

January 15, 2021

Town of Temple
Zoning Board of Adjustment
423 Route 45
PO Box 191
Temple, NH 03084

Re: Application of Ben's Pure Maple Products, LLC for Special Exception to allow a 16,080 sq. ft. building, etc. on Tax Map 2, Lot 17, NH Route 101 and Webster Highway

Dear Members of the ZBA:

This letter addresses certain issues that were raised during the previous hearing.

AGRICULTURE VERSUS COMMERCIAL

John Kieley asked me to go on the record on whether Ben is taking the position that his proposed project is commercial or agricultural. We have already gone on the record on this issue, both in the application and during the hearings. Although the entire building, with the exception of the market, will contain an agricultural use, Ben's Pure Maple Products, LLC applied for a Special Exception pursuant to Section 13 of the Temple Zoning Ordinance. If not for the proposed market, Ben would not have applied for a Special Exception. We will accept a condition of approval that expressly limits the use of the building to a maple syrup production facility and market, as represented in detail on the plans, in the application and written material that we submitted to the Board, and as we represented during the hearings. As the submissions indicate, the facility will include the production of maple syrup and maple products, and the storage, bottling, canning, packaging, and shipping of those products. A condition of approval should so indicate.

IF THE SPECIAL EXCEPTION IS GRANTED, WILL ANY COMMERCIAL USE BY BEN OR HIS SUCCESSOR BE PERMITTED?

Silas Little's claim that an undetermined commercial use could occupy Ben's building if a Special Exception is granted does not comport with New Hampshire law; rather, his effort is to make smoke. New Hampshire cases state that an applicant's representations to a municipal land use board concerning the proposed use are binding and a change of use would require a modification of the land use approval, whether a special exception or variance. To confirm what is already required under New Hampshire law and assuage any doubts the ZBA may have, the applicant in this case will accept a condition of approval as outlined above.

The ZBA can even add a statement that the property owner may not change the use as set forth in the condition without obtaining a modification of the special exception from the ZBA. Obviously, the approved use must, however, encompass the various activities that Ben has presented to the Board.

THE MARKET

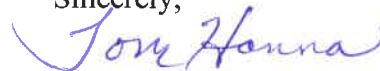
The Chair's characterization of the proposed market as a 7-Eleven convenience store is immensely disheartening, because it ignores the truth and objectivity. In reality, the Market will be much more like a farmstand, featuring maple syrup, maple products, and locally grown food. Approximately, one-third of the Market floor area will display maple products produced on site. Moreover, the Market will not sell cigarettes, wine, beer or lottery tickets—all staples of a 7-Eleven or other typical convenience store. If the ZBA believes it is necessary, it may add a condition of approval that the foregoing products will not be sold at the Market.

As we have stated to the Board, we believe a reasonable interpretation of the 3,000-square-foot retail limitation is that it relates to the display area where customers purchase items on display ("retail display area"). It does not include the walk-in cooler, deli, and storage areas that support the retail display area or the restrooms and utility room which would be included in the maple production facility with or without a retail market. We request the Board to approve the Market as designed and defined above. We hope the Board will interpret the 3,000 square-foot limitation as we have, but the Special Exception should not be denied because of a contrary interpretation, and the Board can apply a condition to the approval as it deems necessary.

We ask the Board to take this letter into consideration and to approve the Special Exception accordingly.

We also request that the Board endeavor to close the public hearings on January 19 for both the Special Exception and Variance applications and to move into deliberations. It is time.

Sincerely,



Thomas R. Hanna

TRH/sw

Cc: Silas Little
Ben Fisk