

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.