

September 28, 2020

Zoning Board of Adjustment
Temple Town Office
Temple, NH 03084

Delivered via email: boardassistant@templenh.org

Re: Application for Special Exception, Tax Map 2, Lot 17 – Ben's Pure Maple Products LLC

Dear Board Members,

Thank you for the opportunity to submit written testimony through the public hearing process for the above application schedule for a continued public hearing on Tuesday, September 28, 2020.

The story behind this business is amazing. It is quintessential entrepreneurship - a young boy develops an interest, grows that interest to a small business venture and then an enterprise that produces and distributes probably 100,000s of thousands of gallons of a signature New England product (maple syrup and candy) across our region, country and probably the world. Kudos to Ben Fisk, and his family and employees. They have worked hard growing this business, expanding markets, production, and with that success some time ago outgrew the current business location in the side yard site of his parent's residential property.

They are now ready to take the business to the next step, on a site adjacent to Route 101 with easy access for potential retail customers and a state highway to support distribution of the volume of products that will be shipped around the world. How this step is taken is very important. It is important to the business, its neighbors and to the community of Temple. This property is at a gateway location will represent what Temple is to those who may never turn off Route 101 to the historic village or travel our neighborhoods.

This business expansion, site adjacent to Route 101, and its maple focused products supports the rural character and is an opportunity to fulfill the vision of our community Master Plan that seeks to provide for business, housing and other structures to be developed and integrated into the town's working landscape and be acceptable to neighboring residents (Master Plan Vision Statement).

Consideration of this proposed new use of this parcel under the special exception criteria is clearly appropriate, whether the use considered a commercial enterprise or activity related to agriculture. In addition to the provisions of the town's zoning, RSA 674:32-a thru 674:32-d (attached) clearly recognize that while the state law may establish a presumption favoring uses related to agriculture both evaluation under the special exception and site plan regulations is prescribed. The presumption provided under state law does not override application of the special exception standards or building or site plan requirement when a use is newly establish, re-established or expanded or retail in nature or involving on-site transactions with the public application of special exception standards and site plan regulations to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety or the value of adjacent property.

As part of the consideration of the special exception for this project, I request that the Zoning Board of Adjustment conduct a site visit that includes the site of the proposed development as well as the adjacent property (approximately 7 acres) at 5 Old Revolutionary Road. This proposed building will probably be one of the largest structures in Temple. To fully understand the scale of the proposed business, its needs and impacts and how it will function in conjunction with other properties now in business use, relates directly to application of the special exception criteria articulated in Section 13A and Section 13B of the Zoning Ordinance and NH law.

In addition, for the ZBA to understand this proposed use and evaluate it considering the Ordinance criteria, more information is required about the plan. Some initial questions that should be asked of the applicant to benefit the board's deliberation are listed below.

Questions:

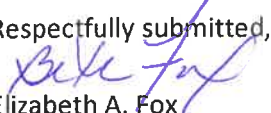
1. Parking and Vehicular Movements. The special exception application indicates that there will be ample off-street parking. The Site Application materials indicate the business during peak season will have up to 26 employees.
 - The plan provides for approximately 22 or 23 parking spaces on the front side of the building. Testimony at the initial hearing indicates this is for customers. Location for parking for employees needs to be defined by the applicant to determine whether the standards of the special exception can be met and whether sufficient area remains for delivery and delivery vehicle movements on the north side of the proposed building.
 - Where will business vehicles and equipment park? The plan does not include any information.
 - What kind of business vehicles or equipment will be parked or stored on the site? What area does this require?
 - Since the special exception criteria establishes a 55' set back for parking, will parking that currently occurs on the south side of Old Revolutionary Road in the proximity of the old Saltbox site and on street parking by employees on Old Revolutionary Road continue?
 - On-street parking related to events will need to be managed. This past year, during the peak of spring Maple Season activities, cars parked all the way out to Route 101 and on both sides of the road creating unsafe pedestrian movements and traffic problems between the state highway and 83 Webster. If grass parking for events is intended at this property, where on the site will that occur and what number of cars will that area accommodate?
 - Are tractor-trailer deliveries anticipated at the site? If so, do any of these parking or storage uses impact vehicular movements? If TT truck, is the rear area turn radius sufficient?
 - Will tractor-trailer offloading continue to occur in the right of way for Old Revolutionary Road?
2. Other commercial activities on the site. Will wood processing continue on the site?
3. Will there be any other commercial activities beyond retail and production?
4. Will maple syrup equipment distribution be a component of this location's business plan?

5. Will food preparation, service and sale (beyond maple syrup, candy and similar products) be a component of this location's business operation?
6. Septic System. Are any modifications planned to accommodate the use to the installed septic system on the property? Is that system design sufficient for the proposed production facility, employee numbers, food service if planned, and retail space? State records indicate the current design criteria is for a 2-bedroom apartment (5 Old Revolutionary Road is connected), 10 employees and a gift shop. A large system may be required to this use
7. Lighting. The site plan provides light pole locations adjacent to the on Webster Highway and Route 101 side of the building. The application indicates wall pack lights are planned for the building exterior. Where will they be located? What kind of lighting will be on the north side of the building where commercial vehicle movements would be anticipated? Will the lighting conform dark sky standards? More information regarding lighting should be provided to the ZBA.
8. Will the business storage (barrels), equipment, vehicles remain in the field that is part of 5 Old Revolutionary Road or be moved to the new site? Will this activity be expanded? Will further topographical/excavation occur on this property as has most recently (this spring/summer)? Should at this location screening be enhanced so it is effective when foliage falls and we are in the winter season? How will the building (apartment/garage) at this location be used in this new expanded business operations? Is approval for commercial use on this property required?

The opportunity for business expansion is exciting for its owner and the town. It will provide employment for residents and success to its entrepreneurs. Its expansion and move to this site can be win-win respecting the privilege state law and the zoning provides to the business and the investment and rights of area homeowners who have invested in homes with the dream of living a rural residential area.

It is the responsibility of the ZBA to investigate and critically evaluate representation related to the proposed commercial operation and then determine considering whether this new production and retail commercial enterprise can be developed and operated under the standards prescribed by the Zoning Ordinance and state law. Thank you in advance for your efforts as a volunteer board member in our community.

Respectfully submitted,


Elizabeth A. Fox
62 Old Revolutionary Road

Attachments: RSA 674:34a-d & RSA 21:34-a

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-a

674:32-a Presumption. – In accordance with RSA 672:1, III-d, whenever agricultural operations or activities as defined in RSA 21:34-a are not explicitly addressed with respect to any zoning district or location, such operations or activities shall be deemed to be permitted there, as either a primary or accessory use, so long as conducted in accordance with best management practices guidelines adopted by the commissioner of the department of agriculture, markets, and food and with applicable federal and state laws, regulations, and rules.

Source. 2000, 279:3, eff. July 1, 2001. 2019, 338:5, eff. Sept. 5, 2019.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-b

674:32-b Existing Agricultural Uses and Activities. –

Any agricultural use or activity which exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing technology or markets, or changed to another agricultural use or activity, as set forth in RSA 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state laws, regulations, and rules, including agricultural best management practices guidelines adopted by the commissioner of the department of agriculture, markets, and food; subject, however, to the following limitations:

I. Any new establishment, re-establishment after abandonment, or significant expansion of an operation involving the keeping of livestock, poultry, or other animals may be made subject to special exception, building permit, site plan review, or other local land use board approval in accordance with the provisions of RSA 674:32-c, II and III.

II. Any new establishment, re-establishment after abandonment, or significant expansion of a farm stand, retail operation, or other use or activity involving on-site transactions with the public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special exception, building permit, site plan review, or other local land use board approval in accordance with the provisions of RSA 674:32-c, II and III, and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety. No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism activities that conflicts with the definition of agritourism in RSA 21:34-a. ✓

Source. 2000, 279:3, eff. July 1, 2001. 2016, 86:1, eff. July 18, 2016; 267:4, eff. June 16, 2016; 267:7, eff. July 18, 2016 at 12:01 a.m. 2018, 56:1, eff. July 15, 2018. 2019, 338:6, eff. Sept. 5, 2019.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-c

674:32-c Other General Provisions. –

I. The tilling of soil and the growing and harvesting of crops and horticultural commodities, as a primary or accessory use, shall not be prohibited in any district.

II. Nothing in this subdivision, or in RSA 674:32-b, shall exempt new, re-established, or expanded agricultural operations or activities from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in circumstances where their literal application would effectively prohibit an agricultural use or activity allowed by this subdivision, or would otherwise be unreasonable in the context of an agricultural use or activity, in accordance with the provisions of RSA 672:1, III-b, the board of adjustment, building code board of appeals, or other applicable local board, after due notice and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit the agricultural use or activity, unless such waiver would have a demonstrated adverse effect on public health or safety, or on the value of adjacent property. Such waiver shall continue only as long as utilized for the permitted agricultural use or activity.

III. Nothing in this subdivision shall apply to any aspect of an agricultural operation determined to be injurious to public health or safety under RSA 147. Nothing in this subdivision shall be deemed to modify or limit the duties and authority of the department of environmental services under RSA 485 or RSA 485-A or the commissioner of the department of agriculture, markets, and food under title XL.

IV. Nothing in this subdivision shall be deemed to affect the regulation of sludge or septage.

Source. 2000, 279:3, eff. July 1, 2001. 2019, 338:7, eff. Sept. 5, 2019.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-d

674:32-d Agritourism Permitted. – Agritourism, as defined in RSA 21:34-a, shall not be prohibited on any property where the primary use is for agriculture, subject to RSA 674:32-b, II.

Source. 2016, 267:5, eff. June 16, 2016.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21

STATUTORY CONSTRUCTION

Section 21:34-a

21:34-a Farm, Agriculture, Farming. –

I. The word "farm" means any land, buildings, or structures on or in which agriculture and farming operations or activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock; in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in the operations or activities named in paragraph II(a) or (b) of this section or any combination of such individual operations or activities.

II. The words "agriculture" and "farming" mean all operations or activities of a farm, including:

(a)(1) The cultivation, conservation, or tillage of the soil.

(2) The storage and use of or spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.

(3) The use of or application of agricultural chemicals.

(4) The husbandry of livestock which shall include but not be limited to all beef or dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), or reindeer (*Rangifer tarandus*).

(5) The husbandry, boarding, training, or riding instruction of equines.

(6) The husbandry and harvesting aquaculture products including fresh or salt water finfish, shellfish, or other aquatic organisms grown for consumption or processing.

(7) The husbandry of poultry or game birds or production of eggs.

(8) The husbandry of bees or production of honey.

(9) The husbandry of domesticated strains of fur-bearing animals.

(10) The production of greenhouse crops.

(11) The production, cultivation, growing, or harvesting of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees or tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any plant that can be legally grown or harvested extensively for profit or subsistence.

(b) Any practice or activity on the farm incident to, ancillary to, or in conjunction with such farming operations, including, but not necessarily restricted to:

(1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.

(2) The transportation to the farm of supplies and materials.

(3) The transportation of farm workers.

(4) Forestry or lumbering operations.

(5) Marketing or selling at wholesale or retail, regardless of the manner or form of the transaction, any livestock or products derived principally from the production of the farm, including, but not limited to items listed in subparagraph (a), whether on-site or off-site, provided that marketing such products is not specifically prohibited by local regulations. For the purposes of this section marketing shall include agritourism, which means attracting visitors to a farm to attend events or activities that are accessory uses to the primary farm operation, including, but not limited to, being provided a meal, making overnight stays, enjoyment of the farm environment, education which shall be instruction or learning about the farm's operations, or active involvement in the activities of the farm.

(6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.

(7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II(a)(4).

(8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.

III. A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.

IV. Management practices on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, or appropriate agencies of the United States Department of Agriculture.

V. The term "farmers' market" means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. "Farmers' market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

VI. [Repealed.]

Source. 1961, 140:1. 1977, 95:1. 1979, 60:1. 1985, 6:1. 1997, 250:1. 1999, 191:2. 2005, 107:1. 2006, 11:5; 326:1. 2007, 157:1. 2008, 8:1, eff. July 4, 2008. 2014, 97:2, eff. Aug. 10, 2014. 2016, 267:1, 6, eff. June 16, 2016. 2019, 338:1-3, eff. Sept. 5, 2019.