

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.

