

January 13, 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 Variance from 500-Foot Setback Requirement

Dear Members of the Board:

This letter responds to the December 31, 2020 letter sent by Silas Little on behalf of a group of individuals. Mr. Little makes several points that mischaracterize the intentions of Ben Fisk, the proposed development on Tax Map 2, Lot 17 ("Ben's Property"), and the law on variances.

First, Mr. Little argues that the inability of Ben's Pure Maple Products to obtain consent from Freddie Mac, the bureaucracy that owns the former Forte property ("Freddie Mac Property"), is not a special condition of the property. Mr. Little mischaracterizes my argument on this point. The combination of the inability to obtain consent from a large and impenetrable bureaucracy is ancillary to the physical attributes of Ben's Property which create the special condition. The physical location of Ben's Property on NH Route 101 makes it undesirable for residential development. Further, the unique buffering provided by NH Route 101 lying between the Ben's Property and the Freddie Mac Property makes it highly unlikely that the Freddie Mac Property will be affected by the development. To say that the variance is being applied for based solely on inconvenience to the use proposed ignores the physical uniqueness of the location the property and its resulting undesirability for other uses.

Mr. Little cites Garrison v. Town of Henniker, 154 N.H. 26 (2006) for support that the special condition must arise from the property, not the owner's desired use. That case involved a situation factually distinct from the current situation for the Ben's Property. In Garrison, the applicant sought to use a more than 1600-acre property for an explosives manufacturing operation. Id. at 28. The Garrison Court stated "applicants no

longer must show that the zoning ordinance deprives them of any reasonable use of the land. Rather, they must show that the use for which they seek a variance is ‘reasonable,’ considering the property's unique setting in its environment.” Id. at 30–31, quoting Rancourt v. City of Manchester, 149 N.H. 51, 53–54 (2006). Ben’s Property is uniquely situated on NH Route 101, as noted above, and is physically located a substantial distance of the other side of a busy state highway from the house owned by a federal bureaucracy that has failed to respond to the applicant’s numerous inquiries. These attributes create an unnecessary hardship in the face of strict application of the Zoning Ordinance. The Garrison case supports Ben’s variance application.

Second, the argument that the only public interest expressed in the Zoning Ordinance is to segregate commercial and residential uses is another oversimplification. The nature of zoning is to separate uses. However, Ben’s variance application does not seek to allow commercial use where no commercial use is allowed. Instead, commercial use may be allowed by special exception when the required buffers from residential dwellings are met. This is not a blanket intention to segregate all commercial uses from all residential ones. Rather, the purpose and spirit of the ordinance is to allow commercial uses to co-mingle with residential uses where such uses do not adversely impact the residential use. Here, the variance would be consistent with the spirit of the ordinance. Given the unique location of the Freddie Mac Property, the 500-foot setback is not required to protect the residence from the impact of Ben’s project.

Third, with respect to substantial justice, Mr. Little’s argument appears to argue that substantial justice cannot be done without owner consent. This would mean no variance could ever be obtained from this provision of the ordinance. Substantial justice, as noted in my prior letter, requires a balancing test between the applicant and the public. In this case, any effect on the public or the owner of the Freddie Mac Property is far outweighed by the hardship to Ben caused by the denial of the variance. “Perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007) (citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000)).

Fourth, defining the “use” as the edge of any parking lot or other activity is an unreasonable reading of the ordinance and contradicts the way the Town and its Zoning Board have previously calculated the setback measurement. In the application of Wheeland’s Auto + Truck Service, the ZBA calculated the setback between a commercial use and a residential dwelling as the distance from building to building. To now measure



from building to “use” as suggested by Mr. Little would ignore that precedent and render the Town’s process unpredictable for applicants.

In conclusion, Ben’s Property does have special conditions that distinguish it from others in the area and that create an unnecessary hardship. Granting a variance to alleviate that hardship is not contrary to the public interest, observes the spirit of the ordinance, and does substantial justice. For these reasons and all reasons articulated in the Application for Variance, I respectfully request the Board grant this variance.

Sincerely,

A handwritten signature in blue ink that reads "Tom Hanna". The signature is written in a cursive, flowing style.

Thomas R. Hanna

TRH/sw

Cc: Silas Little  
Ben Fisk