

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 16th 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 16th 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

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