



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 F-3-2 Lot Size 8.84 acres

Street Address Isaac Frye Highway

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 Isaac Frye Holdings, LLC

Mailing address 586 Turnpike Road

Mailing address _____

Town, State, ZIP New Ipswich, New Hampshire 03071

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 03/17/2022

(continued on the next page)

RECEIVED
MAR 18 2022

BY: MBD

clerk use only

Date and time received: 11:40 AM

Received by: Michelle Decosimo Amount paid: \$820.-

Case #: _____ ☒ 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 03/17/2022

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 Roy W. Tilsley, Jr., Esq.

Mailing address 670 N. Commercial St., Suite 108

Mailing address P.O. Box 1120

Town, State, ZIP Manchester, NH 03105

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 03/17/2022

(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) 623-8700 ☐ Evening phone _____

☒ Work E-mail rtilsley@bernsteinshur.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):

The ZBA previously granted Isaac Frye's request for a variance for a driveway. Isaac Frye subsequently applied for an Excavation Site Plan Review permit from the Planning Board, at which point the Planning Board determined that Isaac Frye needed to obtain additional variances/ approvals from the ZBA.



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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? On February 16, 2022, the Town of Wilton Planning Board decided at a public meeting that Isaac Frye Holdings, LLC needed to obtain a variance under Sections 6.1, 9B.6.1 and 9B.6.4 of the Zoning Ordinance for the property located on Isaac Frye Highway, which is depicted as Lot 3-2 on the Town of Wilton Tax Map 4.

What Town official or board made the decision? Town of Wilton Planning Board

What sections of the Zoning Ordinance was the decision based on? Sections 6.1, 9B.6.1 and 9B.6.4

Why do you believe that the decision was incorrect? See Attachment 1.

Attachment 1

The Town of Wilton (the “Town”) sent a Cease and Desist Letter, dated January 4, 2021, to Isaac Frye Holdings, LLC (“Isaac Frye”). In the Cease and Desist Letter, the Town stated that Isaac Frye needed to obtain two variances from the Zoning Board of Adjustment (“ZBA”), including (1) a variance from Article 4.1, and (2) a variance from Article 12. Subsequently, Isaac Frye applied for a variance from Article 4.1 and Article 12. Isaac Frye attended at least five (5) meetings from January 2021 to November 2021 concerning its application for a variance.

On or around November 9, 2021, the Zoning Board of Adjustment (the “ZBA”) granted Isaac Frye Holdings, LLC’s (“Isaac Frye”) application for a variance from Section 4.1 of the Town’s Zoning Ordinance. In its Notice of Decision, the ZBA explained that:

[t]he variance will allow the excavation of 5138 yards of gravel, incidental to the construction of a single family dwelling on Lot F-3-2, Isaac Frye Highway, which is outside the Gravel Excavation District, where the excavation has already occurred and the gravel has already been removed from the lot.

In relevant part, the variance was granted “in recognition of the applicants’ acknowledgment that the excavation is subject to Excavation Site Plan Review by the Wilton Planning Board.” Additionally, the ZBA found that “Excavation Site Plan Review of the excavation by the Wilton Planning Board will satisfy the requirements of section 12.4 of the Wilton Zoning Ordinance, and will therefore render applicants’ request for a variance to that section moot.” As a result, the issues raised in the Cease and Desist letter concerning a variance from the ZBA were resolved.

At that point, Isaac Frye, in accordance with the ZBA’s decision, applied for an Excavation Site Plan Review at the Planning Board. On or around February 16, 2022, Isaac Frye appeared before the Town’s Planning Board for a public hearing on the application. During the meeting, the Planning Board stated, for the first time, that Isaac Frye needed to obtain variances from the

Zoning Board for Sections 6.1, 9B.6.1 and 9B.6.4 of the Zoning Ordinance. For the reasons set forth herein, Isaac Frye appeals the Planning Board's interpretation of Sections 6.1, 9B.6.1 and 9B.6.4 of the Zoning Ordinance because these sections do not apply to the Property.

Section 6.1

In relevant part, Section 6.1 of the Zoning Ordinance is entitled "Permitted Uses" and provides that:

A building may be erected, altered or used, and a lot may be used or occupied for any of the following purposes, and in accordance with the following provisions:

- a. Any use permitted in the Residential District under the same provisions as apply to the use in that district, except that the lot areas shall be governed by section 6.2.

Since Isaac Frye intends to use the Property in a manner consistent with Section 6.1 of the Zoning Ordinance, it does not need to obtain a permit under Section 6.1. The Property is not being used an excavation site. Rather, Isaac Frye intends to construct a single family residence on the Property, which is consistent with the use described in Section 6.1.

Notably, the ZBA stated in its decision granting a variance under Article 4.1 that any excavation was "incidental to the construction of a single family dwelling on Lot F-3-2, Isaac Frye Highway," even though such excavation was "outside the Gravel Excavation District." Put simply, the ZBA did not require Isaac Frye to obtain a variance under Section 6 of the Zoning Ordinance because a variance under Article 4.1, which allows excavation that is incidental to the construction of a single family dwelling, was sufficient. Therefore, the Planning Board's interpretation that Isaac Frye needs to obtain a variance from Section 6 of the Zoning Ordinance is wrong. The variance under Section 4.1 authorized Isaac Frye to engage in excavation activities in the General Residential and Agricultural District, so no additional variance from the use restriction for this zone is required.

Sections 9B.6.1 and 9B.6.4

Similarly, Section 9B of the Zoning Ordinance does not apply to the Property because it is not located in a Gravel Excavation District. Notably, Section 9B of the Zoning Ordinance provides the standards that apply to the Gravel Excavation District. Here, the Property is situated in the General Residential and Agricultural District, so the standards that apply to the Gravel Excavation District (Section 9B of the Zoning Ordinance) do not apply to the Property.

Section 9B.6.1 of the Zoning Ordinance is entitled “Setbacks and Buffers” and provides that:

All areas used for the excavation of earth materials shall be set back and separated by an undisturbed natural wooded buffer at least three-hundred (300) feet from all public roads except Webb Road and from all lot lines, except that:

- a. The setback may be reduced to twenty-five (25) feet from other lots in the Gravel Excavation District with the written permission of the lot owner.
- b. There is no setback requirement from lot lines between multiple lots containing land encompassed in a single excavation.
- c. Access roads may be constructed through the buffer area.

In relevant part, Section 9B.6.4 of the Zoning Ordinance is entitled “Reclamation” and provides that:

- b. All topsoil removed during the excavation shall be stockpiled on site, and shall be spread over the site during the reclamation of the excavated area or any portion thereof. Additional topsoil shall be brought from off-site, as required, to provide a minimum depth of four (4) inches. The excavator may apply to the Planning Board for permission to remove a portion of the stockpiled topsoil from the site, subject to a determination that the remaining material will be sufficient to cover the reclaimed area to a minimum depth of six (6) inches.

Sections 9B.6.1 and 9B.6.4 of the Zoning Ordinance are limited to properties within the Gravel Excavation District and deal directly with gravel pit operations. Since the Property is not

located within the Gravel Excavation District, Sections 9B.6.1 and 9B.6.4 do not apply to the Property. Importantly, the ZBA granted Isaac Frye's application for a variance from Article 4.1 in November 2021. In approving Isaac Frye's excavation, the ZBA *did not* require Isaac Frye to comply with the provision of Section 9B.6.4. Rather, the Planning Board first asserted that Isaac Frye needed to obtain a variance under Section 9B.6.1 and Section 9B.6.4 on February 16, 2022. However, the Property is not located within the Gravel Excavation District, so Isaac Frye is not required to obtain a variance under Section 9B.6.1 or 9B.6.4. Therefore, the Planning Board's interpretation that Isaac Frye needs a variance from Isaac Frye needs to obtain a variance from Section 9B.6.1 and/or 9B.6.4 of the Zoning Ordinance is wrong.

Rokeh Consulting, LLC - Abutters List

Date: 3/18/2022

Researcher: N. O'Neil

Town of Wilton

Tax Map	Lot No.	Town	Abutter Name	Abutter Address
F	2-2	Wilton	Burnes, Andrew S	202 Wilson Rd. Wilton NH 03086
F	2-3	Wilton	Boggs, Michael & Linn Shannon	192 Wilson Rd. Wilton NH 03086
F	2-4	Wilton	Boggs, Michael & Linn Shannon	192 Wilson Rd. Wilton NH 03086
F	2-5	Wilton	Boggs, Michael & Linn Shannon	192 Wilson Rd. Wilton NH 03086
F	2-6	Wilton	Walker, Corey & Anna	303 Ashland St. Manchester NH 03104
F	3-1	Wilton	Dillon, Daniel	539 Isaac Frye Hwy Wilton NH 03086
F	3-2	Wilton	Isaac Frye Holdings LLC	586 Turnpike Rd. New Ipswich NH 03071
F	4	Wilton	Town of Wilton	42 Main St. Po Box 83 Wilton NH 03086
E	16	Wilton	New England Forestry Found.	3 Swan Rd Tyngsboro MA 01879-2501
		Chichester	Rokeh Consulting Jon Rokeh	89 King Rd. Chichester NH 03258
		Milford	Fieldstone Land Consultants	778 Elm St. Ste C Milford NH 03055
		Manchester	Roy Tilsley, Jr., Esq	670 N. Commercial St., Suite 108P.O. Box 1120, Manchester NH 03105