



Town of Wilton, NH Zoning Board of Adjustment

Notice of Decision

The request by The Dawn Ryan Revocable Trust for variances to sections 14.3.3 and 14.3.5 of the Wilton Zoning Ordinance has been granted. It will allow the construction of a bridge and the creation of a trail in the Watershed District setback area from Mill Brook on Lot A-47-1, 74 Stagecoach Road.

The decision was made by a vote of five in favor, none opposed, on a motion to approve at the Tuesday, September 8, 2026 hearing on the application.

This decision will expire if the construction or use permitted by it has not commenced within two years of the decision date. See Wilton Zoning Ordinance section 17.4.2

The selectmen, any party to the action or proceedings, or any abutter may request a rehearing of this decision. See N.H. RSA 677:2. A request for a rehearing must be filed in writing with the Zoning Board of Adjustment within 30 days of the date of the decision using the form which is available on the Zoning Board web site at <wiltonzba.org/how_to_apply.html> or in the Wilton Land Use Office.

Findings of Fact

- Lot A-47-1 has an area of 14.5 acres and 380 feet of frontage on Stagecoach Road. It is located in the General Residence and Agricultural District and the Watershed overlay district, and portions are in the Wetlands Conservation, Aquifer Protection, and Floodplain Conservation overlay districts.
- The lot is more or less rectangular. It is 380 feet north-south at the western end and 234 feet north-south at the east end, but runs over 2000 feet east-west.
- Mill Brook and associated wetlands meander roughly north-south through the lot approximately 700–750 feet east of Stagecoach Road.
- The only access to the lot is by its Stagecoach Road frontage. The portion of the lot east of Mill Brook is accessible only by passing over the property of other owners or by crossing Mill Brook.
- The lot is benefited by an easement over abutting lot A-47-2, immediately to the north, which allows access to the western part of the the portion east of Mill Brook.
- The easement does not allow access to the easternmost 3.2 acres of the lot.
- The applicant proposes to create a trail running from the western part of the lot to the eastern lot line, and a bridge which the trail would traverse. The trail has been variously characterized as a nature trail and a snowmobile trail, and would also allow equipment access (less than 4000 pounds) for land maintenance purposes.

History

- The Zoning Board granted a special exception under Section 11.4(b) of the Wilton Zoning Ordinance on April 8, 2025 (Case #3/11/2025-2), to permit the construction of the bridge

in and the creation of the trail through the wetlands portion of the lot, which uses which would not otherwise be permitted in the Wetlands Conservation District.

- The Wilton Planning Board granted site plan approval for the bridge and trail in Case SP01-0526 and SW01-0526, with a condition requiring the applicant to obtain two variances (or resolve the issues in some other way): A variance from Zoning Ordinance Section 14.3.3 to allow a structure (the bridge) less than 200 feet from water or less than 150 feet from any wetland, and a variance from Zoning Ordinance Section 14.3.5 to allow the path, which would be a second driveway.

The Proposed Bridge is not Permitted as of Right

Zoning Ordinance Section 3.1.31 defines a structure:

Any construction, erection, assemblage or other combination of materials upon the land which is made in such a manner as to imply that it will remain in position indefinitely or which in fact remains on the land for a period of time in excess of thirty (30) days. Structures do not include driveways, fences, stonewalls, mailboxes, culverts, and drainage measures approved by the Planning Board as part of a subdivision or site plan.

The proposed bridge is clearly a structure.

Zoning Ordinance Section 14.3.3, “Setbacks,” of chapter 14, “Watershed District,” states

No residence, building, structure, feed lot, outflow from building drainage, septic system or its containment area shall be located less than two hundred (200) feet from open water and perennial streams nor less than one hundred-fifty (150) feet from intermittent streams, the 100 year floodplain, the deeded flowage rights to the State of New Hampshire Flood Control System, or any wetland or water body.

The proposed bridge would be directly over Mill Brook, a perennial stream, and is thus prohibited by the ordinance.

The Proposed Trail is not Permitted as of Right

Zoning Ordinance Section 14.3.5, “Permitted changes within the setback area,” of chapter 14, “Watershed District,” states

1. The setback area defined in section 14.3.3 shall be left in its natural state and where existing, a natural woodland buffer shall be maintained.
2. Where existing, a natural woodland buffer must be maintained. Tree cutting shall be limited to not more than fifty (50) percent of the basal area of trees, and not more than fifty (50) percent of the total number of saplings, in a twenty (20) year period. A healthy, well-distributed stand of trees, saplings, shrubs, and ground cover shall be maintained. Stumps and their root systems must remain intact in the ground. Dead, diseased, fallen or dangerous trees, saplings, limbs, shrubs, and ground cover may be removed following applicable Best Management Practices (BMPS).

One (1) driveway access may be permitted within the setback area, provided the driveway construction plan and erosion control plan are approved by the Planning Board in accordance with applicable zoning and regulations. As approved, necessary alteration of terrain, removal of rocks, stumps and roots are permitted exclusively for driveway construction and associated stormwater management and erosion control. Any activity or construction within the setback is subject to inspection as a condition of approval; solely to insure compliance with any approval or permit.

Construction of the proposed trail would not leave the setback area “in its natural state,” and thus is prohibited by the first paragraph.

The third paragraph creates a narrow exception from the restriction of the first paragraph: a single driveway access is permitted, subject to certain conditions.

Driveways are not defined in the Zoning Ordinance. The standard rules for the interpretation call for terms not defined in an ordinance to be given their common meanings. A variety of dictionary definitions were all similar to “a private road giving access from a public way to a building on abutting grounds” (“*Driveway*.” *Merriam-Webster.com Dictionary*, *Merriam-Webster*; <https://www.merriam-webster.com/dictionary/driveway>) and “a private way or road for cars, leading from a street or road to a garage, house, etc.” (*Webster’s New World College Dictionary*, 5th Digital Edition. Copyright © 2025 HarperCollins Publishers.). The Zoning Ordinance contains nine other uses of the word driveway (sections 3.1.31, 5.3.1(f), 5.3.7(d), 6.3.1, 9A.2.3, 10.1.22, 13.3, 15.4.7, 16.4.1.1(b), and 16.4.1.3), and all of them are used in a way consistent, or at least not inconsistent, with the dictionary definition.

The proposed trail simply does not fit the common meaning of a driveway. Thus, the driveway exception in the third paragraph of Section 14.3.5 does not apply to it, and it is prohibited by the first paragraph.

What the Variance Allows

The variance to Section 14.3.3 allows the construction of the proposed bridge, as approved by the Planning Board’s site plan approval in Case SP01-0526 and SW01-0526.

The variance to Section 14.3.5 allows the construction of the proposed trail, as approved by the Planning Board’s site plan approval in Case SP01-0526 and SW01-0526.

The Zoning Board notes that the language pertaining to driveways in the third paragraph of Section 14.3.5 is simply irrelevant to the proposed trail.

Reasons for the Decision

- **Public Interest and Spirit of the Ordinance:** The design of the proposed bridge is such as to ensure that it will not affect the water flow of Mill Brook under any conditions, up to a hundred-year flood. “The purpose of the Watershed District is to preserve the quality of the water and to protect the health and welfare of the residents of the Town of Wilton by minimizing sources of pollution through regulation and restriction of population density and activity, and by keeping organic and inorganic wastes to a minimum.” (Section 14.1) The trail and the bridge footings have been designed to have a negligible effect on sediment or pollutants reaching Mill Brook. This conclusion is based not just on the representations of the applicant’s engineer, but on the independent review of the design by the Planning Boards’s consultant.
- **Property Values:** The Zoning Board could not envision any scenario by which the bridge and trail construction could have any effect on neighboring property values.
- **Substantial Justice:** There would no public purpose served by denying the variance that would justify depriving the applicant of any use of 20% of her property.
- **Hardship:** The bisection of the lot by Mill Brook makes the majority of the lot inaccessible without either crossing over Mill Brook or passing over land belonging to others. While an easement allows access to part of the lot beyond the brook, more than 20% remains completely inaccessible. The proposed bridge and trail are the only way to give the applicant any use of that part of the lot.

Sincerely,

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

Neil Faiman, Chairperson
Wilton ZBA
September 9, 2026

Case #9/8/2026-2, decided Tuesday, September 8, 2026