

Town of Temple, NH

ZONING BOARD OF ADJUSTMENT

May 12, 2022 Public Hearing- Special Exception

APPLICANT- Stepping Stone Farm and Event Center LLC

ZBA Members Present: Emily Sliviak, Deb Harling, Allan Pickman, James Stein, Bill Ezell, Lucas Tabolt

Non-Meeting 5:15 p.m. (RSA 91A:2 Discussion with Attorney Boldt ; Ezell did not participate

Ezell Recused himself from Public meeting

Harling began the hearing at 6:04 p.m.

Sliviak made a statement "Tierney (MacMartin's attorney) stated that her husband Ben Fisk verbalized support for the application on the last hearing in regard to traffic and overall support of the application. That was a completely false statement. Fisk corrected MacMartin's statement in regard to his own business hours. At no time did he mention traffic or Martin. Because I don't want to affect the applicant and process later, I will recuse myself from voting tonight even though Tierney's statement is again, completely false. I will continue to take minutes."

Harling gave the option for Martin to continue tonight with only 4 members or wait for the opportunity with a full voting board.

Peidra, representing Martin agreed to continue the hearing with 4 voting members.

Harling addressed the regional impact, she feels the towns have been notified more than once and the board will not be taking another vote. Notices were sent to towns and regional planning commissions, sent minutes, notified of variance application, etc. All members agreed.

Harling continued that the application and hearing tonight will include the variance application as well and asked the Applicant to make their presentation.

Piedra stated the board does have the authority to grant a variance from a special exception requirement. The applicant is asking for relief from the special exception criteria on the 100-foot setback. Buildings are preexisting and predate the zoning ordinance. The only potential impact would be to the smaller lot which is also owned by the applicant. If there is ever a potential new buyer of the lot, then they will have notice to the setbacks on the property. Property values would not be diminished, and it would be unreasonable for Ms. Martin to not be able to use her property as the owner.

Harling asked if the board had any questions. Harling asked if there was any representative from the Town of Wilton, Town of Lyndeborough, Southwest regional planning commission or Nashua regional Planning Commission. No one came forth.

Carrier, representing Woodcock farms stated the application does not meet all criteria and it should be denied. The 100-foot setback is meant for commercial properties, the applicant is seeking approval for a 33 foot setback. This would go against the spirit of the ordinance. The board must consider the impact from both properties, the applicant has not demonstrated that surrounding properties values wouldn't

be diminished. The applicant created the hardship for herself in 1977 when the subdivision took place between the 2 lots.

Harling commented that all submissions from the abutters came in less than 2 hours before the hearing and the board had not been given the chance to review. Notices were sent well outside of the 14 days for both the Special exception and Variance application.

Tierney wanted to address the spirit of the ordinance before granting the variance. The board must determine the spirit for the 100-foot setback for commercial uses by looking at the Temple Zoning Ordinance. The 100-foot set back is not to protect the abutting property owners but the authors of the Temple Zoning Ordinance decided to protect the character of the rural and agricultural zones. Can you go from 100 feet to 33 feet and still maintain the spirit of the ordinance?

Harling opened the hearing to public comment.

Ivy Bibler stated that the proposed use will have a positive impact and every dollar generated will contribute to Temple's economic value.

Olivia Holmes stated the applicant wants to stay country and rural by continuing to operate the farm. There are no new buildings, just a change in use.

Andy Peterson, a realtor since 1979 stated that boards often give dimensional variances. Property rights go both ways, however when looking for tangible evidence for diminished property values he couldn't find it. If farms go into disrepair, then that will diminish property values. The spirit of the ordinance is to support farms. He has found no instance to where property values diminished based on being next to or near a farm/wedding venue. If this application is not approved and the farm discontinues, then residents may see housing lots instead of a farm.

Mike Beebe stated that the Town must be flexible or else housing lots are a real possibility.

Piedra disagrees with the abutters' interpretation of the zoning provisions and believes there is no legitimate purpose of zoning setbacks since the applicant owns both lots.

Tierney stated Temple could have chosen not to have zoning rules. But that is not the case, and it is the boards obligation to apply it as written.

Carrier suggested the board should take more time to review the latest documents/submittals.

Harling asked if there were any other public comments. Hearing none, Harling closed the public hearing at 6:52 p.m.

Harling asked the board members if they would like to continue the hearing or go into discussion of the variance request. All in Favor of continuing into discussion.

Criteria 1- The variance will not be contrary to the public interest:

Pickman stated the 2 parcels are under the same ownership and intertwined so that no public interest is harmed by the board approving the variance.

Harling stated that if approved it does not set any precedent and each case going forward will be unique and looked at separately.

Stein agreed with Pickman's statement. There is no harm to the public. Harling agreed that the properties are under common ownership and a possible condition may be made that they cannot be sold separately.

Criteria 2- The spirit of the ordinance is observed.

Stein stated the Spirit of the ordinance is observed based on the ownership of both lots. Pickman and Tabolt agreed. Harling agreed the Spirit is observed since the lots are owned and operated and have not had any issues over the years while in operation.

Criteria 3- Substantial Justice is done.

Pickman, Stein, Tabolt and Harling agreed that substantial justice is done because both properties are owned by the applicant.

Criteria 4- Values of surrounding properties are not diminished.

Stein stated property values have gone up and has been in operation for years. Harling stated because there is no longer a horse operation there, she believes that property values will not be diminished.

Pickman and Tabolt agreed that property values would not be diminished.

Criteria 5- The Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

The board agreed that the application meets the criteria for hardship under the first standard.

Tabolt and Stein stated that the buildings have been there for many years without any complaints and does not affect the general public. Harling agreed it does meet the hardship criteria because Martin owns both lots. In 1977, Harling stated the PB approved the subdivision and that is what created the 33 foot setback. The board would like to have clarification with a surveyed plan to determine the exact measurements during Site Plan Review for the record.

Pickman stated that this does not affect the board's decision on the variance. A surveyed plan should be provided to the ZBA in regard to the use and building overall. If there is going to be outdoor activities the applicant should provide a plan indicating the area of activities. The Burden of Proof falls onto the applicant.

Harling agreed that there should be some record for the above discussion for the site plan review process. Harling asked the members if they agree and all were in favor.

Stein made a motion to grant the variance with the conditions as discussed.

The two Properties cannot be sold separately to third parties; if sold separately, then the variance is void. Distances of the 2 buildings must be confirmed via the Site Plan approval process; and if the special exception is approved, then all conditions of the special exception must be met. Second by Tabolt, roll call, all in favor.

Harling began a 5 minute recess.

Harling called the continued hearing for the Stepping Stones application to order at 7:37 p.m.

Harling gave the opportunity for the Applicant to speak.

Piedra referred to the prior testimony. While sound ordinance is not part of the special exception, it falls under the possible impact on adjacent properties. Bottom line is the applicant will comply with the Temple Sound Ordinance and welcome this as a condition. If sound is not complied with, then the Select Board will step in and enforce it, the element is satisfied. Adjacent property values will not be affected, and the signed petition confirmed that the bulk of abutters and neighbors are okay with the proposed use. Piedra believes that the plans submitted show necessary distances to make a determination. This application is not asking for a huge commercial application, it is a 23-acre farm asking to have rustic weddings 15 times a year.

Pickman asked if the application includes any outdoor events like dancing or ceremonies, if so, where will they be located and how will the sound ordinance be kept?

Piedra stated there will be no outside music and the use will be within the barn. There will be no events like dancing happening outside. Ceremonies could be located right outside the barn but there would still be more than 500 feet from the nearest dwelling and that could be confirmed during site plan review.

Stein stated that there has been concerns about loud guests outside, what measures will be taken to ensure control is met?

Piedra replied that there are very explicit agreements that have to be signed by the wedding party in regard to guests and a deposit made as a deterrent and forfeited if there is a violation.

Harling asked if the applicant would be willing to have a condition that set a certain radius to how far outside guests could wonder outside of the barn.

Piedra stated they are not opposed to it, but it would be hard since guests would have to come and go from their cars.

Harling asked again if there are any representative from the Town of Wilton, Lyndeborough, Nashua Regional planning commission or South-Werst regional planning commission. No one came forth.

Carrier representing for Woodcock farms stated it is the boards job to review all submittals and feel that more time should be given to go over conditions. Carrier feels that this application should be required to hire additional experts and information like the Ben's Sugar Shack application was required to do. The application does not account for all of the existing business activities like horseback riding, lessons or use of the hotel. Driveway width has not been determined since there are no official plans submitted. Traffic data has not been determined and may affect Putnam Road (Dirt Road that is closed off/dead end). There is no sufficient buffering between the Woodcock farm side and the applicant's side, buffering should be up to the applicant. Wedding guests should be limited to using only 2 out of the 6 driveways. This application should be treated as the Ben's application and require additional experts. Woodcock Farms urges the board to include the scope of the proposed use to both owned lots since the website indicates full use of both properties are allowed when booking weddings. Woodcock expects continued issues and/or violations with guests trespassing onto their property, installation of a commercial sign for Stepping Stones at the corner of Webster Hwy and North Road, operating the Lodge and Homestead as a hotel without documented approvals, placing the indoor arena on an unapproved

lot, operating after a cease and desist order and holding other events not approved. For these reasons Woodcock Farms suggests the board deny the application and take more time to review.

Harling asked Woodcock Farms (Opposing abutter) where the camping cabin is located and what it consists of? Also if there is a permit for the cabin? Tax Records do not show the cabin.

Pickman asked where the camp is in relationship to the applicant's property.

Russell replied it is a 3 season fishing cabin and is approximately 20 x 15 feet, remembers paying for a permit. The camp is located across the street and up the hill from the riding arena, but it is up to the applicant to provide distance. Russell hasn't had the property surveyed but stated the cabin is near the pond.

Harling asked if there are riding lessons taking place on the property, the applicant replied that there are Veteran programs that take place once every 2 months and she only has 2 mini ponies, 2 large ponies and 2 horses. There are no public riding lessons.

Tierney wanted to give Karen Walker from Wilton's Planning board an opportunity to speak on regional impact concerns once contact is made. Tierney then stated that the sound study was improperly done due to the barn doors being closed and fire code requires the doors to be open. There is a small parking lot (9 spaces) with handicapped spaces that are within the 55 feet of a property line. Prior to granting a special exception the board has to determine if the well on the property is adequate. Until the well is verified with DES then the special exception shouldn't be granted. The board should clarify if events are classified as full weekends (1 event= Fri, Sat, Sun) or (single) day events.

In the matter of the Special exception hearing, Sliviak continued to recuse herself again from participating in deliberations and voting. She will remain taking minutes.

Harling asked if MacMartin (an opposing abutter) has a residence on the actual abutting lot to the applicant's property. It was determined that MacMartin has no structure or dwelling on a lot that is abutting the applicant, only vacant land.

Select Board member Ken Caisse confirmed that Woodcock farms did not need a permit for his fishing camp when remodeled but did pull a mechanical permit for gas piping. There is no plumbing or electric and does not show on the tax card in Temple.

Karen Walker, a member of the Wilton Planning Board was given the opportunity to speak through Attorney Tierney's (MacMartin/Laurenitis attorney) phone. Walker believes there may be a regional impact because there is potential pollution from parking and harm to the aquifer. There is not enough information on a storm water management plan. She is concerned that Mill Brook which is Wilton's water source could be affected. Wilton is concerned about the additional traffic on Burton Hwy and wedding guests will likely be routed through Wilton. After serving alcohol to an unfamiliar out of town person it may cause accidents on the windy narrow road and Wilton provides significant back up in terms of the emergency services which would create an additional burden for Wilton.

Harling asked if anyone else from the public had any comments.

Olivia Holmes stated that the aquifer is actually safer under the new proposed use compared to the original use of the farm which kept 70+ horses. Holmes also stated that there is now a lot less traffic

compared to the camps that were hosted and traffic would most likely come from Route 101/Webster Hwy. She finds Walkers concerns very unreasonable.

Piedra commented that the barn doors and fire safety issue concern is inaccurate. The main exit consists of 2 barn style doors (main entrance), the original barn doors were referenced in the fire marshal's letter. During the sound report it was indicated that the correct doors remained opened, and the permanent doors were closed (Because they can't be opened) which is per fire/safety code.

Piedra stated that with 23 acres and 70+ spaces are more than sufficient for the use. The board can safely say that all uses are far from 500-foot setback requirements. When the South-West Regional planning commission weighed in, they did not have any concerns.

Tabolt asked about the driveways and which 2 are going to be used for the commercial use.

Peidra replied that the plans indicate which driveways will be roped off.

Pickman stated he would like to see larger plans that indicate the roped off driveways.

Piedra stated that Martin is entitled to full use of other driveways for the specific uses they serve to the other buildings and property.

George Russell asked how the board will deal with the intermingling of buildings on both properties?

Pickman replied that the board is looking at the Barn only as a commercial use. It is a decision for the Select Board to make in the future for approved uses. The Homestead is going to be used as a long-term single home residence.

Piedra does not want to limit already lawful uses on the property. The application clearly states the use of the Barn is the only commercial use being applied for.

When asked, Boldt stated that the ZBA is authorized to make a decision on issue X of the Application, not A, B, C and AAA that are not before it. The Select Board will have to decide later on those uses and if they are lawful.

Carrier believes a traffic study is warranted for this application and asks the Board to check the parking spaces to ensure they meet the 55 foot setback requirements.

Tierney believes the application includes the entire property since Martin is operating entirely together.

Tabolt asked about the use of the Lodge; Pickman replied that the Lodge has always been used for events, but the application is only on the Barn.

Harling stated that the Homestead should be removed from any advertising in conjunction with the barn and wedding/events.

Ezell stated that if the Lodge should be removed than shouldn't the Homestead be removed as well?

Russell stated that when looking online at the venue, it is marketed as 1 property with full use.

Mike Beebe stated that if the application isn't approved then the only choice might be to sell the land and then it would end up as a subdivision. Staying a farm and maintaining its appearance should be the smarter decision.

Harling asked if there were any other public comments. Hearing non, Harling closed the public hearing at 9:05 p.m.

Harling opened a discussion on this Application for Special Exception including possible conditions for section 13A and 13B for special exception standards. Harling asked if the Board wanted to adopt their prior vote on the Application or reconsider each of the Special Exception Criteria. Board determined to reconsider each in light of Sliviak's recusal.

Discussion/Thoughts

13A. 1. Pickman said he is comfortable with the 500 feet requirement if it refers to the barn only but believes more information is needed for outdoor uses.

Stein agreed that outdoor events should be shown to ensure setback requirements. Tabolt stated outdoor activities should be shown on the plans. Harling agreed that she would like to know the outdoor activities and where they are, in reference to the Barn. The Board was comfortable with approving events inside the Barn only.

13A. 2. Pickman stated that it is met and would like to add a qualification: if existing paddocks and riding arenas should be used as event parking, permanent fencing or curbs should be installed limiting parking to 55 feet from the lot line.

Stein would like to ensure fire lanes are kept clear during events but standard is met.

13A.3. Pickman added a qualification: amplified music is only allowed inside the Barn subject to the sound/DBA protocols stated in the application.

Tabolt asked if a police officer should be present during events as a deterrent? But agreed with Pickman that all music should stay inside barn only.

Stein stated in order to keep the adjacent property values intact that we should include in the conditions to limit 1 barn event at a time, hard stop at 10 p.m. and only 15 weddings a year. There should be no changes to the Barn other than to meet safety/fire standards. Expansion is not allowed.

Tabolt wanted to include there to be no changes to the exterior of the barn and questioned if the board should state that metal siding should not be allowed in order to maintain its rural character. The rest of the Board did not agree.

13.A.4. Board feels this standard has been met with no conditions necessary

13.A.5. Board feels this standard has been met with no conditions necessary

13.A.6. Tabolt asked the board if an officer should be present, again as a deterrent especially if alcohol is served at events of more than 50 people.

Stein stated that a licensed and insured bartender with a last call at 9:30 p.m. is sufficient and an officer would be excessive to be added as a condition.

Harling stated that she believes this standard is met and does not think there is a safety hazard nor would the application cause excessive wear and tear on the roads.

13.A.7. The Board feels this standard has been met with no conditions necessary

13.A.8. Harling proposed a condition that includes the applicant must fill out the first page of the Temple's special events application which would give the Select Board necessary information on date and number of guests attending. Also have the health officer confirm adequate number of porta potty's at event. This would also allow the number of events to be tracked. Other members agreed.

13.B.1. Received a Variance

13.B.2. Pickman stated that the driveway on the corner of Putnam road and Webster Hwy should be roped off during events but in such a way that would not affect the long-term resident that lives there.

13.B.3. Met

13.B.4. Met

13.B.5. Agreed, no food or drink shall be served outside

13.B.6. N/A

13.B.7. N/A

13.B.8. N/A

13.B.9. Met

Additional conditions:

Site Plan approval must be obtained before any events are held.

The Homestead shall be used as a private residence either by the owner or long-term tenants and shall not be used as a short-term rental, bed and breakfast, air bnb or housing for event guests or staff.

The Lodge shall not be used in conjunction with the Barn events unless a second Special Exception is obtained for the Lodge use.

No events shall occur outside the Barn unless another Special Exception is obtained showing the areas of such outdoor use.

All advertisement for the Homestead and the Lodge must be removed in association with Barn events.

The only building on Map 9 Lot 15 to be used for events is the Barn; and only one Barn event can occur at a time.

No more than 15 Barn events (up to 35 guests) be held per calendar year and no more than 15 Barn events (up to 99 guests) be held per a calendar year. 30 Events total per calendar year.

Barn must meet all fire and safety codes before the first event takes place. Barn must be inspected and signed off by the Select Board before such use.

There shall be no event open to the general public.

Events and set-up can take place between 8 a.m. and 10 p.m.

No alcohol is to be consumed outside of the barn.

Alcohol is only allowed to be served inside the Barn and by a licensed and insured Bartender in compliance with all applicable State laws and regulations.

Last call shall be 9:30 p.m. and the event shall end by 10:00 p.m.

Any and all fees are to be paid associated with the Variance and Special Exception Application within 30 days of the date of this Notice of Decision.

Tabolt made a motion to approve the special exception with conditions as discussed, second by Stein.

All in favor, motion carried.

Pickman made the motion to continue the review of a draft Notice of Decision until Thursday May 19th, 2022 at 6 p.m., second by Stein. All in Favor, motion carried.

Harling made a motion to approve the minutes from April 21, 2022, second by Stein.

Minutes by Sliviak