

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

APPLICATION FOR A VARIANCE

Revised June 2019

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| Applicant Name: Ben's Pure Maple Products, LLC |
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When filing for a Variance, the applicant must complete the ZBA's General Application Form as well as this specific application.

As the applicant, it is your responsibility to provide evidence that you meet each of the requirements for the type of decision you are requesting. simply stating that the standard is met is not sufficient.

You may want to consult with an attorney or other professional as you prepare your application.

In order for the ZBA to grant a Variance, it must determine that each of the following conditions are met. At the time of application for a Variance, you must submit documentation regarding the following conditions which, in your judgment, are relevant including discussions with and responses from neighbors.

You must provide answers to the following five questions:

1. Granting the variance would not be contrary to the public interest because:

See attached narrative

2. The spirit of the ordinance is observed because:

See attached narrative

3. Substantial justice is done because:

See attached narrative

4. The values of surrounding properties are not diminished because:

See attached narrative

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5. Literal enforcement of the provisions of the ordinance would result in an “unnecessary hardship” because:

See attached narrative

- a. For purposes of this paragraph, “unnecessary hardship” means that special conditions of the property distinguish it from other properties in the area.

(i) Owing to these special conditions, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

See attached narrative

- (ii) The proposed use is reasonable since:

See attached narrative

- b. If the criteria in subparagraph (a) are not established, an “unnecessary hardship” will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The following special conditions of the property make the variance necessary in order to enable a reasonable use of it:

Not Applicable

Variance Narrative/Responses

Under the Town of Temple Zoning Ordinance, the ZBA may grant a special exception if, among other criteria, “[t]he proposed use 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” Temple Zoning Ordinance, Section 13A(1). The Applicant seeks a variance from this criterion in relation to the dwelling located approximately 450 feet from Ben’s proposed building. The dwelling is currently owned by Federal Home Loan Mortgage Corporation, d/b/a Freddie Mac, and is located at Temple Map 2A Lot 51.

Granting the variances is not contrary to the public interest and observes the spirit of the ordinance

These first two variance standards, from RSA 674:33, I(a)(2)(A) and (B), are related and should be considered together. See Harborside Assocs. v. Parade Residence Hotel, 162 N.H. 50, 514 (2011). “The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). For a variance to be sufficiently contrary to public interest, it “must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Nine A LLC v. Town of Chesterfield, 157 N.H. 361, 366 (2008). While judging whether “granting a variance violates an ordinance’s basic zoning objectives, [the court considers], among other

things, whether it would alter the essential character of the locality or threaten public health, safety, or welfare” but “such examples are not exclusive.” Id.

Here, the variance requested is from the requirement of consent from the owner of a residence approximately 450 feet from the proposed commercial construction. The purpose of having a five-hundred-foot setback between a dwelling and a commercial development is to buffer the residence from the impact of a commercial activity. We have measured the distance from building to building, which we believe is the correct interpretation of the ordinance and is also the way the ZBA has interpreted this measurement in the past.

In this case, the residential property is separated from the proposed commercial building not only by nearly the required 500 feet, but also by NH Route 101, clearly the busiest and noisiest highway in Temple. The traffic, light, noise, dust, and other disturbance from NH Route 101 have a far greater impact on the residence than the proposed commercial development. Traffic on NH Route 101 occurs at all times of day and all days of the week, including large trucks, commuter traffic, and construction vehicles. Ben’s proposed maple production facility will operate primarily on weekdays, during business hours, and with limited, low-speed, shopper, employee, and truck traffic.

Granting the variance is not contrary to the public interest because the buffering that 500 feet would provide is unnecessary. The distance and NH Route 101 provide significant amount of buffering between the residence and the proposed development such that the spirit of the ordinance is fully satisfied. It will not violate the basic objectives of having such a buffer in place, because the practical buffering is accomplished by the combination of distance and the intervening state highway. Further, allowing a commercial use approximately 450 feet from the

residence will not alter the character of an area already defined by the heavy commercial and commuter traffic on NH Route 101.

Granting the variance does substantial justice

The third variance criterion asks whether or not granting the variance will do substantial justice. “Perhaps the only guiding rule [on this standard] 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)).

Needless to say, denial of the variance will cause a substantial loss to the Applicant. Conversely, denial of the variance will provide virtually no gain to the general public. The residential dwelling is located approximately 450 feet from the commercial development, close to the required 500 feet. The substantial buffer of 450 feet is divided by NH Route 101, which further buffers the residential property from the commercial development. As it relates to the former Forte residence, NH Route 101 is a far greater factor than Ben’s project. This standard is a balancing test, and the balance favors the applicant. Granting this variance will do substantial justice as that term is defined by law.

Granting the variances does not diminish the values of surrounding properties

The fourth criterion involves the effect that the variance will have on the values of surrounding properties. I suggest that the Board’s particular focus should be in the Freddie Mac property which is the focus of this application. As noted, having commercial development on NH Route 101 is consistent with the traffic and use pattern of NH Route 101, so allowing additional development to occur closer to NH Route 101 will concentrate commercial

development on that existing corridor. In addition, because the residential property in question here in on the opposite side of NH Route 101 and is accessed from Route 45, the impact on the property value of that property is attenuated by both distance and the state highway. Moreover, as Brian Underwood has testified, there will be no diminution of residential property values, including the property in question, resulting from Ben's project.

Literal enforcement of the provisions will result in an unnecessary hardship

The "unnecessary hardship" element is satisfied when "owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one." RSA 674:33, I(b)(5)(A).

There are several special conditions that are relevant here. The existence of NH Route 101 between the property at Map 2A Lot 51 and Ben's development site is a special condition. As noted above, NH Route 101 provides significant buffering between Ben's property and properties to the south so that development of the property on which the commercial developed is proposed will have negligible effect on properties to the south. The frontage on NH Route 101 also makes Ben's property less desirable for residential development than the properties surrounding it because of existing traffic and noise.

The residential property at issue in this application is also distinguished from other properties in the area because it is currently owned by the Federal Home Loan Mortgage Corporation, not an individual homeowner or more local corporate entity. Obtaining consent to

reduce the setback requirement from such a large, complex, out-of-state bureaucratic corporation has not been possible. Indeed, the prior owner, Forte, did consent.

Due to these special conditions, no fair and substantial relationship exists between the general purposes and specific application of the ordinance provision. The property is located in an ideal location for low-impact commercial development, and Ben's development will impact the residential property in question much less than the existing traffic and commercial use of NH Route 101 that lies between. Further, the ordinance anticipates that obtaining consent from the owner of a residential dwelling would be straightforward and at least logistically possible, which is not the case with this residence. In addition, the proposed use of the property is a reasonable one, as the location of NH Route 101 makes it far less desirable for residential development on Ben's site than nearby properties and much more desirable for low-impact commercial development.

Finally, there is no particular relationship between the Ordinance's 500 foot provision and the Map 2A Lot 51 residential property because of the intervening NH Route 101. The buffer's objective is affected by the State highway, not Ben's proposed maple production facility and market.

The variance standards are satisfied; the variance should be granted.