

1 **Town of Wilton, New Hampshire**

2 **Zoning Board of Adjustment**

3 Draft Minutes

4  
5 **Location: Remote ONLY**

6 **Date: June 9, 2020**

7 **Start time: 7:30 PM**

8 **Board:** Neil Faiman, Joanna Eckstrom, Paul Levesque, Jeff Stone, Andy Hoar, Bob Spear  
9 (alternate), Peter Howd (alternate)

10 **Absent:** Judith Klinghoffer (alternate)

11 **Staff:** Paul Branscombe (Town Administrator), Norma Ditri (Code Enforcement  
12 Officer), Michele Decoteau (Land Use Administrator)

13 **Attendees:** Tom Quinn (applicant's representative), Dawn Ohlund, Judy Clark, Paul Clark,  
14 Darrin Brown (applicant's representative), Steve Yurcak, Wes Lawrence, Wendy  
15 Cheney, Tammy Baker, Sam Proctor, Charlene Krol (applicant), Jim Buchannan  
16 (applicant), Chris Krol, Paula Burke, Terri Krol, William Baker, Karen Walker,  
17 Lynn Pentler, Lynne Stone, Elizabeth Levesque

18  
19  
20 **1) PRELIMINARIES:**

21 **N. Faiman called the meeting to order at 7:34 PM** and read the emergency declaration  
22 regarding emergency Order #12 pursuant to Executive Order 2020-04.

23 He reviewed the Right to Know declaration on how people can participate.

24 Roll call attendance:

25 J. Eckstrom – here, alone

26 A. Hoar – here, alone

27 P. Howd – here with Karen Walker

28 J. Stone – here with Lynne Stone

29 P. Levesque – here with Elizabeth Levesque

30 N. Faiman – here with Lynn Pentler

31  
32 J. Eckstrom **MOVED** to not start a new case after 10 PM and adjourn the meeting by 11 PM.

33 P. Howd **SECONDED**.

34 Roll call vote:

35 J. Eckstrom – yes

36 A. Hoar – yes

37 P. Howd – yes

38 J. Stone – yes

39 P. Levesque – yes

40 N. Faiman – yes. Motion carried.

41  
42 N. Faiman reviewed the reviewed the Rule of Procedure.

43

44 **2) MINUTES:**

45 The Board decided to move the minutes to later in the meeting.

46

47 **3) PUBLIC HEARINGS:**

48 Case# 06/09/20-1

49 Determination of Regional Impact.

50 The Board briefly discussed the potential of regional impact.

51

52 J. Eckstrom MOVED to determine that there is no potential Regional Impact in this instance. P.

53 Levesque SECONDED.

54 Roll call vote:

55 J. Eckstrom – yes

56 A. Hoar – yes

57 P. Howd – yes

58 J. Stone – yes

59 P. Levesque – yes

60 N. Faiman – yes. Motion carried.

61

62 N. Faiman opened the Public Hearing by reading the Public Notice. T. Quinn, representing the  
63 Applicant Jim Buchannan and reviewed the lot they plan to subdivide. They plan to divide K-  
64 103-3, which is 1.59 acres into two lots with a shared driveway. The lot is in the Residential  
65 District. The lot has 187 feet of frontage. One lot created would be a 0.6 acre lot with 100 feet of  
66 frontage. The second lot, on the west side, would have 0.897 acres and 87 feet of frontage. They  
67 are proposing a common driveway.

68

69 T. Quinn said Section 5.2.1. sets the minimum lot size of half an acre and this would be met by  
70 the proposed plan. Section 5.2.1. sets the minimum frontage at 100 feet but in this case, one of  
71 the two lots would be short 13 feet.

72

73 T. Quinn said that a variance has a five part test. The first two parts of the test ask if the Variance  
74 would not be contrary to the public interest and honors the spirit of the ordinance. He planned to  
75 show that this variance would not alter the essential character of the neighborhood and not  
76 threaten the health, safety, and welfare of the residents. To determine the character of the  
77 neighborhood, T. Quinn said he took 25 lots including the abutters that were around this lot.  
78 Only three of the 25 lots meet current size requirements of a half an acre and only 13 of the 25  
79 meet current frontage requirements. T. Quinn added that of the 25 lots, 16 of them have less than  
80 87 feet of frontage. He said they plan to use a common driveway to mitigate the impact on the  
81 safety and sight lines. T. Quinn said these lots will be perfectly consistent with the neighborhood.

82

83 T Quinn said that granting this variance would not be a risk to public health, welfare or safety.  
84 There is ample room for two driveways no closer than other driveways in the neighborhood. But  
85 the applicant is proposing using a common driveway to further mitigate the impact on the  
86 neighborhood.

87

88 T. Quinn said that if a variance is granted it would do substantial justice. The court defines this  
89 as the loss to the individual will not be outweighed by the gain to the community is an injustice.  
90 He said that there is ample frontage to add two lots without compromising public safety.

91  
92 T. Quinn said that granting the variance would not diminish surrounding property values. The  
93 applicant is proposing to build two nice houses at a lower density than the surrounding  
94 neighborhood.

95  
96 T. Quinn said the last requirement of the variance is owing to special characteristics that  
97 distinguish it from other properties. This lot is unique. It is three times larger than is required for  
98 a single family lot. And if the Variance is approved, the subdivided lots will meet the minimum  
99 lot size and be only 13 feet short of frontage on one of the two lots. T. Quinn said this is a  
100 developed neighborhood and the proposed common driveway will mitigate any damage. He said  
101 that two single family homes are a reasonable use of the property.

102  
103 J. Eckstrom asked about a driveway. When she drove by she saw what looked to be an existing  
104 driveway is located and she is good with the proposal. . N. Faiman said he has walked the  
105 bounds for the subdivision of lot 105.

106  
107 J. Stone noted that K-1-5-3 should be K-105-3-1.

108  
109 P. Howd asked that the lot that has the variance be specified. Will the east or west lot receive the  
110 variance. This was discussed and the western most lot would be the lot with only 87 feet of  
111 frontage.

112  
113 N. Faiman asked if there were any comments from abutters.

114  
115 W. Baker asked how they were planning on building with the large amount of ledge on the  
116 property? This was discussed briefly but not as part of the variance discussion. W. Baker asked  
117 if these houses were to be single family homes? N. Faiman said that any single family home can  
118 have an Accessory Dwelling Unit (ADU) by right.

119  
120 W. Cheney asked why the applicant was proposing a single shared driveway? And why not a  
121 shared driveway on the shared property line? T. Quinn said that this proposed driveway would  
122 comply with the driveway regulations but willing to discuss this with the Planning Board. The  
123 applicant was not going to move the stone wall but will if there is Planning Board consent. N.  
124 Faiman weighed in that the driveway location is in the purview of the Planning Board.

125  
126 There were no more questions.

127  
128 J. Stone MOVED to close the Public Hearing. J. Eckstrom SECONDED.

129  
130 Roll call vote:  
131 J. Eckstrom – yes  
132 A. Hoar – yes  
133 J. Stone – yes

134 P. Levesque – yes  
135 N. Faiman – yes. Motion carried.

136  
137 The Board briefly discussed the facts and decided this was a fairly clear cut case.

138  
139 J. Eckstrom MOVED to grant the variance for a reduced frontage lot on the westerly lot as  
140 requested by the applicant with the exact placement of the driveway to be determined by the  
141 Planning Board. A. Hoar SECONDED.

142  
143 J. Eckstrom MOVED to reopen the Public Hearing. J. Stone SECONDED.

144 Roll call vote:  
145 J. Eckstrom – yes  
146 A. Hoar – yes  
147 P. Howd – yes  
148 J. Stone – yes  
149 P. Levesque – yes  
150 N. Faiman – yes. Motion carried.

151  
152 Discussion on the variance motion: none.

153 Roll call vote:  
154 J. Eckstrom – yes  
155 A. Hoar – yes  
156 P. Howd – yes  
157 J. Stone – yes  
158 P. Levesque – yes  
159 N. Faiman – yes. Motion approved and variance granted.

160  
161 N. Faiman reviewed the appeal process.

162  
163 Case #06/09/20-2

164 N. Faiman opened the Public Hearing by reading the Public Notice. He noted that he ZBA does  
165 not have the authority to waive regulations and the driveway issue is not in their jurisdiction. He  
166 noted that the Right To Know issues were not in their jurisdiction and the ZBA was not in a  
167 position to consider them.

168  
169 The Board asked questions about ruling on part of an appeal and not others. They discussed this  
170 and decided to see the appeal as three separate appeals.

171  
172 D. Brown, representing the Krol Trust and Frank and Charlene Krol, said his response to the  
173 Notice of Violation is outlined in his letters dated May 7 and Dec 4 from last year.

174  
175 He said skipping the part about the driveway, we have allegation about a noise ordinance  
176 allegation of noise but not what the noise producer was and this is the same as the smoke.  
177 Without a specific allegation, there could be no remedy. D. Brown said it seemed like there was  
178 a focus on construction equipment but there is nothing that emits smoke. The small pieces of  
179 equipment Frank Krol uses on the property is just for property maintenance. C. Krol drives the

180 large dump truck to and from work. D. Brown said that he determined that the db level from the  
181 dump truck running was only 68 db at the driveway.

182  
183 D. Brown said that there needs to be a certain level of evidence in the letter to support the claim,  
184 and allow for a remedy. There was nothing in the letter to remedy.

185  
186 D. Brown said there is no home occupation. He said he did not see where N. Ditri came up with  
187 a Home Occupation.

188  
189 D. Brown said the barn is used for personal projects and not involved with any business. The  
190 pumps on the outside are for decoration on not a commercial use. He offered to allow the ZBA  
191 members to do a site walk. D. Brown said he C. Krol has an excavation business but does work  
192 anywhere but his property. He has no materials for customer job and the excavator never comes  
193 off the trailer. In addition, he said there are no deliveries and C. Krol said he doesn't have  
194 employees.

195  
196 T. Krol said she felt this was a personal attack and wanted to get down to how this can be  
197 resolved. She said they pay a ton of taxes and keep the house nice. They don't want to make the  
198 town dirty or smoky. She felt the town should have come to talk to them and asked them if this is  
199 what they were doing.

200  
201 D. Brown said that the photos had dates and questioned if they indicated employees. He said he  
202 was surprised that no one went to the Town Clerk to ask how many cars are registered at the  
203 property. He said they would see that there three generations of Krols living there. They are not  
204 indicative of employees. D. Brown said these people respectfully use their property. They use the  
205 barn for projects and the young people on the property repair their dirt bikes. The equipment is  
206 just for Frank Krol to use

207  
208 C. Krol said he is self-employed and leaves every day to jobs. He doesn't meet people at home  
209 and has no employees.

210  
211 J. Eckstrom asked C. Krol if he had any idea of what might be the source of the smoke or noise?  
212 C. Krol said no, all his stuff is factory and his equipment meets all emission laws. J. Eckstrom  
213 said she drove by today. The vehicles she saw she didn't think were suggestive of a business.

214  
215 P. Levesque asked about a business phone and if C. Krol took calls at home? C. Krol said yes he  
216 has a cell phone and he does take calls sometimes.

217  
218 D. Brown said that it isn't unusual to see a skid steer or other large equipment on a dairy farm.  
219 Just because something is prototypically a piece of construction equipment, doesn't mean it can't  
220 be used for agriculture.

221  
222 N. Faiman asked N. Ditri to review her case.

223

224 N. Ditri said she was prepared to have legal counsel and does not which she feels is unfair. She  
225 had received at least five complaints from neighbors about noise and odors. She asked the  
226 neighbors to speak later about their experiences.

227  
228 N. Ditri said that the equipment discussed is much larger than is typically found on a farm. She  
229 said that Board had the information she used to determine the commercial use with the  
230 registration of vehicles and licenses to the property.

231  
232 N. Ditri reminded everyone that when she did approach the property she was chased by a man  
233 who flailed his arms and swore at her to get off the property. Playing nicely wasn't an option.

234  
235 N. Ditri she has driven by at least times and there are a lot cars there, even with all the people  
236 living there. She observed the large equipment moved. She would like to hear from the  
237 neighbors.

238  
239 D. Ohlund asked if the area is zoned commercial? N. Faiman said that it was zoned for  
240 residential and agricultural. D. Ohlund asked if there is a dump truck leaving the property daily,  
241 how is that being used on the property for agriculture? D. Brown said it is not.

242  
243 D. Ohland said she had an illegal driveway across from her property for many years that now has  
244 boulders in it. And dirt bikes go in and out the driveway. She sits on her porch and faces dump  
245 trucks and construction equipment. How would that affect her property value?

246  
247 A. Hoar asked D. Ohland to address to the Board.

248  
249 D. Ohland said that if this residential and she sees the construction equipment on the property  
250 and it is going on the roads every day. N. Faiman said his interpretation from the applicants'  
251 attorney said that some of the equipment is for use on the property and other pieces are used only  
252 off the property. D. Brown said that the dump truck is used only as a commuter vehicle.

253  
254 D. Ohland said if this is only used as a commuter vehicle, why two people are getting out of it.  
255 N. Faiman asked her for specific dates. D. Ohland said that M. Decoteau and N. Ditri can share  
256 the video with the Board. T. Krol said one of the people who lives at the property commutes part  
257 of the way to and from work.

258  
259 D. Brown asked if W. Lawrence would like to speak. N. Faiman said it is not appropriate for D.  
260 Brown to ask, abutters can come forward if they choose.

261  
262 W. Lawrence said he has been over a few times to the property. The only smoke he has observed  
263 was from a wood stove. He has seen only personal projects being worked on in the machine  
264 shop. He has only observed the construction equipment parked. He is one individual and has four  
265 antique vehicles. The horses are wonderful to see. The kids have motorcycles and dirt bikes and  
266 snowmobiles in the winter.

267  
268 J. Clark said she would echo what W. Lawrence said. She has not had any problems with smoke  
269 or noise from the Krols.

270 M. Decoteau was asked to show the videos that were provided by D. Ohlund. She shared the  
271 photos. N. Ditri said that the equipment is very large. The dump truck is large and the front end  
272 loader is so large it takes the dump truck to move it. There is a commercial license and a business  
273 registration on this address.

274  
275 D. Brown said that was her opinion. The equipment is medium sized.

276  
277 N. Ditri said that when she drove by, the very large equipment that did move every day and he  
278 has a business registered there.

279  
280 J. Eckstrom said that she has registered business at Post Office Box. It is where the books are  
281 kept but not where the business is being operated. She said her opinion was that this is not an  
282 indication of a business occupying that property. She said that is a very deceptive thing to say.

283  
284 P. Levesque asked N. Faiman to provide clarity about the role of the ZBA in this case. N. Faiman  
285 said it wasn't the job of the ZBA to decide if the property was being used in a way that the Board  
286 approved of, it is to determine if what the Building Inspector alleges in the notice of violation of  
287 the Zoning Ordinance is correct. J. Eckstrom asked if the Board was also being asked to agree or  
288 disagree with the Building Inspector's interpretation of what is farm or construction equipment. N.  
289 Faiman said the decision doesn't hinge on what type of equipment is being used. He said one  
290 question that is relevant is whether there is a commercial use being made of the property.

291  
292 N. Faiman summarized the complaint from the Building Inspector. The Board has agreed that the  
293 driveway complaint is not something they have authority to address. This they are going to pass  
294 on. The other two assert that the property is being used in a way that violates the Zoning  
295 Ordinance. One has to do with violations of the performance standards and the other that there is  
296 a home occupation on the property.

297  
298 N. Faiman said there is a large amount of equipment that could be used as construction  
299 equipment but is not being used that way, but is used for permitted purposes. C. Krol is said to  
300 have a business using this equipment and simply stables it onsite. Some neighbors are character  
301 references and there is one neighbor who has made numerous complaints about noise and  
302 equipment. We also have the notice of violation supported by the observations of the Building  
303 Inspector.

304  
305 D. Brown said he has some small clarifications. The equipment is not large nor is there a lot of it  
306 in his opinion. He also said that C. Krol is a septic installer not a septic designer.

307  
308 N. Ditri said that if you read the Zoning Ordinance about Section 6. 6. 1 it says that equipment  
309 used for the business shall be screened and the business shall not be visible from a public right of  
310 way. Maybe they aren't doing retail but they are falling into some of the sub categories.

311  
312 P. Levesque said there is some double speak. They are not using the equipment on the property.  
313 They are taking calls, they store equipment, it is registered there and they leave from there every  
314 day. He said he agrees with the Building Inspector that is a business being run from that  
315 property. That equipment is large.

316 W. Lawrence said it seems to him that if C. Krol parks his equipment in a different location, Ms.  
317 Ohland wouldn't see it and wouldn't have a problem.

318  
319 D. Brown said the vehicle itself is not materials stored on the property. This doesn't meet the  
320 criteria for a home occupation. There is nothing that Chris does that meets the criteria for a home  
321 occupation.

322  
323 A. Hoar MOVED to close the Public Hearing. J. Eckstrom SECONDED.

324 Roll call vote:

325 J. Eckstrom – yes

326 A. Hoar – yes

327 J. Stone – yes

328 P. Levesque – yes

329 N. Faiman – yes. Motion carried.

330  
331 The Board discussed the commercial use of the property. N. Faiman said that the dump truck is  
332 obviously a commercial use but also there are allowed accessory uses. He asked are the Krol's  
333 making a commercial use of the property? N. Faiman said that what D. Brown is arguing is that  
334 the Krol's are using the property in an accessory manner like many people who have commercial  
335 vehicles take them home at night and park them. Is parking a dump truck, a trailer with an  
336 excavator and other excavation equipment really accessory? Given that the notice said home  
337 occupation, clearly there is no home occupation. Issue two is too vague and needs to include the  
338 sources and specifics. Issue three can be rewritten by the Building Inspector to be for a  
339 commercial use if she chooses.

340  
341 P. Howd said he agreed that this isn't a home occupation because this isn't operated in a  
342 building. Later in the definition, "or a lot" is added but it isn't include in the beginning. So a  
343 strict reading of the definition excludes this because the equipment is stored outside.

344  
345 P. Levesque said this is not a home occupation, it is an order of magnitude larger than that. This  
346 is a commercial business.

347  
348 A. Hoar said he agreed with N. Faiman on the performance standards. Basically there is a  
349 difference in life style. He said he didn't think this is commercial use or a home occupation.  
350 Could he and his neighbors agree on a better location to park this, yes, but that isn't something  
351 we should be involved in.

352  
353 J. Eckstrom said she agreed with A. Hoar. What if she put a boat in her yard – would that make  
354 her a commercial fisherwoman? She agreed that point number two is very vague as to what is  
355 being argued – it isn't clear.

356  
357 J. Stone said he has a question about scale. He has neighbors who plow in the winter. These  
358 neighbors have pickup trucks with plows. They may leave the plow at home when they go off to  
359 work. I have another neighbor who has an over the road tractor parked at their house. This is a  
360 large truck. There were no trailers, they didn't operate a shipping business. Does the scale  
361 change things? Not sure that the ordinance is that clear making a distinction of driving your

362 vehicle home every day and operating a business. If we do have a distinction where a  
363 commercial endeavor is operating and a commercial vehicle being parked at home – he said he  
364 hadn't read it.

365  
366 N. Faiman said that if you are an electrician and have a panel van with equipment that you park  
367 at home every night that is still a commercial use of your property. It is a permissible commercial  
368 use since it is accessory. These are customary accessory uses. And part of that determination is  
369 scale. Is it customary to have a dump truck with a flatbed trailer with a middle size excavator?  
370 That is debatable and there is case law to support that it isn't.

371  
372 J. Stone asked if the scale makes this incompatible with the Res Ag district. He would prefer the  
373 neighbors work it out and mitigate the impact. The scale does have impact on the neighborhood.

374  
375 A. Hoar said there is a difference between parking on the road and parking on your own  
376 property. While he thought that the neighbors should work it out and he didn't think the citation  
377 should stand.

378  
379 N. Faiman summarized that the first thing the ZBA needed to decide is if the Notice of Violation  
380 should stand and if the interpretation of the Zoning Ordinance was correct. He said he thought  
381 point three should be that there was a commercial use being made of a property in a location that  
382 does not permit commercial use and which has not been allowed by being permitted as a home  
383 occupation. N. Faiman shared case law from Becker v Hampton Falls.

384  
385 J. Stone suggested the Board Vacate without Prejudice the Notice of Violation to give the  
386 neighbors time to work out a satisfactory solution not involving this Board. This would also give  
387 the Building Inspector time to re-evaluate point three and the language used.

388

389 The Board discussed this idea.

390

391 A. Hoar MOVED that Item 1 is outside the jurisdiction of the Zoning Board. Item 2 does not  
392 describe facts sufficient to interpret if the Performance Standards are being violated and it is  
393 rejected and will leave it open for the town to come back with specific facts which support the  
394 allegations. Item 3 does not describe a violation of the Zoning Ordinance and the town is free to  
395 come back and write a new Notice of Violation for an unpermitted commercial use. P. Levesque  
396 SECONDED.

397

398 Discussion

399 J. Eckstrom asked if the ZBA is going to encourage the neighbors to work this out in the motion.

400 A. Hoar said this would be nice but not our business. J. Stone agreed and said that many of the  
401 parties are here. P. Howd said that since most of the neighbors are here and if they haven't gotten  
402 the message by now, they probably won't. P. Levesque said that they are here now and that  
403 suggests they won't work it out.

404

405 J. Eckstrom MOVED to reopen the Public Hearing. P. Levesque SECONDED.

406 Roll call vote:

407 J. Eckstrom – yes

408 A. Hoar – yes  
409 J. Stone – yes  
410 P. Levesque – yes  
411 N. Faiman – yes. Motion carried.

412  
413 Vote on Motion:  
414 Roll call vote:  
415 J. Eckstrom – yes  
416 A. Hoar – yes  
417 J. Stone – yes  
418 P. Levesque – yes  
419 N. Faiman – yes. Motion carried.

420  
421 N. Faiman reviewed the appeal process and that a written notice will be provided to the  
422 applicant.

423  
424 **4) MINUTES:**  
425 The Board discussed having a meeting just to review minutes from the last few meetings.  
426 J. Eckstrom MOVED to have a Special ZBA meeting June 16, 2020, at 7pm to review  
427 minutes. J. Stone SECONDED.

428 Roll call vote:  
429 J. Eckstrom – yes  
430 P. Howd - yes  
431 A. Hoar – yes  
432 J. Stone – yes  
433 P. Levesque – yes  
434 N. Faiman – yes. Motion carried.

435  
436 **5) ADJOURN :**  
437 A. Hoar MOVED to Adjourn at 10:54 PM. J. Stone SECONDED.

438 Roll call vote:  
439 J. Eckstrom – yes  
440 P. Howd - yes  
441 A. Hoar – yes  
442 J. Stone – yes  
443 P. Levesque – yes  
444 N. Faiman – yes. Motion carried.

445  
446 Respectfully submitted by Michele Decoteau, Land Use Administrator  
447 Approved on XXXXXXXXXXXXXXXXXXXX