

Town of Wilton, NH
Application to the Zoning Board of Adjustment
(Revised August 2022)

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//112/01/ Lot Size 0.25

Street Address Island Street, Wilton, NH

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 Fait's Property Maintenance, LLC / Cody Fait


Mailing address 118 Amherst Street

Mailing address _____

Town, State, ZIP Amherst, NH 03031

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  Date 05/25/23

(continued on the next page)

clerk use only	
Date and time received: _____	
Received by: _____	Amount paid: _____
Case #: _____	<input type="checkbox"/> 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 **05/25/23**

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 Attorneys at Cronin, Bisson & Zalinsky, P.C. _____

Mailing address 722 Chestnut Street _____

Mailing address _____

Town, State, ZIP Manchester, NH 03104 _____

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 (only if a representative is named)

Signature  _____ Date **05/25/23**

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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 603-624-4333 Evening phone _____

Work E-mail rmunson@cbzlaw.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 (attach additional pages as necessary):

Please see attached

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Application for a Special Exception

A Special Exception is a use which is permitted by the Zoning Ordinance, but requires approval from the Zoning Board. Every special exception is allowed by some section or subsection of the Ordinance. Most special exceptions have a list of requirements; the Zoning Board can only approve the special exception if it finds that all the requirements are satisfied.

Note that in addition to the specific requirements that may be listed for a particular special exception, all special exceptions are subject to the general requirements in Section 4.12 of the Zoning Ordinance.

What section of the Zoning Ordinance defines the Special Exception that you are applying for? _____

Explain why your proposed use satisfies the requirements of the Zoning Ordinance (attach additional pages as necessary):

Please see attached

Applicant: Fait Property Maintenance, LLC
Property: 16 Island Street
Relief: Special Exception per Wilton Zoning Ordinance (“WZO”) Section 17.3

Property History, Background, and Applicability to WZO Section 17.3

The property at issue is 16 Island Street, Tax Map J, Lot 112-1 (the “Property”) and is a substandard non-conforming lot with an area of .25 acres.

2005 Special Exception and Variance

In 2005, the previous owners sought both a Special Exception per WZO Section 17.3 and simultaneously sought a variance from WZO Section 5.2.3 (setbacks). The previous owners sought both a Special Exception and a variance because if they were denied the Special Exception, they could still attempt to make a case for a variance.

The relevant sections of the WZO were the same in 2005, as well as today.

It appears that the ZBA’s issue back in 2005 is that no one could produce solid evidence that Lot J-112-1 stood on its own as a *lot of record* prior to 1971 (2005 Case File attached as Exhibit “A”). Compounding that dilemma was the fact that J-112 and J-112-1 have, for some time, been under common ownership.

Notably, and as discussed further below, the WZO defines “lot of record” as “[l]and designated as a separate and distinct parcel in a **legally-recorded deed filed in the record of Hillsborough County, New Hampshire.**” WZO Section 3.1.19 (Amended March 1992).

However, WZO Section 17.3 does *not* reference or require a *lot* to be a “lot of record.” Rather WZO Section 17.3 does reference and require that a *lot* be a “lot” as defined by the WZO, which is defined as “[a] single area of land **defined by metes and bounds or boundary lines as shown in a recorded deed or on a recorded plan.**” WZO Section 3.1.16. (Amended March 1992).

The minutes of the ZBA’s hearing on July 12, 2005, denying relief state that “[t]he decision is *without prejudice*¹ to an applicant who might present compelling evidence regarding the lot-or-record status or who might obtain a lot size variance to permit residential construction on the lot.”

¹ Since the 2005 application was denied ‘without prejudice’ there is no concern relative to the subsequent application doctrine. See *Fisher v. Dover*, 120 N.H. 187 (1980).

History of the Property

The Property, for the purpose of this application, was first conveyed to Abbott Worsted Mills, Inc., back in 1933 as part of the first described parcel in a deed recorded at the Hillsborough County Registry of Deeds at Book 919, Page 577 (*Deed attached as "Exhibit B"*). Unless the reader is an engineer, it is unlikely that they would be able to ascertain from the legal description where the Property is specifically described. The description is from the 'old days' and uses 'rods' and references trees/objects/businesses that likely no longer exist and have not existed for decades. However, it is readily obvious that the description is for a large parcel but does not describe the Property distinctly.

In the 1950s, a Plan was drawn up and can be found at the Hillsborough County Registry of Deeds as Plan No. 988 (*attached as Exhibit "C"*), where the Property is surveyed but it not given its own identity or lot number. The plan was relative to Lots #19 and #20 (previously named), which abut the Property. However, despite Plan No. 988 clearly depicting the Property and its dimensions there was no corresponding deed with a legal description.

That is until 1972, the Property was finally described as Parcel #3 in deed recoded at the Hillsborough County Registry of Deeds at Book 2269, Page 268 (*Deed attached as Exhibit "D"*).

Therefore, without any other evidence the Property does not fit the definition of a "lot of record" under the WZO as the ZBA in 2005 *thought* was required.

However, the Property, since it is depicted on a Plan from the 1950s, predating the adoption of zoning, the Property does qualify as a "lot" because it is "[a] single area of land defined by... boundary lines as shown...on a recorded plan." WZO Section 3.1.16.

As such, the Property does qualify for a Special Exception under WZO Section 17.3 because the Property is a 'lot' (*as defined by WZO Section 3.1.16*) where there "...is no reasonable placement of a proposed new structure..." that can conform "...with the [WZO's] lot setback requirements...". WZO Section 17.3. Provided, of course, if the Property can satisfy the remainder of the WZO Section 17.3 criteria, which we contend it does, discussed below.

Analysis as to WZO Section 17.3 Criteria

- a. The lot dimensions or existing structures which result in the difficulty must have been in existence prior to the adoption of the setback requirements that are to be reduced.

As stated above, the lot dimensions appear on a recorded plan as Plan No. 988, which was recorded on February 12, 1954, well before Wilton adopted zoning in March of

1971. Consequently, the lot dimensions cannot conform to setback requirements of today.

- b. The setback to be reduced must be a lot line setback. Setbacks from wetland or water bodies may not be reduced by a special exception under this section, nor may tower setbacks as specified in the Wireless Communications Overlay District, Section 15.3.5. (*Amended March, 2009, Amended March 2020*).

There are no setback issues relative to wetland, water bodies, or Towers, as such, this subsection not applicable to the Property.

- c. The proposed structure and its proposed placement must be in keeping with the existing development of the neighborhood.

The proposed structure will be a single-family residence that contemplates up to one family to occupy the structure. The structure will be designed to blend in with the surrounding structures to keep with essential character of the neighborhood. The surrounding area and the abutting properties are all residential and the applicable zone allows for residential uses.

- d. The special exception must specifically identify the permitted location of the proposed structure, as shown on a site plan, which is to become part of the record of the decision.

See the *preliminary* plan, dated January 13, 2023, drafted by Meridian Land Services, Inc., and attached as Exhibit "E."

- e. The Zoning Board may restrict the dimensions of the proposed structure so as to balance the reasonable use of the property with the spirit of the zoning ordinance.

As proposed, the structure is a 28-foot by 60-foot single-family home and would be placed within the required setback lines as best as it can be given the Property's non-conformity, provided, the Honorable Board agrees with the proposal. Otherwise, we acknowledge the Honorable Board's right to restrict the dimensions.