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Via US Mail

Zoning Board of Adjustment

Town of Temple

423 Route 45

PO Box 191

Temple, NH 03084

(603) 878-2536

Re: Application for Special Exception submitted by Stepping Stones Farm and Event Center LLC, presented May 11, 2021, and amended June 1, 2021
Tax Map 9B Lots 14 and 15

Dear Members of the Board,

I am licensed to practice law in New Hampshire and Massachusetts, and for over fifty years I have focused my practice on real estate matters. Stepping Stones Farm and Event Center LLC (“Stepping Stones”) asked Bielagus Law Offices PLLC to provide an opinion as to the application referenced above. My opinion is as follows.

In forming this opinion, I reviewed the documents that the Town has provided on its website. In reviewing these documents, I noticed that a number of people have raised a wide array of issues, and I believe it would assist everyone to maintain focus on the application and the issues relevant to the application.

Introduction

To review, Stepping Stones applied for a special exception in accordance with the Town of Temple Zoning Ordinance (amended March 9, 2021) (“ZO”), Article IV, Sections 11, D, and 13,¹ in order to conduct a business activity on Tax Map 9B Lot 14 (19 Putnam Rd) and Lot 15

¹ “Any business activity that exceeds the standards for Home Business I, II or III, and any Garage-Public, Filling Station or Retail business, must comply with Article IV, Section 13.” ZO, IV, 11, D. “Trade, enterprises, facilities, whether commercial, non commercial and/or industrial use of land or buildings, including the commercial excavation of earth materials, not specifically authorized under other sections of this ordinance, may be permitted by special exception if approved by the Board of Adjustment after a public hearing on the subject. At said public hearing the Board of Adjustment shall only grant a special exception upon finding that the Standards outlined in Section 13A and the Conditions in 13B have been met.” ZO, IV, 13.

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(11 Pony Farm Ln),² and, more specifically, to use the Premises as venue for events such as celebrations, family gatherings, gatherings of friends, wellness and spiritual retreats, corporate trainings and retreats, holiday gatherings, nonprofit community fundraising or meeting location, or vacation rental.

Facts

The Manager of Stepping Stones is Isabella “Boo” Martin. Boo’s family first moved to the Premises in June of 1965. Boo started the Pony Farm, a for-profit business, on the Premises in June of 1972. In 1977, the Town approved Boo’s application to subdivide the Premises into the two lots it is today.³ Furthermore, the minutes from the 1977 meetings relative to the subdivision refer back to a variance that the Town previously granted for the Retreat Center. In 1986, Boo founded Horse Power, a nonprofit organization, which provided therapeutic riding programs for individuals with disabilities on the Premises. In 2000, the Town granted Boo’s application for a special exception to construct an indoor arena to be used for Pony Farm lessons on the Premises. In 2011, Pony Farm and Horse Power merged into Touchstone Farm, a nonprofit organization. Touchstone Farm rented the Premises until September 2020, at which time they moved to a new location.

Since Touchstone Farm left in September, 2020, Boo has used the Premises for agricultural purposes. More specifically, there are, and have been, on the Premises 2 mini-horses, 2 mini-donkeys, 5 goats, and 16 chickens. In addition, 7 acres are used for growing hay, and there are 6 fruit trees, and an herb garden. Furthermore, there will be 6-8 horses on the Premises starting in late July or early August. Also, Boo is in the process of preparing 5 acres to be used for grazing for cattle. In addition to having cattle on 5 acres, she may also use an additional 8 acres for sheep, and bees.

To summarize these facts, the Premises are currently used for agriculture, and have been for decades. Furthermore, there have been a variety of businesses on the Premises, both for profit and nonprofit, since 1972, and there is a prior variance for a Retreat Center, and a special exception for an indoor arena for equestrian lessons.

Zoning

The Premises are located in the Rural Residential and Agricultural District. In the Rural Residential and Agricultural District, farms and residences are permitted:

The Rural Residential and Agricultural District shall enjoy the following provisions: (It shall be mainly a district of farms, residences, and woodlands.)

Section 1: Permitted Uses

Buildings may be erected, altered, or used for one-family year-round or seasonal dwellings and farms. (See General Provisions, Article IV, Section 7.)

² Tax Map 9B Lots 14 and 15 are referred to collectively as “the Premises.”

³ Plan 10308. All book, page, and plan references refer to the Hillsborough County Registry of Deeds.

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ZO, V, B.

For the definition of "Farm, Agriculture, Farming," the ZO refers to RSA 21:34-a I, II, III, IV, & V. ZO, II. RSA 21:34-a provides that:

I. The word "farm" means any land, buildings, or structures on or in which agriculture and farming operations or activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock; in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in the operations or activities named in paragraph II(a) or (b) of this section or any combination of such individual operations or activities.

II. The words "agriculture" and "farming" mean all operations or activities of a farm, including:

(a)(1) The cultivation, conservation, or tillage of the soil. ...

(4) The husbandry of livestock which shall include but not be limited to all beef or dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), or reindeer (*Rangifer tarandus*).

(5) The husbandry, boarding, training, or riding instruction of equines. ...

(7) The husbandry of poultry or game birds or production of eggs.

(8) The husbandry of bees or production of honey. ...

(11) The production, cultivation, growing, or harvesting of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees or tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any plant that can be legally grown or harvested extensively for profit or subsistence.

(b) Any practice or activity on the farm incident to, ancillary to, or in conjunction with such farming operations, including, but not necessarily restricted to...

(5) Marketing or selling at wholesale or retail, regardless of the manner or form of the transaction, any livestock or products derived principally from the production of the farm, including, but not limited to items listed in subparagraph (a), whether on-site or off-site, provided that marketing such products is not specifically prohibited by local regulations. For the purposes of this section marketing shall include **agritourism**, which means attracting visitors to a farm to attend events or activities that are accessory uses to the primary farm operation, including, but not limited to, being provided a meal, making overnight stays, enjoyment of the farm environment, education which shall be instruction or learning about the farm's operations, or active involvement in the activities of the farm.

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RSA 21:31-a (emphasis added).

Boo's current use of the Premises for a variety of livestock, hay, fruit trees, and herbs is clearly for a farm, agriculture, and farming. As such, this use is clearly permitted under the ZO. Furthermore, the use of the Premises for events on the farm would be agritourism, which is part of agricultural operations, under RSA 21:31-a, I and II, which are clearly allowed under the ZO.

Furthermore, the use of the Premises for an event center is consistent with the pre-1977 variance for a Retreat Center, the 2000 special exception for an indoor arena for riding lessons, and the use of the Premises for a variety of businesses (both for profit and non-profit) since 1972.

For the reasons above, there is no need for a special exception to conduct agritourism on the Premises, or to use the Premises as they have been since 1972, which is for farming and agriculture (which includes agritourism), and for a variety of businesses.

Special Exception

Even if you were to come to a different conclusion than I did above, and even if you were to require a special exception for business activities on the Premises, then the application would satisfy the requirements for a special exception.

The requirements for a special exception are found in the ZO, Article IV, sections 13A and 13B. See also ZO, VI, 6. See also RSA 674:33, IV.

The standards and conditions for a special exception, and how the proposed use complies with them, has been discussed in detail in the application, and in the supplements to that application, but to summarize:

Standards (section 13A):

“1) The 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;”

Here, the only abutters within five hundred feet have given their permission.

“2) The Board of Adjustment finds that the proposed use shall have off street parking which will be ample to serve the proposed use; provided, however, that any such off street parking shall, at a minimum, be set back at least fifty-five (55) feet from all lot lines.”

Here, as the plans submitted show, there is ample off-street parking, and the parking areas are at least fifty-five feet from all lot lines.

“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 injurious or limit the use

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of neighborhood property by causing such problems as excessive noise, odor, 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.”

Here, as the letters from Andrew Peterson and Sally Mann state, there will be no adverse effect on the value of adjacent properties. Furthermore, there would be no excessive noise, odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare, drainage, or other conditions not typical of permitted uses within the area⁴ that would be obnoxious, injurious, or limit the use of neighborhood property.⁵

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

Here, the Premises, which have been a farm for decades, are an appropriate location for the use of agritourism. Furthermore, the size of the Premises (27 acres) provides ample room for the proposed use, there are multiple roads and driveways giving access to the Premises, and the existing structures are more than adequate for the proposed use.

“5) No hazardous waste shall be permanently stored on or disposed of on the property.”

The proposed use does not involve storing or disposing of hazardous waste.

“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 to town roads.”

The proposed use, which would be infrequent (the use would mostly occur on weekends and holidays during the summer), would generate little traffic and would not present a safety hazard, or cause excessive wear and tear to town roads.

“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.”

Appropriate buffering exists on the Premises. This issue can also be addressed during the site plan review process before the planning board.

“8) The Board of Adjustment shall, when appropriate, request a recommendation from the Planning Board, the Conservation Commission, Road Agent and/or the Health Officer concerning the proposed use.”

⁴ Again, agritourism is part of agriculture, which is permitted in this district.

⁵ Note that section 13A, 3, does not require a complete lack of noise, traffic, etc. Rather, what section 13A, 3 prohibits is (i) excessive noise, traffic, etc, and (ii) that the excessive noise, traffic, etc, causes obnoxious or injurious or limits the use of neighborhood property. Clearly the proposed use would not present excessive noise, traffic, etc that would cause such problems.

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Here, the recommendations requested by the Board have been favorable.

As for the Conditions (section 13B), the proposed use would comply with all required conditions.

For the reasons above, even if the Board were to require a special exception, the proposed use complies with the standards and conditions for a special exception.

The 1754 House

Another issue I would like to address briefly is the issue of the house that was built in 1754. Clearly, the house was in existence in its current location prior to the enactment of the Zoning Ordinance. As such, the use of the house in its current location can continue. ZO, VII.

Conclusion

For the reasons set forth above, the Town should either:

- A. Find that Stepping Stones does not need a special exception for the proposed use, as the proposed use falls within RSA 21:31-a, and the ZO, V; or
- B. Grant Stepping Stones' application for a special exception.

Sincerely,

/s/ John F. Bielagus
John F. Bielagus, Esq.

cc: Christopher B. Drescher, Esq.