

TOWN OF TEMPLE, NEW HAMPSHIRE
Zoning Board of Adjustment
APPROVED MINUTES OF PUBLIC HEARING
October 5, 2016

ZBA members present: Virginia (“Jenny”) Houston (Chair), Honey Hastings (Vice Chair), Mary Beth Ayvazian, John Kieley, Bill Ezell (alternate replacing David Martz who was not present) and Sydney Thomas (alternate). Also present was Attorney Biron Bedard representing the ZBA.

The meeting was called to order by Chair Houston at 7:05 p.m.

The Chair welcomed the ZBA members and the members of the public and explained that the meeting was a continuation of the September 22, 2016 hearing concerning the appeal of Martin Connolly to the Selectmen granting a building permit to Ben’s Sugar Shack (BSS) at their July 26, 2016 BOS meeting.

The Chair stated that Dave Martz was not in attendance and she appointed Bill Ezell as the alternative. Sydney Thomas was excused and took a seat in the public section of the hall.

The Chair asked if any members needed to disqualify themselves. All responded, no.

John Kieley made a motion to close the public hearing and was seconded by Honey Hastings. The ZBA voted 5-0 to close the public hearing.

Mary Beth Ayvazian made a motion to start the deliberations and was seconded by John Kieley. The ZBA voted 5-0 to start deliberations.

John Kieley stated that the ZBA needed to address two issues; the building permit and the question of agricultural versus commercial use of the property in question. It is beyond the purview of the ZBA to determine the use of the building. The ZBA is to interpret the Town Ordinance not to form an opinion as to use.

The Town of Temple permits a broad definition of the term agriculture. Proposals have been made to tighten up the definition but have not been approved by the voters.

Mr. Kieley made the following comments:

- A) Kieley referred to the Town of Temple Zoning Ordinance, Article VIII Section 2, and paraphrased the language and specifically emphasized that the Ordinance exempts agriculture from site plan review. The Town’s Zoning Ordinance refers to RSA 21:34-a for a complete definition of agriculture. The Town could choose to regulate, by Ordinance, the State’s wide open definition of agriculture.

- B) Temple's Zoning Ordinance is very broad and no changes have been adopted by the Town regarding the Agriculture Ordinance.
- C) The ZBA's role in the appeal process is not to enforce or get involved with the use of the property.

Chair Houston referred to and read from the Town's Zoning Ordinance specifically referring to the section that states; "For complete definition, refer to RSA 21:34-a." The statute is broad as to what includes agriculture. The ZBA can only look at what the law says and the Town's Ordinance point to RSA 21:34-a. The Chair referred to RSA 21:34-a and noted that under section II there are 11 descriptions of the terms "agriculture" and "farming". Section II (11) list includes the production, cultivation, growing harvesting and sale of maple syrup. The statute is more descriptive than the Temple Zoning Ordinance.

Mary Beth Ayvazian noted that the ZBA's job is not to determine the use of the property but only to determine if the Selectmen properly granted the building permit.

Honey Hastings referred back to Article VIII Section 2 of the Zoning Ordinance citing the agriculture exception. She read the Zoning Ordinance as compelling issuance of the building permit.

Mary Beth Ayvazian stated that the property met all the requirements including set-backs. She believes the Board of Selectmen was compelled to issue the permit.

John Kieley referred to the discussion at the September 22, 2016 meeting concerning the sale of machinery as an ancillary use going on within the property. Temple permits a commercial business on a property. If all BSS was doing was selling maple equipment it would be considered a home business.

The Chair noted that the definition of agriculture is broad and the use of the word production as used in the statute is broad. She thinks it encompasses Ben's operation. The Town of Temple, in the past, made the decision not to narrow down the definition. The Chair believes the building permit should have been issued because the property qualifies as agricultural.

Bill Ezell noted that maple syrup was one of the allowed uses under the statute.

The Chair noted that set-backs and other requirements for the property were not issues and were not raised by the appellant.

Mary Beth Ayvazian stated that much evidence introduced at the September 22, 2016 hearing was extraneous. The ZBA's purview is narrow. It is the State's goal to promote agriculture, and the towns have the right to introduce restrictions. Temple made the decision not to introduce any restrictions on agriculture in its ordinances. Ayvazian

continued that the ZBA can only vote on and take into consideration what the law is today.

Honey Hastings referred to the five points contained in Mr. Connolly's appeal letter. The points are really Planning Board issues.

The Chair noted that BSS is regulated by the State's Agriculture Department. If the State did not consider BSS an agricultural business, why would the State be regulating them through the NH Agriculture Department?

Bill Ezell stated that under RSA 21:34-a, agriculture includes transportation to and from the farm and suppliers.

Honey Hastings referred to the Temple Zoning Ordinance Article VIII Section 4 concerning enforcement. If there is a concern as to the use of the property, it is the Selectmen who need to take steps to enforce the ordinance. As far as she knows this has not happened.

Mary Beth Ayvazian stated that signs on the property and conflict of interest issues are not within purview of the ZBA because they do not involve the Zoning Ordinance.

The Chair stated that whether the permit was granted or denied, it was the Selectmen's decision as long as their decision was reached by following the Ordinances.

John Kieley made a motion to deny the appeal. It was seconded by Mary Beth Ayvazian and voted on 5-0 by the ZBA.

Honey Hastings moved to defer the vote on the minutes from the September 22, 2016 meeting and noted they are available in draft for review at the town offices. It was seconded by Mary Beth Ayvazian and voted on 5-0 by the ZBA.

The minutes from the current meeting will be available in draft in 6 days at the town offices.

The next meeting was scheduled for October 19, 2016 at 6:00 p.m.

Motion to adjourn the meeting was made by Mary Beth Ayvazian, seconded by John Kieley and voted on 5-0 by the ZBA at 7:33 p.m.

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