

June 29, 2023

Town of Temple
Zoning Board of Adjustment
423 Route 45
PO Box 191
Temple, NH 03084

**Re: Application for Special Exception
Proposed Antique Construction Equipment Collection
32 West Road, Tax Map 7 Lot 13
Applicants: John H. Jackson-Marsh and Alan Marsh**

Dear Members of the ZBA:

My firm represents Alan Marsh and Jack Jackson-Marsh of 32 West Road. Enclosed are the following:

- General Application, including signature page.
- Application for Special Exception, with responses to the criteria.
- Narrative Explanation of Proposed Use.
- Map showing location of collection of antique equipment and confirming that all nearby dwellings are at least 500 feet from the proposed use.
- Abutters' mailing labels.
- Check in the amount of \$150.00 to cover the application fee. We will promptly deliver a separate check to cover the newspaper and abutter notices when we learn the amount.

In light of summer vacation schedules, I would appreciate being informed in advance of the date you propose to hold the public hearing.

Please let me know if I have omitted anything.

Thank you.

Sincerely,



Thomas R. Hanna
hanna@nhlandlaw.com

TRH/ljs

Cc: Client

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

GENERAL APPLICATION FORM

Revised October 2022

423 Route 45
PO Box 191
Temple, N.H. 03084

INSTRUCTIONS FOR SUBMITTING A COMPLETE APPLICATION

(Please read carefully)

For an application to be scheduled with the Zoning Board of Adjustment (ZBA), you shall submit the following items to the Temple Town Office:

1. Completed and signed ZBA General Application Form. The application will not be placed on the ZBA agenda unless all required signatures are on the application.
2. A specific Application Form for the type of application you are making:
 - a. Special Exception
 - b. Variance
 - c. Appeal of Administrative Decision
 - d. Equitable Waiver of Dimensional Requirements
3. Other information to provide (if applicable):
 - (a) Two (2) copies of a plot plan of the lot as shown on the Town Tax Map which shows the existing and proposed improvements, drawn to scale, along with existing and proposed setback distances.
 - (b) Pictures or construction plans showing all sides of the structure to which any improvements are proposed to be made.
 - (c) Any wetlands or aquifers shall be identified by a wetlands scientist for reference by the Conservation Commission. You shall meet with the Conservation Commission to discuss the proposal and receive a written report that will be forwarded to the ZBA prior to the FINAL public hearing.
4. Mailing Labels. Prepare mailing labels for all abutting property owners (as defined by RSA 672:3), licensed professionals on plan, owners, and applicants. See Attachment 1 for detailed requirements.
5. The required fees. See fee schedule in Attachment 2.
6. The completed Authorization to enter your property form included in Attachment 3.

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

GENERAL APPLICATION FORM

Revised October 2022

An application may be delivered to the Town offices by hand (see Town website for office hours) or by US mail. An application will be considered received when stamped below.

Note: As an applicant, you must be familiar with each of the following:

- a. Temple Zoning Ordinance
- b. Temple ZBA Rules of Procedure
- c. New Hampshire statutes on zoning (RSA's)
- d. Notice of Land Use Board Fees under TSA 673L16, III

Documents a, b and d are available on the Town's web site or Town office. Document c is available on the State's website.

AUTHORIZED SIGNATURES

I/We certify that we have read the above Application Instructions and that this application is correctly and accurately completed in accordance with the Town of Temple's Zoning Ordinance and the requirements of this application. I/we agree to pay the fees outlined in the attachment to this application.

Alan Marsh - ALAN MARSH
John Jackson - JOHN JACKSON - MARSH JUNE 28, 2023
Applicant(s) Signature Date

As property owners, I/We give the applicant and/or agent, as stated hereon, our authorization to submit this application and represent us on matters relative to the Town's ZBA process. I/We also authorize members of the Temple ZBA and its agents access to the property described on this application for on-site review of the proposed application if necessary:

Alan Marsh - ALAN MARSH
John Jackson - JOHN JACKSON - MARSH JUNE 28, 2023
Property Owners(s) Signature Date



Office Use Only
Date Received: _____
Fees Paid: _____
Initialed: _____
Case #: _____

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

GENERAL APPLICATION FORM

Revised October 2022

Type of Application:

(check all that apply)

- Special Exception
 Variance
 Appeal of Administrative Decision
 Equitable Waiver of Dimensional Requirement

2. Applicant:

Name(s): John H. Jackson-Marsh and Alan Marsh
Address: 32 West Road
City: Temple State: NH Zip: 03084 Phone: _____
Email: _____

3. Property Owner(s):

Name(s): John H. Jackson-Marsh, and Alan Marsh, and George Marsh
Address: 32 West Road
City: Temple State: NH Zip: 03084 Phone: _____
Email: _____

4. Primary Contact:

Name(s) Thomas R. Hanna, BCM Environmental & Land Law, PLLC
Phone: 603-352-1928
Email: hanna@nhlandlaw.com
 Applicant Owner Attorney Surveyor/Engineer

5. Project Name: Antique Construction Equipment Collection

Street Address: 32 West Road
Tax Map: 7 Lot: 13
Acreage: 39 +/-

6. Zoning District(s)

(check all that apply):

- Village and Historic Preservation
 Rural Residential and Agricultural
 Mountain

7. Request

Please explain what you are seeking from the ZBA.

Grant of special exception to allow storage of our antique construction equipment collection on up to four (4) acres of our 39 acre property. We seek approval of our hobby as a "non-commercial enterprise" pursuant to Sections 13 and 13A.

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

GENERAL APPLICATION FORM

Revised October 2022

PLEASE FILL OUT THE APPLICABLE APPLICATION FOR THE TYPE OF REQUEST YOU ARE MAKING,

i.e. Special Exception, Variance, Appeal from an Administrative Decision or Equitable Waiver of Dimensional Requirements.

Notes:

- (1) In addition to the information requested in this application, the Temple ZBA may request any additional information it deems necessary to make a decision regarding your application.
- (2) Please feel free to attach any additional information to this application that you feel would be helpful to the ZBA.
- (3) 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. You may want to consult an attorney or other professionals as you prepare your application.

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

GENERAL APPLICATION FORM

Revised October 2022

Attachment 1

Mailing Label Requirements

You must submit 2 sets of mailing labels with the current mailing addresses of:

- a. The applicant,
- b. The property owner or owners, if different from the applicant,
- c. Every person who owns property which touches any lot involved in the application (even at a corner) or is directly or diagonally across a road or stream, and
- d. The holders of any conservation, preservation, or agricultural preservation restrictions on any of the lots involved in the application.

Those persons in category (c) are known as “abutters.” It is your responsibility to provide accurate mailing labels including all abutters. Any ZBA decision made without notice to all of the abutters may be invalid. Any abutter without proper notice may be able to have the decision overturned.

Preparing a list of Abutters for the labels

- a. Find the lots you are interested in and the abutting lots from the tax maps at the Town Office or on the Town website.
- b. Get the current mailing address for the owners of each abutting lot maps at the Town Office or on the Town website.
- c. Check whether there are any conservation, preservation, or agricultural preservation restrictions on any of the lots involved in the application. Make sure that you get the correct mailing address for the entity that holds such restriction. It may be a conservation group, a homeowners’ association, or the Town of Temple.
- d. If a lot is held under collective ownership by an association, “abutter” means the officers of the association.
- e. Note: The Town of Temple only has information on properties within Temple. If the lot under consideration abuts an adjoining town, you will need to go to that town for abutter information.

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

GENERAL APPLICATION FORM

Revised October 2022

Attachment 2

Zoning Board of Adjustment Application Fee

A fee will be charged sufficient to cover the ZBA's administrative fee, the mailing of legally-required notices and placing a notice in the local paper as listed in the 'Notice of Land Use Board Fees under RSA 673:16 III' document available at the town office and on the town website. The ZBA is authorized to select and retain outside technical or investigative assistance when the ZBA deems such assistance to be necessary to properly evaluate any application and the ZBA may charge those expenses to the applicant.

1. Application fee:		\$ 150.00
2. Required notices: \$ _____ x <u>12</u> *		\$ _____
3. Newspaper notice: **		\$ _____
4. Professionals retained by the ZBA: ***		\$ _____
5. Total Application Fee		\$ _____

Notes to above:

- * Actual cost times number of notices
- ** Actual cost
- *** To be assessed by ZBA

To find out about specific fees, or to get answers to questions, contact the Town Office at 878-2536.

**TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT
GENERAL APPLICATION FORM**

Attachment 3

Authorization to enter property

TOWN OF
TEMPLE
ZONING BOARD OF ADJUSTMENT

AUTHORIZATION TO ENTER ONTO

PROPERTY

I, (print name) _____ do hereby authorize members of the Temple Zoning Board of Adjustment and the general public entry onto my property (identified as Map_Lot _____) for purposes of a site visit to assist with the application process for _____.

Such site visit shall take place on (Date) _____ at (Time) _____ unless rescheduled.

This access authorization is limited to the times of the formal site visits as noticed by the Board.

Signature

_____ Date

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

APPLICATION FOR A SPECIAL EXCEPTION

Revised June 2019

Applicant Name: John H. Jackson-Marsh and Alan Marsh
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When filing for a Special Exception, 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.

Please submit documentation regarding how your application meets each of Temple's specific special exception standards below. Feel free to attach additional documentation.

Temple Zoning Ordinance
Section 13A (2010)
Available on the Town's web site.

RESPONSES TO SPECIAL EXCEPTION STANDARDS

- 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;**

There are no dwellings located on abutting or adjacent properties that are less than 500 feet from the area where the antique construction equipment is proposed to be located. See accompanying plan entitled "Approximate Distance of Proposed Equipment Area from Abutting Dwellings."

- 2) 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.**

There is ample off-street parking on the applicants' large parcel. However, parking will not be needed because the property housing the antique construction equipment collection will not be open to the public. The applicants may host an annual meeting of the Northeast Chapter of the Historical Construction Equipment Association ("HCEA"), but the association selects different venues for its annual meeting, so it's unlikely that such a meeting will be at 32 West Road each year. Otherwise, the applicants will have occasional visitors like any other property owner.

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

APPLICATION FOR A SPECIAL EXCEPTION

Revised June 2019

- 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 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.**

There are several reasons why the proposed use will not adversely affect the value of adjacent property. The primary reason is that no residence is within 500 feet of the proposed use. The 39-acre parcel is surrounded by trees. The antique equipment will be stored on up to four (4) acres, which is approximately 1/10 of parcel size. The equipment collection will not be visible from any public road or any adjacent property. The concept that the equipment will be visible from the sky, for example, by satellite or drone, is not a reasonable basis to find that the equipment collection will adversely affect the value of adjacent property. Indeed, that concept is preposterous.

Other reasons why the proposed use will not adversely affect the value of adjacent property are as follows: a) the extensive vegetation and distance muffles the infrequent noise from the start-up of engines or from the periodic moving of pieces of equipment either within the property or off-site, such as the times when pieces of equipment are transported to exhibitions of antique construction equipment in New England or around the country; b) the proposed use will not generate odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare or drainage issues. c) Storage and disposal of the limited quantities of petroleum products (gasoline, diesel, oil and lubricating and hydraulic oils), all of which are stored in the barn or garage, employ Best Management Practices. The site will have a benign impact on the adjacent area.

- 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.**

The proposed site is an appropriate location for the applicants' use for the reasons stated in our response to the preceding standard involving the proposal's effect on the value of adjacent property. In particular, the antique equipment collection will be limited to approximately 1/10 of the applicants 39-acres parcel and will not be visible from public roads or adjacent residences. The forest buffer, large lot size, and fact that the collection is not open to the public make the site an ideal location.

TOWN OF TEMPLE ZONING BOARD OF ADJUSTMENT

APPLICATION FOR A SPECIAL EXCEPTION

Revised June 2019

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

Petroleum products are stored temporarily in the barn on a cement floor without floor drains. The applicants use Best Management Practices (BMPs) in the storage of regulated materials as verified by a senior hydrologist of Geolnsight, an Environmental Strategy and Engineering company retained by the applicants. The area of the applicants' property used and to be used for construction equipment storage is located on a hill outside the Town's Aquifer Protection Overlay District and away from surface water bodies or wetlands. Based on the foregoing, its onsite inspection, and laboratory results from soil testing, Geolnsight determined that the environmental sensitivity of the proposed use is considered low. The environmental company stated that "Laboratory testing of soil and water samples at the property did not indicate impact from petroleum products or hazardous wastes. Arsenic found in the soil and groundwater "represents a natural condition not associated with equipment management activities at the site," according to Geolnsight. The applicants will submit Geolnsight's report prior to a public hearing on this application.

- 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.**

Except for a meeting of members of the antique construction equipment association mentioned above, which is not likely to occur even once a year, the use will not generate visitors or passenger vehicle traffic. Equipment will be delivered to the site occasionally and taken off-site for display at antique equipment events, but the impact of the moving of the equipment on and offsite will be negligible.

- 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.**

The applicants will obtain site plan review approval following approval of the special exception from the ZBA. As previously mentioned, the site has substantial existing vegetative screening such that the antique equipment collection will not be visible from West Road or other public highway or from adjacent properties.

- 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.**

The applicants would appreciate knowing if the Board intends to request input from any of the above.

NARRATIVE

32 West Road, Tax Map 7 Lot 13

Applicants Alan Marsh and John Jackson-Marsh seek a special exception to maintain their antique construction equipment collection on their 39-acre home property located at 32 West Road. This application is filed pursuant to Section 13 of the Temple Zoning Ordinance, which allows a “non-commercial enterprise” by special exception.¹ The property is primarily located in the Rural Residential and Agricultural zoning district with a small portion in the Village Historical Preservation zoning district. Alan Marsh and John Jackson-Marsh are passionate about their unusual hobby. They have committed themselves to preventing the antique construction vehicles and equipment from being destroyed or forgotten. As Judge Temple stated in his June 2 Order related to this matter, they “have a genuine enthusiasm and love for their collection.” The applicants are active members of the Northeast Chapter of the Historical Construction Equipment Association (“HCEA”), the New England chapter of which is called the Northeast Rockbusters. They transport pieces of their collection around the country to exhibit at HCEA shows and events. By way of example, the collection includes among numerous pieces: a 1952 Northwest Model 25 front-shovel; a 1944 Caterpillar D7 tractor with a LeTourneau cable-operated bulldozer; a 1925 American Gopher crane; a hydraulic front-end loader based on a 1937 Corbitt Truck; a 1953 Lorain Model TL-25 with a rare scoop shovel attachment, and a 1963 American Model 975 Crawler with a 100 foot-long boom. Alan Marsh can recite the provenance of these and the many other pieces of equipment, including how they became part of the applicants’ collection.

This special exception application seeks permission to maintain the equipment collection in an area of up to four (4) acres within the 39 acres, where their home and a large barn are also located. The collection requires the ‘support’ of 12 tractor trailers that contain old tools and

¹ The applicants have appealed the June 2, 2023 superior court decision to the NH Supreme Court, including that their hobby is a “non-commercial enterprise.” The applicants’ hope is to achieve a resolution through this special exception application that avoids the need to pursue the appeal further, but in doing so they do not waive their right to proceed with the appeal if their application is unsuccessful. The superior court ordered the applicants to apply for a special exception, site plan review and a license for a junk yard. The applicants will apply for site plan approval upon receipt of the special exception, and they believe that the special exception will obviate the need for a junkyard license.

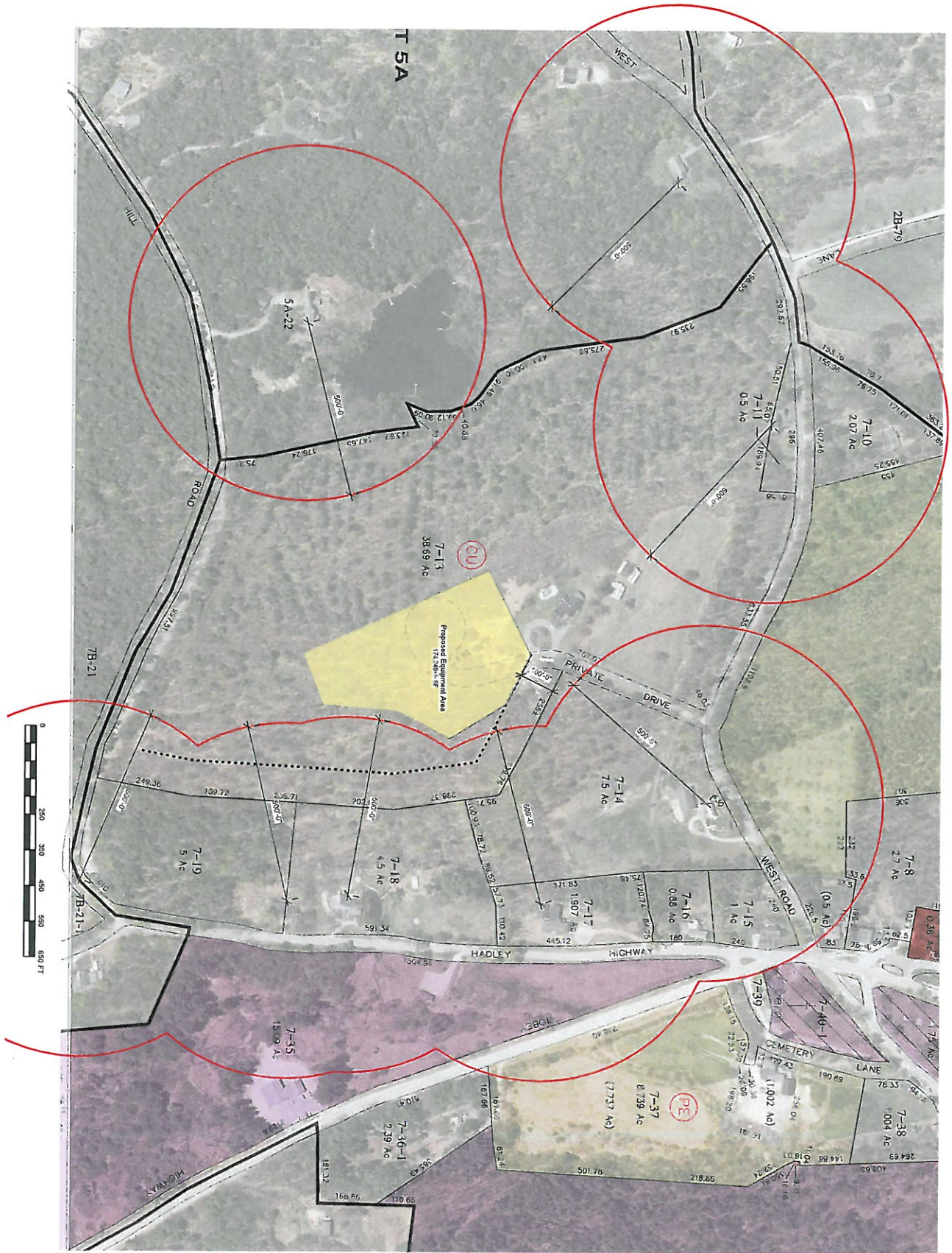
parts. The tractor trailers and the entire antique equipment collection will be located as shown in YELLOW on the map submitted with this application. The antique construction equipment will not be visible from any adjacent properties or from West Road or other public highways.

In his superior court decision, Judge Temple stated as follows, "...the Court finds that the defendants' [the applicants'] hobby-use of the property constitutes a noncommercial enterprise." The judge further stated at page 13 of his order:

"The process of repairing these motor vehicles and machines, as well as loading them onto flatbed truck with the use of a crane if necessary to transport them to HCEA shows and exhibitions across the country, may be fairly described as difficult, complicated and risky. Thus, while the defendants [applicants] are not operating an establishment or place of business at the Property, but instead storing these vehicles and machines as a hobby and for personal use, such activity in this case qualifies as a noncommercial enterprise.

The Court directed that the applicants apply for this special exception. Based on the reasons set forth in their responses to the special exception criteria, the applicants believe that their "non-commercial enterprise" fully qualifies for a special exception under Sections 13 and 13A, and they urge the ZBA to grant the special exception.

APPROXIMATE DISTANCE OF PROPOSED EQUIPMENT AREA AT 32 WEST ROAD, TEMPLE, NH FROM ABUTTING DWELLINGS



LEGEND:

- 500' Buffer Around Abutting Dwellings
- 100' Setback from Property Line

