

1-12-21

Town of Temple

Zoning Board of Adjustment

423 Route 45, PO BOX 191

Temple, NH 03084

Dear Members of the Board,

After thoughtful consideration I would like to express my concerns and disappointment in the Zoning Board of Adjustment. As a current employee of Ben's Pure Maple Products, LLC and a Temple resident I have been actively monitoring each meeting and reviewing all documents thus far. I am very proud to see a small agricultural business in town grow and become successful in providing not only employment but essential food items. My disappointment lies within the excessive time for review of the application and the lack of progression. This has caused an outstanding expense and burden to the business. At what point is it the job of the ZBA to set a deadline for submittals and start to finalize the findings? This is a business that deserves a speedy, fair and factual examination from the Zoning Board of Adjustment.

Next I would like to address a member who has directly and indirectly given his opinion of the applicant and proposed project. There were several comments made that inaccurately described the proposed building. After numerous times stating that Ben's Pure Maple Products, LLC envisions a farm store with local products and where maple will be the vocal point, Chairman John Kielely kept referring to it as a 7-Eleven convenience store. The applicant has made it very clear that he will not sell gas, cigarettes, liquor, lottery tickets or any other item you can generally find at a gas station/convenience store. Included in the original application was a detailed breakdown of departments/categories, and I urge John Kielely to refer to this again. Below is an address to the nearest 7-Eleven and I challenge the Board to visit this store and re-explain to the public what accurate comparisons there are.

7-Eleven

496 AMHERST ST

Nashua, NH 03063

The New Hampshire Supreme Court, in a discussion of the test for disqualification of board of adjustment members, said "...they (must) meet the standards that would be required of jurors in the trial of the same matter... A juror may be disqualified if it appears that he or she is 'not indifferent'." *Winslow v. Town of Holderness Planning Board*, 125 N.H. 262 (1984) (citations omitted). In that case the decision reached by the board was ruled invalid even though the disqualified member's vote was only one of six affirmative votes, because "it was impossible to estimate the influence one member might have on his associates."

There have been many repeated opposition letters with many false statements and requested conditions on an entirely different property. It is the duty of the Board to summarize but also address the legitimacy of statements and visuals made from the opposing parties. For example, a visual was included in an opposition letter of the new proposed building that was extremely inaccurate in size and appearance. Should this be noted for the sake of the public and left entirely to the paid engineers?



A resident of 203 Old Revolutionary Road kindly included this visual, while stating the proposed building is entirely too large for a 7 acre field. This residence covers more than 50% of the proposed building's face and yet their opinion is this building is too large to be located on Route 101?



There have been assumptions made about the future market area and its purpose. Well cold cuts are obvious, but imagine a specialty baked brie with maple syrup drizzled over fruit or nuts. Or a Maple Bacon turkey club sandwich or salad. There will be no "processing of animals" and there will be no slaughter house. See definition below:

noun: **delicatessen**; plural noun: **delicatessens**

a store selling cold cuts, cheeses, and a variety of salads, as well as a selection of unusual or foreign prepared foods.

As a resident who lives at 5 Old Revolutionary Road it is also becoming tiring that requested conditions include that of parking at my own home. The conditions that are being requested of the board are not only hypocritical but outrageous considering the opposition's own properties. If the goal of Temple is to prohibit commercial trucks from coming through town and putting a limit on the number of vehicles that you own, then by all means the opposing parties should self-reflect. Maybe buffering should be added to all residences on Old Revolutionary Road who have a home based business with business vehicles, business trailers and lack of proper outside storage.

As the requested conditions continue to be submitted the irrelevancy and fabrication on information from opposing submittals becomes more apparent. Ben's Pure Maple Products, LLC has properly gone through the process of Site Plan Review, hired multiple experts, and yet it seems that there might be an alternative motive from the opposition. In regards to traffic flow and safety, the issues are there with or without the proposed building. This has been a problem for decades and I think the continuation of suggestions for Ben Fisk to "fix the intersection" or "add a turning lane" has come to a needed end. Although it is flattering to think that a Sugarhouse and market would create such an impact on one of New Hampshire's busiest roads it has been proven by DOT and Steven Pernaw that customer counts could be increased to a

far greater extent and still not require any change. The lack of respect given to the experts in this matter has become apparent and makes me wonder why so much time has been spent fighting an expert opinion but no evidence has been submitted to prove otherwise.

There also seems to be insufficient interest from the opposing party and makes me question their right to participate as if they were “abutters”. If a residential property is 1 mile down on an entirely different road that has a separate means to enter and exit without ever needing to drive by the proposed building, how much standing can they have during considerations? If the current building/property of Ben’s Pure Maple Products, LLC hasn’t affected their property values and it is merely 0.2 miles up the road, then how will the proposed building affect the values? Again, as an actual abutter to the proposed building I would like to offer a solution to everyone who is in opposition for the new location. Fortunately Old Revolutionary Road offers 2 options to enter or exit and has direct access to Route 101 on the opposite side to where anyone that doesn’t want to see the proposed building can travel out/in the other way.

To establish standing, an appealing party must show “some direct, definite interest in the outcome of the action or proceeding.” Four factors are considered when determining whether a non-abutter has sufficient interest to confer standing: (1) the proximity of the appealing party’s property to the property for which approval is sought; (2) the type of change being proposed; (3) the immediacy of the injury claimed; and (4) the appealing party’s participation in the administrative hearings. See *Weeks Restaurant Corp. v. City of Dover*, 119 N.H. 541 (1979).

I have not seen any opposition letter thus far that proves his/her land will be affected or diminished in value. With every submitted opposition letter there is not one participant that has a close proximity to the proposed building, meaning you cannot visibly see any residence because the distance between the new proposed driveways to their driveways extend 0.3 miles or more. It has become apparent that the opposing parties are simply not in favor of the applicant and has no standing for an opinion.

I also would like to apologize to the opposition for their seemingly wasted funds and time in an attempt to discredit the applicant. When one compares a Marvin Windows or VIP Auto building to the proposed building it discredits their entire case. Such comparisons are unfair and completely inappropriate.

See attachments below:



Marvin Windows



Proposed Building

Please note that (In my opinion) this land is not adequate for a residential project or sufficient enough to be farm land). At some point in an opposition letter there was a suggestion for Ben Fisk to re-locate to another town. Relocation might possibly lead to selling of the land which in return there might be a commercial or industrial company very interested in its potential and willing to spend millions in getting approval. Would the town's people rather see a sugarhouse and market? Or maybe an industrial steel/metal building with a lack of character and appeal? It is unfortunate to see such a lack of reasonability thus far in the project. This building fits into the rural nature of the town and will be comparable to any nice looking farm building.

Now that I have summarized and made public some of the many concerns I have with the Board and opposing parties I would like to share my perspective and expectations of the Town of Temple. After reviewing the master plan, future land use goals and vision statement it becomes apparent that the town needs and wants a business like that of Ben's Pure Maple Products, LLC. Everything below suggests that this new proposed development is perfect for Temple with an agricultural basis and so many benefits to the town itself.

POLICIES: 1. Ensure that Temple has a diverse mix of residential, recreational, agricultural, commercial and light industrial uses consistent with the goals, policies and objectives of this Master Plan.

POLICIES: 1. Create and maintain a balanced tax base by increasing certain commercial and industrial base that reduces the tax burden borne by individual home owners.

2. Promote a wide range and number of local employment opportunities.

3. Increase educational opportunities for Temple residents to promote a more educated work force.

5. Encourage agricultural and forestry businesses.

9. Promote the development of tourism-based businesses.

OBJECTIVES:

4. Evaluate parcels town-wide to identify sites suitable for future industrial and/or commercial development. Consider any rezoning, as necessary. CONSERVATION COMMISSION, PLANNING BOARD

5. Review zoning and other land use regulations of neighboring towns periodically to assess Temple's industrial/commercial uses. PLANNING BOARD

Again, as an employee of Ben's Pure Maple Products, LLC I speak for all of its employees that this new building is needed. The town needs it as much as the employees and

our business needs it! A proposal that includes a larger building that can better accommodate everything and everyone, storage, customers, employees, cars, equipment, etc. This new building will ensure less travel on Webster Highway beyond 300' from Route 101. It will ensure a safer, better and more fun and educational tour experience. The new building will be a center point for all local businesses that will be able to network and share its customers and success.

Then there is Ben Fisk, owner/CEO of Ben's Pure Maple Products, LLC who established the company in 1993. He has lived in Temple for 32 years and has become Temple's largest employer and is asking to become one of the largest taxpayers in town.

This application meets all criteria in the zoning ordinances besides getting a waiver signed on a house that recently became bank owned and sits vacant and dilapidated across Route 101. The applicant received written consent from the previous owners of 5 NH RT 45 (Forte) and is now waiting on written approval from Freddie Mac. This proposed building is going to be used for the same agricultural purposes as Ben's current buildings, but with a more efficient footprint and combination of the multiple buildings that are currently utilized. I cannot think of a better piece of property in town that could accommodate this proposed building any better.

As a Temple resident I expect the Zoning Board of Adjustment to review all letters again before considerations are made and provide us with a good-faith unbiased decision on January 19th 2021. Thank you for reviewing my thoughts and concerns.

Emily Sliviak

5 Old Revolutionary Road

Temple, NH 03084

Resources Used: Indicated in Red

<https://www.nh.gov/osi/planning/resources/documents/zoning-basic-functions.pdf>

<https://www.nh.gov/osi/planning/resources/documents/zba-chapter-3.pdf>

<https://www.templenh.org/planning-board/pages/master-plan-2019>

On the other hand, if the special exception is listed in the ordinance and the conditions are met, the board cannot legally refuse to grant the special exception even though it may feel that the standards are not adequate to protect the neighborhood.

Language counts when reviewing a special exception. In *Cormier v. Town of Danville ZBA*, 142 N.H. 775 (1998), the ordinance allows excavations provided they are compatible with, and not injurious to, either natural features or historic landmarks or other historic structures. The board denied a special exception finding that the use would be detrimental to the historic and natural character of Tuckertown Road. The decision was appealed and upheld by the superior court. **The Supreme Court reversed the ZBA, finding that there was nothing in the record to support the ZBA's conclusion that the proposal would have an**

adverse impact on the road. The court reminded the board that “the law demands that findings be more specific than a mere recitation of conclusions.” Board members should be sure that factual conclusions like “adverse impact” are supported by factual findings contained in the record, whether from testimony, evidence, or board members’ personal knowledge of the area. If you determine that there WILL be something (adverse impact, detrimental effect, etc.), you should next ask yourself, and make sure the record reflects, WHY you came to that conclusion, i.e., “We find that there will be an adverse impact because of x, y, z.”

“The applicant still has the burden of persuasion on all five variance criteria, but my advice to ZBA members is not to be procedural sticklers when it comes to the “public interest” criterion. If an applicant makes even a conclusory statement like: “As you can see, there’s no adverse effect on the public interest,” that should be enough, unless abutters or board members themselves identify some specific adverse effect on the public interest, in which case the applicant will have the burden of overcoming it. To put it another way, if the applicant satisfies the other four criteria, a denial based solely on the “public interest” criterion is, in my view, unlikely to be upheld in Court unless your decision identifies some specific way in which the proposed variance is contrary to that interest.” 1999 Municipal Law Update: The Courts; H. Bernard Waug

As another example, consider the question of frontage requirements. Most zoning ordinances specify a minimum frontage for building lots to prevent overcrowding of the land. If a lot had ample width at the building line but narrowed to below minimum requirements where it fronted the public street, a variance might be considered without violating the spirit and intent of the ordinance, because to do so would not result in overcrowding. There are many other variations of lot shapes and sizes that might qualify for a variance; the principles remain the same. The courts have emphasized in numerous decisions that the characteristics of the particular parcel of land determine whether or not a hardship exists.