

November 17, 2020

Zoning Board of Adjustment
Temple Town Office
Delivered by email

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

Dear Board Members,

This correspondence is supplemental testimony and previous correspondence dated September 28, 2020. Many of the questions raised in the September 28th correspondence and by the board members during the September 29th hearing session remain unanswered and should be addressed by the applicant through the public hearing process. This letter’s focus is primarily directed toward the provisions of the Town of Temple Zoning Ordinance and Special Exception Standards established by Section 13A and conditions related to 13B for industrial, commercial and non-commercial enterprises all districts including the Village and Historic Preservation District, Mountain District.

This property is in the Town’s Rural Residential and Agriculture District described by the Zoning Ordinance “*as mainly a district of farms, residences, and woodlands. Buildings may be erected, altered or used for one family year around or seasonal dwellings and farms*” (TPZ Article 5B1). *Commercial enterprises, of any kind are prohibited, other than those existing or as outlined in General Provisions, Article IV, Section 13. (TPZ Article 5B2)* Commercial use is defined as an occupation, employment or enterprise carried out for profit. (TPZ Article II).

An applicant seeking a special exception is requesting the privilege to conduct a USE not customarily permitted within the district. The applicant bears the burden of proof and must demonstrate that all the standards in ordinance are met (TZO Section 13A). The application, as submitted and as described at the initial hearing and site review, does not conform to the ordinance standards. Nor does it meet the conditions of Article 13B.

Special Exceptions Standards (Section 13A)

Standard #1

The proposed USE (emphasis added) 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.

The application, site plan, and consent form submitted indicate that the applicant is attributing this 500’ standard to proposed building location and not the proposed USE.

This commercial enterprise or USE of the property extends beyond the proposed building. As represented by the site plan accompanying this application, the commercial activity extends:

- south of the building (with delineated parking),
- north (with a employee parking and truck delivery),
- in an undefined manner for informal parking (across the parcel),
- northeast (to provide dumpsters for trash disposal),
- east (to accommodate detention basin/reverse osmosis water storage area) and,

- west (current location of the undersized septic system) and will be further expanded in a direction to be determined when a location is identified for a septic system designed and sized for 26 employees (not 10), expanded production for space, retail space (3000'+), in addition to the food production (deli).

Please review the only consent statement included with the application indicating that the owner has provided consent for the BUILDING, but not the USE, to be closer than 500'.

The applicant must demonstrate compliance with Standard #1 for this dwelling and all those within 500' of the property boundaries.

Standard #2

The Board of Adjustment finds that the proposed use shall have off street parking which will ample to serve the proposed use; provided that any such off-street parking shall, at a minimum be set back at least fifty-five feet from all lot lines.

While the site plan delineates 23 parking spaces on the retail side of the building no evidence is provided to support that the parking/unloading area on the north side of the building is sufficient for employee parking, business vehicle and equipment parking and delivery vehicle movements. The presence of 4 loading docks extending across the building north side make assessment that the area is sufficient for truck movements, employee and business vehicle and equipment parking critical. The application does not acknowledge parking of business vehicles and equipment as an activity that the site should accommodate.

This business does not operate without vehicles or equipment. Current practice as it operates today includes the parking of business vehicles, equipment and employees on street on Old Revolutionary Road, off-street adjacent to the road on the parcel subject of this application and in the field to the west of 5 Old Revolutionary Rd.

The applicant's statements regarding extending overflow parking across the property during Maple Sugar Weekends and for seasonal events supports the reality that even if additional information regarding the business vehicle, equipment and employee parking demonstrates that the site can accommodate these needs, special accommodations will be required to prevent on-street parking for special events. Any approval granted by the ZBA should include additional conditions mitigate hazards posed by on-street parking and pedestrian activity associated with the use's customary high volume activities.

Standard #3

The proposed use shall not adversely affect the value of adjacent property. An adverse effect on adjacent property is one which would be obnoxious or limit the use of neighborhood property by causing such problems as excessive noise, order, 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.

Beyond stating that in the opinion of the applicant that this proposed use will not have any impact, the applicant has provided no evidence that the value of adjacent properties will not be adversely affected. The scale of this facility must be considered. It will extend more than 40' high when viewed from the south, and closer to 50' when viewed from the north. The main building dimensions are 180' x 60'. This is enormous when compared to existing permitted residential uses. The building proposed is significantly taller than any of the structures at this location. The hours of operation propose are expanded and extend 7 days a week beyond dawn to dusk. The applicant represented this facility, at the September 29th as being *in large part a replacement of an existing operation*. Town records do not support that it is a replacement of 83 Webster. The proposed production/retail

building footprint is more than 2 times the size of structures at 83 Webster Highway. The retail footprint at 83 Webster – and the 3000+ area and deli at proposed at the new site are in no way comparable.

Evidence that the sheer presence of a facility of this size, mix of production and retail activity and related vehicle traffic will not negatively affect the value of residential properties and historic homes (which are the permitted use in this district) is required. Absent provision of that information the board cannot make an affirmative finding. The applicant bears the burden of providing evidence, not just their opinion.

Standard #4

The proposed site shall be an appropriate location for the use. Among factors the Board of Adjustment will consider are: lot size, topography, soils, water resources, road access and location of driveways, condition of existing structures and other relevant characteristics such as whether the proposed use is compatible with the surrounding land uses.

The applicant has described this site as well drained. The historical canal, the test pit data from the existing septic system noting an estimated season high water table at 19" and the raise septic leach field seem contradictory. Attachment #1, existing septic system test pit profile.

Standard #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 on town roads.

Traffic generated by the production may not pose safety concerns **provided** it can be demonstrated by the applicant that area designated on the site plan for that activity is sufficient and loading/unloading and forklift activity occurs on the proposed site. Observed on a routine basis are trailer trucks parked blocking the roadway and off-loading at 5 Old Revolutionary. A forklift is regularly on the road moving items back and forth between this site and 83 Webster. This roadway activity is a safety concern.

The applicant has sent mixed messages as it relates how expansion to this new site will affect business occurring on other properties – saying both that he plans to consolidate operations to this site – and that activity including storage may continue at 83 Webster Highway. The on-going commercial use at 5 Old Revolutionary Road is ignored by the application.

Of greater concern is the traffic associated with the large retail store proposed and additional turning movements and traffic that will be generated by the proposed retail deli, food and sales operation. The retail space (52'x60' 7" or 3,120 square feet) is the same general size as the multi-purpose room at Temple Elementary School a space many of you are familiar with since it is where we hold Town Meeting. Attachment #2 – Assessing Card for Temple Elementary School. The deli proposed will add approximately 374 square feet of floor space to the retail use.

It is reasonable to assume that sandwiches require chips, drinks, cookies, and potentially beer and wine given the applicants expressed interest in pre-packaged meals etc. While maple related products may also be on display for sale, the hours of operation indicated in the site plan application extending from early morning to early evening and the size of the operation are much more characteristic of a convenience store "grab and go" operation. The board should request an independent assessment of the retail traffic impacts considering both regular and seasonal destination activity.

Standard #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.


This standard's implementation directly relates to how the proposed use will affect adjacent residential properties (Standard #3). The ZBA should be proactive regarding this application and include conditions establishing buffering requirements that support maintaining of the rural/residential and agricultural character of the neighborhood and protect abutting residential uses from the scale of this use and its offsite impacts. Buffering to include maintenance of existing natural barriers and vegetation between existing residences to the east, north and west of this operation is critical to preserve the character of existing permitted single-family dwelling units. The neighbors did not buy homes adjacent to a production/retail facility and rural quality of life enjoyed by those neighbors should not be adversely affected.

As indicated previously 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 across our region, country and probably the world. It has evolved from "sugaring" to a substantial commercial enterprise. That success has brought it to the point we are at today.

As a neighbor to this business now, we are in the difficult position. This businesses operation, whether the application is approved or denied, will affect our largest investment and our home. We know that denial of this application means business activity will continue to sprawl in an unregulated fashion across our neighborhood. If approved, whether this new location's affects are negative, degrading the quality of life and value of our property, will be determined as it is now by the manner in which the business chooses to operate. Unfortunately, I know from personal experience that it will be the "good will" that the business chooses to extend that will determine quality of life for our neighborhood. It is my hope, that regardless of the outcome of this proposal, this business can be a good neighbor and operates in a fashion that is respectful of its residential neighbors.

The ZBA has the responsibility of determine to apply the standards of the ordinance and determine whether the application, as present meets the standards of the ordinance. The current application fails to demonstrate that it meet those standards, in particular Standard #1, 2, 3, 4, 6 & 7 and **must** do so if the board is to find in its favor. In addition, the retail space proposed exceeds that permitted by Section 13B.

Respectfully submitted,



Elizabeth A. Fox
62 Old Revolutionary Road

Town of Temple

Print Now

Parcel ID: 00006B 000019 000002 (CARD 1 of 1)
 Owner: CONTOOCOOK VALLEY SCHOOL DIST
 Location: 830 NH RT 45
 Acres: 16.340

General

Valuation		Listing History	
Building Value:	\$1,705,100	<u>List Date</u>	<u>Lister</u>
Features:	\$52,200	12/05/2018	ERVM
Taxable Land:	\$276,800	01/03/2018	INSP
Card Value:	\$2,034,100	11/18/2013	ERCL
Parcel Value:	\$2,034,100	07/30/2013	ADVM
		11/03/2008	KCQC

Notes: FKA 6-19-2; BRICK/WHITE; BTH'S=1 URINAL,10 TOILETS,18 SINKS & 1 SHOWER; 8 CLASSROOMS; 7/13 NC NOTED; 11/13 ALL ORIG; CENT A/C IN SOME OFFICES ONLY; UTIL RMS W/EXPOSED CONC FLR ONLY; 12/18; NO TOUR-STATES NC SINCE 2013 VISIT; NC TO EXT;

History Of Taxable Values

Tax Year	Building	Features	Land	Value Method	Total Taxable
2019	\$1,705,100	\$52,200	\$276,800	Cost Valuation	\$2,034,100
2018	\$1,676,600	\$50,600	\$258,100	Cost Valuation	\$1,985,300
2017	\$1,676,600	\$50,600	\$258,100	Cost Valuation	\$1,985,300

Sales

Sale Date	Sale Type	Qualified	Sale Price	Grantor	Book	Page
05/02/1997	VACANT	NO - UNCLASSFYD EXCLUSION	\$100,000			

Land

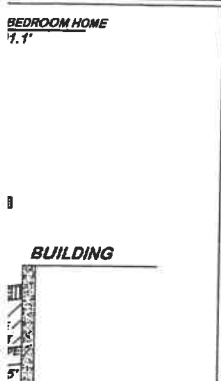
Size: 16.340 Ac.
Zone: 02 - RA RURAL/AGRI
Neighborhood: AVERAGE
Land Use: EXEMPT-MUNIC
Site: AVERAGE
Driveway: PAVED
Road: PAVED
Taxable Value: \$276,800

Land Type	Units	Base Rate	NC	Adj	Site	Road	Dway	Topo	Cond	Ad Valorem	SPI	R	Tax Value	Notes
EXEMPT-MUNIC	3.000 AC	84,000	E	100	100	100	100	100 LEVEL	300	252,000	0	N	252,000	USE
EXEMPT-MUNIC	13.340 AC	2,000	X	98	0	0	0	95 MILD	100	24,800	0	N	24,800	

Building

1.00 STORY SCHOOL Built In 1998

Roof: GABLE OR HIP ASPHALT	Bedrooms: 0	Quality: AVG+20
Exterior: BRK VENEER VINYL SIDING	Bathrooms: ABOVE AVG	Size Adj. 0.7282
Interior: DRYWALL	Extra Kitchens: 0	Base Rate: 110.00
Flooring: LINOLEUM OR SIM CARPET	Fireplaces: 0	Building Rate: 0.8651
Heat: OIL HOT WATER	Generators: 0	Sq. Foot Cost: 95.16
	AC: YES 25%	Effective Area: 20,133
		Gross Living Area: 18,469
		Cost New: \$1,915,856

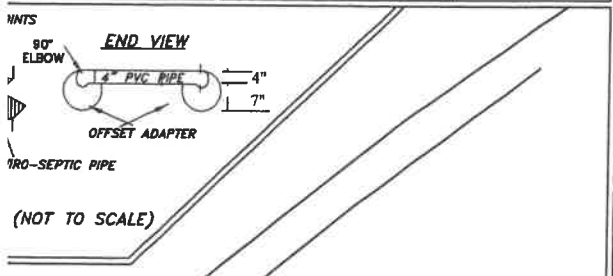


NOTE:
Wetlands were delineated per Env-Wq 1014.03 in accordance with RSA 482-A and Env-Wt 100 et. seq.

NOTE:
N.H.D.E.S. as ITA approval #2010-07-01 in accordance with Part Env-Ws 1024. The System is Designed in accordance with the *Enviro-Septic leaching systems design and installation manual*. System shall be installed in accordance with the *Enviro-Septic leaching systems design and installation manual and Env-Wq 1000 Rules*.

Please review *Presby Environmental 2010 Design and Installation Manual* for questions. Recommends installer be *Presby Certified*.

DESIGN INTENT
"The bottom of the effluent disposal area (EDA) shall be constructed at 96.0 ' elevation"; and "There is/are approximately 1.0 foot/feet above, at or below original ground on the high contour of the designed effluent disposal area (EDA)".



TEST PIT LOG
DATE: 10-8-2013
SOIL TYPE*: 613A CROGHAN
LOAMY FINE SAND

*FROM WEB SOIL SURVEY

10" DARK BROWN TOPSOIL. 10YR 2/2 VERY DARK BROWN. FINE SANDY LOAM. GRANULAR FRIABLE.
10" - 19" 50% 7.5YR 3/4 DARK BROWN. LOAMY SAND. GRANULAR VERY FRIABLE 50% 10YR 4/6 DARK YELLOWISH BROWN. LOAMY SAND. GRANULAR VERY FRIABLE.
19" ESTIMATED SEASONAL HIGH WATER TABLE (70" WATER)
19" - 28" 10YR 4/4 DARK YELLOWISH BROWN. COARSE SAND WITH FINE GRAVEL SINGLE GRAIN LOOSE.
28" - 36" 2.5Y 4/4 OLIVE BROWN. COARSE SAND WITH FINE GRAVEL SINGLE GRAIN LOOSE. 5% SMALL COBBLES.
36" - 44" 2.5Y 4/4 OLIVE BROWN. FINE GRAVEL WITH COARSE SAND SINGLE GRAIN LOOSE. 20% SMALL COBBLES.
44" - 74" 10YR 4/4 DARK YELLOWISH BROWN. COARSE SAND WITH COARSE GRAVEL SINGLE GRAIN LOOSE. 20% LARGE COBBLES.
74" NO BEDROCK.

- LIST OF MATERIALS**
1. LEACHING PIPE 4" DIA. CRESTLINE OR EQU.
 2. MULTICOMPARTMENT SEPTIC TANK 1500 / 500 & 1250 / 400 GAL. WILLIAM LAMARRE CONCRETE PRODUCTS INC. OR EQU.
 3. SEPTIC PUMP CHAMBER 1000 GAL. WILLIAM LAMARRE CONCRETE PRODUCTS INC. OR EQU.
 4. SEPTIC TANK 1000 GAL. WILLIAM LAMARRE CONCRETE PRODUCTS INC. OR EQU.
 5. LARGE DISTRIBUTION BOX WITH 5 OUTLETS WILLIAM LAMARRE CONCRETE PRODUCTS INC. OR EQU.
 6. 2" FLEX PIPE 88LB. CRESTLINE OR EQU.
 7. SEWAGE PUMP MODEL 9885WE0511H (2 REQ.) HEAD, 2" DISCHARGE LEVEL SWITCH ALS-2-5 GOULDS OR EQU.
 8. 36 (10' SEGMENTS) ENVIRO-SEPTIC LEACHING PIPE.
 9. 24 SPLIT COUPLINGS.
 10. 24 OFFSET ADAPTORS.

- NOTES**
1. INSTALLATION OF LEACH FIELD SHALL BE DONE BY A PERMITTED NHDES INSTALLER.
 2. INSTALLER ADVISED TO CONTACT DIG SAFE 1-888-344-7233 PRIOR TO CONSTRUCTION.
 3. VERIFY PROPERTY LINES AND TOWN/STATE SETBACKS PER REGULATIONS PRIOR TO CONSTRUCTION.
 4. VERIFY DISTANCE TO ADJACENT WELLS PER LOCAL ORDINANCE.
 5. THERE IS NO KNOWN BURIAL SITE OR CEMETARY WITHIN 100 FT OF THE ISDS.
 6. THERE ARE NO KNOWN WETLAND IMPACTS FOR THIS PROJECT.
 7. NO SURFACE WATER WITHIN 75 FT. OF SEPTIC FIELD.
 8. DISTANCE TO HYDRIC SOIL 75+
 9. WELL IS AT LEAST 125 FT. FROM SEPTIC LEACH FIELD, 125 FT. FROM SEPTIC TANK. (SEE WELL EASEMENT).
 10. SLEEVE SEPTIC AND WATERLINES UNDER DRIVEWAYS (IF APPLICABLE).
 11. FOUNDATION DRAINS TO BE LOCATED AT LEAST 15' FROM BED, 5' FROM SEPTIC TANK.
 12. REMOVE TOPSOIL PRIOR TO INSTALLING SEPTIC FIELD, SCARIFY SOIL PRIOR TO FILL PLACEMENT.
 13. SEPTIC TANK, D-BOX AND ALL PIPE CONNECTIONS MUST BE SEALED AND WATERTIGHT.
 14. ENVIRO SEPTIC LINES TO BE LAID LEVEL.
 15. GRADE FOR SEPTIC 0%, DROP BETWEEN LINES -0'.
 16. MANIFOLD ENVIRO SEPTIC LINE AT FAR END AND VENT.
 17. LINE SPACING 2' CENTER TO CENTER.
 18. DIFFERENTIAL VENTING REQUIRED (10' DIFFERENTIAL MIN.)
 19. PUMP CHAMBER TO BE VENTED.
 20. REPLACE IN PLACE IF FAILURE OCCURS; COMPLY WITH REGULATIONS AT TIME OF FAILURE.
 21. NO LIABILITY IS TAKEN FOR THIS PLAN WITH RESPECT TO THE INSTALLATION.
 22. THIS PLAN DOES NOT REPRESENT A PROPERTY BOUNDARY SURVEY.
 23. ANY DISCREPANCY BETWEEN THE PLAN AND FIELD CONDITIONS SHOULD BE REPORTED TO THE DESIGNER PRIOR TO CONSTRUCTION.
 24. THIS PLAN IS FOR A DRY GOODS STORE 900 SQ. FT. AND PACKAGING FACILITY WITH 10 EMPLOYEES AND 2 BEDROOM APARTMENT.

PERCOLATION RESULTS
DATE: 10-8-2013

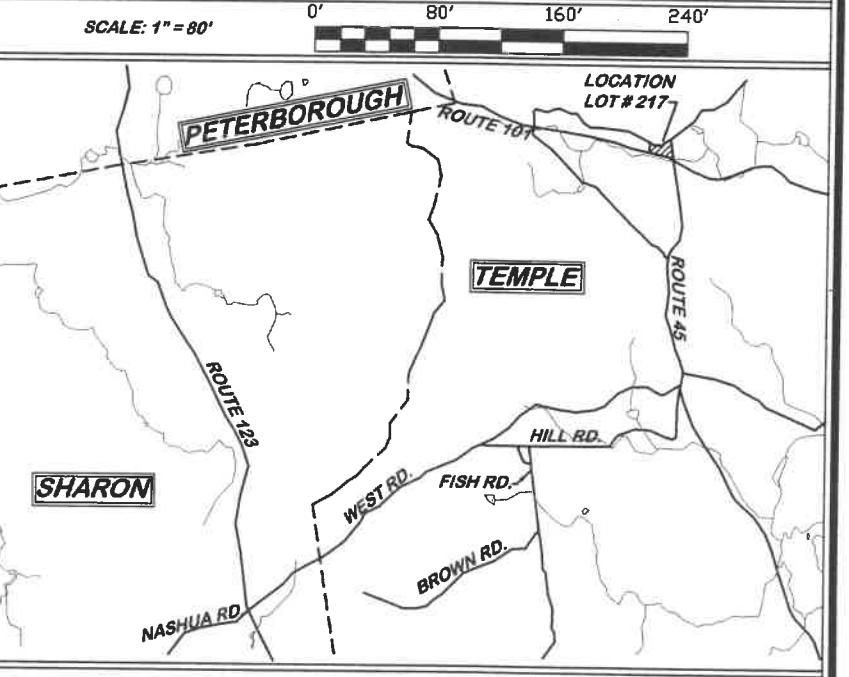
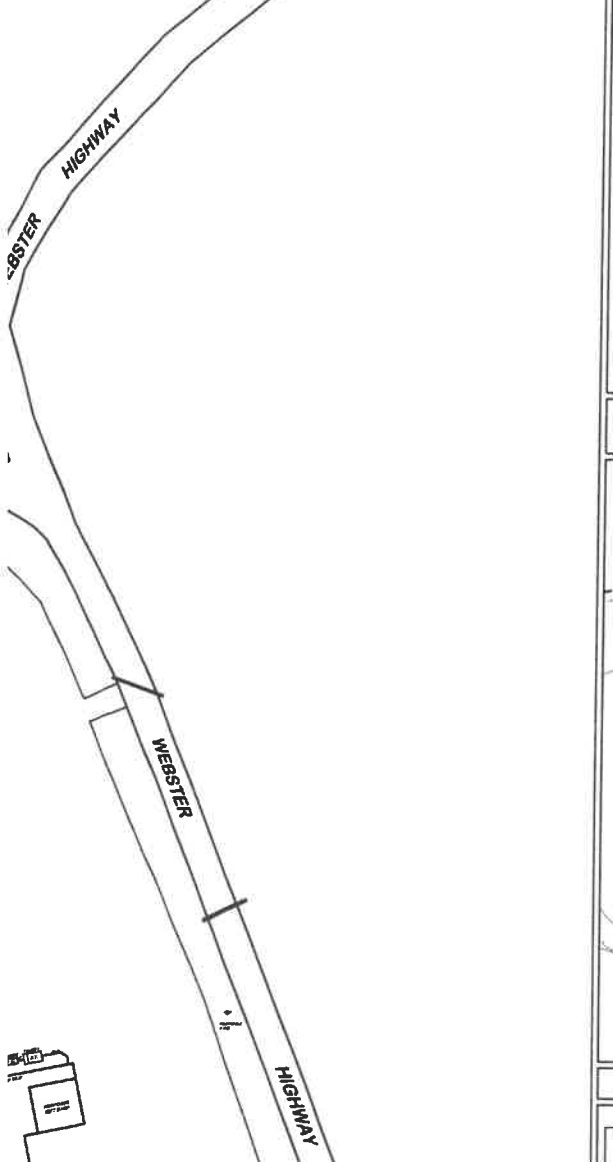
1" IN 5 MIN. AT 24 IN.

ABSORPTION AREA REQUIRED
2 BEDROOM APARTMENT = 300 GPD
GIFT SHOP 5GPD/100FT2 = 45 GPD
10 EMPLOYEES @ 20GPD = 200 GPD
TOTAL = 545 GPD

ENVIRO-SEPTIC: 272.5 LIN. FT.
50 x 5.45 = 272.5

SIZE OF BED
23' X 30' (12W X 3L) : 360 LIN. FT.

TOWN: TEMPLE
SUB. NAME: OLD LOT
SUBDIVISION NO: LOT OVER 5 ACRES
TAX MAP NO: 2A LOT NO: 2-17
DEED REF. BK. NO: 8599 PAGE NO: 1753
COUNTY: HILLSBOROUGH
LOT SIZE: 7.13 ACRES



DESIGNERS STAMP

TOWN STAMP (IF REQUIRED)