

TOWN OF TEMPLE  
ZONING BOARD OF ADJUSTMENT  
July 9, 2018 Public Hearing

ZBA Members Present: Mary Beth Ayvazian, Honey Hastings, Sydney Thomas, Greg Robidoux, Deb Deleso, Bill Ezell, John Kieley

Non-ZBA Members of the audience present: Connie Kieley, Alan Marsh and John Jackson-Marsh(applicants), Attorney William Drescher, Attorney Christopher Drescher, Richard Benotti, Sandra Benotti, Sean Radcliffe

Call to order by Chair Ayvazian at 7:15 p.m.

Ayvazian re-introduced the case before the ZBA as a continuation from a Public Hearing on June 11, 2018: The applicants seek a Special Exception for their antique truck and construction equipment collection which they stated in their application is consistent with New Hampshire laws and town of Temple ordinances.

Ayvazian then proceeded to introduce the ZBA members and re-establish the recusals still intact: Bill Ezell, as a Member of the Temple Select Board is recused. Deb Deleso, Honey Hastings, Mary Beth Ayvazian, Greg Robidoux and Sydney Thomas. John Kieley was introduced as a ZBA member, recused in this case, but attending as a member of the public. Biron Bedard, the ZBA's attorney was also introduced and present to provide counsel to the ZBA should they require it. Ayvazian asked if there were any other recusals or requests for members to be recused. There were none.

The applicants, Alan Marsh and John Jackson-Marsh, were then invited to provide any new and/or clarifying information since the June 11<sup>th</sup> hearing. The applicants provided the ZBA with a timeline, (marked as Exhibit A for the purposes of ZBA minutes of the hearing) which they proceeded to review.

Jackson-Marsh pointed out that he and Marsh first contacted the Select Board in 2015 regarding Marsh's use of the property for a home business, which he, at the time the information was disseminated, indicated was a business that would be utilizing a tractor trailer truck. The applicants indicated that at the time of the 2015 notification, they expressed that the storage trailers had nothing to do with the home trucking business.

Jackson-Marsh stated that the applicants had planned to move both trailers and equipment into a clearing that would not be visible from West Road but the clearing of the land took longer than expected and though the clearing project began in 2015, it was completed in June/July of 2018. Of the 10 storage trailers visible from West Road, the applicants confirmed that they had moved 5 to the clearing. The applicants stated that they also moved several other pieces of equipment (the antique equipment collection hereinafter "collection") to the clearing.

Applicants also indicated that their intent was to obtain 12 additional pieces for their collection in the next year.

Hastings asked whether their plan was to move other equipment visible from the driveway to the clearing. The applicants stated that they would move only the vehicles and equipment that were visible from West Road. Ayvazian asked about the dimensions/acreage of the clearing area and the applicants stated they were unsure but that they believed the clearing to be less than an acre. The question was asked whether all of the equipment would fit into the clearing that appears to be less than an acre especially given the fact that they had plans to acquire additional vehicles/pieces of equipment as was stated at the onsite visit. The applicants stated that there would be plenty of room in the clearing to fit existing and future pieces of their collection.

Hastings referred to the map in the packet which the ZBA and applicants received from the Town Attorney to try to estimate exactly where the cleared area was located. The applicants drew a circle as to where the clearing was located on the map Hastings displayed.

The applicants then referred to a second document (marked as Exhibit B for the purposes of the ZBA official minutes of the hearing) which they indicated were responses to the Select Board recommendations/conditions.

The first condition addresses the ownership of the equipment which must be owned by the applicants. Applicants stated that every piece in their collection was owned by them.

The second condition addresses storage for the pieces of vehicle/equipment in question. The applicants replied that most of the antique equipment will be out of view by virtue of topography and vegetation in the area. Ayvazian asked, "When you say most of the antique equipment will be out of view by virtue of topography and vegetation, what does that mean?" The applicants answered that this means that generally no more than three pieces of equipment are going to be visible to the public at any given time. The applicants stated that they intend to have at least two pieces visible at all times.

The applicants then addressed the 3<sup>rd</sup> condition proposed by the Select Board which addresses the maximum number of vehicles/equipment they can have/store on the property whether they are visible or not. The applicants responded that this requirement does not serve a useful purpose and that it limits their enjoyment of their land and equipment without any appreciable benefit to the town or the town's residents, especially since the vehicles won't be visible. Hastings then replied that if the Town limited the number to a number they could agree upon but greater than 5 (the number the town imposed as a limit), would that address their concern? Hastings attempted to determine the number of pieces to which the applicants would be agreeable.

The applicants went on to discuss the fourth condition which has to do with repairs being visible to the public. Jackson-Marsh stated that the intent is to repair and rebuild equipment in

an area that is invisible to the public, unless there's an emergency with that equipment and they couldn't live without an emergency repair stuck in the field.

The applicants addressed the fifth condition regarding limitations of only one unregistered and uninspected motor vehicle onsite. Jackson-Marsh reasoned that each piece of the collection is more than 25 years old. Hastings clarified and stated that she thought the applicants misunderstood this requirement and stated, "I think you're saying that there's been not more than one unregistered or uninspected vehicle that's less than 25 years old." She explained that the Select Board is proposing not more than one vehicle under 25 years should be unregistered. The applicants indicated that this condition is met.

Jackson-Marsh addressed the sixth condition and stated that they are not operating a museum.

The applicants next addressed the seventh condition which is that the use of the premises shall remain in compliance with municipal land use ordinances and regulations. Jackson-Marsh indicated that they are already in compliance with this condition.

When addressing the condition that they must comply with a Planning Board site review, the applicants did not believe they needed to comply as they stated that they are not making any major changes to the property. Jackson-Marsh added that if a site plan review is required then they will comply.

Marsh addressed the proposed use of their property is to collect pieces of the collection as a hobby. He proffered proof of same by showing a quarterly publication to which the applicants subscribe.

Ayvazian then addressed the Select Board through Attorney William Drescher and Attorney Christopher Drescher for additional information or remarks. Attorney William Drescher presented photographs of the applicant's collection as taken by Attorney Christopher Drescher at the on-site visit. Based on the site visit, Attorney William Drescher presented a revised list of conditions. In response to the presentation made by the applicants, Attorney William Drescher addressed the applicants' home business. He stated that the Town of Temple never sanctioned the applicants' characterization of their home business. Instead, Attorney William Drescher stated that the only home business use that the Select Board sanctioned involved Marsh bringing his tractor trailer home after driving it all day long and that the Select Board did not sanction the increasing and overwhelming collection of equipment that has amassed on the property in the interim.

Attorney William Drescher also stressed that before granting a special exception, the set of standards presented in Zoning Ordinance 13 A and B must be met. He asserted that these standards are imposed regardless of whether they are included in the application or not. The conditions are mandatory and absolute with no allowance for deviation. Attorney William Drescher stressed that number nine of 13B requires that 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 a manner as may be approved by the Planning Board during site plan review. Site plan review is not optional.

Attorney William Drescher represented that the Select Board members conducted an onsite visit in December of 2017 and reported that there were far fewer pieces of the collection at that time than there were on the June 19th onsite visit. He stated that the scope of this non-commercial, hobby enterprise, undertaken by the Applicants was without the benefit of any permit from the town. The Select Board asserts that the collection is greater than anticipated and is far too big for the site. The position of the Select Board is that the applicants cannot meet the conditions that the ZBA is required to find.

Referring to 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," Attorney William Drescher noted that the applicant's property is surrounded on three sides by the aquifer protection district. The Select Board is concerned that liquids which leak out of these pieces of equipment have the potential to runoff and leach into the soil which impacts on the stratified aquifer that surrounds this property.

Attorney William Drescher further stated that the town's historical district is in close proximity to the applicant's property to further address appropriate compatible uses. He said that the use of surrounding properties consists of single-family homes with an occasional farming or business that's conducted as a home business in accord with the ordinance, and one of the conditions of a home business is that it's an accessory to the principal use of property as residential or farming use.

Attorney William Drescher explained that the principle activity of the applicant's property is storage of "stuff." He represented that the Select Board recommends that the ZBA deny the Special Exception. He further stated that should the ZBA approve the Special Exception, then it should impose the conditions proposed by the Select Board.

Attorney William Drescher then presented a revised list of conditions from the original submission presented at the June 11<sup>th</sup> public hearing: The second condition would impose that a structure be built to house the collection or in the alternative, suitable fencing, which at a minimum substantially conforms to or complies with the requirements of the state statute while meeting Ordinance 13 B: 9 that the collection remain out of public view.

Attorney William Drescher further stated changes made to the third condition that the number of pieces/equipment in the collection be limited to 35.

Ayvazian asked whether the Town has obtained an inventory list. Attorney William Drescher replied that the applicants supply an inventory list to be added to the list of conditions

proposed from the Town.

The Town further proposes (should the Special Exception be granted) that the collection does not spread over the entire 38 acres that is the total applicant's property. Additionally, the Town proposes that the area used for storing the collection shall not exceed one-eighth of the entire property which equates to roughly 5 acres. Furthermore, the Town proposes that this one-eighth area be definitively marked off within 14 days and that the collection be moved within 30 days of any Special Exception being granted. The Town's position is that if this collection were allowed to spread out over the entire property then it would no longer qualify for Current Use status which would significantly impact the property tax.

Attorney William Drescher then addressed the use of the tractor trailers on the applicant's property. His understanding is that the tractor trailers are being used as part and parcel of the home trucking business. Hastings answered that her understanding is that the trailers are simply storage containers. She posed this question to the applicants and they answered that the trailers are not used in any home business capacity but are indeed used for storage of household goods, and also for parts of their collection used in the hobby enterprise.

Deleso added that part of the Select Board's recommendation is that all of the equipment be located in one spot that is not more than one-eighth of the total lot size.

The applicants clarified that the designated storage area is approximately 1.4 acres in size, well short of the one-eighth as in the condition imposed by the Select Board.

Ayvazian asked if there were any other comments to be made by members of the public present at the Hearing. Richard Benotti addressed the ZBA by stating that he has a concern about his well which is located right next to the applicant's property. Hastings suggested that Richard Benotti show the ZBA approximately where his well is located using the Town map. The location of his well is downhill from the applicant's property and his concern is that his well water could be deleteriously affected by any potential draining of hazardous fluids from equipment leakage.

Sean Radcliffe also spoke as a member of the Conservation Commission of Temple. He stated that members of the Conservation Commission attended the onsite visit on June 19, 2018. After touring the site and conferring with other members of the Commission, the Conservation Commission decided to make a formal statement as follows (in relevant part): "The primary responsibility and concern of the Conservation Commission is the proper utilization and protection of natural resources and the protection of watershed resources. The Commission wishes to communicate our concern regarding the collection of vehicles and machinery on the applicant's property. Our concerns are twofold: that many of the vehicles and machinery on the property contain oils, hydraulic fluid, antifreeze, and diesel fuel. Many, if not most, of the vehicles and machinery are significantly old, exposed to the elements and sitting on bare ground. The fluids in the machinery pose a risk to water, surface, groundwater and rivers. Although many residents have an old car on their property, the applicant's property has a

rather large number of vehicles and machinery in one area which increases the risk of any leaks. Although the machinery may be built to last, at some point age and exposure, will cause rubber tubing to fail, fuel lines to leak and radiators to rust. The location of the property magnifies the risk to water resources because it is on top of a hill and surrounded on three sides by an aquifer. Chemical leaks do not stay put. They travel and travel quickly with any precipitation. Any chemical leak will travel downhill and possibly into the aquifers. Chemical contamination of underground water sources would affect many residents. Any contamination would affect residents, plants and animals, and would be difficult, if not impossible, to remediate any damage. The problem with the property is the increased number of vehicles and machinery, the age of the machinery, and the precarious location on top of a hill close to shared water resources. The chances of leaks and chemicals getting into shared water is simply greater. As stated earlier, many residents have older vehicles sitting on bare land. Aging vehicles out in the field will decay faster than in protected buildings. When vehicles are not intended to be moved or operated, they will decay into the soil. Heavy vehicles will eventually sink into the ground.”

Ayvazian entertained further questions from the public.

John Kieley stated that he expected the applicants to offer more definitive answers. He stated that Temple residents have consistently told various Select Boards that they want to keep Temple rural and that they don’t want big development. He reiterated that Temple has very limited water resources, warning that the Town doesn't have any big rivers coming through that it could tap into if damage occurred to the aquifers. He reminded the ZBA that Temple has adopted an Aquifer Protection Ordinance, which specifically prohibits junkyards over aquifers.

John Kieley also stated that the applicant’s collection is essentially a junkyard as per the definition of an RSA defining junkyards. Kieley addressed property values being affected by close proximity to junkyards. He further stated that no hazardous waste can be stored citing that the NH junkyard rules specifically require that any vehicle entering a property must be drained of its fluids. Kieley concluded by stating that his concerns about this use of property include hazardous waste, appropriate location, damage to aquifers, damage to property values, and setbacks.

Gail Cromwell commented that she attempted to count the number of vehicles and pieces of equipment at the June 19<sup>th</sup> onsite visit and she approximated that there were at least 32 vehicles or pieces of equipment on the applicant’s property in various stages of disrepair. In addition to that, she estimated that there were 12 trailer bodies around the corner of the barn. She stated that in addition to the 32 pieces of equipment she counted, there were long pieces of cable, and metal planks strewn around the area.

Connie Kieley commented that on the site tour she observed a large area that contained just parts and pieces of machinery and vehicles. She also voiced her concern over a very large crane that extends very far up into the air.

Jackson-Marsh addressed the ZBA to state that he disagreed with Attorney William Drescher’s

characterization of the primary use of the applicant's property stating that the primary use is residential. He stated that secondary uses of the property involve agricultural uses such as haying which encompasses the vast majority of the property. The area containing the collection is 1.4 acres. He posits that this constitutes a very small portion of the use of their property.

Attorney William Drescher cited case law to address the primary use of the applicant's property, stating that if the use is not listed, it's not permitted and is prohibited. He stated that in this particular area/district it's not listed as a use for storage of equipment. If it is not an accessory to the home then it is not a permitted use. Attorney William Drescher stated that the collection is not an accessory to the residential use.

Ayvazian asked Attorney William Drescher if the applicant's property is in the Aquifer District to which Attorney William Drescher responded that no, it is not, but it is surrounded by the Aquifer District. He further stated that there exists a specific list of productivity uses that includes repair of vehicles within junkyards which is not allowed in this district.

Jackson-Marsh objected to the use of the term junkyard as offensive when referring to the applicants' property and the collection in particular.

Deleso responded that if one has more than 2 unregistered vehicles on one's property, then it may technically qualify as a junkyard and the applicants have more than 30 unregistered vehicles.

Hastings responded by reading a definition of the ordinance section, article 2: "motor vehicle junkyard business in a place of storage or deposit, whether in connection with any other business or not, which has stored two or more unregistered or uninspected vehicles which are no longer intended or in condition for legal use on the public highways or parts of motor vehicles or old iron metal ... sum of which parts or materials would be equal in bulk to two or more motor vehicles."

Attorney William Drescher added that the junkyard exemption imposes very stringent limitations, including a condition that no more than five vehicles are to be outside of a building which must be screened. More stringent regulations exist for antique vehicles in the state statute.

Ayvazian asked the applicants what percentage of the vehicles are drained of fluids?

Jackson-Marsh replied that they didn't have an exact number and after Hastings pressed him he replied that perhaps half of the vehicles they have in the collection have fluids with which to operate them.

Ayvazian continued to ask about possible leakage from any of the pieces of equipment and how they can be sure that there are no significant leaks onto their property.

Marsh responded that they cannot say definitively that there are no leaks, but he stated that he could say that there are no significant leaks. Marsh cited that the Environmental Protective Agency (EPA) does not require any reports involving a “few drops of oil, or a quart or a gallon. It has to be in excess of five gallons.”

Ayvazian stated that citing the EPA reporting requirement is little consolation for someone such as Richard Benotti, who has a well downhill from the applicant’s property. She stated that she would be concerned if up to 5 gallons of oil or some other such hazardous fluid was to leak into her well water.

Marsh replied that he agreed but that he wanted to convey a little perspective on what the Federal Government considers to be a threshold of danger.

Hastings addressed whether the applicants had any bulk storage of hazardous materials/fluids that are related to operation of the equipment/vehicles.

The applicants answered that they might have approximately 20 gallons of hydraulic fluid and no excessive amounts of motor oil; perhaps a few gallons of motor oil and diesel fuel.

Marsh stated that he would be willing to drain all fluids on non-operable vehicles, but couldn’t give an idea of how many that would entail.

John Kieley commented that there exists a New Hampshire rule that states when a vehicle enters into a junkyard, all of its fluids must be drained. The state of New Hampshire attempts to protect us from situations like this. Kieley also pointed out that aquifers were poisoned in and around the Litchfield, NH area by industrial activity and there’s no fixing it once it is polluted. John Kieley warned that the consequences of a bad decision here involving an accident or a leaking vehicle or multiple leaking vehicles is that it could adversely affect many Temple residents.

Thomas posed a question about the collection as a hobby indicating that most hobbies are limited by the collectors’ finite financial resources, but she pointed out that the Applicants stated in their presentation that people are only too happy to give them old pieces of equipment. If the applicants do not need to utilize their own finances to procure equipment for their collection what would limit it? She further stated her concerns that should the applicants expand to immeasurably more than what they have in their collection at present, their use of the property could be perceived as that of a junkyard especially to prospective buyers of property in the area.

The applicants responded that they do not have any extra financial resources with which to invest in their hobby. They stated that if their collection is limited to 40 or 50 pieces, they would abide by that especially given the area needed to store such a collection out of the public view. The applicants reasoned that because the collection would be shielded from view, it would not affect property values.



Thomas further stated that one of the conditions that could be imposed involves a barrier of some sort that would be impervious to mitigate potential leakage from the collection. But, she stated that such a barrier seems impractical for the number of vehicles that are in the collection.

Connie Kieley suggested to the ZBA that when deliberating, consider any precedent that might be set with an affirmative decision.

Cromwell stated that with the advent of Google Earth in the arsenal of realtors when showing properties to prospective buyers the collection would be visible and that it could be perceived as a junkyard and this would affect property values substantially.

Robidoux commented that with new technology comes new realities that need to be taken into consideration including the use of Google Earth by realtors and real estate appraisers.

Ayvazian then asked for a Motion from the ZBA to close the Public Hearing. Hastings so moved, seconded by Thomas, and all voted unanimously in the affirmative.

Public Hearing closed so that the ZBA could consult with Attorney Bedard.

ZBA returned to announce that the deliberative session which is closed to public comment shall be scheduled for July 16, 2018.

Meeting was adjourned at 9:08 p.m.