

March 4, 2021

Zoning Board of Adjustment

Temple, NH 03084

By email: [boardassistant@templenh.org](mailto:boardassistant@templenh.org)

Dear Board Members:

Please consider this correspondence a request for re-hearing of the Board of Adjustment's decision made on 2/2/2021 that action on the variance application submitted by Ben's Pure Maple Products LLC was not required. The Zoning Ordinance does not support a determination that the application submitted was moot and a variance for the use of the property as proposed is not required.

Section 13 establishes the standards and conditions to be applied by the Zoning Board of Adjustment to "trade, enterprises, facilities, whether commercial, noncommercial and/or industrial use of land or buildings" (emphasis added). This preamble recognizes land as a component of a proposed use, whether a proposed use includes a building or not. The Board's determination that the building footprint, or its corner, constitutes the boundary of the "proposed use" for the purposes of measuring compliance with the 500' setback requirement from the existing dwelling located on Tax Map 2A-51 owned by FHLMC is in error and contrary to the explicit and clear wording of the ordinance.

There are very few cases that a building engaged in a use is not dependent on a least a portion of the land around it. In this case, use of the property for the proposed retail activities inside the applicant's 16,080 square foot building cannot occur without land outside the building that will be both dedicated to and activity engaged in that use. Those areas include walkways and exterior amenities providing access to the building for retail customers, picnic areas and parking. All these areas are design to and necessary for the proposed retail use to operate and cannot be disregarded as a component of the use. See Attachment #1.

The term "proposed use" Section 13A (1) does not include any language supporting limiting a proposed use to the footprint of a building or supporting exclusion from that definition of land activity engaged in the use.

Nor does Section 13A (1) include any language that supports the exclusion of parking (if required for a use to occur) or other areas of a property that may be necessary for a proposed use to function.

The ordinance merely provides through Section 13A (2) an additional standard that parking that is part of a proposed use be off-street, ample to serve the proposed use and that it be set back fifty-five feet from all lot lines (not dwellings). This section does not include any language that supports a conclusion that parking is not a component of a land use nor does it grant any relief from the proposed use/existing dwelling of another owner standard provisions of Section 13A (1).

To reach the conclusion that parking necessary for a proposed use is not part of that use is illogical and in outcomes that would not be in keeping with the plain language of the ordinance.

Parking required that supports a trade, enterprise or other type of use permitted under this special exception standard for many of these uses subject to special exception result in more persistent daily impacts to a neighboring dwelling than a building that may contain the use. The vehicle and pedestrian

movements associated with potentially hundreds of customers daily proposed to begin at or before sunrise and extend into the evening are part of the proposed use.

Any consideration an assertion that interpretations of this provision more than 25 year may have excluded parking do not merit consideration by the Zoning Board of Adjustment in light of the plain language and clarity of the ordinance terms. If true, they do not justify perpetuation of a past error.

In addition, the Board is requested to reconsider its determination regarding the residential footprint of the structures located on Tax Map 2A-51 (owned by FHLMC) based on the records attached (Attachment #2, 3 & 4). The dwelling extends beyond the footprint considered by the board on 2/2/2021. The plot plan and building plans obtained from town records indicate that the design of the addition constructed is for residential purposes. A review of past zoning provisions indicate that the permit approved for this addition to the dwelling was pursuant to a provision in the ordinance which at that time allowed dwellings to be used to house home industries, provided the use did not occupy more than one-half the floor area including the basement. The calculations on the building plan illustrate the property owner demonstrating compliance with this provision. No portion of this addition to the dwelling has received an approval modifying its primary use as a residential dwelling or allowing a commercial use.

With respect, I request the Zoning Board of Adjustment grant this request for re-hearing and consider the application submitted by Ben's Pure Maple Products LLC for a variance as the ordinance and additional information submitted does not support a determination that the use proposed conforms to the standards established by Section 13.

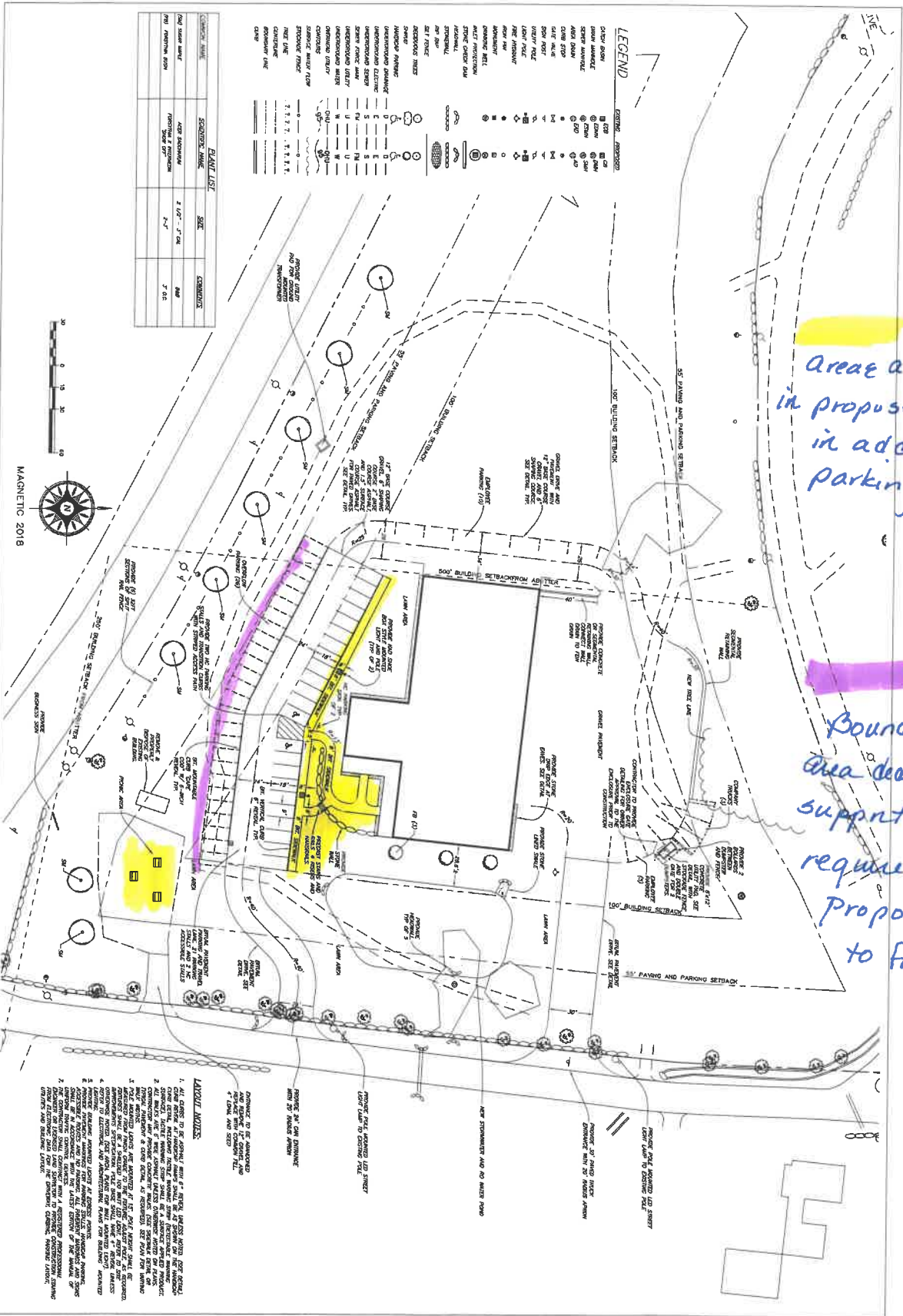
With great appreciation for your service,



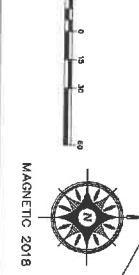
Elizabeth A. Fox

62 Old Revolutionary Road

Temple, NH 03084



SYMBOL	DESCRIPTION	SCALE	COMMENTS
[Symbol]	ASPH DRIVEWAY	2:1"	AS SHOWN
[Symbol]	CONCRETE DRIVEWAY	2:1"	AS SHOWN
[Symbol]	GRAVEL DRIVEWAY	2:1"	AS SHOWN
[Symbol]	GRAVEL DRIVEWAY	2:1"	AS SHOWN
[Symbol]	GRAVEL DRIVEWAY	2:1"	AS SHOWN



Areas actively engaged in proposed use - in addition to parking

Boundary of area dedicated to support parking required for the proposed use to function.

**LAYOUT NOTES:**

1. ALL CHANGES TO BE APPROVED BY THE CITY OF WESTER HIGHLAND, IN WRITING PRIOR TO CONSTRUCTION.
2. ALL MATERIALS TO BE USED SHALL BE APPROVED BY THE CITY OF WESTER HIGHLAND, IN WRITING PRIOR TO CONSTRUCTION.
3. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF WESTER HIGHLAND.
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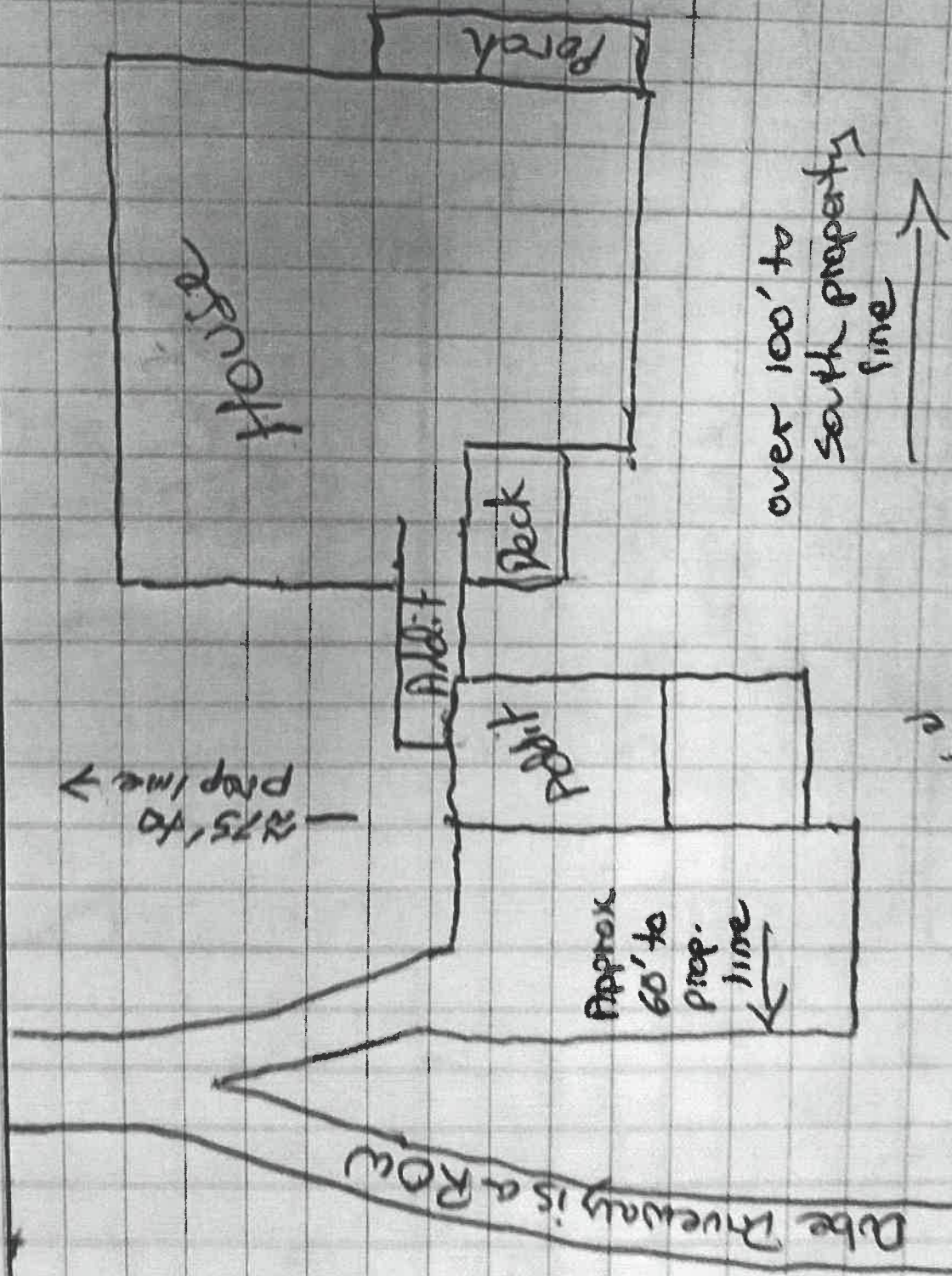
<p><b>B</b> Brickstone Land Use Consulting LLC</p> <p>1100 WESTER HIGHLAND AVENUE, SUITE 100 WESTER HIGHLAND, TN 37091 PH: 615.254.4444 WWW.BRICKSTONELANDUSECONSULTING.COM</p>	<p><b>STEVENSON &amp; ASSOCIATES, INC.</b> LANDSCAPE ARCHITECTS</p> <p>1010 WESTER HIGHLAND AVENUE, SUITE 100 WESTER HIGHLAND, TN 37091 PH: 615.254.4444 WWW.STEVENSONANDASSOCIATES.COM</p>
<p>PURPOSE OF DRAWING: LANDSCAPE ARCHITECTURE PRELIMINARY</p>	<p>DATE: NOVEMBER 24, 2020 PROJECT: BEN'S SUGAR SHACK</p>
<p>BEN'S SUGAR SHACK WESTER HIGHLAND, TN PREPARED FOR: BEN'S MAPLE PRODUCTS LLC 83 WESTER HIGHLAND, TEMPLE, TN</p>	<p>DRAWN BY: [Name] CHECKED BY: [Name] DATE: 09/09/20 PROJECT NO.: [Number]</p>
<p>LAYOUT PLAN</p> <p>C-3</p> <p>SHEET 4 OF 8</p>	

Attachment #2

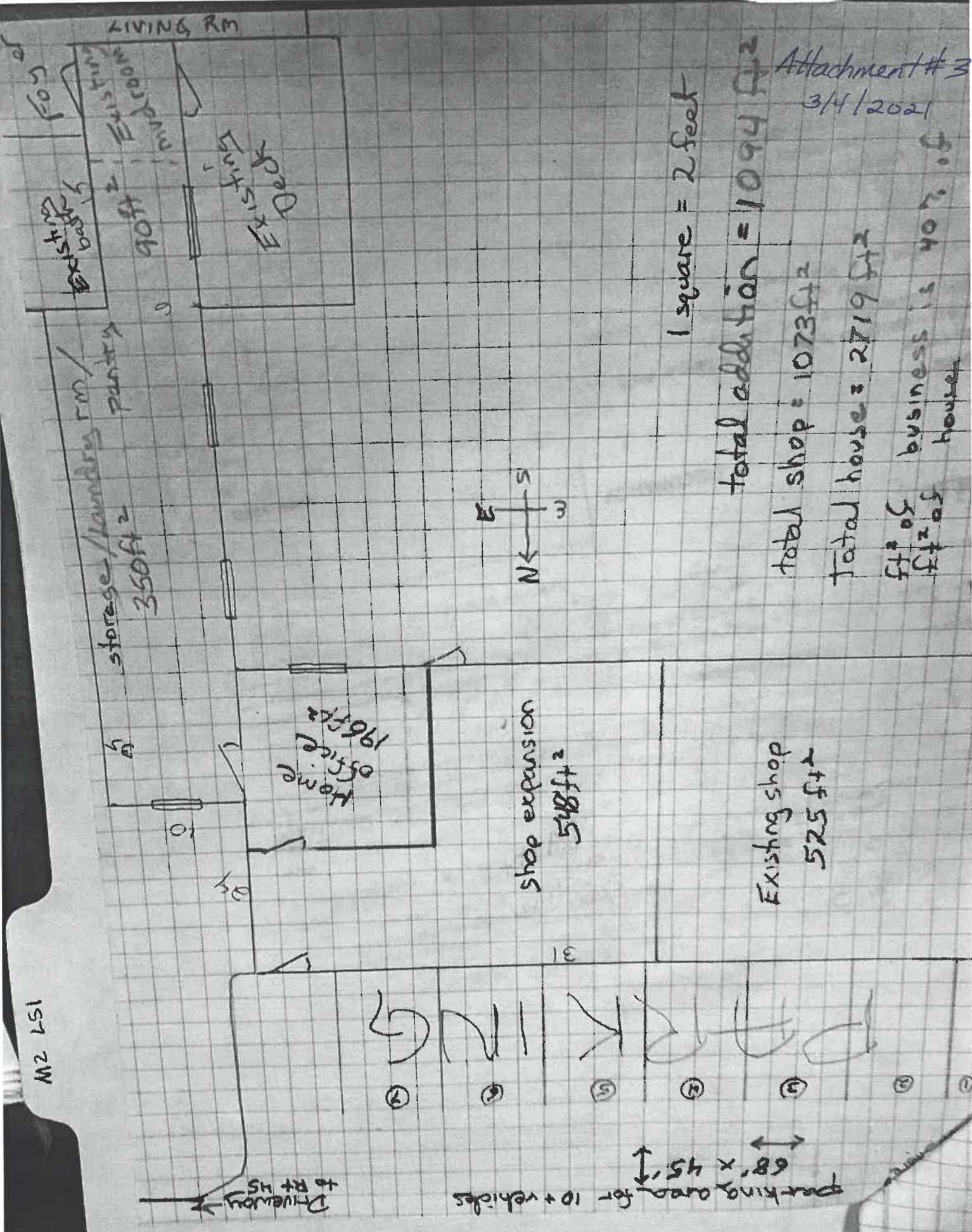
3/4/2021

RT 45 → to temple

I have spoken



M2 L51



LIVING RM

Existing  
bath

storage/laundry rm/  
pantry

350ft<sup>2</sup>

4

Home  
Office  
196ft<sup>2</sup>

2

Shop expansion  
518ft<sup>2</sup>

3

Existing shop  
525ft<sup>2</sup>

1 square = 2 feet

total addition = 1094 ft<sup>2</sup>

total shop = 1073 ft<sup>2</sup>

Total house = 2719 ft<sup>2</sup>

ft<sup>2</sup> of  
ft<sup>2</sup> of

business is 40% of  
house

Attachment # 3  
3/4/2021

parking area for 10+ vehicles  
68' x 45'

①  
②  
③  
④  
⑤  
⑥  
⑦

Driveway  
to Rt 45

Attachment # 4

3/4/21

Home Industry zoning provision applicable to permit issued for Tax Map 2A-51

Section 11 Home Industries and Professional Services: Dwellings may be used to house home industries or professional services provided: (a) the business owner's residence shall be maintained on the premises; (b) the professional service or home industry use does not occupy more than one-half the floor area, including basement; (c) not more than four non-residents are employed therein; and (d) adequate off-street parking shall be provided.