

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 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, NH 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  Date 07/23/2024

(continued on the next page)

clerk use only

Date and time received: _____

Received by: _____ Amount paid: _____

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 07/23/2024

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 Bernstein, Shur, Sawyer & Nelson, P.A. - Roy W. Tilsley, Jr., Esq.

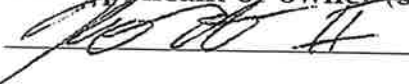
Mailing address 670 North Commercial Street, Suite 108

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 (only if a representative is named)

Signature  Date 07/23/2024

(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 (attach additional pages as necessary):

The Applicant is before the ZBA requesting relief from Zoning Ordinance Sections 9B.6.1, 6.2 & 6.4.

Please see attached addendum.

**Town of Wilton, NH
Application to the Zoning Board of Adjustment**

**Isaac Frye Holdings, LLC
Addendum to
Application for a Variance**

VARIANCE 1

The specific section of the Zoning Ordinance to be varied:

9B.6.1 – Setbacks and Buffers

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

“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.”

The Applicant is requesting relief from the 300-foot buffer requirement consistent with the prior use variance granted by the Wilton Zoning Board.

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

A variance is contrary to the public interest when it unduly, and in a marked degree, conflicts with the Ordinance such that it violates the Ordinance’s basic zoning objectives. *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). There are two methods for determining whether a variance violates a zoning Ordinance’s basic zoning objectives: (1) “whether granting the variance would alter the essential character of the neighborhood” or (2) “whether granting the variance would threaten the public health, safety or welfare.” *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 514 (2011).

The Wilton Zoning Board of Adjustment is very familiar with the Applicant’s property. The lot is in the General Residence and Agricultural zone, and the present variance applications are all in furtherance of using this lot for one single-family residence in compliance with a Planning Board-approved excavation site plan permit. The neighborhood is generally densely forested and interspersed with homes and some other uses including the South Yard Cemetery. Allowing the variance from the woodland buffer requirements, especially in light of the hardships further discussed below, will not change the character of the neighborhood. Similarly, this proposal will have minimal effects on the Town and neighborhood and will not threaten the public health, safety or welfare.

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

Because it is in the public's interest to uphold the spirit of the Ordinance, the Supreme Court has held that this and the first criterion are related. If an application meets one test, it almost certainly meets the other. *See Farrar v. City of Keene*, 158 N.H. 684 (2009). In addition to the reasons stated above, which are incorporated herein by reference, granting the variance will be consistent with the spirit of the Ordinance. While the proposal requires relief from the strict language of the zoning Ordinance, a substantial amount of forested area—exceeding even the statutory requirements of RSA 155-E:4-a—remains adjoined to the proposed driveway that necessitated the gravel removal. As such, the spirit of the Ordinance is being observed.

3. Granting the variance would do substantial justice:

The New Hampshire Supreme Court has held that measuring substantial justice requires balancing public and private rights. “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.” *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 515 (2011). Here, without variance relief, the lot cannot be used. Additionally, the abutting neighbor most affected by the project has expressed a strong desire to have the work completed for the benefit of his lot and the neighborhood at large. To deny this request would not have any public benefit and would be an injustice.

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

As noted, installation of a separate driveway rather than having a shared access easement with the southern neighbor will benefit both properties. Completing the driveway, which remains surrounded by significant tree buffers directly to the north and to the south of the abutting property, should have no effect on area properties.

5. Literal enforcement of the provision of the Ordinance would result in unnecessary hardship.

The Property is immediately distinguishable from other properties in the neighborhood due to its panhandle shape. Despite being nearly nine acres, the property has only $\pm 58'$ of frontage on Isaac Frye Highway, and the narrow access area of the lot extends $\pm 400'$ before widening significantly further from the road.

5(a) Owing to special conditions of the property that distinguish it from other properties in the area:

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:

The lot requires excavation to install a driveway compliant with the Town's regulations, but due to the $\pm 58'$ -foot wide access corridor, the necessary excavation can not be completed without relief from the 300' buffer requirement. Allowing the excavation results in a safer driveway and still includes significant tree buffer, albeit on abutting lots. Applying this Ordinance as written would

result in either an unsafely steep driveway or the lot not being usable at all. Both options are less reasonable than granting this request for relief.

ii. and the proposed use is a reasonable one:

The Applicant has already received a variance permitting the gravel excavation use. The Applicant's proposal is in furtherance of building the single-family home, although the Town determined the scope of the project necessitated by the slopes exceed the exceptions for excavation projects incidental to building. Building a driveway is an inherently reasonable use, and granting this relief to allow completion of the driveway is similarly reasonable.

VARIANCE 2

The specific section of the Zoning Ordinance to be varied:

9B.6.2 – Transportation

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

“The transportation of earth materials removed from this district must be by a private access road to NH Route 31 (Greenville Road) or King Brook Road from NH Route 31 (Greenville Road) to Photon Way, subject to the Planning Board finding that such use does not compromise public safety, and not to any other public road. Where materials are proposed to be removed from a lot without frontage on NH Route 31 (Greenville Road) or King Brook Road, it is the responsibility of the excavator to obtain any necessary easements to construct an access road to NH Route 31 (Greenville Road).”

The Applicant is requesting relief from requirement that all excavation removal travel via Route 31 because the property does not abut that road.

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

Allowing the Applicant to remove gravel via Isaac Frye Highway in the quantities required by the proposal will not alter the essential character of the neighborhood, nor harm the public health, safety, or welfare. The project is not intended to be ongoing, so it will not result in sustained truck traffic or any other detrimental effects.

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

Section 9B.6.2 is designed to sequester truck traffic to certain areas. As noted above, the scope and duration of this project is limited enough that the spirit of the Ordinance will be upheld.

3. Granting the variance would do substantial justice:

As detailed in Variance 1, without relief from certain Ordinance provisions, the Applicant would either be required to construct a very steep driveway (in contravention of regulations) or be prevented from developing the nearly nine-acre lot in any way. The minimal public harm of

allowing some material to be removed on the abutting road is clearly outweighed by the harm of effectuating a complete taking of the property on the owner.

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

Isaac Frye Highway is a reasonably well-traveled Town road and the addition of a few more truck trips as contemplated will have no effect on property values.

5. Literal enforcement of the provision of the Ordinance would result in unnecessary hardship.

The property does not abut any of the roads enumerated in 9B.6.2; as such, the Applicant cannot possibly comply with this provision.

5(a) Owing to special conditions of the property that distinguish it from other properties in the area:

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:

As discussed, allowing this gravel excavation results in safer access to the property and has been approved by the Planning Board. The gravel needs to be removed, and pursuant to the Ordinance, cannot be accomplished without the requested relief. As applied literally, the Applicant cannot legally take gravel from the property because it does not abut any of the permitted trucking routes.

ii. and the proposed use is a reasonable one:

The Ordinance contemplates gravel removal and the Applicant has already received a variance for the use. At the scope and duration proposed by the Applicant, gravel removal using alternate routes is reasonable.

VARIANCE 3

The specific section of the Zoning Ordinance to be varied:

9B.6.4 – Reclamation

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

“No slope in soil material shall be left steeper than 3 to 1 (three (3) horizontal feet for each one (1) foot of vertical drop). The Planning Board may approve a reclamation plan incorporating 2 to 1 slopes (two (2) horizontal feet for each one (1) foot of vertical drop) provided all of the following conditions are met:

1. The steeper grade of 2 to 1 must be stable and must be able to support adequate forest growth;
2. Reforestation of the 2 to 1 slope area with native tree species consistent with forestry best management practices (BMP) utilizing seedlings or young trees;

3. Acceptable soil erosion and drainage control measures must be incorporated to stabilize the reclaimed area, according to best management practices (BMP), including but not limited to elevation platforms or benches at appropriate elevation intervals.”

The Applicant proposes to stabilize the site, but because the intended use is as a driveway, does not intend to reforest the affected area.

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

Allowing the lot to have an access driveway will not alter the essential character of the neighborhood, nor harm the public health, safety, or welfare.

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

The proposed work is not a permanent gravel operation. As such, the provisions regarding ongoing excavation projects are not well tailored to this site. Allowing a driveway to service a single-family home in a residential zone inarguably complies with the spirit of the Ordinance.

3. Granting the variance would do substantial justice:

Forcing the Applicant to reforest the driveway would cause immense harm to the property while providing no public benefit whatsoever. The Applicant will properly stabilize the site and use all necessary best management practices.

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

Nearly every property in the Town of Wilton has a driveway to provide access. Allowing the Applicant to complete the driveway without reforestation will have no effect on surrounding properties.

5. Literal enforcement of the provision of the Ordinance would result in unnecessary hardship.

As noted, a literal enforcement of this provision would result in the Applicant excavating a safe, planning board approved driveway, and then planting trees in the driveway. This would be a patently absurd application of the Ordinance.

5(a) Owing to special conditions of the property that distinguish it from other properties in the area:

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:

This provision contemplates remediation following the completion of commercial gravel operations, which is not how the Applicant intends to use this property. As noted, the driveway will be installed and stabilized using best management practices and has been vetted and approved

by the Planning Board, but the Ordinance provision as written, and the requirement to reforest the driveway, would not be a fair or just application of the requirement.

ii. and the proposed use is a reasonable one:

An allowed use, such as a driveway, is inherently reasonable. *See Malachy Glen Assocs., Inc, v. Town of Chichester*, 155 N.H. 102, 105 (2007).