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August 30, 2021

Temple Zoning Board of Adjustment
423 N.H. Rt. 45
PO Box 191
Temple, NH 03084
Via email at boardassistant@templenh.org

Re: Stepping Stones Event Center Special Exception Application

Dear Zoning Board:

This firm represents Alec MacMartin and Arlene Laurenitis, both individually and in her capacity as Trustee of the Arlene Laurenitis Revocable Trust. In addition to residing in close proximity to the proposed Stepping Stones Event Center, my clients own the abutting properties to the north and east of the Event Center. We are writing in opposition to Stepping Stones' request for a special exception to allow commercial uses on the properties and ask that you find that Stepping Stones' application does not meet the criteria of Article IV, Sections 13A & 13B of the Temple Zoning Ordinance. The Supreme Court has recognized that "In an application to obtain a special exception from a zoning board, the burden of proof is on the applicant to present sufficient evidence to support a favorable finding on each of the requirements for a special exception." *Jensen's, Inc. v. City of Dover*, 130 N.H. 761, 765 (1988). Stepping Stones has not met its burden of proof for several criteria in the Temple Zoning Ordinance and, therefore, the application must be denied.

NATURE OF THE APPLICATION

Stepping Stones has applied for a special exception to operate a commercial event center. Included in this proposal are the use of ten different buildings on site as described by the applicant. In addition to converting the barn to an assembly for weddings and other large gatherings of up to 119 people, (99 guests and 20 staff), the applicant will also "provide[] overnight accommodations for a maximum of 38 guests between two rental buildings, The

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Lodge (sleeps 24) and The Homestead (sleeps 14).” See “Scope of Business” submitted by applicant.

SOUND

Pursuant to Article IV, Section 13A (3), Stepping Stones has the burden of showing that it will not create “excessive noise . . . not typical of permitted uses in the area.” Article IV, Section 31(5) sets forth the standards for compliance with the Temple Noise Ordinance. In the Rural Residential and Agricultural District, the absolute limits are 35 dBA (10-min L10) for nighttime noise “anywhere at any time on another property.” In Stepping Stone’s application, they acknowledge that they cannot meet this standard and propose instead to simply require “guests to agree, in writing, that all music for events stating compliance of Table 3 for Rural and Agricultural districts of 35 dba (10-min L10) as measured from neighboring homes.” This does not meet the standard of the Temple Zoning Ordinance and the ZBA does not have the authority to authorize a variance as part of a special exception application.

As indicated in Mr. MacMartin’s May 11, 2021 submission, on Friday, May 5, 2021, which is part of the ZBA’s record in this case, abutters and others met with the applicant for a sound check using a home stereo, without a subwoofer, playing at 85 dBA measured in the middle of the barn space. This resulted in sound measured 40 to 45 dBA at the property lines, in excess of the 35 dBA (10-min L10) absolute limit.¹

As further explained in Mr. MacMartin’s May 24, 2021 email, which is also part of the ZBA’s record in this case, the event held the weekend of May 21st greatly exceeded the limits of the Temple Zoning Ordinance. In particular, outdoor sound at the property boundary on Putnam Road (approximately 1,100 feet away from the outdoor sound source located at the NW corner of the Homestead), read 50-65 dBA at 5:15 PM. Sound levels in Mr. MacMartin’s yard at 46 Collins Road in Wilton (approximately 2,500 feet away) were 50-53 dBA at 5:30 PM. From 8:00 PM to 10:30 PM, when the sound moved to the barn, the sound was even louder than that, with the bass being the loudest.

Furthermore, as explained in Herbert Singleton of Cross Spectrum Acoustic’s August 20, 2021 letter, a copy of which is attached to this letter, the 35dba limit of Section 31(5) is further lowered by an additional 5 dbA to 30 dbA due to the low tones that will be present in the music played at events. Stepping Stones has failed to meet their burden of demonstrating that 45 during the sound test or 65 decibels on May 21, 2021 is lower than 30 decibels. Mr. Singleton points out that in order to meet the 30 dba limit outside, the music needs to be limited to no more than 72 dbA inside. Nevertheless, in Stepping Stones’ July 14th submission, they indicate

¹ The ZBA website has a variance application for exceeding the noise levels. See [variance application sound.pdf \(templenh.org\)](#) It is unclear when this was submitted to the ZBA, but abutters have not been notified of the variance application and therefore the ZBA cannot consider it. Nevertheless, as part of the variance application, the applicant admits that it cannot meet the requirements of the noise ordinance. Therefore, the requested special exception must be denied based on this admission.

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“[a]mplified music in the Barn must be limited to 80db as measured from the southern interior wall.” In other words, Stepping Stones is planning on exceeding the noise ordinance by 8 dBa.²

Finally, Stepping Stones is proposing that they merely require their guests to promise not to be loud, and give them three chances prior to enforcing any noise limits. In other words, a five hour wedding reception needs to have three separate visits to complain about the noise in order for there to be any serious action taken. This does not meet the requirements of the ordinance. The Temple Zoning Ordinance requires applicants to provide “[p]re-construction modeling estimates and post-construction compliance noise measurements . . . independently performed by a qualified professional chosen by the Selectmen.” Stepping Stones has not provided the independent modeling by a professional chosen by the Selectmen. Nevertheless, the Selectmen have submitted a letter to the ZBA, dated August 13, 2021, indicating that they have received many noise complaints already. See Attorney Drescher Letter of August 13, 2021.

Property Values

Pursuant to Article IV, Section 13A (3), Stepping Stones also has the burden of showing that it will not “adversely affect the value of adjacent property.” Stepping Stones has not met their burden. Stepping Stones has submitted a letter from Andrew Peterson where Mr. Peterson compares Stepping Stone to other venues such as Mayfair Farm, Aldworth Manor and Cobb Hill Estate in Harrisville. Stepping Stones is not comparable. Among other reasons, while Mayfair Farm is on 70 acres, Aldworth Manor is on 170 acres and Cobb Hill is on 750 acres (and the venues are far removed from any abutters) Stepping Stones is mostly crowded on Lot 14 on 19 Putnam Road that has a total of 3.54 acres and Lot 15 on 11 Pony Farm Lane has only 23.5 acres. Events happening at Stepping Stones can be seen and heard by people on the lots owned by my clients. Stepping Stones has not produced any evidence that property owned by my clients, including property that directly abuts the venue center, will not be adversely affected. When determining whether a proposal will diminish adjacent property values, a ZBA can disregard the opinions of others and is “entitled to rely upon its own knowledge, experience and observations.” *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 520 (2011). Having a commercial event center on a small 3.5 acre property will diminish the value of my clients’ properties.³

² This also presumes that the barn doors are kept closed. See Singleton Letter. It is difficult to imagine that Stepping Stone will be able to keep the barn doors closed during August weddings. Therefore, it is almost certain that the noise ordinance will be violated as it has already been violated several times in 2021.

³ Mr. Peterson’s May 5, 2021 letter and May 29, 2021 letters both reference sales of properties and houses near Stonegate Farm. Mr. Peterson fails to acknowledge that these properties all sold below asking price: 8A Stonegate Farm Road was listed for \$179,500 and sold for \$160,000, 0 Webster Highway listed for \$139,500 and sold for \$130,000 and 8A-2-3-2 Woodcock Run listed for \$75,000 and sold for only \$68,000, 56 Woodcock Run listed for \$550,000 and sold for \$540,000 and 179 Stonegate Farm listed at \$759,000 and sold for \$750,000. While properties not near an event center are selling for much more than their asking prices in 2021, these properties are

Compatibility With Surrounding Area

Pursuant to Article IV, Section 13A (4), Stepping Stone also has the burden of showing that it will be an “appropriate location for the use . . . [considering] lot size . . . and whether the proposed use is compatible with the surrounding land uses.” Again, the ZBA can properly find that Stepping Stone’s small lot and close proximity to its neighbors makes their lot an inappropriate location for a commercial event center. As previously stated, while other event centers such as Aldworth Manor in Harrisville is on 170 acres and the venue is far removed from any abutters, Stepping Stone is mostly crowded on Lot 14 on 19 Putnam Road that has only has 3.54 acres and Lot 15 on 11 Pony Farm Lane that has only 23.5 acres.

Stepping Stones Does Not Have Sufficient Water Resources

Pursuant to Article IV, Section 13A (4), Stepping Stones also has the burden of showing that it will be an “appropriate location for the use . . . [considering] water resources.” Stepping Stones has presented no evidence that there is sufficient water resources and septic service for gatherings of 99 guests and 20 staff. They assert that their 1977 well will be sufficient but provide no evidence. In fact, the State of New Hampshire has documentation that Stepping Stones’ is for 54 people. See attached. Nevertheless, Stepping Stones is asking the ZBA to approve more than doubling that capacity to 119 people. The ZBA should decline to grant a special exception until it obtains confirmation from NH DES that either their 1977 well or a new well can serve that many people at once.

Furthermore, the ZBA cannot grant a special exception, pursuant to Article IV, Section 13(a)(4) without confirming that Stepping Stones has sufficient room to install a septic system to handle 119 people on site at the same time. It appears that Stepping Stones’ current septic system is designed for a 5 bedroom house and is woefully inadequate for 119 people.⁴

Traffic Issues

Pursuant to Article IV, Section 13(A)(6), Stepping Stones must also demonstrate “[t]raffic 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.” Stepping Stones asserts that the roads will not experience excessive wear and tear but do not

selling for less. Finally, and most importantly, there is no analysis of the effect on abutting properties, such as my client’s, where one will be able to hear the events at night.

⁴ NH DES approved a 5 bedroom single family septic system for the Homestead in 2016. See attached. Nevertheless, Stepping Stones is currently advertising the Homestead as 6 bedrooms commercial rental. Even if Stepping Stones was not inviting up to 99 guests on the property, the 14 guests it proposes to house in the Homestead is in violation of the 5 bedroom septic approval.

address the first requirement regarding vehicle or pedestrian safety. In particular, it does not address safety on Putnam Road where Stepping Stones will be directing substantial traffic.

Both Barn and Homestead Violate Setback Requirements

Pursuant to Article IV, Section 13(B)(1) commercial uses for which a special exception is required “SHALL . . . be set back at least 100 feet from all lot lines.” The Barn, located on lot 9B-15, is located within 100 feet of lot 9B-14. See attached Setbacks Plan. Furthermore, Stepping Stone proposes to house their guests in the Homestead which is less than 100 feet from the property line. The application for a special exception includes commercial use of all buildings. Therefore, pursuant to Article IV, Section 13(B)(1), the special exception must be denied. The Homestead may only be converted from residential to commercial use by a variance,⁵ not by special exception.

Stepping Stones, knowing that the Homestead violates the setback requirement, argues that the “Homestead farm house and the location of the house are considered to be a pre-existing and non-conforming use and can continue under Article 7 of the Zoning Ordinance.” This is not accurate. The Homestead is a pre-existing structure that has been used for residential purposes. It is proposed, as part of this special exception application, that the prior use be changed to be a commercial use as lodging for the event center. This is a change of use, not a continuation⁶ of the use.

Stepping Stones does not even address the Barn. As a new commercial event center, the Barn too must comply with the ordinance. It does not.

Special Exception Uses Are Within 500 Feet of Ezell Property

Finally, pursuant to Article IV, Section 13(A)(1), all uses must be at least 500 feet from any dwelling. The Ezell dwelling is within 500 feet. Therefore, the ZBA cannot approve this special exception unless Ezell approves in writing. As of today’s date, there is no consent from Ezell and therefore the ZBA must deny the application.

Even if Ezell did consent, however, the ZBA still cannot grant this special exception application. Section 13(A)(1) allows, with the dwelling owner’s consent, for the setback to be reduced from 500 feet to 200 feet. The special exception application includes all ten buildings

⁵ The ZBA website has a variance application for converting the Homestead to commercial use. [variance application 13b 1.pdf \(templenh.org\)](#) It is unclear when this was submitted to the ZBA, but butters have not been notified of the variance application and therefore the ZBA cannot consider it. Nevertheless, as part of the variance application, the applicant admits that it cannot meet the requirements of the required setback. Therefore, the requested special exception must be denied based on this admission.

⁶ ZBA Chair Kieley recognized this fact at the June 1, 2021 ZBA meeting. The Minutes reflect that “Kieley confirmed that a commercial business in an old building still has to meet the requirements for a Special Exception.”

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including the Homestead. The Homestead is less than 200 feet from the Ezell dwelling. Therefore, the ZBA cannot grant the special exception request. Stepping Stones would need to request a variance.

CONCLUSION

Stepping Stones' application for a special exception to utilize their property as a commercial event center must be denied as presented. Stepping Stones has not demonstrated that it meets the requirements of Article IV, Section 13(A) and cannot meet the conditions of Article IV, Section 13(B).

Very truly yours,



Michael J. Tierney

MJT

Enclosure

cc: Mr. Alec MacMartin
Ms. Arlene Laurenitis