



Town of Wilton, NH Zoning Board of Adjustment

Notice of Decision

The request by Michaelann Murphy for special exceptions under sections 5.3.1 and 6.6.1 of the Wilton Zoning Ordinance has been granted. It will allow a licensed family group child care as a home occupation at Lot H-132, 291 Captain Clark Highway.

This decision shall expire if the construction or use permitted by it has not begun by Thursday, April 30, 2026. (Wilton Zoning Ordinance section 17.4)

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, May 30, 2024, and must fully specify all grounds on which the rehearing is requested. (N.H. RSA 677:2)

Findings of Fact

- Lot H-132 is approximately 17 acres and is located in the General Residence and Agricultural District.
- There are a house and barn on the property.
- The house is located on Captain Clark Highway facing its intersection with Potter Road, and the driveway is offset slightly to the south of the intersection.
- The applicant proposes to operate a state-licensed “Family Group Day Care Home” in the house. The actual limits will be set by the State licensing agency following an inspection of the property, but will in no case exceed 12 full-time pre-school children and no more than five occasional after-school school-age siblings.

Reasons for the Decision

The Zoning Board considered the requirements of Sections 6.6.1, 5.3.1, and 4.12 of the Zoning Ordinance, and found that the proposed use satisfies each of them. Most are fairly obvious. Requirements which required additional discussion by the Board are addressed below.

- **6.6.1(a) The home occupation shall not be evident from the road or other public right-of-way.**
The drop-off and pick-up of children and, presumably, children playing in the yard do not reach the level of obtrusiveness that we believe is envisioned by “evident from the road.”
- **6.6.1(d) Separate structures may be constructed or placed to accommodate the home occupation if screened from surrounding development and suitable for reversion to a use ancillary and incidental to a residential or agricultural use.**
No additional structures are proposed.
- **5.3.1(f) In addition to the parking area required for the primary residential use, including for all dwelling units on the lot, sufficient off-street parking shall be provided for any non-resident employees, customers and suppliers who may normally be expected to need parking at one time. Driveways may be used for client parking. Where additional space is desired, a maximum of two (2) parking spaces is**

permitted; however, those spaces shall not be located in the front yard or in a setback. Parking spaces shall be a minimum of nine feet by eighteen feet (9' x 18') per space.

The applicant has designated two employee parking spaces, to be located behind the house and in front of the barn, and there is adequate space in the driveway for staggered child drop-off and pick-up.

- **5.3.1(g) Traffic generated by home occupations shall not create safety hazards or be substantially greater in volume than would normally be expected in the neighborhood.**

Considering testimony by various neighbors and the practical impact of no more than a dozen staggered morning and evening (and possibly five after-school) trips, the Board found this requirement to be satisfied.

Additional Comments

The Board received a number of specific objections from Abutter Thomas Ryan, but did not find that any of them justified denial of the application. They are summarized below.

- **That the application should have been rejected because it failed to request a special exception under Ordinance Section 5.3.6.**

Section 5.3.6(b) does not define a distinct special exception, but rather requires that “in-home day care” receive a special exception “as a home occupation under section 5.3.1”, which the applicant appropriately requested.

- **That the application should have been rejected because it redundantly requested special exceptions under both sections 5.3.1 and 6.6.1 of the Ordinance, where 6.6.1 incorporates 5.3.1.**

Identifying both sections that include requirements for the home occupation is not an error.

- **That the application should have been rejected because it did not adequately justify affirmative findings on the requirements of the special exception.**

Although the Special Exception application form asks the applicant to “Explain why your proposed use satisfies the requirements of the Zoning Ordinance,” the purpose is simply to encourage the applicant to think through what they are applying and to prepare their justifications in advance. The Board is ultimately responsible for determining whether the requirements are satisfied, which they do based on the application, testimony from the applicant and other parties, and their own judgment.

- **That the application should have been denied because existing traffic at the Potter Road / Captain Clark Highway intersection, the amount of new traffic from the proposed use, the configuration of the intersection and location of the driveway, and the narrowness of Captain Clark Highway to the south of the driveway would create an unacceptable safety hazard, in violation of Ordinance requirement 5.3.1(g).**

The Board considered the testimony of Mr Ryan and other neighbors and viewed the property and the intersection itself, and, based on its judgment experience, concluded otherwise.

- **That the application should have been denied because the applicant’s intention to construct a large circular driveway with potentially up to 15 parking spaces in the center, some of them in the front yard, was in violation of Ordinance requirement 5.3.1(f).**

The Board found that the applicant has complied with §5.3.1(f) with regard to non-resident employee parking and the use of existing driveway space, and has the same right as any property owner to create a parking area on her property, in a location of her choosing, independent of her proposed home occupation.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Faiman". The signature is fluid and cursive, with a long horizontal flourish at the end.

Neil Faiman, Chairperson
Wilton ZBA
May 2, 2024

Case #3/12/2024-1, decided Tuesday, April 30, 2024