specific purpose articulated in the Ordinance for this restriction. Also, it's hard to tell if it should mean "the greater of 45 feet or 2 stories." Presumably, the purpose of this Ordinance is to maintain the visual integrity of the skyline and perhaps to address life/safety concerns. But, given the proximity of the Property to downtown, the buildings (which including a garage under will not exceed 45 feet) won't be out of character. Additionally, to the extent that life/safety issues are a concern, the buildings will be code compliant which, presumably will alleviate those life/safety concerns.

- §7.A.5.2.a – 25 foot front setback. The purpose of setback and other dimensional restrictions is to facilitate an orderly development process. In this case, we're requesting relief from these requirements to re-develop the Property into much needed housing and to reduce current setback violations, which will render the site less nonconforming than it currently is. The Property is a long narrow lot. There is frontage on two public ways. This unique feature of the Property makes development/redevelopment of the Property very difficult if setbacks are strictly enforced given Property dimensional limitations.

- §7.A.5.e – 25 foot front setback restriction. The Applicant is proposing to locate parking on the Forest Road side of the building. Due to the narrow nature of the Property, parking will be located in the setback. For the same reasons discussed above regarding the front setback, there is no fair and substantial relationship between the application of these set back requirements to the Property. Existing conditions of the Property are already in violation of applicable Ordinance setback provisions. The proposed redevelopment will improve the Property by reducing impervious cover,

restricting access to the state highway to one point, and improving site lines on Forest Road. Included with this application is a letter from Samuel Foisie, P.E., of Meridian Land Services, Inc., that confirms an improvement to site generated traffic.

ii. The proposed use is a reasonable one. The proposed use is a reasonable one. There will be no detrimental effect on surrounding properties. The Wilton Master Plan has contemplated and encourages this type of development. The Property is unique in location and configuration.

iii. The hardship is a consequence of special conditions of the property that distinguish from other properties in the area. The Property is a long and narrow lot that is essentially three-sided. The existing footprint of buildings on the Property is approximately 9,323 square feet. The proposed improvement footprint will be approximately 9,198 square feet. The Property has frontage on two of its three sides. Strict compliance with the setback requirements would fundamentally render the Property undevelopable and commercially not feasible.

CONCLUSION. In light of the foregoing, the Applicant respectfully requests that its application for a variance be granted.