

TOWN OF TEMPLE, NH - ZONING ORDINANCE
(As amended through March 13, 2018)

Section 11 (2010) Home Business

A. Home Business I:

A Home Business I will be permitted in all zoning districts if it conforms to all of the requirements of this section.

1. It shall be carried out only by residents of the premises and involve a service provided by or product produced by those residents.
2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior floor space and in no case more than 2000 square feet.
3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.
4. It shall result in no external evidence of the enterprise except for a permitted sign and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), increases in traffic or in parking requirements, or as a result of other nuisances.
5. It shall not include on-site Retail except for the sale of produce and products grown or made on-site or the sale of other products that are clearly incidental to the business, profession or trade.
6. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment. One business related vehicle may be stored on site without required screening.
7. The dwelling or accessory building shall not provide window displays or other characteristics or features normally associated with Retail or other commercial use.

B. Home Business II:

A Home Business II will be permitted in the Village and Rural/Agricultural zoning districts if it conforms to all of the requirements of this section.

1. It shall be carried out by residents of the premises and not more than three on-premise employees who are not residents.
2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior space and in no case more than 2000 square feet.
3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.
4. It shall result in no external evidence of the enterprise except for a permitted sign and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), excessive increases in traffic or in parking requirements, or as a result of other nuisances.

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5. It shall not include on-site Retail except for the sale of produce and products grown or made on-site or the sale of other products that are clearly incidental to the business, profession or trade.
6. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment. One business related vehicle may be stored on site without required screening.
7. The dwelling or accessory building shall not provide window displays or other characteristics or features normally associated with Retail or other commercial use.

C. Home Business III:

A Home Business III will be permitted in the Rural/Agricultural zoning district if it conforms to all of the requirements of this section.

1. It shall be carried out by residents of the premises and not more than three on-premise employees who are not residents.
2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior space and in no case more than 2000 square feet.
3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.
4. It may result in external evidence of the enterprise but shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), excessive increases in traffic or in parking requirements, or as a result of other nuisances.
5. It shall not include on-site Retail except for the sale of produce and products grown or made on-site or the sale of other products that are clearly incidental to the business, profession or trade.
6. It shall have 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 manner as may be specifically required and approved through site plan review by the Planning Board. One business related vehicle may be stored on site without required screening.
7. The dwelling or accessory building shall not provide window displays or other characteristics or features normally associated with Retail or other commercial use.

D. Special Exception

Any business activity that exceeds the standards for Home Business I, II or III, and any Garage-Public, Filling Station or Retail business, must comply with Article IV, Section 13.

Section 12 Farming and Related Rural Pursuits: Farming, logging, sugaring and related rural pursuits that have been normal in this town are permitted.

Section 13 (2010) Industry, Commercial and Non commercial Enterprises: Trade, enterprises, facilities, whether commercial, non commercial and/or industrial use of land or buildings, including the commercial excavation of earth materials, not specifically authorized under other sections of this ordinance,

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may be permitted by special exception if approved by the Board of Adjustment after a public hearing on the subject. At said public hearing the Board of Adjustment shall only grant a special exception upon finding that the Standards outlined in Section 13A and the Conditions in 13B have been met.

Section 13A (2010) Special Exception Standards

- 1) The proposed use shall be set back at least five hundred feet from any existing dwelling of another owner; provided, however, that, at the discretion of the Board of Adjustment, this distance may be reduced in any amount to a minimum of two hundred feet, but only if written permission is obtained from the abutting owners affected;
- 2) The Board of Adjustment finds that the proposed use shall have off street parking which will be ample to serve the proposed use; provided, however, that any such off street parking shall, at a minimum, be set back at least fifty-five (55) feet from all lot lines.
- 3) The proposed use shall not adversely affect the value of adjacent property. An adverse affect on adjacent property is one which would be obnoxious or injurious or limit the use of neighborhood property by causing such problems as excessive noise, odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare, drainage, or other conditions that are associated with the intended use but are not typical of permitted uses within the area.
- 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.
- 5) No hazardous waste shall be permanently stored on or disposed of on the property.
- 6) Traffic generated by the proposed use shall not present a safety hazard to the community for either vehicles or pedestrians, nor shall it cause excessive wear and tear to town roads.
- 7) Appropriate buffering landscaping shall be provided within the setback areas, of a type and amount deemed appropriate by the Planning Board during Site Plan Review.
- 8) The Board of Adjustment shall, when appropriate, request a recommendation from the Planning Board, the Conservation Commission, Road Agent and/or the Health Officer concerning the proposed use.

Section 13B (2010) Special Exception Conditions

In the event that the Board of Adjustment finds that the above standards have been met and, accordingly, grants a special exception, any such use SHALL comply with the following additional conditions and the Board of Adjustment may not waive compliance with the following conditions as part of its decision regarding the special exception:

- 1) All buildings shall be set back at least one hundred feet from all lot lines;
- 2) Access shall be provided by not more than two driveways, not more than thirty-two (32) feet wide;

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- 3) The total footprint of all buildings and structures shall occupy no more than one-eighth (1/8) of the lot or parcel of land.
- 4) Proposed use shall be located on a town or state maintained road or street.
- 5) All food shall be served and consumed within the building(s), except that a seasonal outdoor dining area and or take out services may be approved during Site Plan review.
- 6) No drive through services shall be provided
- 7) New facilities shall be located on a lot at least 5 acres in size.
- 8) Any retail store shall not exceed 3000 square feet of floor space
- 9) 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 manner as may be specifically required and approved by the Planning Board during Site Plan Review. One business related vehicle may be stored on site without required screening.

However, this prohibition is NOT intended to limit the Board of Adjustment in the exercise of its authority to consider applications for variances from the terms of the ordinance made pursuant to RSA 674:33, (I)(b).

Approvals granted hereunder shall expire at the end of twelve months after the date of the Notice of Decision if the activity for which the Special Exception is granted has not been started or significantly acted upon. The Board of Adjustment, upon timely application, may extend the expiration date for an additional twelve months at its discretion and without a public hearing.

Section 14 (2010) Not used

Section 15 Removal of Ruins: No owner or occupant of any land shall permit any building ruins caused by fire, explosion, flood, storm, or other acts of God to be left unfinished or incomplete thereon, but shall finish or complete or remove the same within two years of occurrence.

Section 16 (2007) Home Products and Produce: Home products and produce may be sold, and exposed for sale.

Section 17 Signs:

- (a) Property owners of business, professional, or service enterprises shall be allowed two advertising signs on the premises for their goods and services only, such signs not to exceed eight square feet each.
- (b) Two signs not exceeding eight square feet each are permitted on any lot advertising that lot and/or building thereon for sale or lease.
- (c) Two signs, advertising their goods and services only and not exceeding twenty square feet each, are permitted on the premises of any commercial or industrial enterprise that has been approved by the Board of Adjustment according to Section 13.



**State of New Hampshire
Department of Safety
Division of Emergency Services and Communications**



DESC Data Operations
Dwinell Building , 50 Communications Drive
Laconia, New Hampshire 03246
(603)527-2069 (603)527-2073 (fax)
1(800)735-2964 (DESC Data Operations)

Mark E. Doyle, Director

TDD Access: Relay NH
1(800)806-1242 (Administration)

E9-1-1 Data Operations Liaison Form

The Town/City of Temple has appointed the following individuals to serve as the Primary and Secondary E9-1-1 Data Operations liaison.

We authorize the individuals listed below to request and receive data from the Division of Emergency Services and Communications (DESC) and further authorize them to make any changes to the Master Street Address Guide (MSAG), Street Address Guide (SAG) and Mapping data used in the E9-1-1 system in order to ensure accurate location information.

Primary E9-1-1 Data Operations Liaison:

Secondary E9-1-1 Data Operations Liaison:

Name	Paul Clifton-Waite	Name	Tim Fiske
Title	Assistant to the Select Board	Title	Road Agent
Phone	603-878-2536	Phone	603-878-2744
Alt. Phone		Alt. Phone	
Fax		Fax	
Email <i>(Please Print Legibly)</i>	boardassistant@templenh.org	Email <i>(Please Print Legibly)</i>	templehwy@gmail.com

Depending upon the structure of the Town/City government, any of the following people may sign this form: Chairman of the Board of Selectmen; Chairman of the Town Council, Mayor, Town/City Manager, Town/City Administrator or other authorized designee.

Signed this day 26 of February, 2019
Day Month Year

[Signature], Co-Chair Select Board
Signature Title

Town/City Mailing Address: 243 Route 45, Temple, NH 03084

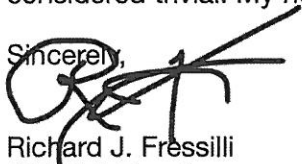
Please return by mail, e-mail or fax to:
DESC, 50 Communications Drive, Laconia, NH 03246
E-mail: database@e911.nh.gov Fax # 1(888)628-8266 (Toll Free In-State)

To: Select Board Member Cromwell
From: Richard J. Fressilli, Citizen of Temple, N.H. 03084
Subject: Building File Concern Follow Up, Fish Road
Date: February 21, 2019

I am aware that it has been one year since I received your last update regarding the non-permitted building concern we were attempting to resolve at the DeRosier property which abut's my Fish Road property. The letter you emailed me dated March 31, 2018 indicated you intended to mail a reminder to the non-permitted building's proponent that weekend. I regret that I have yet to hear about the status of this permit for the structure.

I was hoping you might be able to contact me in regard to the status of the permit and the nature of the structure which was alleged to emanate from its submission. Although I know the matter may seem trivial in view of the host of difficulties at large, experience brings many memories to mind about major concerns which evolved from matters which were once considered trivial. My hope is to avoid having this matter become one of them.

Sincerely,



Richard J. Fressilli
404 Fish Road

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS

MARCH 2019

*SUPERIOR COURT
SOUTHERN DISTRICT*

TOWN OF TEMPLE

vs.

Docket # 226-2019-CV-00 _____

JOHN H. JACKSON-MARSH AND ALAN MARSH

VERIFIED PETITION FOR INJUNCTIVE RELIEF RELATING TO LAND USE
COMPLAINT PURSUANT TO RSA 676:15,
IMPOSITION OF CIVIL PENALTIES PURSUANT TO RSA 676:17,
AND ENFORCEMENT ACTION PURSUANT TO RSA 236:128

NOW COMES the plaintiff, the *Town of Temple*, with a mailing address of PO Box 191, Temple, County of Hillsborough, State of New Hampshire 03084, (hereafter ‘Town’ or ‘plaintiff’), by its duly elected Selectboard, (hereafter “Board”) and complains against *John H. Jackson-Marsh and Alan Marsh*, of 32 West Road, PO Box 184, Temple, NH 03084-0184, and say as follows:

Parties

1. The plaintiff is the *Town of Temple*, New Hampshire, which is a NH municipality located in the County of Hillsborough with a mailing address of PO Box 191, Temple, County of Hillsborough, State of New Hampshire 03084.
2. The undersigned Selectboard is designated by the Town of Temple Zoning Ordinance as the authority authorized to enforce the terms of the ordinance.¹

Property Locations, Descriptions, Owners

3. The property (hereafter ‘Property’) consists of all of the land, with buildings and improvements thereon, shown as *Tax Map 7, Lot 13* on the Town of Temple Tax Maps and identified thereon as consisting of 38.69 acres, said property also being shown on a plan recorded in the Hillsborough County Registry of Deeds (hereafter ‘Registry’) as *Plan # 5345*

¹ *Town of Temple Zoning Ordinance (TZO) - Article VIII, section 4 - 2018 ed.*

as **Lots No. 1-14, inclusive, together with a cul-de-sac road identified as 'Highland Road'**, as depicted thereon.

4. Said Property is located on the south side of West Road and is primarily located in the **Rural Residential Agricultural (RRA)** zoning district while a small portion of said Property is located in the **Village Historical Preservation District (VHP)**, all as more particularly depicted in the Town of Temple Zoning Map.
5. The Property is bounded on the north by West Road and on the south by Hill Road.
6. Said Property is believed to be owned and controlled by the Respondents in their individual capacities and is the same property conveyed to the Respondents by deed of Marcia Salera, trustee, dated November 21, 2014, which deed is recorded in the Registry at **Volume 8717, Page 1278** (hereafter the 'premises' or 'property').

Jurisdiction

- Subject Matter

7. The within is an action brought to enforce local codes and regulations pursuant to **RSA 676:15 & 17**, as well as to exercise the Town's right to enforce certain state laws governing the use of property as provided for in **RSA 236:128**.
8. NH Superior Court is empowered to hear matters brought under said statutes.²

- Of the Parties

9. The Honorable Court has jurisdiction over the defendants by virtue of their being residents and domiciliaries of the Town of Temple, in the State of New Hampshire.

Venue

10. Venue, in the Superior Court, is generally understood to be in the county in which either the plaintiff or defendant reside.³
11. The plaintiff is a NH municipality with a principal place of business in the County of Hillsborough and, accordingly, venue in the County of Hillsborough is proper generally and, in particular, in its Southern District.⁴

² **RSA 236:128, (I) & RSA 676:17, (IV) and (V).**

³ **RSA 507:9.**

⁴ **RSA 496:1(I)(f).**

12. The Owners individually or collectively own and/or exercise control of said Property and conduct or allow to be conducted various commercial and other activities on the premises including, but not limited to:
- The establishment and maintenance of a ‘... *Motor Vehicle Junk Yard* ...’.
 - The storage of metal, cars, junk and other materials;

said uses being conducted in violation of applicable codes, statutes and regulations, all as more particularly specified below.

Applicable Restrictions

- Temple Zoning Ordinance Provisions (TZO)
13. The Town of Temple has adopted land use regulations including a Zoning Ordinance (‘TZO’), which ordinance divides the area of the Town into three distinct zoning districts one of which is the *Rural Residential Agricultural (RRA)* zoning district.
14. As noted above, the Property is located, primarily, in the *Rural Residential Agricultural (RRA)* zoning district.
15. The *TZO* defines the terms ‘... *Lot, Plot, or Parcel* ...’ as ‘... *A parcel of land occupied or intended for occupancy by one main building, together with its accessory buildings, and uses customarily incidental to it, including the open spaces required by this Ordinance. ...*’.⁵ (*Emphasis supplied*).
16. The *TZO* contains a regulation governing the authority to enforce its terms which expressly delegates to the Board of Selectmen the sole responsibility for enforcement:
- ‘... Upon any well-informed information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action. ...’*.⁶
17. The *TZO* requires a permit for construction and renovation of structures as well as the change in the use of any land, and prohibits the issuance of permits for construction or uses that are not compliant with the *TZO*:
- ‘... It shall be unlawful to erect and use any structure, alter, remodel ... or repair ... any existing building, change the use of any land, building or structure, remove*

⁵ *TZO, page 3 - Article II - Definitions. (Also, see the TZO in effect in Temple as of March 8, 1983, which contained the identical definition).*

⁶ *TZO, page 64 - Article VIII, § 4. (Also see TZO, page 63 - Article VIII, § 1).*

or demolish any existing structure, to repair or replace any existing structure destroyed or damaged by fire or an act of God, or relocate any building in any district within the Town of Temple without first obtaining a building permit from the Board of Selectmen or their agent, unless such structure or building is less than 125 square feet and serves as an accessory use to an existing residence. The Selectmen or their agent shall issue any and all building permits requested when such building permit is in accordance with the provisions of this ordinance. Prior to the granting of a permit for the development or change or expansion of any non-residential use or multi-family use, excepting agricultural use, Site Plan Review approval shall be granted by the Planning Board. Before any structure or dwelling may be occupied, all inspections must be completed and a certificate of occupancy issued by the Selectmen. ...'.⁷

18. The section of the *TZO* which addresses '*... Industry, Commercial and Non-commercial Enterprises ...*' provides that '*... commercial ... use of land or buildings ... may be permitted by special exception if approved by the Board of Adjustment ... [which is only entitled to grant such permission] ... upon a finding that the Standards outlined in Section 13A and the Conditions in 13B have been met. ...*'.⁸

19. The *TZO* defines the term '*... Motor Vehicle Junk Yard ...*' as:

'... any business and any place of storage or deposit, whether in connection with any other business or not, which has stored or deposited 2 or more unregistered and uninspected motor vehicles which are no longer intended or in condition or legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal in bulk to 2 more motor vehicles. Shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn material which are parts of a motor vehicle or cut up the parts thereof. ...'.⁹ (Emphasis supplied).

20. The *TZO* addresses the manner in which a *Motor Vehicle Junk Yard* is regulated by deferring to state law:

'... Motor vehicle junkyards shall abide by the state laws on this subject (RSA 236: 111-129). ...'¹⁰

⁷ *TZO, page 63 and 64 - Article VIII, § 2.*

⁸ *TZO, page 10 - Article IV - General Provisions, § 13.*

⁹ *TZO, page 4 - Article II - Definitions.*

¹⁰ *TZO, page 8 - Article IV - General Provisions, § 10.*

- New Hampshire State Law

21. Several state laws address the issue of the storage of 'junk', 'disabled automobiles', 'motor vehicle junkyards', 'machinery junk yards', the licensing of the same, and when the conduct of any of those constitutes a 'nuisance'. Some of those statutes include, but are not limited to, the following:

236:112. Definitions.

'... For the purposes of this subdivision:

I. "Junk yard" means a place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:

(a) ...

(b) Machinery junk yards, as defined in paragraph III; and

(c) Motor vehicle junk yards, meaning any place, ... where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:

(1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or

(2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle. ...'.

III. "Machinery junk yard" means any yard or field used as a place of storage in which there is displayed to the public view, junk machinery or scrap metal that occupies an area of 500 square feet. ...'.

RSA 236:114. Requirement for Operation or Maintenance.

'... A person shall not operate, establish, or maintain a junk yard or machinery junk yard until he (1) has obtained a license to operate a junk yard business and (2) has obtained a certificate of approval for the location of the junk yard. ...'.

RSA 236:119. Nuisance.

‘... Any junk yard or machinery junk yard located or maintained in violation of the provisions of this subdivision is hereby declared a nuisance, and the same may be abated on complaint of any prosecuting officer. ...’.

RSA 236:128. Injunction.

‘... In addition to the penalty in RSA 236:127, the local governing body may obtain a mandatory injunction to end the violation. ...’.

Violations

- Unauthorized Material Storage and Junkyard

22. The **TZO** defines the term ‘... **Motor Vehicle Junk Yard ...**’ as:

‘... any business and any place of storage or deposit, whether in connection with any other business or not, which has stored or deposited 2 or more unregistered and uninspected motor vehicles which are no longer intended or in condition or legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal in bulk to 2 more motor vehicles. Shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn material which are parts of a motor vehicle or cut up the parts thereof. ...’¹¹

23. The **TZO** addresses the manner in which a **Motor Vehicle Junk Yard** by deferring to state law, essentially incorporating the referenced provisions into the TZO:

‘... Motor vehicle junkyards shall abide by the state laws on this subject (RSA 236: 111-129). ...’¹²

24. The referenced NH State law defines a ‘junkyard’ as:

‘... I. “Junk yard” means a place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material.’¹³

¹¹ **TZO, page 4 - Article II - Definitions.**

¹² **TZO, page 8 - Article IV - General Provisions, § 10.**

¹³ **RSA 236:112.**

25. NH State law also includes (without limitation) in the definition of a 'junkyard' a '*... Machinery junk yard ...*',¹⁴ and a '*... Motor vehicle junk yard ...*',¹⁵ as those terms are defined in the state law.

26. Under that state law, a '*... Machinery junk yard ...*' is specifically defined as:

*'... any yard or field used as a place of storage in which there is displayed to the public view, junk machinery or scrap metal that occupies an area of 500 square feet. ...'*¹⁶

27. Further, the term '*... Motor Vehicle junkyard ...*' is defined as:

'... any place, ... where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:

(1). Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or

*(2). Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle. ...'*¹⁷

28. Operating or conducting activities on a tract of land that constitute either the storage of 'junk', or an operation of a 'machinery junkyard' or a 'motor vehicle junkyard' under the TZO and NH law requires a license, renewable annually and compliance with statutory conditions as well as any conditions contained in the issuance of the license:

*'... A person shall not operate, establish, or maintain a junk yard or machinery junk yard until he (1) has obtained a license to operate a junk yard business and (2) has obtained a certificate of approval for the location of the junk yard. ...'*¹⁸

29. Moreover, any such conditions that exist or are being operated without the benefit of a license are deemed under State law (and, therefore, also under the TZO) to constitute a

¹⁴ RSA 236:112, (I)(b).

¹⁵ RSA 236:112, (I)(c).

¹⁶ RSA 236:112, (III).

¹⁷ RSA 236:112, (I)(c).

¹⁸ RSA 236:114.

‘nuisance’:

‘... Any junk yard or machinery junk yard located or maintained in violation of the provisions of this subdivision is hereby declared a nuisance, and the same may be abated on complaint of any prosecuting officer. ...’¹⁹

30. The significance of such conduct being deemed a ‘nuisance’ is that it gives rise to the remedies and penalties which exist in the relevant state statutes and which are incorporated by reference into the TZO, so that the remedies set forth in *RSA 676:17*, also are applicable and may be imposed.
31. The Board of Selectmen is the licensing authority with regard to junkyards and the other forms of activity identified above.²⁰
32. The Board of Selectmen when issuing a license are empowered to determine both the suitability of the applicant²¹ as well as the suitability of the location²² of any such junkyard, subject to certain minimum standards set forth in the statute.
33. Even if a license is issued by the Board of Selectmen, unless they have adopted a specific regulation relaxing the state minimum standards, the location of any approved junkyard may NOT be ‘... [*l*ess than 300 feet from the right-of-way lines of... class V, ... highways. ...’²³
- - Activity on Map 7, Lot 13
34. In spite of the foregoing, there is currently located on *Map 7, Lot 13*, at a location visible from West Road, (which is Class V highway) at a point readily observable by persons using said highway, a large collection of material that is located in a field area on said lot.
35. The material in question consists of ‘... *junk machinery or scrap metal* ...’²⁴ that clearly occupies an area of more than ‘... 500 square feet. ...’²⁵
36. As such, the storage and placement of this material on said site consists, at a minimum, a ‘...

¹⁹ *RSA 236:119.*

²⁰ *RSA 236:115.*

²¹ *RSA 236:117.*

²² *RSA 236:118.*

²³ *RSA 236:118, (III)(b).*

²⁴ *RSA 236:112, (III).*

²⁵ *RSA 236:112, (III).*

Machinery junk yard ...’ is specifically defined in NH law which sections have been incorporated by referenced into the TZO.²⁶

37. The material at the location consists, in part, of used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle, all or parts motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle, which materials also include old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material.²⁷
38. As such, this circumstance as noted on this lot constitutes a ‘... *Motor Vehicle junkyard ...*’ as that term is defined in sections of NH law that have been expressly incorporated into the TZO.²⁸
39. The conducting of activities on a tract of land that constitute either the storage of ‘junk’, or an operation of a ‘machinery junkyard’ or a ‘motor vehicle junkyard’ under the TZO and NH law requires a license, renewable annually and compliance with statutory conditions as well as any conditions contained in the issuance of the license.²⁹
40. Moreover, any such conditions that exist or are being operated without the benefit of a license are deemed under State law (and, therefore, also under the TZO) to constitute a ‘nuisance’.³⁰
41. The Respondents do not have a license to conduct this operation.
42. Thus, the presence of the junk and other materials referenced above on the property constitutes a violation of both the TZO and applicable state law as referenced above, constitutes a ‘*nuisance*’ as that term is defined in the applicable statute.
43. The Respondents have permitted and continue to permit on said premises, the storage and/or deposit of junk and materials which are visible on the property, in violation of the above cited zoning ordinance and state law.

²⁶ *RSA 236:112, (III).*

²⁷ *RSA 236:112.*

²⁸ *RSA 236:112, (I)(c).*

²⁹ *RSA 236:114.*

³⁰ *RSA 236:119.*

44. The storage of the material and equipment referenced above began sometime after the Respondents became the owners of the Property.
45. The Respondents contend that the items constitute items of historical value and that their maintenance and storage of the same constitutes an 'hobby' of sorts.
46. Even if that were true, the nature of the items gives rise to the violation of the statutes and town ordinances referenced above and constitutes, at best, the establishment of a non-commercial enterprise, the establishment of which is governed by **Section 13, 13-A and 13-B**, of the TZO which requires a special exception from the Zoning Board of Adjustment.
47. The conduct on the site consists of the placement of truck bodies, heavy earth moving equipment, heavy machinery of sundry uses, size and type, much of it in dilapidated condition and various state of deterioration and disuse.
48. Even assuming that this activity was, indeed, an attempt to establish and commence a storage location for historical or otherwise significant items of equipment and machinery, such an enterprise would require a special exception.

Notice of Violation

49. On or about April of 2018, the Temple Selectboard served the defendants with a notice of violation advising them of the foregoing complaints and directing that the complained of conduct be terminated.
50. As a consequence of the same, the defendants requested that the Board stay the imposition of the notice of violation pending the submission by them of applications for land use approvals to the ZBA for the purpose of allowing the use to continue.
51. The ZBA held several hearings regarding these applications with the eventual outcome that the requested relief was denied.
52. No timely appeal has been taken from the denial by the ZBA.
53. Accordingly, at the present time, no application for a special exception, nor any application for any other license or permit to conduct a non-commercial 'hobby' on the site or, in any other manner to sanction the described activity, has been obtained from the Town of Temple or any other authority having jurisdiction over this use.

Relief Requested - Violation of Town Ordinances

54. NHRSA 676:15, provides, in pertinent part, as follows:

RSA 676:15. Injunctive Relief.

'... In case any ... land is ... used in violation ... of any local ordinance, code, or regulation adopted under this title, ... the building inspector or other official with authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title... may ... IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW, institute injunction, ... to prevent, enjoin, abate, or remove such unlawful [use]. ...'. (Emphasis supplied).

55. NHRSA 676:17, provides, in pertinent part, as follows:

RSA 676:17. Fines and Penalties; Second Offense.

'... I. "Any person who violates any of the provisions of this title, or any local ordinance, code, or regulation adopted under this title, ...shall be subject to a civil penalty not to exceed \$275 for the first offense, and \$550 for subsequent offenses, for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier. Each day that a violation continues shall be a separate offense. ...'.

56. NHRSA 676:17, provides further, in pertinent part, as follows:

'... II. In any legal action brought by a municipality to enforce, by way of injunctive relief ... or otherwise, any local ordinance, code or regulation adopted under this title, ... or to seek the payment of any fine levied under paragraph I, the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses. ...', (Emphasis supplied); and,

'... V. The building inspector or other local official with the authority to enforce the provisions of this title or any local ordinance, code, or regulation adopted under this title may commence an action under paragraph I...in the superior court.... The provisions of this section shall supersede any inconsistent local penalty provision."

57. In accordance with the foregoing, the undersigned seeks the imposition of civil penalties, all appropriate costs (including reasonable attorneys fees) authorized pursuant to **RSA 676:17, (I)**.
58. Additionally, the undersigned seeks injunctive relief ordering the defendants to cease any further violations as specified above as well as an order directing that the materials constituting junk found on the premises be removed within a specified period of time and that the property, thereafter, be maintained in compliance with applicable local codes and regulations.

Relief Requested - State Law

59. The state statutes cited above that regulate the existence, operation and use of junkyards authorize the local governing body (the Temple Selectboard) to enforce the provisions by seeking, *inter alia*, injunctive relief. **(RSA 236:128, (I))**
60. Pursuant thereto, the undersigned also seek injunctive relief against the defendants, as their interests may appear, ‘... ***to end the violation. ...***’.³¹

WHEREFORE the undersigned prays that the Honorable Court direct the clerk of court to prepare an appropriate summons, attach copies of the within petition to the same and direct the Town of Temple to cause a copy of the same to be served on the defendants in order that said defendants be required to appear in said court to answer the allegations contained herein and schedule a hearing on the merits with respect to the same and, pursuant thereto, enter the following final orders:

- A. The Court find that the foregoing conduct occurred and that the defendants violated the State statutes set forth as well as local codes and regulations of the Town; and,
- B. That, in accordance with NHRSA 676:17, the court order the defendants to pay civil penalties in an amount of \$275 per day for each and every day that said violation occurred after notice of the same was given, as authorized by and to the extent permitted by law, as a consequence of said finding; and,
- C. That, additionally, the defendant also be ordered to reimburse the Town for all costs, including reasonable attorney's fees and other costs incurred by the Town as a consequence of the necessity of having to prosecute this action including also, but not limited to, expert witness fees, consultant charges, engineering expenses and other recoverable expenses; and,
- D. That the funds be ordered to be paid to the plaintiff town; and,
- E. That the Honorable Court issue a permanent injunction and order directing the defendants, in addition to the payment of the fines, costs and other charges outlined above, to remove from the premises all unregistered and uninspected motor vehicles including but not limited to, motor vehicles unfit for highway travel, motor vehicle parts, as well as anything that could be characterized as ‘junk’ within the meaning of both the town zoning ordinances as well as the above referenced state law, and bring said property into compliance with the same; and,
- F. That the Court issue an injunction prohibiting the defendants from conducting any further non-residential use of the premises until the defendant has secured all applicable permits and approvals and requiring the defendants to maintain the premises in compliance with applicable state and local statutes, codes and regulations.

³¹ ***RSA 236:128, (I).***

G. For such other and further relief as may be just.

Respectfully submitted,
Town of Temple
By its Board of Selectmen

Chair

**STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH**

Personally appeared the above-named members of the Town of Temple Board of Selectmen, who acknowledged the foregoing before me this _____ day of _____, 2019.

Before me,

Notary Public/Justice of the Peace

My Commission Expires: _____, 2 _____

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February 26, 2019