

**TOWN OF  
TEMPLE, NEW HAMPSHIRE**

**MINUTES OF PUBLIC HEARING**

**ZONING BOARD OF ADJUSTMENT**

Meeting held on the 1st day of June 2000

Board members present: D. Kraemer, C. Martin, P. Quinn, T. Winship, D. Fonda, K. Barsanti.

Call to Order by D. Kraemer at 7:37 p. m.

Approval of Prior Minutes: Motion made by  
Seconded by           subject to the following amendment(s):

Voted   unanimous to       Approve       Disapprove

**Regular Business**

1. Subject: 7:37 p.m. Isabella McDaniel appeared before the Board presenting An application for a special exception under Article IV, section 13 of the Temple Zoning Ordinance. The proposed use is an indoor riding arena to offer a better place for the Pony Farm riders. Mrs. McDaniel also presented a letter from her abutter, Randall and Colleen Martin stating that "all is okay with them". Mr. Quinn asked if a variance would be needed and the board looked at the tax map. It was determined that no variance would be needed. Board voted to accept the application; five for acceptance and none opposed. The hearing date was set for July 6, 2000 at 7:30 p.m.

2. Subject: Mr. Kraemer read a letter submitted by Richard Messina Requesting a re-hearing on the May 4, 2000 decision of the Board which denied his application for a special exception to convert the garage on Map 08 Lot 008 to a residence under Article VII Section 1. The Board reviewed the letter paragraph by paragraph. Paragraph 1. Messina stated the letter submitted by the Selectmen was read aloud. Mr. Messina feels that the letter should not have been read as it was read at a previous meeting. Quinn asked for the decision, and Martin stated that the reason the letter was read aloud was for length and the Board had previously read Mr. Messina's letters. If Mr. Messina had wanted his letters read again he could have asked the board to do so. Paragraph 2. Mr. Messina states that his property is a "non-conforming" commercial use and as such Article IV Section 7 does not apply. Paragraph 3. Mr. Messina states that the 100' setbacks for "new" commercial use do not apply. Mr. Quinn stated that there is a conflict between this property being residential or commercial. If it is commercial then the 100' setbacks do apply. Mr. Messina stated he does not

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2. Subject: (cont.) need to go for a new special exception. Mr. Quinn stated the Board feels the 100' setbacks apply because this is an expansion of Mr. Messina's stated commercial use. Mr. Messina then stated that he is an "expert" and he can understand the Board's confusion. Debra Stark questioned whether her property would continue to be "residential" if it abuts a commercial property. Mr. Quinn explained that Temple has rural residential zoning. A commercial special exception does not create a "mini commercial district" and a commercial enterprise and residential property can be next to each other. Mrs. Stark then asked if something was "grandfathered" and then there where changes would it have to meet current zoning. The answer was yes. In paragraph 4 of Mr. Messina's letter it is stated that Messina had applied under one paragraph of Article VII Section 1 as in his opinion that was the only applicable paragraph. Messina objects to the Board addressing all three paragraphs in Article VII Section 1. Messina stated that in meetings the Board had directed him to paragraph 3 and only after the Board consulted with Town Counsel did the Board inform him that all three paragraphs must be addressed. Mr. Quinn commented that the Board members are only human and must seek counsel when needed. Messina commented "very well put". In paragraph 5 Mr. Messina states the Board did not let him present his case. Messina felt cheated that he could not present his case "properly". Messina then stated in the previous meeting we were addressing the one paragraph that applies to his application. Mr. Barsanti commented that by State law the town cannot allow anything less stringent than the State RSA's allow, the town does have the option of being more stringent. Mr. Barasanti questioned why they were having this discussion. Paragraph 6. States that the Board never asked for comments from the abutters. The Board members and Donald Andersen, an abutter, all remembered the abutters being asked for comments. Paragraph 7. Addresses the Chairman's attitude. Messina states in the letter that the Chairman was predisposed had already made up his mind and should have recused himself. During the meeting, Messina stated that both Chairman Kraemer and Mr. Barsanti were rude and that the Board rushed him at the May 4, 2000 hearing. Mr. Kraemer stated that the Board was doing this to "the best of our ability". Paragraph 8. Of the letter states that the Board did not review his case. Mrs. Martin stated that they thought they had discussed everything at length. Messina thought the Board should have discussed each paragraph of Article VII. Quinn quoted RSA 674:33 IV that a local zoning ordinance may provide that the ZBA, in appropriate cases and subject to appropriate conditions and safe guards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance. Quinn then asked Messina what RSAs he, Messina, was referring to, asking for a specific quotation. Messina stated he would get the RSA numbers he was referring to.

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3. Subject: (cont.) Messina also stated in his letter that the health, safety and Property value issues were never addressed and stated again that the Board had pre-judged his case. Messina also noted in the letter that the town currently recognizes and taxes the garage as a florist shop. Kraemer stated he did not think the town was taxing a florist shop. Messina stated it was being taxed as a florist shop and that the assessment cards would prove this. The 1988 assessment cards were passed around. Kraemer state that these records did not prove that the building was being taxed as a florist shop. Messina maintained that the assessment cards did prove taxation as a florist shop. Quinn stated that it may at one time have been taxed as a florist shop, but it had not been used in this manner in over two years. Quinn took exception to Messina's claim that the case had been pre-judged. Quinn stated that the Board takes great care to listen to this and every other case. Quinn admitted that tempers may have flared, but he did not think that this affected the Board's decision. Quinn then said that the Board could vote to accept the appeal, but also stated that maybe the Board should seek legal counsel. The entire Board agreed that legal counsel should be sought. Kraemer then read an application for an appeal of an administrative decision. It was agreed to hear this appeal. Tim Winship asked if Messina would need to show proof that the cabins were used year round pre-dating the zoning ordinance. Quinn suggested that Town Counsel be asked if there was a time frame for proof of year round use. Messina about the 30-day time limit on appeals. Quinn again suggested that Town Counsel be asked when the 30-day time limit is involved. Messina stated that he would probably waive his right to a hearing in 30 days. Discussion then continued on the expansion of the cabins. This was again tabled to July 6, 2000, as the appeal from the BOS administrative decision will need to be heard first. Mr. Messina was informed that the burden of proof is on him to prove that the cabins were used year round.

4. Subject: Meeting adjourned at 8:55 p.m.