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From: **ArleneL/AlecM** <aajimac@tds.net>

Date: Mon, Jun 14, 2021 at 3:19 PM

Subject: Special Exception Should Be Denied as a Matter of Law

To: <boardassistant@templenh.org>

Dear Chairman Kieley and Members of the Temple ZBA,

As direct abutters to the property that is the subject of the Stepping Stones Farm and Event Center, LLC's request for a Special Exception for the uses described in the record, we respectfully request that, as a matter of law, this Application be denied in it's entirety for the following reasons outlined below.

In the first instance, "{w}hen a board is considering whether to grant a special exception, it may not vary or waive any of the requirements set forth within the zoning ordinance." (The Board of Adjustment in NH, 2020 - NHOSI, pg II-8). Stated another way, the Applicant may not seek to comply with the special exception requirements by seeking a variance for criteria that the Applicant is unable to satisfy.

"The question sometimes arises as to whether an applicant for a particular land use can obtain a variance from one of the terms of a special exception in order to qualify for a special exception. Clearly, where a use is allowed by special exception provided certain criteria are met, the special exception could not be granted if any one of the criteria is not satisfied. Similarly, the board could not first grant a variance for the unsatisfied criteria, then turn around and grant the special exception even if all the other criteria are met." (The Board of Adjustment in NH, 2020 - NHOSI, pg II-8.) To qualify for a special exception as provided in Article IV, Section 13 of the Temple Zoning Ordinance (TZO), "{a}ll buildings shall be set back at least one hundred feet from all lot lines..." and shall not have an adverse effect on adjacent property, such as "excessive noise". The Applicant's two recent Variance requests regarding the one hundred foot building setback and the sound ordinance as applied to the Applicant, submitted prior to the 6/1/21 hearing, demonstrate that the Applicant is NOT able to satisfy these specific TZO Article IV, Section 13 criteria requiring that this Special Exception Application be denied.

In the second instance, where the Applicant has 3 non-conforming residential dwellings on Lot 9B-15, the Applicant is not permitted to use the Special Exception Application under TZO, Article IV, Section 13, to expand the use of the Homestead to a Hotel when such an Expansion under TZO, Article VII, Section 3-6 specifically places limits on any such expansion requiring that the proposed use "must be related to and a continuation of the existing use and cannot increase the degree of non-conformity." Here, a Hotel rented on a transient basis represents a significant increase in the degree of non-conformity compared to a single family residence.

In summary, the Stepping Stones Farm and Event Center, LLC's Application for a Special Exception to operate a large Commercial Business and Wedding venture in the Rural Residential and Agricultural District must be denied as a matter of law, where the Applicant is unable to meet one or more of the Special Exception Criteria specified in TZO, Article IV, Section 13. In addition, the Applicant seeks to substantially expand the existing non-conforming residential use (3 dwelling units on Lot 9B-15) of the Homestead single family dwelling to a non-residential, Commercial Hotel use. Such an expansion of a non-conforming residential use to a Commercial Hotel use is not permitted by TZO, Article VII, Section 1-3, and therefore should be denied as well.

Respectfully Submitted,

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