



Town of Wilton, NH Zoning Board of Adjustment

Notice of Decision

The request by David G. Wirbal for variances to sections 5.3.1(e) and 5.3.1.1(e) of the Wilton Zoning Ordinance has been denied without prejudice, on the grounds that the proposed use fully complies with the Zoning Ordinance and no variance is required. If it had been granted, it would have allowed the use of a 130 square foot utility shed on Lot M-73, 41 Greene Street, for the purpose of brewing craft beer as a home occupation, where the Zoning Ordinance does not allow exterior storage of materials or equipment, or outside operations, for a home occupation that is permitted without a special exception under section 5.3.1.1 of the Ordinance.

The selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing of this decision. A request for a rehearing must be filed in writing with the Zoning Board of Adjustment on or before Thursday, August 10, 2023, and must fully specify all grounds on which the rehearing is requested. (N.H. RSA 677:2)

Findings of Fact

- Lot M-73 is a fully conforming 1.2 acre lot.
- The applicant proposes to brew craft beer for sale as a home occupation, which requires state and federal licensing.
- In order to satisfy the licensing requirements, the brewing needs to take place in a structure distinct from the residence.
- The applicant proposes to do the brewing in a small shed.
- The applicant believes that the proposed occupation essentially satisfies section 5.3.1.1 of the Zoning Ordinance, which allows certain home occupations without special exception or site plan review, but requests variances to two ordinance provisions prohibiting “exterior storage of materials or equipment” and “exterior operation(s) related to the home occupation.”
- Essentially the same variance was granted in January, 2018 in ZBA Case #12/12/17-1, but expired unexercised in 2020 (Zoning Ordinance section 17.4),
- The shed was built in 2019; but the shed itself is a conforming structure. It is its use in conjunction with the home occupation which is problematic.

Discussion

The applicant requested variances to sections 5.3.1(e) and 5.3.1.1(e) of the Zoning Ordinance to allow the conduct of a home occupation in a detached shed. The Zoning Board determined that the prohibitions on “exterior storage of materials or equipment” and “exterior operation(s) related to the home occupation” did not apply to the conduct of the proposed brewing operation in the shed. and that the home occupation was therefore permissible as proposed as of right under section 5.3.1.1 of the Ordinance. “[W]e conclude that contained in every variance application is the threshold question whether the applicant’s proposed use of property requires a variance because, for the reasons discussed above, the ZBA will invariably consider this issue in deciding whether unnecessary hardship exists.” *Bartlett v. City of Manchester*, 164 N.H. 634 (2013).

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Faiman". The signature is written in a cursive style with a long, sweeping tail.

Neil Faiman, Chairperson
Wilton ZBA
July 12, 2023

Case #7/11/2023-1, decided Tuesday, July 11, 2023