

# SHEEHAN PHINNEY

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May 12, 2022

*Via Email (boardassistant@templenh.org)*

Temple Zoning Board of Adjustment  
423 N.H. Rt. 45  
PO Box 191  
Temple, NH 03084

Re: Stepping Stones Event Center Special Exception Application

Dear Members of the Temple Zoning Board of Adjustment:

As you know, this firm represents Woodcock Farms, LLC (“Woodcock”) in connection with a special exception application filed by Isabella Martin (the “Applicant”) by which the Applicant seeks a special exception to utilize the Stepping Stones Farm & Event Center (“Stepping Stones”) for weddings and gatherings (the “Application”). The Board is in receipt of my letters of April 14, 2022 and April 20, 2022, whereby I expressed Woodcock’s opposition to the Application based on the fact that it does not, and cannot, satisfy the special exception criteria set forth in Article VI, Sections 13A and 13B of the Temple Zoning Ordinance (the “Ordinance”).

The purpose of this letter is to bring to attention, in a comprehensive manner, a number of additional concerns that Woodcock has regarding the application.

## GENERAL CONCERNS

- **The Board should consider the entire area of the proposed use, not just the Barn.**

The issue regarding the scope of the proposed use is one that Woodcock has attempted to draw to the Board’s attention on multiple occasions. At the April 14 meeting, however, the Board did not discuss this issue during deliberations. For the following reasons, Woodcock respectfully urges the Board to consider this important issue and to conclude that the scope of the proposed use actually extends far beyond the Barn, to the entirety of both Lot 9B-14 and Lot 9B-15:

- a. The Applicant’s advertising materials, available on the Stepping Stones website and confirmed as of today’s date, continue to reflect that wedding clients will have exclusive access to the entire property, that there is an option for an outdoor ceremony, and that the Homestead is available for use in connection with weddings. **See Attachment 1** to my

April 14, 2022 Letter. This is true despite the Applicant insisting at the April 14 meeting that the Homestead had been removed from the website. The Applicant's representations to the Board are inconsistent with her representations to potential clients.

- b. Photographs from the Stepping Stones website reflect outdoor ceremonies off of the west end of the Homestead. **See Attachment A** hereto, Photos.
- c. The Application reflects parking areas beyond the Barn as well as a potential for seasonal outdoor dining. Notably, per Google Maps, the paddocks where sporting activities and parking will take place extend to the property line in many areas, and there are no physical boundaries that would limit the setback of parking or other activities related to the hotel and events business.
- d. The Applicant admitted, at the April 14 meeting, that she would be utilizing the Lodge as a hotel in connection with the proposed use.
- e. The Planning Board's March 2, 2021 Planning Board minutes reflect then-town counsel's opinion that the Applicant needed to seek a special exception for "lot 9-15 which includes the house and barn." **See Exhibit B** hereto, March 2, 2021 Planning Board Minutes.
- f. Woodcock has observed guests at events utilizing the entire property before, during, and after wedding ceremonies over the course of 3-day weekends, including outdoor dining, the use of fire pits and volleyball courts, and general partying all over the property and beyond it – to include trespass on the Woodcock property (event guests found wading in the stream on the Woodcock lot).

Woodcock firmly believes that the Applicant has restricted her Application to the Barn because she cannot satisfy the special exception criteria were she to appropriately seek a special exception as to the entire property that will be utilized in connection with the proposed use. Woodcock respectfully requests that the Board deny the Application because it does not properly reflect the scope of the proposed use.

- **The Application is incomplete because the Applicant has failed to provide supporting information relating to a number of special exception criteria.**

The Application must be rejected as incomplete because:

- a. It fails to account for the cumulative effect of *all* other existing business activities on the property, including riding lessons and instructional activities at the indoor riding arena, the use of the Lodge as a hotel, the use of the Homestead as a hotel or a rental, the housing of employees, the commercial boarding of animals, and potentially others. All of these uses, taken together with the proposed use, have an impact on noise, traffic, safety, and the overall quality of life in Temple and Wilton, in addition to impacting the value of neighboring properties. The Application fails to address how all of these other existing commercial activities on the property will impact those concerns, in addition to concerns relating to fire and safety.

- b. The Applicant hasn't provided surveyed information showing that she satisfies the special exception criteria relating to distances, including 13A(1) (requiring other dwellings be no less than 500 feet from the proposed use); 13A(2) (requiring parking to be 55 feet from the lot line); and 13B(2) (regarding driveway width). Google Maps is not an accurate or reliable measurement source.
- c. The Applicant has not provided any reliable data to support that the proposed use will not diminish neighboring property values, as required by 13A(3).
- d. The Applicant has not submitted a traffic study that addresses safety to both vehicular and pedestrian traffic as required by 13A(6).
- e. The Applicant has not provided any sort of buffering plan to demonstrate compliance with 13A(7).
- f. The Applicant has not provided a plan demonstrating how, as required by 13B(2), she will limit event guests to using two of the six driveways currently operating along Webster Highway and Putnam Road.

Absent the above-referenced information, there is insufficient evidence before the Board to support favorable findings on all of the ordinance's requirements, and the application must be denied. McKibbin v. City of Lebanon, 149 N.H. 59, 61 (N.H. 2003).

- **The Board must take abutters' concerns seriously, and cannot grant the special exception absent sufficient evidence to support a finding on all of the ordinance's requirements.**

Woodcock has become concerned, following the Board's April 14 and April 20 meetings, that the Board is not engaging in the in-depth analysis of the application that is required under the law. Even as recently as May 2021, in connection with the Applicant's prior special exception application, the Board engaged in a much more robust and penetrating investigation into what was being proposed and what information was missing. See Exhibit C hereto, May 11, 2021 ZBA Minutes.

In connection with this Application, however, Woodcock feels, respectfully, that the Board is disregarding its concerns. During the April 14 meeting, Woodcock and other abutters raised concerns which went largely unaddressed during the Board's deliberations. Specifically, after the Board took rebuttal comment from the Applicant, the abutters were not offered an opportunity to respond per the Board's rules of procedure, and then the Board went into deliberations and, with perhaps one exception, did not discuss any of the concerns the abutters had raised. Thereafter, the minutes from the meeting inaccurately reflected that the Board had taken a vote on the Application. Woodcock requests that the Board consider the numerous concerns it, and the other abutters, have expressed to date.

Woodcock understands that the Applicant is well-liked in the community. But, all applications must be treated equally, regardless of who the applicant is. Here, the distinction between the treatment of this Application and the treatment of the Ben's Sugar Shack ("Ben's) application in 2021 is striking. In connection with the Ben's application, the Board analyzed the issues of traffic and impact on neighboring real estate values in depth, and repeatedly expressed concerns that the applicant had provided insufficient information to determine whether the it had satisfied the applicable criteria. The applicant ultimately provided additional information, including information from a property value expert, traffic information from the DOT and a traffic expert, and a drawing with revised information showing distances between abutting property and the proposed site, among other things. Even then, after the applicant submitted additional information, the Board determined that the information was still lacking and sought proposals from independent experts in the areas of real estate values and traffic impact. **See Exhibit D** hereto, Ben's Minutes. This process took many months, but the Board's attention to detail on these important issues was appropriate and necessary.

The dichotomy between the Board's approach to the Ben's application and the Board's approach to this Application is troublesome. Here, despite the abutters raising concerns regarding traffic and property values, and despite the very limited information the Applicant has provided to support that she meets the special exception criteria—particularly when compared to the information that was provided or obtained by the Board in connection with the Ben's application—the Board does not seem to be pressing the Applicant on these issues, and has not requested any additional information. Woodcock requests that the Board treat this application with the same level of seriousness that it treated the Ben's application, take the abutters' concerns seriously, and require the Applicant to submit sufficient reliable information demonstrate that she has satisfied all of the applicable criteria.

- **The concept of conditions causes Woodcock concern.**

The Board has expressed a willingness to grant the Application subject to certain conditions. Should the Board proceed with this concept, Woodcock fears that there are likely to be continuous issues between the Applicant and the abutters as time goes on, as it is concerned that the Applicant will not comply with the conditions. This concern is reasonable because:

- a. The Applicant has admitted that it is impossible for the applicant to comply with certain conditions. **See Exhibit 2** to my April 14 Letter; **Exhibit 2** to my April 20 Letter.
- b. The Applicant has, in the past, disregarded rules and requirements placed upon her by the Town or applicable rules and regulations, including by (1) scheduling weddings beyond and in violation of Select Board warning of a cease and desist (**See Exhibit E** hereto, Select Board Letters); (2) operating the Lodge as a hotel without any documented or known approval; (3) operating the Homestead as a hotel without any documented or known approval; (4) placing the indoor arena on the lot of her choice (Lot 9B-15), less than 100 feet from the lot line, rather than the lot it was approved for (Lot 9B-14); (5) placing three commercial signs on the Stepping Stones property, where the Ordinance allows for only two; (6) installation of an off premise commercial sign at the intersection of North Road and Webster Highway that is not only a violation of Town regulations

(prohibiting off-premise commercial signs in the Rural/Agricultural District), but also presents a safety risk for motorists, pedestrians, and nearby residents; and (7) generally operating various commercial enterprises on her property without receiving appropriate relief from the Board.

- c. The Applicant also has a history of providing local boards with inaccurate information. For example, the Applicant has represented to this Board in the Application, and in previous submissions, that there is no dwelling on the Woodcock property, which is inaccurate. In connection with a previous Planning Board hearing regarding a change of use application, the Applicant represented to the Board that “[t]he three abutters, Nicole Concordia, Bill Ezell, and Randy Martin all endorsed the idea,” without mentioning that the two abutters who own approximately 75% of the abutting perimeter of the Applicant’s property line were not consulted about the proposal or notified about the meeting. **See Exhibit F**, January 5, 2021 Planning Board Presentation. Indeed, the Applicant met with the Planning Board at least six times without notice or invitation to Woodcock or MacMartin/Laurenitis.
- d. Finally, the Applicant’s description of the nature of the events that will take place at Stepping Stones has morphed (and expanded into a much larger enterprise than initially contemplated) over time, such that Woodcock has no way of knowing the true nature of the proposal, how it will change going forward, or whether those changes will be in compliance with any imposed conditions. **See Exhibit G**, February 5, 2020 Planning Board Minutes (reflecting the Applicant’s plan to host “class reunions and women’s weekends which would involve less traffic”).

### **THE SPECIAL EXCEPTION CRITERIA**

Woodcock feels strongly that the Applicant has failed to demonstrate that her proposal satisfies all of the applicable special exception criteria found in Sections 13A and 13B of the Ordinance. Specifically:

- **13A(1): The proposed use shall be set back at least five hundred feet from any existing dwelling of another owner; provided, however, that, at the discretion of the Board of Adjustment, this distance may be reduced in any amount to a minimum of two hundred feet, but only if written permission is obtained from the abutting owners affected.**

As Woodcock has argued previously, the Board should measure not from the Barn, but from the lot lines. While Woodcock understands that this criterion has potentially been applied by measuring building to building in other contexts, that approach is not appropriate here where, for the reasons set forth above, the “proposed use” encompasses the entire property.

Regardless of where the measurements are from, however, the Applicant has provided insufficient information for the Board to assess whether this criterion is met, particularly with regard to the Woodcock Property (which the Application inaccurately reflects as vacant except for a shed) and the Ezell property. The Board should either deny the Application because there

is insufficient evidence to support a positive finding on this criterion or continue the hearing and require the Applicant to provide a reliable, surveyed plan detailing this information.

- **13A(2): The proposed use shall have off street parking which will be ample to serve the proposed use; however, that any such off-street parking shall, at a minimum, be set back at least fifty-five (55) feet from all lot lines.**

There can be no question that this criterion is not satisfied, because not all of the parking shown on the plans attached to the Application is fifty-five feet from the lot lines. At a minimum, the spaces shown on Lot 9B-14 are not 55 feet from the lot line for Lot 9B-15.

Moreover, the plan attached to the Application does not accurately represent the parking areas. They are not paved, striped parking lots; they are dirt riding arenas with no parking space striping, at least one of which includes areas that are less than fifty-five feet from the lot lines. It is unclear how the Applicant will prevent cars from parking closer than fifty-five feet from the lot lines without any striping to direct guests to the location of permissible parking.

The Board should either deny the Application because there is insufficient evidence to support a positive finding on this criterion or continue the hearing and require the Applicant to provide (1) a reliable, surveyed plan detailing how this criterion is satisfied; (2) a detailed parking procedures plan; and (3) the construction of physical boundaries to ensure parking does not extend into the setback area.

- **13A(3): The proposed use shall not adversely affect the value of adjacent property. An adverse effect on adjacent property is one which would be obnoxious or injurious or limit the use of neighborhood property by causing such problems as excessive noise, odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare, drainage, or other conditions that are associated with the intended use but are not typical of permitted uses within the area.**

Woodcock incorporates the arguments set forth in my letters of April 14 and April 22 with respect to this criterion. In addition, Woodcock is concerned about the fact that the lights associated with the proposed use will be mounted on the existing light poles that were installed for purposes of outdoor competitive riding, which are approximately 40-50 feet tall—significantly taller than what is necessary for the proposed use, and potentially more impactful on neighboring properties. The Applicant should demonstrate the proposed use of lights with a lighting plan that models the output of proposed light fixtures.

- **13A(4): The proposed site shall be in an appropriate location for the use. Among the factors the Board of Adjustment will consider are: lot size, topography, soils, water resources, road access and locations of driveways, condition of existing structures and other relevant characteristics such as whether the proposed use is compatible with the surrounding land uses.**

Woodcock incorporates the arguments set forth in my letters of April 14 and April 22 with respect to this criterion. In addition, the condition of existing structures also supports a finding that the proposed site is not an appropriate location for the proposed use. Specifically, the Fire & Life Safety Inspection Report from the New Hampshire Department of Safety dated April 2, 2022, reflects a number of safety violations at both the Barn and the Lodge. With respect to the Barn, the Fire Marshall concludes that “[g]iven that there was a licensed fire protection engineer of record who also performed a review on this project, it is necessary that they complete a final inspection to ensure that any items noted or identified by them are addressed and satisfactory. Any documentation of such inspection shall be forwarded to this office for review.” See Exhibit H, April 2022 Fire Marshall Report. Similarly, as to the Lodge, the Fire Marshall wrote, “Please note that this is not a complete and exhaustive code review, but identification of a handful of violations that were noted during the inspection. Given the items noted as well as the uniqueness of the arrangement of the occupancy, the building should be evaluated in its entirety for fire code compliance by a licensed fire protection engineer prior to public occupancy.” Id.<sup>1</sup> The Board should not approve the Application unless and until the Barn and the Lodge have been reviewed and deemed to be safe public occupancy in accordance with these directives.

- **13A(6): Traffic generated by the proposed use shall not present a safety hazard to the community for either vehicles or pedestrians, nor shall it cause excessive wear and tear to town roads.**

Woodcock incorporates the arguments set forth in my letters of April 14 and April 22 with respect to this criterion. In addition, Woodcock stresses the importance of a traffic analysis touching upon Putnam Road, which has not yet been provided by the Applicant. Because all of the entrances and exits the Applicant intends to utilize for purposes of the proposed use are on Putnam Road, Putnam Road will bear 100% of all incoming and outgoing vehicular traffic associated with the use. Putnam Road was not designed to handle the volume or intensity of traffic that these hotel and event operations will generate. It is a dirt road with some locations where two-way traffic is impossible, causing cars to spill over onto the Woodcock property. In addition, Putnam Road is compromised – a portion of it is closed, as signed by the Town. If event guests travel, mistakenly or otherwise, to the location of the sign, they will be unable to do a 3-point turn without driving on Woodcock’s property. Moreover, the presence of a major stream and watercourse all along the abutting line between Woodcock lot and the Applicant’s property further complicates vehicular traffic and safety concerns, particularly where individuals unfamiliar with the area will be traveling along Putnam Road after dark.

In addition, the Applicant’s argument that this use is less impactful than previous uses ignores the fact that this use, unlike previous uses, will result in concentrated traffic during evenings and

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<sup>1</sup> On information and belief, the Applicant continues to operate the Lodge as a hotel despite the fact that the mandated evaluation has not taken place.

late at night, whereas previous uses only generated daytime traffic. This presents a significant difference in terms of safety.

Finally, the Applicant claims that she operated large scale events in the past without any complaints from abutters. It's important to note, however, that during the period where these events took place, the surrounding properties were owned by the Applicant's brother, who would not reasonably be expected to raise the typical abutter concerns and complaints.

The Board should either deny the Application for failure to provide sufficient information to satisfy this criterion, or continue the hearing and require the Applicant to submit a fully compliant traffic analysis.

- **13A(7): Appropriate buffering landscaping shall be provided within the setback areas, of a type and amount deemed appropriate by the Planning Board during Site Plan Review.**

In one area between the Applicant's property and Woodcock's property, there is no buffering along the road for more than 800 feet of the abutting line, including the area directly across from the Lodge and the Barn, and the Applicant has not proposed to add any. While there are some trees on Woodcock's property, Woodcock should not be required to leave those trees up in order to buffer itself from the Applicant's use (it is possible that Woodcock will desire to take those trees down in connection with their future use and development of the property). It is the Applicant's responsibility to show that there is adequate buffering in the setback areas, and she has not done so.

The Application should either be denied for failure to satisfy this criterion, or the Board should continue the hearing and require the Applicant to submit a landscaping plan satisfactory to address the abutters' concerns of noise, light, and visual impairment of the rural, agricultural setting.

- **13A(8): The Board of Adjustment shall, when appropriate, request a recommendation from the Planning Board, the Conservation Commission, Road Agent and/or the Health Officer concerning the proposed use.**

Given the unresolved concerns relating to noise, traffic, water resources, and safety, the Board should request recommendations from all of the above-referenced entities. In particular, the Board should seek input from the Conservation Commission due to the property's location in the aquifer coupled with comments in reports from the Fire Marshall and the Temple Volunteer Fire Department regarding the use of an unknown fire-retardant spray on the interior walls of the Barn (presumably in an effort to avoid the installation of a sprinkler system).

- **13B(1): All building shall be set back at least one hundred feet from all lot lines.**

Woodcock incorporates the arguments set forth in my letters of April 14 and April 22 with respect to this criterion. Unless and until the Applicant demonstrates a lawful manner of compliance with this criterion, the application must be denied.

- **13B(2): Access shall be provided by not more than two driveways, not more than thirty-two (32) feet wide.**

There are 6 driveways currently operating along Webster Highway and Putnam Road. The Applicant has not provided measurements support the width of the driveways she represents will be used in connection with the proposed use, nor has she provided a plan evidencing how she will prevent event guests from utilizing the other driveways. Notably, despite having been aware of this criterion since at least the filing of her initial special exception application in 2021, the Applicant has failed to close or limit use of any of the extraneous driveways.

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Woodcock thanks the Board for its attention to these concerns.

Very truly yours,

*/s/ Megan C. Carrier*

Megan C. Carrier

Enc.

cc: Michael Tierney, Esq. (mtierney@wadleighlaw.com)  
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# EXHIBIT A



# **EXHIBIT B**

**Temple Planning Board**  
**Minutes, Tuesday, March 2, 2021; by Zoom, 7:00pm**  
030221 TPB Minutes-F

Present: Bruce Kullgren, Jr., Chair; Allan Pickman, Vice Chair; Nicole Concordia, Secretary; Brian Kullgren; Randy Martin; Christine Robidoux, George Willard, Olivia Holmes, Clerk.

The meeting was called to order at 7:01pm

Reading of the "Checklist To Ensure Meetings Are Compliant With the Right-to-Know Law During the State of Emergency."

**Approval of Draft Minutes: February 16, 2021**

Approval of the minutes as amended was moved by Nicole, seconded by Brian, and unanimously approved by roll call vote.

**Invitation for Comments from Audience Members:**

Connie would like to be able to comment after agenda items have been discussed. Abutters requested permission to offer comments after the discussion of the Stepping Stones Farm and Event Center. George Russell thought that the correct procedure for Stepping Stones would include an application which could be reviewed by abutters.

**Isabella Martin: Stepping Stones Farm and Event Center**

Given the Planning Board's joint meeting with the Zoning Board of Adjustment (ZBA) and town counsel, the Board's work this evening should include a vote regarding sending to Boo the letter from Atty. Drescher regarding the proper steps for achieving her change of use. The question arose as to whether only lot 9-14, the lot with the indoor arena, would require the change of use process. It was suggested that a building permit is required whether an applicant is building anything or not. It was pointed out that the Select Board decides whether an applicant needs to go before the ZBA. It was said that to be in full compliance with Article 4, Section 13, of the Temple Zoning Ordinance Boo does need to go before the ZBA. Boo would come to the Planning Board, after she meets with the ZBA, for the site plan review.

Christine moved to discuss the conversation the Board and ZBA had with town counsel in a non-public meeting and to put town counsel's letter in the public record. The motion was seconded by George and approved by Allan and Bruce, with Randy, Brian, and Nicole recusing.

Town counsel's opinion is that Boo does need to apply for a special exception from the ZBA for lot 9-15 which includes the homestead and the barn. He also believes Boo needs to apply for a special exception for the change of use of the indoor arena on lot 9-14; and that she can apply for both at the same time.

Town counsel affirmed the Planning Board's ability to advise Boo on the steps she needs to go through. First, she needs to go to the Select Board for the building permit application. George Willard, on behalf of the Select Board, invited Boo to attend their next meeting, to be held on Monday, March 8<sup>th</sup> by zoom. Boo accepted the kind invitation.

There is a separate application she will have to fill out for the site plan review by the Planning Board. **Updating the application for the site plan review is to be put on the agenda for the next TPB meeting.**

Alec pointed out that the minutes from when the indoor arena was approved say there would be no evening use. He thinks that's why she's being asked to apply for a change of use.

The lots have two separate owners. They are both owned by Boo, but the Lodge property, lot 9-14, is held in a revocable trust.

Boo understood that she needs to go to Select Board to acquire a building permit so she can apply for a change of use on lot 9-14 which she understands includes the arena and the Lodge. Then she understood that for lot 9-15, including the homestead and the barn, she needs to apply to the ZBA for a special exception. After she receives the special exception, and her abutters will have input to that, and she has her change of use approved, she will be sent back to the Planning Board which will require an application for her site plan review. She is already well on her way through preparing for that, so it will probably just be finishing up on Dark Sky and noise regulations. Boo: Lodge and ring are 9-14; house and barn are 9-15.

Allan had overlaid a lot map on an aerial view of the farm which indicates the indoor arena is included in lot 9-15 with the house and barn, and that the Lodge is on lot 9-14. He will forward this overlay to the Board.

Christine said the clerk can forward town counsel's letter to Boo with draft minutes.

George Russell offered the following questions and requests:

- a. Make sure the letter they sent two weeks ago is attached to the minutes of the 2/16/21 TPB meeting.
- b. He would like to have a copy of town counsel's letter if it is made available to Boo.
- c. He would really like to see an application for the change of use and the special exception so he can understand concretely what is being asked.
- d. In the site plan review the abutters were not invited to participate. If there is a formal site plan review, he would ask that the abutters be invited to participate.

Alec MacMartin thanked the Board for their consideration of the questions and concerns of the abutters.

George Willard will call town counsel tomorrow to ask his opinion whether the Planning Board can make his letter part of the public record. If he says yes, it could be attached to the minutes

of this meeting. He reassured the abutters that the Board will work with Boo to make sure their concerns are addressed while also working to Boo's satisfaction.

The question arose as to who has authority to determine hours of operation and noise. Allan suggested that in Temple, in general, because these are questions of special exception, the ZBA has historically had this authority. **Alec suggested the Planning Board ask town counsel whether the purview of the ZBA prohibits the TPB from placing restrictions on operations.**

Boo asked whether she could continue to recruit business for Stepping Stones while continuing the process through the select, zoning, and planning boards. Christine replied that this is a question for the Select Board. She added that town counsel said he would probably advise her not to do it, but that is not up to the Planning Board.

Boo read a statement updating the Board on plans for Stepping Stones, which is attached to these minutes.

### **Other Business**

1. Lisa Beaudoin request for LUCT reduction: Update from Allan on his findings and decision on next steps.

LUCT is a Land Use Tax. Allan explained that after Lisa subdivided the house lot with about 8 acres, the Select Board assessed a land use tax of \$3000 based on the idea there is enough acreage and frontage to do a further subdivision on that lot between the house and the new cemetery. Lisa believed that part of the lot was not buildable. Allan then created a sketch showing it is possible. Lisa emailed Allan back it would not meet the sightlines requirement and would not meet the requirements of the state. Allan has not yet responded. She wanted a tax abatement. The lot has 800 or 900 feet of frontage, and the house is at the east end of the existing parcel, but the sightlines are questionable; so if she were to do a subdivision, she would have to get a permit from the DOT. She feels she was assessed too much for taking it out of current use. The determination needs to be made by the Select Board. **Allan will let Lisa know she needs to go before the Select Board.**

2. Update from George and Bruce on their research into whether the TPB or ZBA has authority to change regulations in the zoning ordinance. (This is in reference to Nancy Armstrong's possible request for a subdivision on her property.)

George sent an email to the Municipal Association, and received an answer from Natch Greyes, who said 6 acres would be required. She would have to go to the Select Board, which would have to deny her application. Then she could go to the ZBA, and if she meets the variance criteria the ZBA could give her permission. Then, she would need to come back to the Planning Board for other requirements. Allan pointed out that the Planning Board only does a site plan review for multi-family or commercial applications.

He felt that this is not a Planning Board issue. Connie told the Board that Nancy did reach out to John Kieley, as chair of the ZBA, so she does understand the process.

3. Hoop barns updates: Update on research regarding whether carports are taxable under the statute. It was determined that this is a Select Board issue, and not a Planning Board issue.
4. Review of Kathy Boot's ADU concerns: **It was decided to include ADUs in the plan for the coming year, under the affordable housing umbrella.**

### New Business

1. Randy Martin Timberdoodle Subdivision update

Randy explained that this is a small lot subdivision below the Timberdoodle club house. The potential buyer has sent along pretty much his final plan, which Randy has forwarded to Allan. **Allan will forward it to the rest of the Board once he has had a chance to look at it.** Randy would be happy to address any questions that come up. The question has already arisen about where the driveway would be; Randy explained that it would be off Webster Hwy., with a long drive off the hill. There is already a driveway there. Allan said that driveway location is now required on subdivisions, at least for the first 20 feet or so. He also felt there are some slopes on the lot that need to be taken into consideration. Randy should plan to recuse himself from Board deliberation on this subdivision. **Randy will provide documents to Board and Olivia before the next meeting. Perhaps if Board members have questions, they could get them to Randy in advance of next meeting so he could have answers prepared.**

2. Christine brought up the concern that people are asking what zoning ordinance changes they will be voting on on March 9<sup>th</sup>. The ballot went out without the specific recommendations of the Board. Stephen Buckley of the Municipal Association told Christine that each specific zoning amendment being recommended must be on the ballot. He said that if the way it's being presented were contested, it will not hold up in court. The Board decided to post the recommended changes in as many places as possible immediately, and to have a Board member sharing information sheets outside Town Hall on Election Day if possible. **Christine will forward Stephen's response, as well as town counsel's response to the board members.** It is possible the vote cannot take place this year if the process is challenged, or that people could vote no because they haven't had sufficient information. **Christine volunteered to broadcast the information about the recommended changes on the town Facebook page and in as many other places as possible. Copies will be available at the ballot booth for distribution. Olivia volunteered to pass out information sheets at Town Hall if the Board wishes, and suggested information sheets could be passed out to voters with their ballots.**

Connie suggested Planning Board members take advantage of training opportunities. She felt that board members are required to deal with a great deal of information, and training would help. Information about a May 14<sup>th</sup> Office of Strategic Initiatives training was sent to Planning Board members by Christine today.

3. Timing of Notice of Hearings/Site Visits given USPS deliberate mail slow-down. Given the deliberate slow-down of US Postal Service mail delivery initiated by the Postmaster General, Nicole suggested having applicants pay the cost of 2-day mail delivery, so that hearings or site plan reviews could continue to be scheduled with a two-week time frame. Bruce agreed. **The clerk was asked to remind board members of this idea. The requirement should be added to application forms somewhere. It can be put on site plan review application. Who will do this? Is a vote required?**

**Next Meeting: Tuesday, March 16, 2021, 7:00pm by Zoom**

A motion to adjourn was made by Brian. It was seconded by Randy and unanimously approved by roll call vote.

The meeting was adjourned at 8:52pm

Respectfully submitted, Rev. Olivia Holmes, Clerk

Attachments:

Stepping Stones Presentation of 03/02/21

Letter from town counsel if determined appropriate to include it in the public record

# EXHIBIT C

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

May 11, 2021 Public Hearing

Draft Minutes

Applicant – Stepping Stone Farm and Event Center LLC

ZBA Members present: John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, Gail Cromwell (Alternate) and Deb Harling (Alternate).

Others present: 20+ interested people.

Chair John Kieley called the hearing to order at 5:30 PM and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.

Kieley asked each board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.

Kieley mentioned that all of the required public hearing notifications were successfully implemented.

Kieley summarized the case which is an application for a special exception under Temple's zoning ordinance, to operate a commercial event center in a residential zone.

Kieley asked if any members of the Board had any reason to recuse themselves. All members confirmed that they had no reason recuse themselves except Bill Ezell who recused himself as an abutter. Kieley confirmed that the voting members will be Kieley, Ayvazian, Deleso, Cromwell and Robidoux. Kieley mentioned that alternate members may participate in the dialog tonight but will not vote.

Kieley confirmed that the Board had just received a letter from an abutter which would be available on the Town website shortly.

Kieley confirmed that the subject of potential regional impact would be taken up later in the hearing.

The applicant was invited to make a brief presentation of the application. That presentation which was made by Alec McDaniel is attached to these minutes. Boo Martin followed with a history of the property, comments on cost of maintaining the property and belief that a commercial use is the only realistic use going forward.

After the presentation Kieley confirmed that it only covered the 13A requirements as did the application and that the applicant needed to provide answers to the 13B requirements as well.

A Board discussion on the proposal followed:

- Ayvazian: Is there a sound study available? Applicant agreed to provide a report.
- Kieley: Is there a document that confirms use of each building/site? Applicant agreed to provide.
- Cromwell: What is the staff size? Response that renters will hire caterers, music etc.; applicant will have a staff of five to be sure of compliance with rules etc. Staff will also park on site. If more than 50 guests there will also be a “fire watch” person onsite.
- Robidoux: Sound travels further at night so need to test then.
- Kieley: Who will be measuring sound during an event? Applicant confirmed that a staff person would monitor using an “app” every hour.
- Applicant offered that bar will close at 10:30.
- Kieley: Where will sound measurements be taken from? Application says from abutters’ homes. Applicant will provide additional details.
- Kieley: Looks like distance from Ezell house to “homestead” is less than 500’. Applicant will remeasure using Google.
- Cromwell raised the regional impact question. Kieley summarized Stated ZBA manual and RSA’s and asked Board if they were ok with taking up later in the hearing vs stopping discussion on proposal. Board agreed to continue and take up later.
- MacMartin (abutter): traffic will be clustered so will have regional impact.
- Robidoux: Question on prior events on site. Applicant confirmed that prior events had involved more than 100 guests. Applicant offered that if new business had 99 guests, “half” would be staying overnight so not everyone leaving at the same time.
- Applicant offered that most events would be weekend long.
- Robidoux: Won’t there be mid-week events too? Need for application to be clear on what would actually be taking place. Will the homestead and/or lodge be rented in the winter?
- Kieley: Comparisons have been made between traffic generated under agriculture exception and likely traffic to be generated under commercial application. Board needs to be careful that ag based traffic not used as an allowed starting point. More thought and discussion needed.
- Kieley: parking around overnight buildings doesn’t seem adequate given capacity for 30 people.
- Ayvazian: Is there a report that accompanies the Peterson letter? Board needs data to support the conclusion expressed.
- Deleso: Will a horse-based business continue? Applicant confirmed that there is a non-compete with former horse business on the property that prevents them from training, lessons etc.

The discussion was opened up to the public:

- Bill Ezell:
  1. Scope of operation needs to be tightly defined and included into conditions.
  2. Determination of distance between abutting houses and commercial buildings needs to be done by a licensed surveyor.
  3. 55' setback barrier in the parking ring should be perpendicular to the property line
  4. Exterior lights need to comply with Town's dark say ordinance
  5. Noise test needs to be done by a professional with a full sound source.
  
- Alec MacMartin:
  1. Temple noise ordinance requires sound to be measured at property line.
  2. When recent test conducted sound measured 80-85 DBA in barn and 40-45 DBA at property line depending on wind. Temple ordinance specifies limit of 35 DBA from 7:00 PM to 7:00 AM.
  3. Any outside music is a "non-starter".
  4. Temple's Master Plan specifies that commercial activity should in the village center. It may also be accepted on Rt 101.
  5. Comparison with the old ag use isn't appropriate. That was in the daytime while this is night time.
  6. MacMartin dwelling is about 2000' away not 2700'.
  7. MacMartin property extends to the north of proposed site as well.
  8. MacMartin will provide testimony from an appraiser re impact of commercial operation on abutters' property values.
  9. Board should require an engineered plan that shows how the proposal will work.
  
- Patrick O'Malley:
  1. Applicant needs income.
  2. Town taxes the property as commercial.
  3. Board should consider burden on a citizen.
  
- George Russell:
  1. Temple's master plan calls for "quiet solitude"
  2. When the Special Exception was approved for the arena in 2000, the surrounding land was owned by the Martin family. Today that property is largely owned by others.
  3. Property value diminution must be carefully considered with expert advice vs a real estate sales person.
  4. This proposal is not consistent with a residential neighborhood.

5. Board needs to evaluate the total commercial activity that would take place on the property.
  6. A survey should be required that includes all of the buildings and uses. This would accurately reflect approved businesses for future compliance monitoring.
  7. Businesses today include rental of the lodge, house and wedding venue.
- Patrick O'Malley:
    1. Proposed business would support many other local small businesses.
  - Alec MacMartin:
    1. Spoke with the Deputy State Fire Marshal who suggested that they get involved early.
    2. Reminder that, if approved, this special exception "goes forever".
  - Cam Lockwood:
    1. Read the RSA on Regional Impact.
  - Temple Fire Chief George Clark:
    1. Confirmed that he has been working with the applicant to assure compliance with NFTA and that the State Fire Marshal's office has also been involved.
  - Bill Ezell
    1. Need to use a real sound meter vs an "app"
    2. Would there be a problem if he's running a chain saw on his property during a wedding?
  - Alec MacMartin:
    1. Confirmed that "forestry" is exempt under Temple noise ordinance so Bill's chain saw would be ok.

#### Potential Regional Impact Discussion:

Kieley opened the subject to the Board and confirmed that the public would have a chance to provide their opinion before any vote. Following were Board comments:

- Robidoux:
  1. In the ZBA's last case the traffic generated was right at Rt 101.
  2. In this case some will flow onto Wilton's roads.
  3. Don't want this to come up later and we have to start all over.

- Harling:
  1. Should add Lyndeborough.
  
- Applicant:
  1. Could instruct guests to enter/exit via Temple roads.
  
- Alec MacMartin:
  1. Traffic count at Webster/Putnam measured at 280-300 per day
  2. Traffic count on Rt 101 is 7200-7500 per day

Motion by Kieley: Motion that application from Stepping Stone farm and Event Center LLC has regional impact and that notification of the next hearing should be sent to the towns of Wilton and Lyndeborough as well as Southwest Regional Planning Commission and the Nashua Regional Planning Commission. Second by Cromwell. Roll call vote: Unanimously approved.

Question by Cromwell re requiring a survey. Ayvazian confirmed that many subjects had been discussed that the applicant needs to follow up on. Ayvazian also confirmed that the ZBA is required to make a decision on whether the 13 A&B standards have been met and that the Board must rely on data and facts.

The Board draft minutes from the April 4, 2021 hearing on the Ben's case were discussed and modified. Motion by Kieley to accept the minutes as modified, seconded by Robidoux. Roll call vote: unanimously approved.

Motion by Kieley, second by Ayvazian to adjourn the Stepping Stone hearing until June 1, 2021 at 5:30 PM. Roll call vote: Unanimously approved.

Hearing adjourned at 7:43 PM

Minutes by Kieley

# **EXHIBIT D**

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

January 19, 2021 Public Hearing (Con't)

**Applicant - Ben's Pure Maple Products, LLC**

**ZBA Members present:** John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, Gail Cromwell (Alternate)

**Others present:** Tom Hanna (BCM Environmental Land Law), Silas Little (Attorney), Jim Phippard (Brickstone Land Use Consultants) 20+ interested people.

*Chair John Kieley called the hearing to order at 5:30 and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.*

*Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.*

*Kieley mentioned that all of the required public hearing notifications were successfully implemented.*

*Kieley started by saying there has been a lot of activity on social media sites about the ZBA process lately and he felt this was a good opportunity to provide a cliff notes version to the public of the Zoning board's responsibilities as required by the state of NH. Therefore, John asked Mary Beth Ayvazian to summarize the zoning board's procedures. **Please refer to Attachment #1 at the bottom of these minutes for Mary Beth's summary.***

Kieley then summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16080 square foot building for production purposes which includes 3000 square feet of retail space. Kieley commented that since the applicant has not been able to secure a release from the abutting property owned by the federal government, the applicant has therefore also filed an application for a variance under Temple's zoning ordinance. Kieley stated that this is a combination hearing for both applications however the board will hear the variance application tonight, and said we will be hearing from both sides. Kieley also noted he will read some letters into the record and mentioned that the ZBA will be meeting with legal counsel next week regarding some of the legal issues. Kieley stated he hopes to go into deliberations on both issues and come to conclusions shortly thereafter. Kieley also mentioned they were working on getting all the documents on this case on the town website soon.

Kieley named the voting members and asked if any of them had any reason to recuse themselves. All answered they had no reason. Kieley mentioned that Gail Cromwell is an alternate and may participate in the dialog tonight but will not vote. Mr. Hanna renewed his objection of Cromwell participating in any form in these hearings due to her strong objection of Bens building permit request in 2016 which she voted no on. Mr. Hanna also stated that Cromwell assisted Connolly farm's appeal and produced 30+ pages of documents and spoke at length raising all manner of issues regarding Ben's operation which are similar to the activities being proposed now. Mr. Hanna said her vote would be no in this case and no on any other

location, and therefore she should not sit in on this case. Kieley commented that he noted the objection in earlier hearings and will note it today. Mr. Little added that her participation as a ZBA member does not bar her from speaking as a Temple resident. Cromwell also commented that in 2016 she recommended instead of the operation being on Bens fathers land, the obvious location might be to place the building on the exact location that is being proposed now and that should suggest she would be a supporter.

Kieley then stated that Mr. Hanna would be starting tonight, followed by anyone who is in support of the variance application, then anyone who is against the application, then they will accept final comments. He reminded we should only be discussing the variance application tonight not the special exception, and if anyone wants to make a statement, they can send them in writing to the board. Mr. Hanna said he is hopeful the board will consider closing both matters tonight and move into deliberations. Mr. Hanna also mentioned that although the technical criteria for the two applications are somewhat different, he would like to request that all of the materials submitted on the applicant's behalf be part of the record for this variance hearing and be considered by the board. Mr. Hanna then asked Jim Phippard to give a quick overview of the project to make sure all prior evidence is included in the public record.

Jim Phippard then shared a blown up sketch of the proposed site onto the screen. He spoke about the building, the lot size, location, and the use of the building as they are proposing, which is permitted by special exception. Regarding the variance application, he stated in order to allow this building to be less than the 500 feet separation regulation from the abutter in question (it is about 450 feet away), and although they have made many attempts to contact the owners (Federal Government, Freddie Mac), they have been unable to get the written permission needed and without the written permission, they are seeking the variance. He reminded the board that they also had traffic experts look at traffic impact and contacted the NH DOT who stated that no improvements to route 101/Webster Highway needed to be made. He noted they also did studies on the drainage and the professional results showed no increased run off from the property. He discussed the lighting locations which are going to be 30 feet high which is over the requirement, and he noted they are dark sky compliant. Phippard also mentioned that the utilities and the sewer system will be underground. He added they also addressed fire protection, the storm water pond, and wetland impact. He also discussed the architecture of the building which they believe fits in with the rural character of Temple. Mr. Phippard also showed an aerial photo which showed Ben's proposed site and everything around it including the location of the property owned by Freddie Mac. He also pointed out the forested area along 101 which adds a buffer screening effect for the residential property in question. He also addressed the tractor trailer turning impact and showed a radius tablet which showed the footprint of the tires and stated that all maneuvered safely.

Kieley reminded everyone to stick to the subject of the variance tonight and he commented that some of the things said tonight have been contested by the abutters and he suggests anyone with an interest to study all the files and review the issues raised by those against the application in order to keep things fair.

Mr. Hanna continued and stated that the variance is essentially a waiver of the strict letter of the zoning ordinance as long as the waiver does not sacrifice the spirit or purpose of the ordinance. Essentially the variance is established by state law as a safety valve. The 500 foot setback provision is to protect the residents from the impact of commercial projects. Mr. Hanna went on to state that the distance between the property in question and Ben's building is 450 feet, so the setback is pretty substantial and the ZBA can approve back to 200 feet. Mr. Hanna said the commercial retail market space is an additional 40 feet so they are close to 500 feet distance plus there is a substantial tree buffer along the south side of route 101

which will protect residents from the sights and sounds of Ben's establishment. Mr. Hanna went on to say that the sounds of the traffic on route 101 is quite substantial and supersedes any potential noise from Ben's business, therefore, they feel this project would not be a light or noise concern to any of the abutters. He noted that these special conditions, 101 being the largest, demonstrates the spirit of protecting the residents. Regarding the diminution of property value, since Bens site is 450 feet away and on the opposite side of route 101, and is accessed from route 45, and the tree buffer between 101 and the Freddie Mac property, because of all these reasons, there is no detrimental effect on the value of the Freddie Mac property.

Mr. Hanna went on to address the last two criteria items for the variance. Mr. Hanna stated that substantial justice is a balancing test and is not always easy to explain or understand. It is an evaluation where any loss to the individual (Ben) is not outweighed by a gain to the general public is an injustice. Mr. Hanna said a denial would be a loss to Bens and the board needs to consider that the public gain of the denial outweighs the loss to Bens. The last criteria item which Mr. Hanna read out loud and commented that their position is it is essentially not necessary to enforce the 500 foot requirement in the context of this property because the general purposes of the ordinance will be fulfilled no matter if it is 450 or even 300 feet because of the special conditions of the property. Distance, tree buffer and intervening state highway. Mr. Hanna said they believe the site that Ben is proposing for his project is a perfect site. It is on a state highway but the entrance to the site by trucks and other traffic is off route 101, suggests an ideal location for a low level commercial project.

Kieley asked if there was anyone else who would like to speak in favor of the variance. Steve Andersen spoke in support and said Ben is following all the rules which is one reason he is supporting the project. Steve also stated that the building that was pointed out by the screen shot was built as a business not a residential home, and the 500 foot measurement should be from the residential home not the business so they probably do meet the 500 foot requirement. He also commented that the sound of the truck brakes and motorcycles on route 101 is quite loud. Mr. Hanna then compared Mr. Andersen's commercial project from a long time ago, and stated that the measurement was from the commercial building to the residential dwelling which is how the 500 feet was measured. Mr. Phippard screen shared the plan which showed Mr. Andersen's property at a measurement of a 500 feet. Mr. Hanna stated not only did the ZBA this set a precedent on that project, and that prior position that the board took, confirms how the buildings should be measured.

Mike Dube also spoke stating he lives in close proximity to the planned site and said he did not care what kind of business moves in and stated we need new business in town especially now in this economy. He felt Ben's proposal fits in with this community. He confirmed the noise on route 101 is extensive.

Mr. Little spoke and said that Mr. Hanna's critical point to not approving this variance is the loss to Ben not the nature or usability of the land. In this case if Mr. Fisk cannot get consent from the abutting property owner as required by the ordinance, therefore he is asking the board to consider why it is substantial justice for Ben when he requests that the board ignore the provision made in the ordinance for the abutting property owner. Mr. Littles stated that Mr. Hanna has made a case that it is not a proper variance, it's a loss for Ben and has nothing to do with the land. He feels the purpose of the ordinance is that it does no substantiate justice to the abutting property owner.

Bill Ezell asked Mr. Hanna why they cannot shift the building 50 feet further north in order to meet the 500 foot variance. Mr. Hanna first made a comment that since they received new information tonight in which

Mr. Andersen stated that the residence of the Freddie Mac property may actually be further than the 450 feet that they knew about, since they were measuring building to building, and maybe this variance is not even needed. Mr. Hanna then deferred Ezell's question to Jim Phippard who stated that as the designer, and after a lot of thought, he felt the current plan was the best plan because it places the loading dock area away from route 101 view. If the building were to shift 50 feet, the loading docks would be in view to the public.

Greg Robidoux asked if the building moved 50 feet to the north, would it still be the same size. Jim said yes but would require changing the traffic circulation, parking and loading dock access.

Mary Beth Ayvazian added that looking at condition #1 for the variance, no diminution of value of the surrounding property will be suffered, she asked if there would be any additional evidence submitted. Mr. Hanna stated he submitted Brian Underwood's opinion letter which addressed all the abutter properties but the Freddie Mac property is the property in the context this variance is being sought. Mr. Hanna reminded the board of the distance of the tree buffer and heavy traffic on 101 which intervenes. Mary Beth asked if any back up to the opinion letter was going to be provided. Kieley said the real estate consultant did provide sales data as back up to the report. Mr. Hanna confirmed there is no other data to be submitted.

Kieley then closed public comments on the special exception application but left the opportunity for any comments on the variance application open. Kieley then asked Mr. Hanna if there was going to be any additional materials submitted on the variance application. Kieley stated he has gone through the Underwood materials and stated there are concerns relative to the report and the backup data, and wanted to give Mr. Hanna time to submit any additional data on real estate values or anything else, before they go into deliberations. Mr. Hanna will consult with the expert and will submit anything else if needed. Kieley asked if he could do so by Monday afternoon.

Kieley then moved on to the review of the last 2 ZBA minutes. After discussion and comments, Kieley moved to accept the Dec 1, 2020 minutes as amended. Ayvazian seconded, roll call vote was unanimous in favor. After discussion and comments, Kieley made a motion to accept the Jan 5, 2021 minutes as amended. Ayvazian seconded. Roll call vote was unanimous in favor.

Kieley continued on and read a summary of letters received from George Willard, Amy & Matt Cabana, Don McElreavy & Tamara Andrews, and Simon Le Comte. Kieley reminded everyone that the full versions are available from the office and will be online soon. **Please see attachment #2 for these summaries.**

*Kieley then asked if February 2<sup>nd</sup> would be a date that everyone could make for the next hearing. Everyone was available and the date and time was set for 5:30 on February 2, 2021.*

At 7:00pm Kieley motioned to adjourn the hearing until February 2nd at 5:30 via zoom. Ayvazian seconded, roll call vote was unanimous in favor.

Minutes respectfully submitted by Carole Singelais

## TEMPLE ZBA MEMBER ROLE

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The primary role of a zoning board is to review and decide cases where a special exception or a variance to the ordinance is sought and these are specifically proscribed by law, not whimsy. It is important to note that there is not a commercial ordinance in the town of Temple.

Because we do not have a business zone, any proposed commercial business must comply with the requirements of article 4 section 13 A and B of Temple's zoning ordinance. This is to protect residents according to the ordinances put in place over the years by you, the Temple citizens. It is the responsibility of the applicant to clearly demonstrate to the board their compliance with these requirements. And the Board must be fair and uniform in its decision.

Without stating anything about the merits of this particular case, we must be sure that we are fair across the board, no matter who the applicant is. If there is ever a conflict of interest, a member must recuse her or himself and this is all done in the open, with transparency. The board's work needs to be careful and thorough given the importance of the decision to people on both sides. It is essential that Zoning Board decisions be consistent, reliable, and enforceable in case they end up in Court, and any protracted litigation is expensive for the Town.

While I for one appreciate the incredible success story of young Ben Fiske and applaud those many successes, his popularity must have no bearing on our decision or local zoning becomes meaningless and subject to the whims and personal desires of the loudest and most vocal. This invites a system based on personal bias, influence, favoritism, and enables generally arbitrary practices. Please rest assured that your Zoning Board will not be swayed by the flavor of the month but will instead listen to all stakeholders; we will listen to all of our residents who wish to be heard; and we will apply the facts to render our decision. Your written comments or verbal comments during hearings are always most welcome and will always be listened to.

If you want to stay informed with facts and not just opinion, then please sign up for the [templeh.org](http://templeh.org) alerts from the official town website. Ordinances can always be changed and new ones be implemented, but there is a process for it and that does not happen through the ZBA; it is not our role.

Thanks for listening and being involved. It's extremely important and why Temple is such a wonderful place to live. Thank you again and thank you, Mr. Chair.

Mary Beth Ayvazian  
Temple ZBA Member

## Attachment #2

### **Temple ZBA**

### **Ben's Case**

### **Summary of Letters Received**

#### **Name: George Willard**

Address: 94 Mansfield road

Date: 10/20/20

#### Key Points:

History of his service to the town

Opinion that when Site Plan Review was added in the 90's, commercial development was "best suited" along Rt 101.

Proposal is an "ideal use" of this lot

Fire dept has only reported one accident at this intersection

#### **Name: Amy and Matt Cabana**

Address:

Date: 8/28/20

#### Key Points:

No place to stop between Brookside in Wilton and Big apple in PB

Uses ben's products in restaurant

Could send inn guests to deli for lunch

Ben is a success story for Temple

Project would help toward a more viable future for Temple

#### **Name: Sally and Simon Le Comte**

Address: 565 Webster Hwy

Date: 9/28/20

#### Key Points:

Support Ben's sugar shack

Create employment

Support local business and growth of Temple

Would remove traffic from Webster Hwy

Ben supports the Town

#### **Name: Don Mcelreavy/Tamora Andrews**

Address:

Date:

#### Key Points:

Support Sugar Shack and Market

Believe it would benefit the town

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

February 2, 2021 Public Hearing (Con't)

***Applicant - Ben's Pure Maple Products, LLC***

**ZBA Members present:** John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, Gail Cromwell (Alternate)

**Others present:** Tom Hanna (BCM Environmental Land Law), Silas Little (Attorney for Abutters), Chris Drescher (Town Attorney), Brian Underwood (Property Value expert), Jim Phippard (Brickstone Land Use Consultants) 20+ interested people.

*Chair John Kieley called the hearing to order at 5:30 and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.*

*Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.*

*Kieley mentioned that all of the required public hearing notifications were successfully implemented.*

*Kieley summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16080 square foot building for production purposes which includes 3000 square feet of retail space. Kieley commented that since the applicant has not been able to secure a release from the abutting property owned by the federal government, the applicant has therefore also filed an application for a variance under Temple's zoning ordinance.*

*Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All answered they had no reason. Kieley mentioned that Gail Cromwell is an alternate and may participate in the dialog tonight but will not vote.*

Kieley indicated that at the last hearing there were missing pieces of information to follow up with. He noted that In addition to the 50+ documents already received, attorney Hanna has sent more information from Brian Underwood on property value, new information from the DOT, and a new drawing with revised information on the distance between the abutters property to the proposed site. Kieley noted that all of the documents are now on the Temple website for anyone to view. Kieley noted the board will not go into deliberations and close out information without the applicant knowing if there was a gap with what they had and what they needed. Kieley also noted the board met with legal counsel and received advice that they should talk openly about any shortcomings or concerns they had and wanted the applicant to know about.

Kieley suggested the board have a conversation not a debate, to educate the applicant on what their current thinking is, and to make sure the applicant knows of any concerns so they can provide any additional information. Ayvazian commented that she is concerned with Brian Underwood's letter that states that the ZBA had not received any credible evidence or expert opinion that supports that there

would be a negative effect on the adjacent properties. She feels it is the applicant's burden to provide support that there will not be an impact. Kieley noted that in the first letter regarding the highest and best use of the properties in the area, that they will not change with this proposed business regardless of whatever the type of business is, and suggests more information to educate the board needs to be provided. Cromwell added that on one of the new pieces of information regarding traffic, she is concerned of the absence of a cover letter and is curious on what was told or not told and did that influence the answer.

Kieley asked Mr. Underwood for more back up data on the sales he used in the letter. Kieley stated he went through the data looking for the support. He noted the sample size was small and that they had to go back 20 years. No adjustments were made for that 20 year gap. When he ran the numbers on the 13 sales, he could not replicate Mr. Underwood's numbers on his report and suggested someone take a look at that and clean it up. Deleso agreed she is uncomfortable with the amount of evidence around the diminution of property value. Kieley continued reading the November letter and suggested that the 2 letters and the data given are not convincing. On the second letter from Underwood, the argument should not be looking at the neighborhood, only the adjacent properties and he felt not too much credit was given to that point. Kieley noted that the proof is on the applicant in all of these matters including no diminishment of property values and noted we have a gap that the applicant needs to be aware of. Ayvazian agreed and Ezell added that of all the evidence presented, this is the weakest and he has reservations.

Kieley commented on the state provided traffic study and noted the traffic count reflected a maple syrup based business not an expanded retail business which is a gap, and he noted he wanted to make sure the state has all the information regarding the type of business and the likely traffic counts. Cromwell added the assumption that is underlined, most of the traffic studies stated 200 customers per day and she is not sure where that number came from. It could easily be more and could require a traffic study she commented. Deleso added she thinks the information about the truck traffic going through is not sufficient enough. It is not the traffic going by, it is the traffic turning in and at what point do you need a traffic light. She would like to see more analysis on that.

Kieley then asked to close the variance application input and move into deliberations. Roll call vote was unanimous in favor. Hanna commented that according to the flow chart, there should be an opportunity for the applicant to be heard. Kieley said he could go ahead and speak. Hanna said on the 20<sup>th</sup> of January, Kieley asked for several items that he thought were important so therefore, they hired a surveyor to go out and take measurements and felt they should have the opportunity to show the board those aerial measurements and explain why they reached the conclusion of the measurement of 512 feet. Kieley asked the board if they all had a chance to review the new material or wanted to comment on it. All board members stated they were clear on the data and had no additional questions.

Attorney Little stated the zoning ordinance speaks to the use not the building and all the measurements should go from building to building. There is nothing with respect to that building that says it cannot be used for residential use.

The board went into deliberation at 6:03 on the variance application. Kieley started by stating the first issue on the table is the distance from the dwelling to the building use, and does the word dwelling include the shop or just where people reside? Also does the use include parking and other uses of the property. Kieley said this was discussed with legal and the opinion is that we should differentiate between parking and the proposed building. That led to a discussion to consider use as the measurement from the dwelling to the

proposed structure as differentiated from parking. What defines a dwelling? Do you consider today's dwelling or what could be considered in the future? He noted again the word is dwelling and is this where people live or could it be some accessory shop it was being used for? Ezell commented if any structure was considered a dwelling, anyone could put an 8X10 shed up and say nobody can build near it. He thinks it should be residents that occupy space. Robidoux added is the kind of structure in question currently being used as a residence and was it zoned as commercial? Is there an attached garage to the building and how is it being utilized? Ultimately the pictures showed it was a breezeway that connected the garage.

Kieley allowed Matt Cabana to comment on the federal government owned property and the use of the property. Cabana stated that he is a licensed real estate broker in the area and has firsthand knowledge of the property and said it is in great disrepair and is dangerous. The archery shop has never been used as a home. Just storage. Cabana noted he has tried to get information on the property however once a property goes into foreclosure, it is a long process to go through and you cannot do anything with it during that time. Cabana added you are not going to get anything from them and in his opinion, the bank does not care, it is simply a property they want to get rid of. He added it is in need of complete repair and stated if the board wanted more information on the property, he can provide it to them. Hanna asked if Cabana can speak again later in the hearings. Kieley said Hanna can get information from anyone he chooses.

Ezell commented we need to decide if the property is not habitable, is it therefore not a dwelling, or do we need to go by the fact that it is attached by the breezeway. Kieley stated it was time to vote with the first vote on interpreting is dwelling the habitable part of the structure or any structure on a property. Ayvazian asked if there was a legal definition of dwelling. Deleso asked is the breezeway considered part of the dwelling.

Mr. Little objected to accepting Cabanas information noting the board was already in deliberation. Little stated the entire building should be considered a dwelling. Kieley asked Hanna and Little to mute there systems and he noted he made a mistake letting Cabana speak.

Kieley stated we need to get to the question whether the dwelling is just the habitable part of the connected structure or whether it includes the portion of the structure that perhaps was never habitated. Kieley asked if the board would be more comfortable to continue discussions with legal counsel. Deleso asked if they could go into a private session with legal. Robidoux said to look at the tax card and see how the property was used. Kieley said in the early 2000's there was a building application submitted as commercial that was signed by the select board even though it should not have because it was a residential zone. This was back when the archery place was started and he has not seen any history suggesting it was ever used as residential space. The board went into a private break room session with legal at 6:30.

The board came back to the main meeting at 6:46 and Kieley proposed a motion that for the purposes of the measurement of the 500 feet to the dwelling, they use the habitable portion of the structure. Kieley read from the Temple zoning ordinance that stated the definitions. Ayvazian seconded, roll call vote unanimous in favor. Kieley then made a motion to provide that the in determining the use of the proposed commercial operation, the measurement be made to the proposed building and not to the proposed parking lot or areas, referring to section 13A items 1 and 2 of the ordinance. Ayvazian seconded, roll call vote was unanimous in favor. Kieley stated that based on these two votes, they declare the application for a variance is mute. A motion to leave the deliberative session on the variance application and go back into the main hearing was made by Kieley. Ayvazian seconded, roll call vote was unanimous in favor.

Kieley noted attorney Hanna had an earlier question as to whether he would be allowed to respond to issues specifically regarding traffic and real estate and confirmed with Hanna that he did not want the board to go into deliberations on the special exception application now. Hanna agreed and said he wanted to be heard and will confer with his experts and get the additional information requested.

*Kieley then asked if March 2<sup>nd</sup> or 16<sup>th</sup> would be open for everyone to continue the hearing. Hanna asked that an earlier date be considered. Discussion at the Jan 19 meeting said maybe Feb 16 would be available and he asked for a date before March. Kieley noted there was another case in February that is scheduled. It was agreed that March 2<sup>nd</sup> would be a date that everyone could make for the next hearing.*

Kieley then moved on to the review of the January 19th ZBA minutes. After discussion and comments, Kieley moved to accept the January 19<sup>th</sup> 2021 minutes as amended. Ayvazian seconded, roll call vote was unanimous in favor.

Kieley continued on and read a summary of letters received from Mike Flynn, David Bond, Beth Fox and Emily Sliviak. Kieley reminded everyone that the full versions are available on the Temple website. **Please see attachment #1 for these summaries.**

At 7:09pm Kieley motioned to adjourn the hearing until March 2<sup>nd</sup> at 5:30 via zoom. Ayvazian seconded, roll call vote was unanimous in favor. He will contact Attorney Hanna if an earlier date becomes available.

## Attachment #1

### Temple ZBA

#### Ben's Case

#### Summary of Letters Received

*Name: Mike Flynn*

*Address: 112 General Miller*

*Date: 12/7/20*

Key Points: Ben's is an important part of Temple's character

Proposal would have positive effect on town

We need to support local businesses

*Name: David Bond*

*Address: 164 Moran Rd*

*Date: 1-3-21*

Key Points:

In the 80's Rt 101 was discussed as a corridor for commercial development

Economic development section of master plan references rt 101 development providing facilities/services for the traveling public

...further adds references to balanced tax base, employment and tourist based businesses

Proposal would not impact rural character of Temple

*Name: Beth Fox #3*

*Address: 62 Old Rev*

*Date: 1-5-21*

Key Points:

Not a relo but an expansion extending over three properties

Large scale industrial/retail

Photos of trucks and fork lifts being loaded/unloaded on town roads

Concern that truck area to north of proposed building is insufficient for the use and loading/unloading in the street will continue

Property at 56 Webster Highway calls into question the RE experts report

Comments on SE standards:

- 500' setback should include parking etc
- Outside storage etc to west of building should be prohibited
- Existing buffering to north and west should be protected
- Evergreen screening should be installed along old rev
- 2 driveway limit should be assured
- No parking in 55' setback. Overnight unscreened parking limited to one vehicle
- No on street parking or loading/unloading
- Septic properly sized
- Retail limited to 3000 sq ft
- Retail hours limited to 11-7
- No sale of alcohol etc
- Commercial hours 7 to 5; 6 to 6 during maple season
- Any use changes should be required to go back to ZBA

*Name: Emily Sliviak*

*Address: 5 Old Rev*

*Date: 1-12-21*

Key Points:

Disappointed in Board's "excessive time" and "lack of progression"

Concern with convenience store reference

Opposition letters have contained false statements

Provided description of deli

Requested conditions should not include her house

Traffic flow and safety have been an issue for decades and not brought about by applicant

Board has a lack of respect for experts

Should non-abutting neighbors have standing

No opponent has proven that their property will be diminished in value

New building "can better accommodate ....storage, cars , equipment etc"

New building to serve same ag purpose as current buildings...but be more efficient

*Name: Emily Sliviak*

*Address: 5 Old Rev*

*Date: 1-20-21*

Key Points:

Attempted to be recognized at the 1-19-21 hearing when minutes of the prior meeting were being discussed

Wants paragraph dealing with convenience store reference added to the minutes

Referenced Steve Pernaw's traffic studies and Tom Hanna's comment re mostly maple based products

Minutes respectfully submitted by Carole Singelais

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

March 2, 2021 Public Hearing (Con't)

**Applicant - Ben's Pure Maple Products, LLC**

**ZBA Members present:** John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, Gail Cromwell (Alternate)

**Others present:** Tom Hanna (BCM Environmental Land Law), Silas Little (Fernald, Taft, Falby & Little Law), Chris Drescher (Town Attorney), Brian Underwood, CRE, FRICS (Property Value Expert), Stephen Pernaw P.E., PTOE (Traffic Evaluation Expert), Jim Phippard (Brickstone Land Use Consultants), 20+ interested people.

*Chair John Kieley called the hearing to order at 5:30 and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.*

*Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.*

*Kieley mentioned that all of the required public hearing notifications were successfully implemented.*

*Kieley summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16080 square foot building for production purposes which includes 3000 square feet of retail space.*

*Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All answered they had no reason. Kieley mentioned that Gail Cromwell is an alternate and may participate in the dialog tonight but will not vote.*

Kieley read into the record 5 summarized letters received since the last hearing (see attachment #1), and noted the full versions are located on the town website.

Kieley stated they had an open discussion about the ZBA's concerns with traffic and property value impact at the last meeting and that before they went into deliberation on the special exception, Kieley gave attorney Hanna the opportunity to submit additional information which he did. Kieley added that as this discussion goes on, they will allow information from others and give them a similar opportunity. Kieley stated that after tonight's discussion, they were hopeful to go into deliberation on the special exception.

Attorney Hanna began by stating they stood by the written submissions made by the team of experts representing Ben, and he noted that each of the subject experts were available tonight to answer questions from the board. Hanna said he also sent the board a detailed description of the market space last week.

Steve Pernaw began and addressed some of the concerns from the previous meeting. He noted on table 1 of the November memo, on page 6, it shows the retail area and he noted *it is* included in the trip estimates. Mr. Pernaw also mentioned that on one of the letters submitted, it stated that the trip estimate numbers

were provided from the applicant which he noted was not exactly true. Pernaw stated they looked at the proposed usage and used the ITE trip generation manual which is the standard practice in NH. Pernaw stated they used method A from the manual and came up with the estimates. Pernaw noted they also used a method B which they did not have to do. This method was calculated using the applicant's trip numbers from employee, customer and trucking traffic. This second method which was an independent study, concluded that method B's numbers were higher, so being on the conservative side, they used method B. Pernaw also stated the findings showed that the existing lane configuration is appropriate for the projected volumes and the current stop sign control is appropriate. He noted the width of Webster Highway is sufficient for the speed and traffic volumes and the driveways are properly spaced. He noted that one recommendation was that at the very first special event, it might be a good idea to have police nearby with flashing lights. Pernaw also noted that comments on the Impact to the other roadways besides route 101, were addressed in his study and that they are expecting most arrivals and departures will be from route 101 so the actual impact on Webster Highway north of the existing Bens facility, will not change much. From 101 most of the traffic will turn right onto the site and they will no longer be continuing down Webster Highway where the current facility is so the traffic demands in that section will go down as a result of the new location.

Cromwell added she is bothered by the comparison of the current peak March data which uses the existing 200 square foot retail facility when in fact the new facility is going to be 3000 square feet. A lack of comparison there stated Cromwell. Cromwell also noted that using Pernaw's data, she comes up with 63 maximum number (with Ben's operation) of vehicles per hour going through the intersection. She noted the second study count of what is currently there now, was 59 vehicles per hour and therefore adding these two numbers together equals 122 vehicles per hour which exceeds the 100 vehicles allowed by the Department of Transportation (DOT), and should require more traffic study. Is your study acceptable to the DOT as the traffic impact study asked Cromwell? Adding that looking at how Pernaw gave the info to the DOT, were they not told it was a year round activity? We don't know what was said to them stated Cromwell. Pernaw replied that the 59 number is a weekday pm peak number per hour and the 63 is a Saturday peak hour so he believes that comparison is comparing apples to oranges. You can't just add up the numbers stated Pernaw. Net increase on Webster Highway goes from 74 to 120. It's the net change. Pernaw reminded the board the impact is limited to the short section of 101 and noted the 100 threshold is an unwritten rule the NH DOT uses as a guideline and noted the two numbers are well below the number of trips allowed.

Ayvazian asked if there is any accounting for traffic volume impacted by COVID. Pernaw replied yes his document does show a COVID adjustment factor of an increase of 13%.

Kieley asked if the DOT 100 vehicle threshold is a threshold of just newly generated traffic from a proposed site or is it an aggregate of the existing traffic plus the new traffic. Pernaw replied it is the site generated traffic. Kieley also referenced a memo dated February 2010 from Mr. Bollinger from the DOT which references a 1.5 thousand square foot convenience store when Ben's will have a 3000 square foot retail facility. Kieley noted new information from the applicant shows that 1000 square feet will be dedicated to maple products and the balance is dedicated to other retail products. The Bollinger document of 1.5 thousand square feet convenience store is expected to generate 100 or more vehicles trips during at least one peak hour period. Kieley noted he asked Pernaw in November, what his assumptions were for the retail space in which Pernaw replied the retail traffic generated was based on Ben's experience with retail in the

neighborhood. Kieley said tonight comparing methods A and B, you took a more conservative route but it is based on Ben's data from a 200 square foot small facility not a 3000 retail space as being proposed here.

Pernaw stated he believed the Bollinger document was referencing a free standing 711 type store which is not what Ben's facility will be like. Pernaw said that the method B analysis, given 200 customers and not caring about the products sold, noting the customer count does reflect the customer count of the new facility based on the numbers provided by the applicant for customer, employee and trucking. Kieley stated the Bollinger report references a much smaller retail facility producing a much higher customer count. Pernaw said that is because the convenience store sells items such as lottery, cigarettes, coffee etc. which is expected to generate more traffic.

Jim Phippard added that convenience stores with gas pumps generate a much higher level of traffic so he is not sure they are comparing apples to apples. Kieley said the report has many categories and the one used is without gas pumps. Ayvazian added it would help to compare the facility to some other similar establishment such as Twelve Pine in Peterborough. Fisk added it is similar to Lull farm in Milford and added that the estimates Pernaw was using were numbers from a peak time during maple weekend in March in which they add two tents, a gift store and they open the current facility which all totals 2700 square feet not 200 square feet as referenced by the board. Cromwell said the store will be more like Roy's market in Peterborough. Ezell agreed with the Lull farm comparison. Cromwell added that the traffic on Old Revolutionary Rd. is going to double as people try and avoid the busy intersection. Cromwell asked if that was considered. Pernaw said the projections show the increase of 46 trips to and from the north on Webster highway and expects most will stay on Webster Highway. He added that they could have subtracted the existing traffic but they did not, they took the more conservative route. Mr. Little disagreed with the Lull farm comparison and pointed out this long discussion means maybe some other traffic engineer should analyze Mr. Pernaw's report conclusions.

Kieley asked Pernaw if he was to start with a clean slate and was shown the new retail space documents, the truck traffic and employee counts, and there were no other commercial businesses in the area, how would he go about creating the anticipated traffic flow. Pernaw said this was treated as a clean slate with a brand new use and he super imposed the trip estimates of the existing traffic. Pernaw reminded Kieley that he has been doing these types of studies for over 30 years and he uses the ITE land use codes which sometimes are not exactly applicable to the project which is what happened in this case. Pernaw noted there are over 40 different land use codes and since this project is a unique use, there is no exact code in the manual for this use and that is why they did two methods and used the higher estimate. Kieley asked if there are codes in the manual for retail. Pernaw stated he used ITE code 820 which is a generic retail use code and he added that they used the highest of the applicable codes.

Bob Treadwell commented the town is beautiful and he does not think the town wants this huge establishment in that location. Ayvazian added that citizens have expressed the desire to keep Temple rural and although this building looks esthetically beautiful, the town has opted to not allow commercial zoning so that is a hiccup.

Kieley moved on to the Real Estate Values and Ayvazian asked Brian Underwood if he submitted anything new on the property data. Underwood stated he added a recent sale in the neighborhood and noted that the listing broker disclosed the proposed project to all potential buyers and she commented that none of them objected to the proposed project and the property sold quickly and at market value in her opinion. Therefore Underwood feels this is the best and most recent data to use to further prove his findings that no

decrease in property value is anticipated. Kieley further pushed back on Underwood as to how his assumptions were produced and Kieley noted he felt the board's concerns from the previous meeting were not addressed in his most recent letter. Underwood defended his reports and reminded the board that in a small rural town, his study is how any reasonable person would look at it and the most recent transaction he noted earlier is the best possible case scenario. Kieley stated Underwood's calculations simply don't support his conclusions. Ayvazian also asked if Underwood had the broker's statement in writing. Hanna felt Ayvazian was implying Underwood would misrepresent the broker. Ayvazian said that is not the case they are supposed to analyze the data and noted it is just better to get the information directly from the source rather than hear it through someone else. Underwood said they should consider the overall data and the weight of the testimony received to make an informed decision. Ayvazian stated she is simply trying to do her due diligence.

Cromwell added that we don't know what the traffic count is on Old Revolutionary road which has about 10 houses, but let's say even if the traffic triples, she asked Underwood, do you think it will affect the value of those houses. Underwood said no, he felt that would not impact the value whatsoever on that road. Treadwell added that we need to look at Temple's vision statement, special exception for commercial development criteria, etc. This is a massive building being proposed.

Additional discussion on the highest and best use analysis, and market trends, how prospective buyers differ on what they would accept near their homes, continued. Fisk added that there are other commercial properties in Temple such as the Birchwood Inn, Heck's Welding, Wheeland's auto, RE Granite and he stated that some people do want this project to happen and they feel it would be a very good thing for the town.

At 7:04, after final comments were heard, Kieley asked the board to meet with town counsel privately.

At 7:47 the session resumed and Kieley stated that the board had unanimously decided there was insufficient information on traffic and real estate values to make a decision. That it would not be fair to the applicant or to the town stated Kieley, therefore, they have decided to call in advisors to the board on those two subjects and were hoping to do that in a timely fashion. Kieley added they would like to continue the hearing on March 16<sup>th</sup> at 5:30 although he did not know how far they could get in two weeks selecting and getting those experts up to speed on the case. Kieley added they will be pulling together a package of the baseline information on the project and they will circulate it to the interested parties and to the experts, and will be posting it on the town website as well. Therefore, Kieley stated they will not be going into deliberative session tonight.

Attorney Hanna objected to the decision to hire third party officials not because they were not entitled to do that 4 or 5 months ago but to do it now, is extremely burdensome to the applicant. Hanna also asked if they are going to talk to the applicant about who pays for this and how that process is going to work. Kieley stated the board discussed having high hopes their questions would have been resolved with the new material submitted however, that expectation did not come to fruition. Therefore, they could have either gone into deliberation without having a good picture on both of the subjects, or hire advisors. Kieley also said the signed application states the ability of the town to obtain professionals and that the applicant pays those fees and they plan on following that agreement which was signed by the applicant. Kieley also said they will be asking for quotations which will be made public as well.

Kieley made a motion to adjourn the meeting until March 16<sup>th</sup> at 5:30 via zoom. Ayvazian seconded, roll call vote was unanimous in favor.

## **Attachment #1**

### **Temple ZBA**

#### **Ben's Case**

#### **Summary of Letters Received**

***Name: Tom Hawkins***

***Address: 203 Old Rev***

***Date: 3-2-21***

#1

Traffic Study inadequate...based on applicants traffic counts  
Request ZBA hire its own consultant  
Provided traffic count at DD in Pb which far exceeded Ben's estimates  
Traffic spilling onto Old Rev not evaluated

#2

Recommends that ZBA hire an independent real estate expert to evaluate impact on neighborhood property values of development  
Cabana has publicly stated a bias toward this project so his testimony is similarly biased

***Name: Silas Little***

***Address:***

***Date: 3-1-21***

There should be an independent review of the Pernaw traffic study that recognizes nature of retail market  
Retail space should be limited to 3000 sq ft in total  
Building could be repurposed with larger impact on area; any decision should prevent repurposing  
Board's focus should be on the impact not the applicant

***Name: Matt Cabana***

***Address:***

***Date: 2-28-21***

Background on his RE experience  
Small businesses must be allowed to thrive  
Location is ideal. Travelers need a reason to stop in Temple.  
References Wheelands SE in late 1990's...no drop off in area home sales  
Data shows house sales 1997...2, 1998...17, 1999...19 and 2000...15 throughout temple  
Market value is based on supply and demand

***Name: Silas Little***

***Address:***

***Date: 2-19-21***

PB discussion re event center at Pony Farm  
ZBA should pay attention to because access is via Webster Hwy

***Name: Steve Andersen***

***Address: Rt 45***

***Date: 2-25-21***

Thx to ZBA for being thorough

Atty Little doesn't represent abutters as stated in one set of minutes

Ben has been very thorough

No way to prove property value impact

Since my project, area has seen "massive" increases in values

If denied a SE, applicant could build a much larger building under the ag exception. No SPR.

Do retail later

This is an "awesome" project

lais

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

March 16, 2021 Public Hearing (Con't)

Minutes

***Applicant - Ben's Pure Maple Products, LLC***

**ZBA Members present:** John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, Gail Cromwell (Alternate).

**Others present:** Tom Hanna (BCM Environmental Land Law), Silas Little (Fernald, Taft, Falby & Little Law), Chris Drescher (Town Attorney), Jim Phippard (Brickstone Land Use Consultants), 20+ interested people.

*Chair John Kieley called the hearing to order at 5:30 PM and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.*

*Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.*

*Kieley mentioned that all of the required public hearing notifications were successfully implemented.*

*Kieley summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16,080 square foot building for production purposes which includes 3000 square feet of retail space.*

*Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All answered they had no reason. Kieley mentioned that Gail Cromwell is an alternate and may participate in the dialog tonight but will not vote.*

Kieley summarized two requests the Board had received to rehear the Applicant's request for a variance to the 500' setback requirement as it relates to the Federally owned property on Rt 45. The Board had previously voted to interpret the measurement as starting with the dwelling (i.e. living quarters) component of that structure and running to the nearest wall of the proposed structure. That measurement is approximately 508'. Bill Ezell stated his opinion that, given the wording of the ordinance and the advice of counsel, the prior decision was correct. Motion by Kieley, second by Ayvazian to deny the motions submitted by Beth Fox and Silas Little to rehear the variance and calculation basis decision by the Board. Unanimously approved.

Kieley summarized steps leading up to today's discussion re real estate values and traffic impact:

1. Applicant requested opportunity to submit additional information re real estate values and traffic impact at February 16 hearing.
2. Additional information was submitted by applicant which was reviewed by the Board in advance, and was presented and discussed at the March 2 hearing.

3. Board went into nonpublic session with counsel during the March 2 meeting. When Board came back into public session, it was announced that they had determined that information was lacking and that they would solicit proposals from independent experts in each area.
4. Proposals were obtained from experts and distributed in advance of tonight's Hearing.

Kieley confirmed that the objective of these steps was to give the applicant every chance to prove that real estate values and public safety would not be adversely affected by the proposed business.

Attorney Hanna sent a letter to the Board just before this hearing objecting to the traffic consultant's proposal on the grounds that Gail Cromwell had sent the consultant the agreed upon information and had received their proposal. Additionally, Attorney Hanna, Jim Phippard and Mr. Pernaw felt the \$3,000 fee was high; they offered that the firm was well qualified.

After several iterations, the following was agreed to:

- Chris Drescher will identify alternative traffic consultants and will be the intermediary in both sending the agreed upon background information and scheduling their report.
- The proposed fees for the new traffic consultant will be provided to Mr. Hanna by Mr. Drescher as they become available.
- At the next hearing, assuming the proposed fees for the new traffic consultant are acceptable to the applicant, the Board will vote to confirm the new firm.
- Also, at the next hearing, the results of the real estate consultant's peer review will be presented.
- Attorney Hanna confirmed that his request for a new proposal would necessarily delay the Board's review process.

Steve Anderson commented that Ben was "following the book" and that his costs were building up.

The subject of professional fees was discussed. Kieley confirmed that the ZBA application specifies that professional fees incurred by the Board are the applicant's responsibility. Invoices sent to the applicant to date total nearly \$9000; numerous reminders have been sent. Attorney Hanna commented that these fees are "inappropriate".

It was agreed that the next hearing would be on March 30 at 5:30 PM via zoom.

Motion by Kieley, second by Ayvazian to retain LeMay-Chase for the real estate peer review at a cost not to exceed \$900. Unanimously approved.

Attorney Little raised the question of payment of fees for the two experts as well as Attorney Drescher's time serving as intermediary. Mr. Hanna agreed that those costs would be paid by his client and escrowed by his office.

The following minutes were reviewed and actions taken:

- March 2 minutes on Ben's case. Motion by Kieley, second by Ayvazian to accept those minutes as amended. Unanimously approved.

- February 16 minutes on Judd case. Motion by Kieley, second by Robidoux to accept those minutes as written. Unanimously approved.
- March 4 minutes on Judd case. Motion by Kieley, second by Deleso to accept those minutes as amended. Unanimously approved.

Kieley summarized the need for an organizational meeting on the Stepping Stone case. It was agreed to meet at 5:30 PM on March 31 via zoom. Notice will include all abutters.

Kieley read summaries of a number of letters into the record. Those summaries are attached to these minutes. The originals are on the Town website.

Motion by Ayvazian to adjourn at 6:47 PM, second by Kieley and unanimously approved.

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

March 30, 2021 Public Hearing (Con't)

Minutes

**Applicant - Ben's Pure Maple Products, LLC**

**ZBA Members present:** John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, Gail Cromwell (Alternate), Deb Harling (Alternate).

**Others present:** Tom Hanna (BCM Environmental Land Law), Silas Little (Fernald, Taft, Falby & Little Law), Chris Drescher (Town Attorney), Jim Phippard (Brickstone Land Use Consultants), Brian Underwood (Real Estate Consultant), Heather Peterson and 20+ interested people.

*Chair John Kieley called the hearing to order at 5:30 PM and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.*

*Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.*

*Kieley mentioned that all of the required public hearing notifications were successfully implemented.*

*Kieley summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16,080 square foot building for production purposes which includes 3000 square feet of retail space.*

*Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All answered they had no reason. Kieley mentioned that alternate members may participate in the dialog tonight but will not vote.*

Kieley summarized steps leading up to today's discussion re real estate values and traffic impact:

1. Applicant requested opportunity to submit additional information re real estate values and traffic impact at February 16 hearing.
2. Additional information was submitted by applicant which was reviewed by the Board in advance, and was presented and discussed at the March 2 hearing.
3. Board determined at the March 2 meeting that information was lacking and that they would solicit proposals from independent experts in each area.
4. Proposals were obtained from experts in each area and distributed in advance of March 16 Hearing.

5. Board and applicant agreed to real estate expert's proposal but applicant rejected traffic expert's proposal.

6. Tonight the real estate expert's peer review report will be discussed and a new traffic peer review proposal will be considered

Kieley confirmed that the objective of these steps was to give the applicant every chance to prove that real estate values and public safety would not be adversely affected by the proposed business.

Review of the Real Estate Peer Review report:

General discussion by Board:

- Attributes of properties and attitudes of buyers determine value vs predisposition of current owners toward a particular proposed use
- Lack of data makes determination difficult
- LeMay statements that Underwood conclusions not supported by data, maintenance of highest and best use doesn't preclude reduction in value due to new commercial venture etc
- The one data point available doesn't show diminishment in value
- Consensus that Board should move forward with the real estate information that we have.

Applicant:

- Hanna statement that LeMay report does not discredit Underwood
- 56 Webster Hwy sale is an important data point
- Heather Peterson presentation
  1. Real estate agent for 43 years
  2. Bedford and Marlborough not comparable
  3. Property on Wilson Rd in Temple next to Wheelands sold in 2018
  4. Property across from House by the Side of the Road sold recently
  5. Property across from Brookside recently sold
  6. Property across from Dublin Citgo in under agreement
- Hanna stated and Ben Fisk confirmed that "Existing business on Webster Highway will be discontinued".

Board:

- Kieley suggested reading the LeMay report to understand his conclusions

Public:

- Attorney Little:
  1. Peterson example of property across from House by the Side of the Road inappropriate because it is commercial
  2. Easy to talk about lack of real estate data in the abstract but the Robbins gravel pit is a real example of the impact of commercial operations in this area

3. The applicant has the burden of proof re real estate values
- Mike Flynn:
    1. New to Temple and more retail would make the town more attractive to new buyers
    2. Applicant shouldn't have burden of proof
  - Cam Lockwood:
    1. Peterson comparisons are all Rt 101 properties while the issue here are values on Webster Hwy and Old Rev
  - Bill Ezell:
    1. Reminder to Flynn that it's the State that sets the ZBA's requirements
  - Keith Charlton:
    1. Question whether truck activity on Old Rev would be discontinued
    2. Confirmed by Ben Fisk that all truck activity would be redirected to new site and there would be no trucks on Old Rev
  - Steve Anderson:
    1. Statement that the Robbins pit did not draw complaints from area residents
    2. Kieley, Little and Willard all cited background information about complaints and resulting Town action
  - Tom Hanna:
    1. Gravel trucks are different than tractor trailer trucks
    2. Applicant will only have 5 trucks a day, 5 days a week and all in middle of day
    3. Trucks will be only going a short distance from Rt 101

The real estate discussion was closed.

Kieley asked for a Board discussion of the Hoyle Tanner traffic peer review proposal. Tom Hanna confirmed that the applicant accepted the proposal. Motion by Kieley, second by Ayvazian to accept the Hoyle Tanner proposal for a peer review of the two Pernaw traffic studies. Roll call vote; unanimously approved.

Motion by Kieley, second by Ayvazian to accept the LeMay real estate peer review report. Roll call vote; unanimously approved.

It was agreed that the next hearing would be on April 20 at 5:30 PM via zoom.

Motion by Kieley to adjourn at 6:32 PM, second by Robidoux. Roll call vote; unanimously approved.

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

April 20, 2021 Public Hearing (Con't)

Minutes

**Applicant - Ben's Pure Maple Products, LLC**

**ZBA Members present:** John Kieley, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, and Gail Cromwell (Alternate).

**Others present:** Tom Hanna (BCM Environmental Land Law), Silas Little (Fernald, Taft, Falby & Little Law), Chris Drescher (Town Attorney), Jim Phippard (Brickstone Land Use Consultants), Stephen Haas (Hoyle Tanner), Steve Pernaw (Traffic Consultant) and 20+ interested people.

*Chair John Kieley called the hearing to order at 5:30 PM and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.*

*Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.*

*Kieley mentioned that all of the required public hearing notifications were successfully implemented.*

*Kieley summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16,080 square foot building for production purposes which includes 3000 square feet of retail space.*

*Kieley explained that Deb Deieso was called into a business emergency and would not be able to attend tonight. Kieley gave Atty Hanna the option of continuing with four voting members or defer the hearing. Atty Hanna agreed to continue as long as it was understood that Deb could read the minutes of the hearing and participate as a voting member at subsequent hearings.*

*Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All answered they had no reason. Kieley mentioned that alternate members may participate in the dialog tonight but will not vote.*

*Kieley briefly summarized the steps that led up to. Tonight's discussion:*

1. Applicant requested opportunity to submit additional information re real estate values and traffic impact at February 16 hearing
2. Additional information submitted by applicant and discussed at March 2 hearing.
3. Board determined information lacking and decided to solicit proposals from independent experts in each area

4. Proposals were obtained from experts and distributed in advance of March 16

Hearing

5. At March 16 hearing, real estate expert's proposal was accepted by applicant and

Board; traffic expert's proposal was rejected by applicant.

6. At March 30 hearing real estate expert's report was discussed and accepted

7. At March 30 hearing new traffic proposal was accepted

Kieley introduced Stephen Haas from Hoyle Tanner and confirmed that Steve Pernaw was in attendance and could stay until 6:30. Kieley open Board discussion on the Haas report:

- Bill Ezell commented that subject to the site line question raised in the HT report, it seemed to confirm the Pernaw study.
- Kieley asked HT to comment on the 6 peak AM traffic count in the Pernaw study vs 100+ in the DOT memorandum supplied by the applicant. HT response was that the 6 was based on a syrup business vs broader retail store. HT reviewed the applicant's business plan which had been previously provided and offered that he would look into further but didn't expect traffic count to reach DOT level. Pernaw explained that code 851 convenience store would carry a broad range of products vs a maple based business here with other "accessory" products. Kieley confirmed applicant's commitment that there would be no scratch tickets or beer sales; Hanna added cigarettes would not be sold. HT to review expected traffic counts and submit an update within a week.
- Gail Cromwell commented on the large increase in retail sales space (old building vs new) and questioned whether the DOT trigger of 100+ cars should be evaluated. Discussion re assumption that 74% of traffic to site would come from the east; HT response was that this was a conservative assumption in terms of traffic impact. Question of using a new curb cut on Rt 101 vs access from Webster; Jim Phippard stated that DOT would not allow a new curb cut because there is adequate access from Webster.
- MB asked about plans to offer breakfast or other meals. Ben Fisk responded that there would be one or two tables inside for and a few picnic tables outside but no restaurant service. Kieley commented that this sounded similar to the Dublin Store.
- Greg asked if it would be possible to do a phone survey of similar local business to determine what their customer counts are. Kieley asked if there was an established source for this type of data. HT responded that the ITE "Trip Manual" was the standard source and they don't have a good match for this business. Bill commented that the Dublin Store doesn't seem to impact traffic flow on Rt 101.
- Steve Pernaw offered that even projecting traffic to 2032 only 31% of the capacity of this intersection is utilized. This doesn't mean no queues. In 2032 this intersection would have a "D" rating from the State. Pernaw confirmed that he was looking at this as a maple based business...no restaurant, few tables, limited products for sale etc. HT commented that it would take a lot of additional traffic to create problems.
- Atty Hanna asked Steve Pernaw to comment on Silas Little's recent letter re traffic. Pernaw confirmed that he accepted the applicant's retail vehicle counts then added employee and truck traffic. He stated he "didn't need to know about toilet paper sales". Pernaw confirmed that he did

take COVID traffic reductions into consideration and that that was outlined in his reports. Little mentioned a Florida traffic study which showed COVID related traffic reductions of 47%. Pernaw confirmed that traffic generated by other Webster Hwy was taken into account.

- Hanna asked HT to provide comments on site distances in their next submission. HT agreed to do.

Kieley referenced deferring deliberations until new HT submission was in and all voting members were present.

It was agreed that the next hearing would be on April 29 at 5:30 PM via zoom.

Motion by Kieley to adjourn at 6:32 PM, second by Ayvazian. Roll call vote; unanimously approved.

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

April 29, 2021 Public Hearing (Con't)

Minutes

***Applicant - Ben's Pure Maple Products, LLC***

**ZBA Members present:** John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, Gail Cromwell (Alternate).

**Others present:** Tom Hanna (BCM Environmental Land Law), Silas Little (Fernald, Taft, Falby & Little Law), Chris Drescher (Town Attorney), Jim Phippard (Brickstone Land Use Consultants) and 40+ interested people.

*Chair John Kieley called the hearing to order at 5:30 PM and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.*

*Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.*

*Kieley mentioned that all of the required public hearing notifications were successfully implemented.*

*Kieley summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16,080 square foot building for production purposes which includes 3000 square feet of retail space.*

*Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All members except Kieley confirmed that they had no reason recuse themselves. Kieley made a statement about threats made against him following the last hearing but confirmed that he felt he could continue as an unbiased voting member and would not recuse himself. Kieley mentioned that alternate members may participate in the dialog tonight but will not vote.*

Kieley briefly summarized steps the Board had taken starting on February 16 to provide the applicant with an additional opportunity to provide information on the real estate value and traffic questions.

The recent Hoyle Tanner letter which addressed traffic counts and site lines was discussed by Board:

- HT supported the vehicle counts submitted by Pernaw. No standardized data available.
- Projected intersection capacity (31% in 2032) was noted. Statement that even if the traffic counts are light, there is sufficient excess capacity to absorb excess
- DOT won't help unless 100+ additional vehicles/hour
- No matter what this property is used for there will be additional traffic

Applicant waived opportunity to add additional information

Silas Little commented that (1) the COVID impact used by Pernaw was lower than studies shown to be appropriate and (2) traffic counts used by Pernaw from State sources were inaccurate.

Motion by Kieley, second by Ayvazian to move into deliberations. Unanimously approved.

Bill Ezell muted all attendees except Board members and Attorney Drescher.

Kieley explained the deliberation process and referred attendees to the town website to read the 13 A&B requirements.

### **Section 13 A:**

#### 13A Standard #1:

The proposed use shall be set back at least five hundred feet from any existing dwelling of another owner; provided, however, that, at the discretion of the Board of Adjustment, this distance may be reduced in any amount to a minimum of two hundred feet, but only if written permission is obtained from the abutting owners affected

#### Item A:

Discussion: The federally owned property on the corner of Rt 45 and Rt 101 was discussed.

Motion by Kieley, second by DeIeso to confirm the Board's two earlier votes determining that the 500' required setback had been met.

Roll call vote: Unanimously approved.

Conditions: None

#### Item B:

Discussion: The three dwellings within the 500' setback were discussed and it was confirmed that all three property owners had submitted waivers.

Motion: Motion by Kieley, seconded by Ayvazian to reduce the 500' setback for these three dwellings to 200'.

Roll call vote: Unanimously approved.

Conditions: None

#### Item C:

Discussion: Overall standard

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13A Standard #2:

The Board of Adjustment finds that the proposed use shall have off street parking which will be ample to serve the proposed use; provided, however, that any such off street parking shall, at a minimum, be set back at least fifty-five (55) feet from all lot lines.

Discussion: The plans submitted by the applicant confirm that this requirement has been met.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13A Standard #3:

The proposed use shall not adversely affect the value of adjacent property. An adverse affect on adjacent property is one which would be obnoxious or injurious or limit the use of neighborhood property by causing such problems as excessive noise, odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare, drainage, or other conditions that are associated with the intended use but are not typical of permitted uses within the area.

Discussion:

- Neighbors have expressed strong concerns. This is a large project.
- There was only one recent sale and the buyer expressed no concern about pending project.
- Board has solicited information from a second expert who refuted work of first expert but confirmed that property value impact data for this type of project is not available.
- Heather Peterson's presentation confirmed that residential properties on Rt 101 do sell in this hot market. Concerned residents don't reside on Rt 101.
- Report on property value attributes was discussed.
- Need to be sure conditions protect neighbors and their property values.

Conditions:

- No tractor trailer truck parking on town roads
- Limit number of tractor trailer trucks/day. Specific number TBD
- Limit hours that tractor trailer trucks can be on the property. Specific hours TBD
- Heavy evergreen buffer to be required along north boundary/Old Revolutionary Road as part of site plan review
- Retain current natural vegetation buffer along western property boundary. Can be supplemented.
- No other buildings or businesses to be on lot.
- Special events must be approved by the Select Board and TGPD. Tents must be approved by the Select Board.

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met subject to the stated conditions.

Roll call vote: Unanimous

13A Standard #4:

The proposed site shall be in an appropriate location for the use. Among the factors the Board of Adjustment will consider are: lot size, topography, soils, water resources, road access and locations of driveways, condition of existing structures and other relevant characteristics such as whether the proposed use is compatible with the surrounding land uses.

Discussion:

- Questions about safety of evaporator byproduct going into the aquifer and need to assure appropriateness.
- Purview of Board on subjects like alteration of terrain requirements.
- Given size and complexity, should a certified commercial building inspector be required.

Conditions:

- Discharge of evaporator byproduct into the aquifer certified by state or verified as safe by hydrology expert.
- Existing shed on the property be removed and existing driveways onto the property be blocked off.

Motion: Motion by Kieley, seconded by Robidoux to accept the standard as having been met subject to the listed conditions.

Roll call vote: Unanimous

13A Standard #5:

No hazardous waste shall be permanently stored on or disposed of on the property.

Discussion: Only hazardous material on site stated to be heating oil stored inside the building.

Conditions: none

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13A Standard #6:

Traffic generated by the proposed use shall not present a safety hazard to the community for either vehicles or pedestrians, nor shall it cause excessive wear and tear to town roads.

Discussion:

- If site were further down say Webster Hwy traffic would be a bigger problem.
- Turning tractor trailer trucks could damage Town road and a bond should be required to protect the Town.

- Like real estate, we don't have the data we would like to have.
- Data we have is the best we're going to get.
- Projected (albeit at 1%/year) shows 31% of intersection capacity will be used in 2032. Even if traffic count used is low, there's a lot of margin.
- If we go back to the well what are we likely to find?

Conditions: Require a bond to protect the Town from road damage.

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met subject to condition stated.

Roll call vote: Unanimous

Reconsideration of Standard #4:

The proposed site shall be in an appropriate location for the use. Among the factors the Board of Adjustment will consider are: lot size, topography, soils, water resources, road access and locations of driveways, condition of existing structures and other relevant characteristics such as whether the proposed use is compatible with the surrounding land uses.

Item A:

Motion by Kieley, second by Ayvazian to rescind the earlier vote on Standard #4.

Roll call vote: Unanimous

Item B:

Discussion: Should add a condition that the applicant retain a certified commercial building inspector to assure that the construction is consistent with application and meets and Town and State standards.

Conditions:

- Discharge of evaporator byproduct into the aquifer certified by state or verified as safe by hydrology expert.
- Existing shed on the property be removed and existing driveways onto the property be blocked off.
- Applicant must retain a certified commercial building inspector to assure that the construction is consistent with application and meets and Town and State standards

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met subject to the listed conditions.

Roll call vote: Unanimous

13A Standard #7:

Appropriate buffering landscaping shall be provided within the setback areas, of a type and amount deemed appropriate by the Planning Board during Site Plan Review.

Discussion: A Planning Board Site Plan Review matter.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to refer this standard to the Planning Board.

Roll call vote: Unanimous

13A Standard #8:

The Board of Adjustment shall, when appropriate, request a recommendation from the Planning Board, the Conservation Commission, Road Agent and/or the Health Officer concerning the proposed use.

Discussion: No recommendations required.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

## **Section 13B**

13B Condition #1

All buildings shall be set back at least one hundred feet from all lot lines.

Discussion: The applicants plans confirm this condition will be met.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13B Condition #2:

Access shall be provided by not more than two driveways, not more than thirty-two (32) feet wide.

Discussion: The applicants plans confirm this condition will be met.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13B Condition #3:

The total footprint of all buildings and structures shall occupy no more than one-eighth (1/8) of the lot or parcel of land.

Discussion: Calculation confirming condition met even if temporary tent erected..

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13B Condition #4:

Proposed use shall be located on a town or state maintained road or street.

Discussion: Project is on a Town maintained road.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13B Condition #5:

All food shall be served and consumed within the building(s), except that a seasonal outdoor dining area and or take out services may be approved during Site Plan review.

Discussion: Planning Board matter.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to refer this matter to the Planning Board for Site Plan review.

Roll call vote: Unanimous

13B Condition #6:

No drive through services shall be provided

Discussion: Not applied for

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13B Condition #7:

New facilities shall be located on a lot at least 5 acres in size.

Discussion: Lot is 6+ acres

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met.

Roll call vote: Unanimous

13B Condition #8:

Any retail store shall not exceed 3000 square feet of floor space

Discussion:

- Zoning language not clear re what should be included in the calculation.
- What spaces are shared by retail and production?
- Applicant should supply info on use of any shared spaces including kitchen, loading dock/storage and utility room.

Conditions: Retail space limited to 3000 square feet inclusive of all areas supporting retail operations including, but not limited to bathrooms, storage/loading docks, kitchen, deli, meat/fish, etc

Motion: Motion by Kieley, seconded by Ayvazian to accept the standard as having been met subject to the listed condition.

Roll call vote: Unanimous

13B Condition #9:

There shall be no outdoor display of goods, and no outdoor storage of materials or equipment unless screened from roads and surrounding properties by natural or structural means to such an extent and in such manner as may be specifically required and approved by the Planning Board during Site Plan Review. One business related vehicle may be stored on site without required screening.

Discussion: Planning Board matter.

Conditions: None

Motion: Motion by Kieley, seconded by Ayvazian to refer this matter to the Planning Board for Site Plan Review.

Roll call vote: Unanimous

#### Special Exception Overall

##### A. Additional Conditions:

- Applicant to pay all fees agreed to before Notice of Decision
- Existing buildings on Webster Highway will not be used in the Ben's Pure Maple Products LLC business.
- Proposed building can be used only for maple syrup processing and the retail store described in the submitted materials
- At least one-third of the retail space to be devoted to the maple syrup and related products
- No retail sales of beer, wine, lottery tickets or tobacco products.
- No tractor trailer trucks to be directed onto Old Revolutionary Road.

Motion: Motion by Kieley, seconded by Ayvazian to approve the above additional conditions.

Roll call vote: Unanimous

##### B. Approval:

Motion: Motion by Kieley, second by Ayvazian to approve the Special Exception application submitted by Ben's Pure Maple Products, LLS subject to the conditions voted on.

Roll call vote: Unanimous

Motion by Kieley, second by Ayvazian to conclude the deliberative session and adjourn the hearing until May 4, 2021 at 5:30 PM. Unanimously approved by roll call vote. Hearing adjourned at 8:00 PM.

TOWN OF TEMPLE, NH

ZONING BOARD OF ADJUSTMENT

May 4, 2021 Public Hearing (Con't)

Minutes

Applicant - Ben's Pure Maple Products, LLC

ZBA Members present: John Kieley, Deb Deleso, Greg Robidoux, Bill Ezell, Mary Beth Ayvazian, and Gail Cromwell (Alternate).

Others present: Tom Hanna (BCM Environmental Land Law), Silas Little (Fernald, Taft, Falby & Little Law), Chris Drescher (Town Attorney), and 20+ interested people.

Chair John Kieley called the hearing to order at 5:30 PM and notified the participants that this hearing was being held electronically pursuant to Executive Order 2020-04, Section 8, Emergency Order #12, Section 3.

Kieley asked each voting board member to state their name and indicate whether they were alone. All members stated their name and indicated they were alone.

Kieley mentioned that all of the required public hearing notifications were successfully implemented.

Kieley summarized the case which is an application for special exception under Temple's zoning ordinance, to construct a 16,080 square foot building for production purposes which includes 3000 square feet of retail space.

Kieley named the voting members of the board and asked if any of them had any reason to recuse themselves. All voting members confirmed that they had no reason recuse themselves. Kieley mentioned that alternate members may participate in the dialog tonight but will not vote.

Motion by Kieley, second by Ayvazian to move into deliberations. Unanimously approved.

Bill Ezell muted all attendees except Board members and Attorney Drescher.

Kieley explained the deliberation process the Board had gone through at the last hearing which included roll call votes on each requirement and conditions as well as an overall vote to approve the Special Exception application subject to conditions. Kieley referred attendees to the draft Notice of Decision on the Town website.

Kieley mentioned that at the last hearing the Board had agreed that there were three areas where specifics were "to be determined" and where, as previously specified, the Board could ask the

applicant for additional information. After that hearing Kieley sent an e mail to Atty Hanna suggesting that he be prepared to provide additional information if requested by the Board during the hearing. Rather than being prepared for such questions, Atty Hanna sent an email on the 29<sup>th</sup> which Kieley, as is the Board's normal practice, forwarded to the Board. When Kieley realized that he should not have sent that to the Board because they had not yet specifically asked for the information, he immediately sent a follow up note to the Board asking them not to read the e mail. The time between the two emails was less than 15 minutes.

The Board agreed to review each of the Section 13 A&B requirements, including conditions agreed to at the last hearing, to determine if any modifications were appropriate.

Section 13 A:

13A Standard #1: No discussion or modification

13A Standard #2: No discussion or modification

13A Standard #3:

Discussion re conditions:

- Limit on number of tractor trailer trucks/day. Various alternatives considered including possibility of different limits by season. Agreed to hear information from applicant. Read by Chris Drescher:

“Daily Tractor Trailer Trucks—We suggest that the condition pursuant to Standard 13A #3 should state that the maximum number of tractor trailer trucks allowed on site is 15. (15 is the number of daily trucks on which Steve Pernaw based his traffic study. (See September 8, 2020 traffic memo, Table 1, footnote 3 on page 3.)”

- Motion by Kieley, second by Robidoux to limit the number of tractor trailer trucks per day to fifteen. Kieley yes, Ayvazian pass, Ezell yes, Deleso yes and Robidoux yes. Kieley declared that motion passed.
- Limit hours that tractor trailer trucks can be on the property. Various alternatives considered including applicant's statement about restricting to weekdays.
- Agreed to hear information from applicant. Read by Chris Drescher:

“Limitation on Hours of Tractor Trailer Trucks on Site—We suggest that the condition pursuant

to Standard 13A #3 should state that tractor trailer trucks are allowed on site only between 7

am and 6 pm.”

- Comment that these hours are more restrictive than some of the limits discussed by the Board.
- Motion by Kieley, second by Ayvazian to limit tractor trailer access to the property to 7:00 AM to 6:00 PM Monday through Friday. No tractor trailer trucks on weekends. Roll call vote unanimously approved.
- No other business allowed on the lot. Reference was made to sale of maple syrup equipment which was not a part of the application and therefore not allowed under this Special Exception.
- Special events must be approved by the Select Board and TGPD. Tents must be approved by the Select Board.
  1. Confirmed that under 13B5 food preparation or serving is not allowed outside of the building so could not take place under a tent or anyplace outside.
  2. Interior tables could result in increased traffic load so should be restricted. Any sit-down dining must be incidental to the retail operation.
  3. Should add to condition that Select Board approve duration of tent erection.
  4. Motion by Kieley, second by Ayvazian to approve modifications to conditions. Unanimously approved.

13A Standard #4: No discussion or modification

13A Standard #5: No discussion or modification

13A Standard #6: No discussion or modification

13A Standard #7: Change terminology to “Refer to Planning Board” and Conditions: None”.

13A Standard #8: No discussion or modification

#### Section 13B

13B Condition #1: No discussion or modification

13B Condition #2: No discussion or modification

13B Condition #3: No discussion or modification

13B Condition #4: No discussion or modification

13B Condition #5: Change terminology to “Refer to Planning Board” and Conditions: None”.

13B Condition #6: No discussion or modification

13B Condition #7: No discussion or modification

13B Condition #8: Any retail store shall not exceed 3000 square feet of floor space

Discussion:

- What spaces are shared by retail and production? How should those spaces be allocated? Layout could change in final plans. Should areas like offices, storage, loading dock be allocated? If so how?
- Agreed to hear information from applicant. Read by Chris Drescher:

“Retail Market—Concerning 13B, Condition #8. The proposed condition states as follows:

“Retail space limited to 3,000 square feet inclusive of all areas supporting retail operations including, but not limited to, bathrooms, storage/loading docks, kitchen, deli, meat/fish, etc.”

- a) The 3,000 square-foot retail store should NOT include the cooler and loading dock/storage area, the candy processing room, or the utility room, because these areas are substantially unrelated to the retail store; rather, they are related and integral to the production and wholesale part of Ben’s operation. Further explanations follow:
- b) The Candy Processing room will be used solely for processing Pure Maple candy, of which approximately 1 % will be sold in the retail store.
- c) Less than 15-20% of the loading dock/storage area will contain products sold in the retail store. This area will be used primarily for Golden Delicate Syrup and Organic Syrup, the quality required for pure maple candy. It will mostly contain barrels and maple candy supplies (empty boxes, cardboard, and pallets). Golden Delicate syrup barrels will also be stored in the walk-in cooler, which will have syrup lines running from the cooler to the candy processing room. Less than 10 % of the cooler will house products sold in the store. Much of what is sold in the store will be delivered through the front door, such as fresh produce and other local goods.

d) The utility room will primarily house the mechanicals for the building-wide sprinkler system and should not be considered part of the retail space. “

- Revised condition: “Retail space to be limited to 3000 square feet inclusive of deli, bathrooms, meat and fish, product display, dining etc and an allocated share of the other spaces that support the retail operations”.

Motion by Kieley, second by Robidoux. Roll call vote: unanimously approved.

13B Condition #9: Change terminology to “Refer to Planning Board” and Conditions: None”.

Special Exception Overall

Additional Conditions: No discussion or modifications

General Provisions: No discussion or modifications

Motion by Kieley, second by Ayvazian to approve the Special Exception application of Ben’s Pure Maple Products LLC subject to the conditions confirmed in the Notice of Decision. Unanimously approved.

Motion by Kieley, second by Robidoux to leave deliberative session and return to the hearing. Roll call vote: unanimously approved.

The March 30, 2021 minutes were discussed and modified. Motion by Kieley, second by Robidoux to accept these minutes as amended. Roll call vote: Unanimously approved.

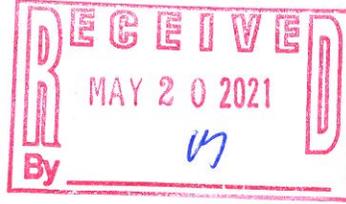
The April 20, 2021 minutes were discussed and modified. Motion by Kieley, second by Ayvazian to accept these minutes as amended. Roll call vote: Unanimously approved.

The April 29, 2021 minutes were discussed and modified. Motion by Kieley, second by Ayvazian

to accept these minutes as amended. Roll call vote: Unanimously approved.

Motion by Kieley, second by Ayvazian to adjourn the hearing. Unanimously approved by roll call vote. Hearing adjourned at 7:05 PM.

# **EXHIBIT E**



Christopher B. Drescher  
Admitted in NH

May 18, 2021

Isabella Martin  
19 Putnam Road  
Temple, NH 03084

**Re: Events Booked in Lieu of Proper Town Approval**

Dear Ms. Martin,

Please be advised that this office represents the Temple Selectboard. It has recently been brought to the Selectboard's attention that you have been booking large scale events prior to having gone through the proper Town approvals.

The Selectboard, in light of the fact that you are currently endeavoring through the proper channels and processes in order to obtain said approvals, has opted to withhold enforcement against you, provided, certain conditions are met.

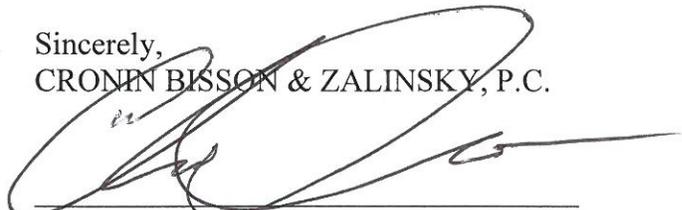
**Said conditions are:**

1. *Provide to the Selectboard a certificate of insurance;*
2. *Provide an approved Fire Watch for the large events as per the Fire Chief's order;*
3. *Provides certification of a licensed bartender, in the event alcohol is being served;*
4. *The event(s) planned shall adhere to the restrictions that are stated in your pending ZBA application relative to noise and hours of operation; and,*
5. *Subject to the town's insurance company confirming that the Town has no liability (the Town will do its follow up on this prong).*

Please provide the above referenced documentation and assurances to the Selectboard ASAP and we do appreciate your cooperation and attention to this matter.

Sincerely,  
CRONIN BISSON & ZALINSKY, P.C.

By:

  
Christopher B. Drescher



Christopher B. Drescher  
Admitted in NH

May 26, 2021

Isabella Martin  
19 Putnam Road  
Temple, NH 03084

**Re: Complaints of Noise and Safety Concerns**

Dear Ms. Martin,

It has recently been brought to the Selectboard's attention that you held a large scale event wherein you had no Fire Watch and ignored sound restrictions.

This information was the result of several abutters/neighbors to your property that flooded the Town officials with complaints of noise and loud music.

Furthermore, there should be no events in the Barn unless you can provide a proper and compliant Fire Watch. It is our understanding that the lack of a proper fire safety was because said Barn does not meet the fire code and, consequently, the Fire Department will not provide a Fire Watch. The Selectboard is deeply concerned about the life/safety of the patrons that you are serving, which said safety is threatened by your disregard towards these basic requirements and mandates.

Therefore, the Selectboard is requiring that you provide a ***list of all events that you currently have contracted, adhere to the proper sound requirements, cease any/all events in the Barn unless a Fire Watch can be provided, and note that the Selectboard will only continue to exercise its discretion in your favor provided that you 1) remain compliant with these demands, and 2) until the ZBA has concluded its decision.***

Please note, however, that if the aforesaid demands contained herein, as well as, the demands of the previous letter (*dated May 18, 2021*) are not complied with the Selectboard will proceed with a *Cease and Desist Order*, or in the alternative, will seek injunctive relief and penalties pursuant to *NH RSA 676:15* and *NH RSA 676:17*.

We appreciate your cooperation and attention to this matter.

Sincerely,  
CRONIN BISSON & ZALINSKY, P.C.

By: 

Christopher B. Drescher

CBD: Temple Selectboard



Christopher B. Drescher  
Admitted in NH

September 15, 2021

Isabella Martin  
19 Putnam Road  
Temple, NH 03084

Re: Remaining Events and Cease & Desist (Warning)

Dear Ms. Martin,

As you are aware, the Selectboard has exercised its discretion in authorizing you to hold some sanctioned events while you pursued administrative approvals to have a commercial Event Center at your property.

You have since withdrawn your application for a Special Exception.

It is our understanding that there are still nine (9) events planned (*8 weddings and 1 dinner*) that were agreed to prior to the withdrawing of said application.

In the spirit of good faith to you customers and, moreover, in light of the Town's duty to provide a fire watch to ensure their safety, the Selectboard will honor its agreement as to the remaining nine (9) events.

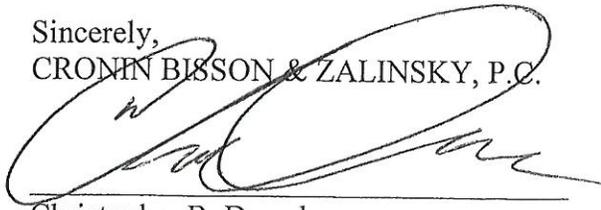
However, once the agreed to events have elapsed there shall be no more such events.

Any further events will be met with a *Cease and Desist Order*, or in the alternative, injunctive relief and penalties pursuant to *NH RSA 676:15* and *NH RSA 676:17*.

We appreciate your cooperation and attention to this matter.

Sincerely,  
CRONIN BISSON & ZALINSKY, P.C.

By:

  
Christopher B. Drescher

CC: Temple Selectboard; Jason Bielagus, Esq.

# EXHIBIT F



**PRESENTATION TO THE TEMPLE PLANNING BOARD  
Tuesday January 5, 2021**

**INTRODUCTION:** Thank you for the invitation to update you tonight. A great deal of planning and hard work has happened since I was with you last February. It was only a fledging idea that was forming 11 months ago. I appreciated your support and encouragement at that meeting. I continue to be grateful for your interest and help to make the farm a success. I appreciate your willingness to work together to keep the rural nature of the town, as we also live into the requirements of the state which fosters public safety. Mostly, I appreciate the collaborative way in which we are approaching the Change of Use for the farm. Please rest assured that we want nothing more than to do an excellent job of enhancing the town, creating good PR for the region, hiring local people, and running a solid business. As a for-profit business, I also fully intend to pay my property taxes. I just finished paying the bi-annual payment of over \$19,000. This is no small feat during this pandemic! Together, let's create enough solid business to generate this amount of property tax for the coming years, while honoring all the requirements of safety, historic preservation and land conservation.

**OVERVIEW OF THE HISTORY OF STEPPING STONES FARM & EVENT CENTER**

Our vision is to preserve the farm's historic nature and to operate a sustainable business. We are only the 5<sup>th</sup> family to ever own this farm which began in 1754. I mean to pass it on to the third generation of my family as I grow into my old age! To begin this process, let me introduce my son, Alec, who has joined this call. It is with great pride and appreciation that all four of my grown kids are helping and advising me as our business is developing.

I purchased the 28- acre farm from my parents in 1975. Prior to that, I had founded Pony Farm, a girls' riding camp, in 1971 to pay for my college tuition. I owned and operated the farm for 47 years, during which time we expanded into a therapeutic riding program called Horse Power. Because we also ran a nationally accredited therapeutic instructor training program, we built an indoor arena on the property approximately 18 years ago. At that time, Ted Petro, Chair of the Planning Board and/or ZBA, advised that I seek commercial zoning for the property so that there was never a question of the legitimacy of the business or the new Indoor Arena with future town governing boards. We received the Commercial Zoning with the blessing of the townspeople following a public hearing. It remains in place today.



In 2011, I led the merger of Pony Farm and Horse Power to become Touchstone Farm, a nonprofit. Since then, the Touchstone Board has been at the helm of the farm. In 2017, I stepped down as the Executive Director to allow the board to begin the process of purchasing the property from me so that the farm's mission could continue in perpetuity. I fully expected that this purchase would happen. Touchstone planned to keep its nonprofit tax status, relieving itself of property taxes in Temple.

After much time and effort, Touchstone decided to purchase a smaller and younger facility this October. They now own property in Lyndeboro. I wish them well.

This unexpected development left me with the dilemma of what to do with the farm. With the help family members and advisors, we decided to work to attract events such as retreats, family celebrations, weekend rentals, and weddings, instead of running a large horse farm and summer camp. It was at this early juncture that I asked to present this plan to you last February. I thought it better "to ask permission than to beg forgiveness".

At that Select Board meeting, I outlined what we were planning. I answered your questions. The three abutters, Nicole Concordia, Bill Ezell and Randy Martin, all endorsed the idea with Bill asking "How can we help you?" The group enthusiastically approved of these plans and said "Temple is lucky to have you and that farm in our town. Good luck." I was most grateful.

With these blessings, our team moved forward with our plans, honing them as we repaired the facility to get it back to being able to welcome guests. We did not build anything new, nor do we have any future plans to do so. We are simply maintaining what is in place so that we can preserve the beautiful and historic feel of the farm.

This November, I was asked by Ken Caisse to present our plans to the Select Board. Again, I was pleased to receive a collaborative and enthusiastic reception. I presented our plans for Stepping Stones and again met with approval. However, they felt that I should return to present to you so that 'all the I's could be dotted and T's crossed'. Thus, I here I am.

## CURRENT PLANS FOR THE FARM

The plan I present to you today is not very different than the one I presented you last February when it was just a hope with fingers crossed. We have done our business planning and budgeting. We have begun to build our team. We are still planning to use the lodge for retreats and veterans' weekends. We have had a good response from potential guests. We have hosted some community events, and birthdays and anniversaries, with a careful eye to Covid mandates. We hosted one wedding with four guests in attendance. Thus far, we are just breaking even financially but we have been able to pay our taxes!



With our website and a lot of hard work, we are attracting future weddings and small family gatherings, as Covid still lingers. It appears that the new business at the farm can be viable and sustainable. I feel more confident of that than when I spoke to you in February. It seems that people are hungry for connection and celebration on a family farm.

It is my hope that you will continue to recognize the farm's long standing commercial zoning status. However, I also realize that the current plan represent a Change of Use for the farm. I would like your permission to address this and to ask for your approval.

PAUSE: Questions thus far as to the history or how we got to this moment in time?

## PLANS IN PLACE

It is our sincere intent to not only run a successful business in town but to preserve and enhance the atmosphere and ambiance of Temple. I believe that the workshops, retreats and gatherings that we will have in the Lodge are no different than what we have done in the past. The Homestead will be used for guest rentals, again no different than with students and campers living there. The guests are seeking quiet and nature, thus will not be a nuisance to any neighbors. Additionally, we believe that the traffic caused by this type of business will be significantly less than the traffic caused by an active lesson programs, horse shows, clinics, summer camp and workshops. The parking will be in the Lodge or the Homestead parking lots.

We definitely do not plan to ever have a large number of horses on the property again. At the end of the Touchstone years after I retired, they often housed 70 horses. The environmental impact was significant. We will not repeat this! While we may eventually have a few horses, they will be well managed with careful attention paid to the land.

The weddings may represent a slight change in use for the barn because we will not have tons of hay stored in the barn, or classrooms and offices for the riding and camp programming. However, concurrently we will improve the historic and scenic look of the farm in order to attract wedding business and to bring tourists and groups to the area, while boosting business for our event partners like caterers.

## PROPOSED PROCEDURES & FUTURE INVESTIGATIONS

We have carefully planned and done our homework to present the following ideas as we look forward to hosting some weddings in the barn. It is our intent to to minimize the impact on our neighbors, maximize the safety of all guests, and preserve the beauty of the property to enhance our town.



1. We realize that we may not be able to host more than 100 wedding guests inside the barn without a suppression system. George Clark and I have been working to determine state regs for this. I have also contacted Alison Brackett of Triangle Fire Consultants in Hollis NH. Alison is not only the Fire Chief in Hollis but she also provides a 3<sup>rd</sup> Party Review Service as a Fire Protection Engineer. She assists both the property owner and town officials, including the Fire Department, to determine appropriate fire codes and requirements. She is willing to work with us to make a plan for the safety and well-being of our guests.
2. Until such time that these plans can be fully implemented, we propose to not allow more than 100 guests in the barn. We will contract with a tent rental company to erect a tent outside the barn for any weddings which exceed 100 guests. At this time, we will not allow weddings with more than 150 guests. We believe our 'sweet spot' is weddings of 50 to 75 guests.
3. We are also committed to determining the structural load of the barn. I have contacted Brian Hanson of Team Engineering of Bedford NH. This company performs building inspections and can assess the structural integrity of the barn. Brian is willing to work with members of the Planning Board and myself as the owner to determine appropriate number of guests.
4. To this concern, we are also anticipating putting a permanent dance floor at the end of the barn which is situated on dirt. As a bank barn, the 2<sup>nd</sup> floor where the weddings or celebrations will be held, sits at the entrance on solid ground.
5. In planning for Emergency Exits in the barn, we have three exits readily accessible that we will mark with lighted signs early this spring. All three exits are at ground level and have wide doors. The main entrance is the widest with two rolling barn doors, serving as the primary egress in case of emergency. This spring, prior to weddings, we also plan to enlarge the two other egresses with doors that open outward.
6. Parking may be another concern due to the scenic nature of our town. We have created off street parking in front of the lodge, with over flow parking in front of the indoor arena, as well as in the hay field below the barn. By this spring when the weddings take place, we will have these areas lighted with tasteful lights.
7. Noise nuisance may be of concern to our neighbors. As one of those neighbors as well, I do not want loud music in our 'hood'! We will close off music at 11:00 PM for all events. Also, note that the barn is well away from other homes, thereby minimizing the noise.
8. We are not currently, or in the near future, considering putting in a septic system for the barn. We are creating a DIY decorated permanent port-o-potty. This port-o-let will be pumped on a regular basis by Portable Privies of Lyndeboro. For larger weddings, we will require that the couple hire a professional company to provide temporary port-o-potties for use during the weekend.



## SUMMARY

On behalf of my family and our team, I welcome questions and suggestions to help us run a successful, safe and sustainable business on our family farm. We have every intention to continue our long tradition of being good community members. Our legacy of customer service provided on a well-maintained property that enhances Temple while being sensitive to our friends and neighbors will continue.

Thank you for your time. May we collaborate to improve our ideas and make sure we honor the requirements of Temple. Thank you for your consideration and community service.

Sincerely, Boo



# **EXHIBIT G**

TOWN OF TEMPLE, NEW HAMPSHIRE  
PLANNING BOARD  
February 05, 2020  
MINUTES OF PUBLIC MEETING

Board Members present: Nicole Concordia, Bill Ezell, Randall Martin, Bruce Kullgren, JR., Allan Pickman, Tedd Petro, Brian Kullgren

Call to order by Pickman, 7:01 p.m.

Doug Heck re: Site Plan Review: Pickman reviewed copies of the plan which were distributed to the Board, pointing out there were no changes. With no further questions or comments from the Board or audience, and all requirements met, Petro made a motion to approve, seconded by Brian Kullgren, and so moved with unanimous approval. Pickman to type out Notice of Decision for the file.

Approval of Minutes: The Minutes of January 8 were reviewed with amendment clarifications noted by Concordia under "Amendment 2" and "Other Business". The Minutes of January 15 were reviewed with amendments by Robidoux (audience) for clarification. Planning Board votes (for or against warrant articles as written) were added to the minutes by name.

Discussion followed, with a motion by Ezell to approve the January 8 minutes as amended, with Kullgren, Jr. seconded, so approved and so voted.

A motion to approve the January 15 minutes as amended by Pickman, seconded by Kullgren, so approved and so voted.

Meeting Agenda: Boo Martin: Martin presented to the Board an update of "Touchstone Farm", with a brief history of the ongoing business activities on the property since her retirement from operations in 2017. Martin noted "Touchstone" will be moving to a new location and thus she will resume operations, with less of a horse facility and more events such as class reunions and women's weekends which would involve less traffic. Martin wanted to re-confirm her commercial status and stress her wish to employ local vendors and workers, offer housing and promote "vibrant and farm-like conditions" as she continues ahead. The Board wished her good luck and abutters offered her any help they could give.

Ezell reviewed an informal poll of reaction to the January 15 Hearing that had been done from the internet.

He noted votes as:

"no- never" 14 votes

"yes vote" 17 votes

"need more info" 12 votes

Pickman reviewed comments relevant to "Proposed Changes to the Temple Zoning Ordinance" with the Board. Under Amendment 2, Pickman noted both square footage numbers should read 1600 s/f. Additionally, discussion followed with the process by which the 30% Open Space calculations were reached.

Discussion followed in the audience, with final review by Town Council on any and all proposed changes before presentation. Brian Kullgren wanted a letter or card to be sent to all households explaining the proposed changes, as well as including changes in the Temple Newsletter.

C. Kiley noted changes are major, not minor, with audience discussion following.

TOWN OF TEMPLE, NEW HAMPSHIRE  
PLANNING BOARD  
February 05, 2020  
MINUTES OF PUBLIC MEETING

Kullgren, Jr. confirmed the obligation of council review before anything is submitted to the Town for vote. Brian Kullgren proposed leaving everything as written. Concordia made a motion to keep “as written with no changes”, seconded by Kullgren, Jr., and so voted.

Kullgren Jr. shared that Greenfield’s Planning Board articles are similar to Temple’s articles; he will provide the Board with a copy of their information.

Concordia presented the Board a Spring Planning Seminar scheduled for May 30, 2020. A motion by Petro to have the Town pay for seminar cost for participants, seconded by Kullgren, Jr., and so approved.

Temple Historical Society (THS): THS is placing a warrant article on the ballot to determine if the Town would be in favor of a building to be placed on town land next to the old Schoolhouse. The building would be used for town historical artifacts display and town records storage.

THS wanted to inform the Planning Board of the idea, and seek site plan guidance if the article is approved. Discussion followed with preliminary questions and comment. With the understanding that the Select Board has final approvals, the Planning Board noted “we will surely cooperate with THS”.

Concordia distributed “Town of Chester” court information to be discussed at a later meeting concerning a ruling on housing issues.

Kullgren Jr. reviewed the February 19 meeting agenda with speakers he has contacted for the Board meeting, including SWRPC and NH Housing, all with an affordable housing focus. This will be an open, regularly scheduled meeting to the public.

Motion to adjourn by Kullgren Jr., second by Concordia, and so voted at 8:20 p.m.

Minutes submitted by Randall Martin.

*~ The next meeting will be held on March 4, 2020 at 7:00 p.m. ~*

# EXHIBIT H



Robert L. Quinn  
Commissioner

# State of New Hampshire

DEPARTMENT OF SAFETY

*Division of Fire Safety*

*Office of the State Fire Marshal*

**Office:** 110 Smokey Bear Boulevard, Concord, NH 03301

**Mailing Address:** 33 Hazen Drive, Concord, NH 03305

**Telephone:** 603-223-4289 • **Fax:** 603-223-4294

[www.nh.gov/firesafety](http://www.nh.gov/firesafety)



Sean P. Toomey  
State Fire Marshal

June 14, 2021

Chief George Clark  
Temple Volunteer Fire Department  
PO Box 80  
423 Rt. 45  
Temple, NH 03084

Re: Stepping Stones Event Center, 19 Putnam Rd. Temple.

Dear Chief Clark,

On June 1, 2021 I accompanied you on an inspection of the Stepping Stone Event Center, 19 Putnam Road in Temple. The owner of the facility would like to convert an existing barn to a rental facility for weddings and similar functions. In preparation for that conversion, the owner secured the services of Triangle Fire Consultants (TFC) to evaluate the facility. The purpose of our inspection was to compare the consultant's report with the existing conditions of the facility.

Based on conversations with the owner, fire chief and others, it appears that the barn has been used occasionally as a place of assembly for a number of years. However, the facility has never formally been approved by the town fire, building or other authorities as a change of use from an agricultural building to a place of assembly. Applying the codes as a new facility or as an existing assembly is a determination for the local authorities. For the purposes of this report I will address the code requirements of the facility both as an existing assembly and new assembly occupancies. This report is based on, but not limited to my observations, the consultant's report, NFPA 101, 2015 edition (101), the International Building Code, 2015 edition (IBC) and the International Existing Building Code, 2015 edition (IEBC). I offer the following.

General Conditions:

The building in question is 158 feet long by 52 feet wide, with 3 stories, and is of unprotected wood frame (VB) construction. The first (lowest) level and second level both exit at grade. The intent is to occupy the second level as the place of assembly. The first and second levels are full the full 158' x 52'.

The third level is a former hay loft and is approx. 12 feet wide for about 60% of the structure and full width of the remaining 40%. Consequently, the third level occupies more than 1/3 of the floor below and cannot be classified as a mezzanine (101, 8.6.10.2, IBC 505.2.1). The hay loft is not totally enclosed and the guards do not meet the requirements of (101) or (IBC). Based on the structural deficiencies and the lack of code compliant access and egress, the third level could be considered unoccupied space.

#### Classification of Occupancy:

The original occupancy classification of the facility storage (101) and utility (IBC). The facility was not separated and the entire facility held the same classification. The new proposal is the use the second level as a place of assembly (101), A-2 (IBC) and continuing to use the lower level as storage. The TFC report classifies the facility as a "mixed- use non-separated barn building." NFPA 101, 6.1.14.3.2 allows for mixed non-separated occupancies and states "The building shall comply with the most restrictive requirements of the occupancies involved, unless separate safeguards are approved." The IBC 508.3.1 also allows for mixed nonseparated occupancies provided that "the most restrictive provisions of Chapter 9 that apply to the nonseparated occupancies shall apply to the total occupancy area." I agree that the changing rooms and office space on level two can be considered accessory uses to the main assembly space and could be treated as such.

#### Fire Protection:

If considered a new A-2, assembly occupancy, the IBC would require an automatic sprinkler system in accordance with 902.2.1.2 (1) The fire area exceeds 5000 square feet and (2) The fire area has an occupant load of 100 or more. NFPA 101 requires that all dance halls, discotheques, nightclubs, and assembly occupancies with festival seating have an automatic sprinkler system. Otherwise all assembly occupancies with occupant loads exceeding 300 persons must be so equipped.

If considered as an existing A-2, assembly occupancy, the IBC would not be applicable. The IEBC 703.1 says that, "Alterations shall be done in a manner that maintains the level of fire protection provided." NFPA 101 requires existing dance halls, discotheques, nightclubs and assembly occupancies with festival seating be equipped with an automatic sprinkler system. Otherwise they would not be required. If the facility cannot be defined as a dance hall, discotheque, or nightclub then a sprinkler system would not be required under 101.

A fire alarm system is not required.

#### Means of Egress:

I agree with TFP that 2 exits are required by the IBC, IEBC, and 101. The main exit consists of two barn style doors that are going to be secured in the open position when the facility is occupied. The walking surface as you enter the facility is dirt and transitions to a wood floor. NFPA 101 7.1.6.3.1 requires that "Walking surfaces shall comply with all of the following: (1) Walking surfaces shall be nominally level. (2) The slope of a walking surface in the direction of travel shall not exceed 1 in 20, unless the ramp requirements of 7.2.5 are met. (3) The slope perpendicular to the direction of travel shall not exceed 1 in 48." Section 7.1.6.2 Changes in Elevation may also apply. The main entrance egress access should be reconstructed to meet the requirements of the code. The second means of egress was newly constructed. At the time of my inspection the new stairs did not meet the requirements of 101 or IBC. TFP outlined the requirements for the exits, including the new egress stairs on pages 3 and 4 of their report. These conditions were not applied when the stairs were constructed.

#### Interior Finish:

As stated in the TFP report, the interior finishes in the assembly space and egress access must meet Class A, B or C. TFP cites NFPA 101 10.2.3.1 as allowing untreated wood as interior finish. This section is not applicable as it only applies to type IV construction and this building is type V.

The exposed wood must meet the interior finish requirements of class A, B, or C. The owner should verify how this is to be accomplished.

On page 5 of the TFP report it is recommended that hard wired smoke detectors be installed in the lower level. Based on the description, my assumption is that they are recommending 110 volt, hard wired smoke alarms. Although I agree with the recommendation for detection, I would caution you on accepting this type of detection for the following reasons: 1) 110 volt alarms are usually listed and reserved for use in residential type occupancies. 2) In the lower level of the facility the varying temperatures due to lack of heat or air conditioning, could have an adverse effect on the back up batteries. The smoke detectors could easily get dirty or be subject to occupancy by insects etc. 4) Maintaining a presence in a “constantly attended location” may be difficult.

As part of the *separate approved safeguards* as required in NFPA 101 6.1.14.3.2 You may want to consider a commercial fire alarm system. Heat detectors could be installed in those areas where dirt and contamination could become a factor. It would eliminate the need for a constantly attended location because of the occupant notification via horn strobes. Newer FACPs can have cabinet heaters installed to maintain the batteries when cold weather becomes a factor.

I also reviewed the Lushes Curtain submittal. Lushes Curtain does offer fire resistive curtains that appear to meet the code requirements for draperies. The owner must insure that the fire resistive curtains are purchased for this facility.

This is certainly not an exhaustive code review. I believe that this report will give you some guidance and comfort that the Stepping Stone Event Center can be occupied safely and in compliance with the adopted codes without rebuilding the entire facility. If I can be of any further assistance, please feel free to contact me.

Best Regards,

A handwritten signature in black ink that reads "Ron Anstey". The signature is written in a cursive, flowing style.

Inspector Ron Anstey, CBO, CFI, CFPS, CFEI  
Fire Protection Specialist

*Saving lives and property through education, engineering and enforcement*



Robert L. Quinn  
Commissioner

# State of New Hampshire

DEPARTMENT OF SAFETY

*Division of Fire Safety*

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Sean P. Toomey  
State Fire Marshal

## **FIRE & LIFE SAFETY INSPECTION REPORT**

**Date of Inspection:** April 1, 2022  
**Date of Report:** April 11, 2022

**Occupancy:** Fire Chief George Clark  
Temple Vol. Fire Dept.  
PO Box 80  
423 Rte. 45  
Temple, New Hampshire

**Owner:** Stepping Stones Event Center  
19 Putnam Rd.  
Temple, New Hampshire

**Dear Chief Clark,**

This report details the findings of the inspection conducted on April 1, 2022. Present at this inspection was yourself, the property owner and myself. The buildings were inspected for compliance with the minimum standard for existing buildings in ***NFPA 101, Life Safety Code, 2015 edition, and NFPA 1, Uniform Fire Code, 2015 edition, NEC 70, 2017 edition***, as well as others. The building was inspected for fire and life safety concerns. Other problems with the building may need to be addressed that are outside the scope of this inspection. This report reflects the violations that I observed at the time of the inspection. Other violations may exist that were not observed at the time of the inspection. In summary, the building is classified as an assembly & hotel/dormitory occupancy. Below is a breakdown of the observed Fire Code Violations.

This inspection was a follow up to an inspection report that was conducted by Inspector Ron Anstey from the NH Fire Marshal's Office that occurred on June 14, 2021 for the conversion of an existing barn into an assembly space. Along with this follow up inspection, the "Lodge" was also inspected at this time. This report is broken into two parts, the follow up from the inspection letter dated June 14, 2021 and the findings from the inspection of the Lodge, which is a two story log cabin type building that has been used for lodging of upwards of 20 occupants with its own independent sleeping rooms and one central kitchen.

## **Outstanding violations for the Barn**

Most of the items noted in the June 14, 2021 report appear to have been or are being addressed. Please note that the newly constructed stairs that were constructed as a second means of egress do not meet the requirements for egress stairs found in the 2015 edition of the International Building Code. Code does not allow for a step down and the stairs do not appear to meet the necessary requirements for preventing the accumulation of water.

### **IBC – 1010.1.5 Floor elevation.**

There shall be a floor or landing on each side of a door. Such floor or landing shall be at the same elevation on each side of the door. Landings shall be level except for exterior landings, which are permitted to have a slope not to exceed 0.25 unit vertical in 12 units horizontal (2-percent slope).

### **IBC – 1011.7.2 Outdoor conditions.**

Outdoor *stairways* and outdoor approaches to *stairways* shall be designed so that water will not accumulate on walking surfaces.

There was also question as to the correct installation of the handrails.

### **IBC – 1011.11 Handrails.**

*Stairways* shall have *handrails* on each side and shall comply with [Section 1014](#).

Given that there was a licensed fire protection engineer of record who also performed a review on this project, it is necessary that they complete a final inspection to ensure that any items noted or identified by them are addressed and satisfactory. Any documentation of such inspection shall be forwarded to this office for review.

## **Violations for the Lodge**

### **NFPA 101 – 29.2.1.1 Means of egress from guest rooms or guest suites to the outside of the building shall be in accordance with Chapter 7 and this chapter**

*Existing exit arrangements for building do not appear to meet the requirements of chapter 7, including but not limited to interior finish (7.1.4.1), remoteness (7.5.1.3.2), illumination (7.8), and marking (7.10)*

### **NFPA 101 – 29.2.1.2 Means of escape within the guest room or guest suite shall comply with the provisions of Section 24.2 for one-and-two family dwellings.**

*The existing windows in the guest rooms do not appear to meet the minimum size / clear opening requirements. The basement sleeping room shall be evaluated to ensure that bulkhead in the sleeping room complies with the requirements of 24.2.7.2.*

### **NFPA 101 – 29.3.1.1.1 vertical openings shall be enclosed or protected in accordance with Section 8.6**

*Ensure that all vertical openings are properly protected*

**NFPA 101 – 7.5.2.1 Access to an exit shall not be through kitchens, storerooms other than as provided in chapter 36 & 37....**

*The stairway / single exit from the master suite must pass through the kitchen to access an exit door*

**NFPA 101 – 29.3.3.2 Interior wall and ceiling finish. Interior wall and ceiling finish materials complying with Section 10.2 shall be permitted as follows:**

- 1) Exit enclosures – Class A or Class B**
- 2) Lobbies and corridors – Class A or Class B**
- 3) Other spaces – Class A, Class B or Class C**

*Interior finish does not appear to meet the requirements for flame spread / smoke propagation*

**Please note that this is not a complete and exhaustive code review, but identification of a handful of violations that were noted during the inspection. Given the items noted as well as the uniqueness and arrangement of the occupancy, the building should be evaluated in its entirety for fire code compliance by a licensed fire protection engineer prior to public occupancy.**

**Thank you for allowing me to perform this inspection. If you have any additional questions or concerns, do not hesitate to contact the Fire Marshal's Office.**

**Mitchell W. Cady**

**Deputy Fire Marshal**

**Division of Fire Safety**

Mailing Address: 33 Hazen Dr.

Physical Address: 110 Smokey Bear Blvd.

Concord, NH 03305

Telephone 603-223-4311

Fax 603-223-4294

Mitchell.w.cady@dos.nh.gov

**WEB Site Address** <http://www.nh.gov/safety/divisions/firesafety>

All buildings shall comply with the minimum requirements of the New Hampshire State Fire Code (RSA 153:5), Saf-FMO 300 and Saf-C-6000. Adopted codes include NFPA 1, **Uniform Fire Code 2015 ed.**, NFPA 101, **Life Safety Code 2015 ed.**, and many others.

This report reflects an inspection under one or more chapters of NFPA 101, NFPA 1 and possibly others. A copy of the New Hampshire State Fire Code is available for review, with prior notice, on normal business days from 8:15 a.m. to 4:15 p.m., at the Office of the State Fire Marshal.

**NH RSA 153:24 Penalty for Violation of Regulations:**

Whoever shall violate any rule or regulation of the state fire marshal issued pursuant to RSA 153:5 or RSA 153:14 I, shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. Each offense shall constitute a separate violation.

All penalties, fees, or forfeitures collected under the provisions of this chapter shall be paid into the treasury of the state.

If you believe that compliance with a stated code or rule provision item imposes an unreasonable hardship, you may apply for a variance from, or an exception to, the stated code or rule provision item, in writing, to the State Fire Marshal, in accordance with Saf-C 6005.04. Any alternative method of achieving compliance must provide protection which is equal to or exceeds the stated code or rule provision protection.

**APPEALS OF APPLICATION OF THE STATE FIRE CODE FROM A NOTICE OF VIOLATION**

**Exceptions or Variances**

RSA 153:4-a (I) allows the State Fire Marshal to grant variances or exceptions to the State Fire Code.

( <http://www.gencourt.state.nh.us/rsa/html/XII/153/153-4-a.htm> )

Saf-C 6005.03 The title "Exceptions and Variances" provides the guidance and requirements for action by the State Fire Marshal to ensure the request provides a degree of safety substantially equivalent to the code section cited.

( [http://www.gencourt.state.nh.us/rules/state\\_agencies/saf-c6000.html](http://www.gencourt.state.nh.us/rules/state_agencies/saf-c6000.html) )

Saf-C 6005.04 provides the format for application to the State Fire Marshal for a variance or exception.

( [http://www.gencourt.state.nh.us/rules/state\\_agencies/saf-c6000.html](http://www.gencourt.state.nh.us/rules/state_agencies/saf-c6000.html) )

**Appeals of decisions of the State Fire Marshal**

Any person aggrieved by the decision of the State Fire Marshal as provided above shall be entitled to a hearing with the Building Code Review Board rules pursuant RSA 155-A:11 and conducted in accordance to Bcr 200.

( [http://www.gencourt.state.nh.us/rules/state\\_agencies/bcr200.html](http://www.gencourt.state.nh.us/rules/state_agencies/bcr200.html) )

Any person aggrieved by the decision of the Building Code Review Board shall be entitled to a hearing in Superior Court pursuant to RSA 155-A:12

( <http://www.gencourt.state.nh.us/rsa/html/XII/155-A/155-A-12.html> )

( [http://www.gencourt.state.nh.us/rules/state\\_agencies/bcr200.html](http://www.gencourt.state.nh.us/rules/state_agencies/bcr200.html) )