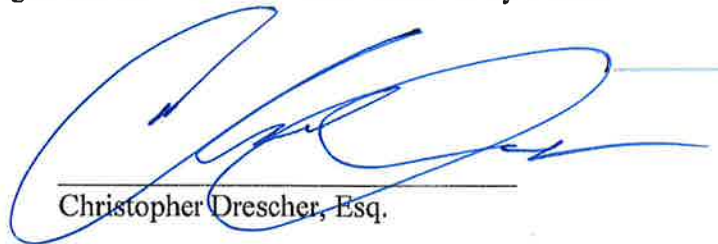


ACCEPTANCE OF SERVICE

I, Christopher Drescher, Esq., being duly authorized as attorney for the Town of Temple do hereby accept service of the Summons Zoning Board Appeal, Complaint and Notice to Defendant, in the action of Deb Balise, et al v. Town of Temple, Docket Number 226-2021-CV-00188. This Acceptance of Service shall constitute and have the same force and effect as service by a sheriff or other duly constituted officer authorized to make service in civil process. This Acceptance of Service shall not be deemed a consent to anything other than the initiation of the action by service of process on the named Defendant.

Date: April 19, 2021

  
\_\_\_\_\_  
Christopher Drescher, Esq.

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

Hillsborough Superior Court Southern District  
30 Spring Street  
Nashua NH 03060

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

SUMMONS  
ZONING BOARD APPEAL  
RSA 677:4



Case Name: **Deb Balise , et al v. Town of Temple**  
Case Numbers: **226-2021-CV-00188**

Date Complaint Filed: April 13, 2021

A Complaint has been filed in this Court. A copy of the Complaint is attached.

**The Court ORDERS that ON OR BEFORE:**

May 29, 2021	Deb Balise; Debbie Diffley; Thomas Hawkins; Seth Poirier; Robert Treadwell shall have this Summons and the attached Complaint served upon Town of Temple.
June 19, 2021	Deb Balise; Debbie Diffley; Thomas Hawkins; Seth Poirier; Robert Treadwell shall electronically file the returns of service with this Court. Failure to do so may result in this action being dismissed without further notice.
30 days after service	Town of Temple must electronically file an Appearance and Answer or other responsive pleading. In addition, a certified record of all previous proceedings must be mailed to this Court. A copy of the Appearance and Answer or other responsive pleading must be sent to the party/parties listed below.

**Notice to Town of Temple:** If you do not comply with these requirements, you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:  
Silas Little III, ESQ

Fernald Taft Falby & Little PA 14 Grove Street PO Box 270  
Peterborough NH 03458

Town of Temple

423 Route 45 Temple NH 03084

BY ORDER OF THE COURT

April 14, 2021

Amy M. Feliciano  
Clerk of Court

(1082)

THE STATE OF NEW HAMPSHIRE

Hillsborough Superior Court Southern District

Docket No.:  
226-2021-CV-00188

Deb Balise, Debbie Diffley, Thomas Hawkins, Seth Poirier, Robert Treadwell

v.

Town of Temple

COMPLAINT  
(APPEAL FROM ZONING BOARD OF ADJUSTMENT DECISION)

1. Your Plaintiffs are Deb Balise, 114 Old Revolutionary Road, Temple, NH 03084; Debbie Diffley, 85 Old Revolutionary Road, Temple, NH 03084; Thomas Hawkins, 203 Old Revolutionary Road, Temple, NH 03084; Seth Poirier, 114 Old Revolutionary Road, Temple, NH 03084, and Mr. Robert Treadwell, 85 Old Revolutionary Road, Temple, NH 03084.
2. Your Defendant is the Town of Temple, a municipal corporation with an address of 423 Route 45, Temple, NH 03084.
3. This matter is from the decision of the Zoning Board of Adjustment on March 16, 2021 to deny the request for rehearing of your Plaintiffs of the decision made on February 2, 2021 on the application of Ben's Pure Maple Products, LLC for a variance from the provisions of Section 13A(1) of the Temple Zoning Ordinance.
4. Jurisdiction and venue is appropriate under New Hampshire Revised Statutes Annotated Chapter 677, Section 4 and RSA Chapter 507, Section 9.
5. Ben's Pure Maple Products, LLC sought a variance from the requirements of the Temple Zoning Ordinance that a commercial use under Section 13A shall be set back at least 500 feet from any existing dwelling of another owner.

6. At the hearing on February 2, 2021, the Board of Adjustment determined that the application for a variance by Ben's Pure Maple Products, LLC was not required. In making the determination, the Temple Zoning Board of Adjustment determined that the required distance of 500 feet from one dwelling to the proposed use meant that the distance was measured from building to building. Further, the Temple Zoning Board of Adjustment determined that the dwelling structure within 500 feet for the proposed use on Temple Tax Map 2-A, Lot 51 does not include a "shop" portion of the dwelling.
7. Your Plaintiffs are persons aggrieved by the decision of the Temple Zoning Board of Adjustment. Your Plaintiffs have participated in the hearings held by the Zoning Board of Adjustment on the application for a variance. Your Plaintiffs' properties are all within the neighborhood of the subject parcel. Each of your Plaintiffs' properties uses as access Webster Highway and Old Revolutionary Road to their properties. The use proposed by Ben's Pure Maple Products would change an existing field to a warehouse/processing facility/retail space employing 26 employees, two (2) driveway entrances from Webster Highway, a 16,000 sq. ft. building, a vertical mass of 8100 square feet, and attendant parking and delivery areas extending approximately 70 feet from the front of the building and 170 feet from the rear of the building. The total developed area for the use is just under 100,000 square feet, purposely kept so by the applicant to avoid an alteration of terrain permit. The proposal of Ben's Pure Maple Products is a substantial change from the existing use of the property and the existing uses in the immediate area. Each of your Plaintiffs has a residential use of their property and the traffic generated by the proposed change immediately injures your Plaintiffs in their enjoyment of their residential uses.

8. Your Plaintiffs through counsel timely filed the request for rehearing of the Board's decision on February 2, 2021. The request for rehearing asserted that the decision of the Board in interpreting the provisions of Section 13A(1) is unlawful and unreasonable.
9. First, the request for rehearing challenged the Board's determination that the required separation of 500 feet was measured not from the proposed use, but rather from any structure proposed for the use to the nearest residential dwelling. The Board in making that determination ignored the plain language of the ordinance. The ordinance does not state "building." The common and ordinary meaning of use of the property includes the necessary ancillary development of the property, including the parking area. The clearest manifestations of a nonresidential use of the property are the substantial area of black top, the in and out traffic to that commercial use, the illumination of parking areas, the vehicle lights and engine noise, and the late hours of snow and ice control. Those activities are all part of the use of the property which fall within the common and ordinary meaning of the word "use."
10. The Board's substitution of the word "building" in Section 13A(1) of the Temple Zoning Ordinance is unreasonable and unlawful. The substitution is unreasonable as it ignores the stated principle of the Temple Zoning Ordinance to provide some separation from commercial development of property from abutting residential property. Section 13 Temple Zoning Ordinance. The decision is unlawful as the Board ignores the principles of statutory construction that requires the Board to determine the meaning of the Zoning Ordinance from its construction as a whole and not by construing isolated words or phrases. The Board ignored the plain language of the ordinance and the Board added words which the Temple

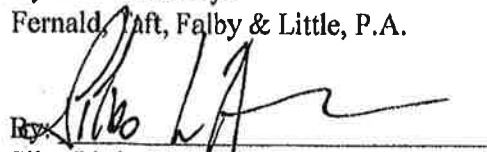
Zoning Ordinance does not include. Connolly v. Town of Madison, New Hampshire Supreme Court Slip Opinion February 22, 2021.

11. The Board's division of an existing residential structure on Tax Map 2-A, Lot 51, 5 NH Route 45, again, ignores the principle that the meaning of the Temple Zoning Ordinance must be derived from construing the ordinance as a whole. Section 11 of the Temple Zoning Ordinance makes clear that a home business must be part of the dwelling. The part of the dwelling the Temple Zoning Board of Adjustment focused on was originally built as a home business. No accessory building was devoted to the home business. At the time of the hearing, that the use of that part of the structure which originally had been built as part of a home business no longer existed and the sole use of the property at 5 NH Route 45 was for residential purposes. Further, there is nothing within the Temple Zoning Ordinance and the residential use of property that precludes a shop from being part of a dwelling and in fact many residential structures throughout New Hampshire contain shops or work spaces which are part of the residential use. The Board inserted a division to the dwelling structure not provided for in the ordinance.
12. The error of the Zoning Board of Adjustment is further demonstrated by the introductory language to Section 13 of the Temple Zoning Ordinance. Section 13 established standards and conditions for "trade, enterprises, facilities, whether commercial, non-commercial, and/or industrial use of land or buildings." Emphasis supplied. The introductory language to Section 13 demonstrates the focus of the ordinance is on the use of the land and not as the Zoning Board would have it on only the building. That the introductory language focuses on the use of the land is only logical as there is almost no nonresidential use of property

which does not involve activities outside of any building or structure, the most common activity being the parking for traffic to and from the proposed use.

13. The Board's decision with respect to the division of the dwelling at 5 NH Route 45 is not supported by the evidence presented to the Board. Tax records and earlier applications to the Town of Temple show that the footprint for the dwelling is beyond what the Board considered and to restate, under Section 11 of the Zoning Ordinance, a home industry or professional service is housed in a dwelling. The Temple Zoning Ordinance makes no distinction between the home business portion of the dwelling and dwelling. The Zoning Board of Adjustment introduced a distinction not found in the ordinance.
14. For each of the reasons set forth above, the Plaintiffs assert that the decision of the Temple Zoning Board of Adjustment on February 2, 2021 is unlawful and unreasonable and respectfully request that this Court remand this matter to the Temple Zoning Board of Adjustment to consider on the merits the application for a variance, order that the proposal of Ben's Pure Maple Products, LLC is subject to the provisions of Section 13A relative to the separation of the proposed use from existing dwelling, and grant such other and further relief as shall be just and equitable.

Respectfully submitted,  
Deb Balise, et al  
By Their Attorneys  
Fernald, Taft, Falby & Little, P.A.

  
\_\_\_\_\_  
Silas Little, NHB #1495  
14 Grove Street, P O Box 270  
Peterborough, NH 03458-0270  
(603) 924-3364 Ext. 14

Date: April 13, 2021

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

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Nashua NH 03060

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**NOTICE TO DEFENDANT**

Case Name: **Deb Balise , et al v. Town of Temple**  
Case Number: **226-2021-CV-00188**

You have been served with a Complaint which serves as notice that this legal action has been filed against you in the **Hillsborough Superior Court Southern District**. Review the Complaint to see the basis for the Plaintiff's claim.

Each Defendant is required to electronically file an Appearance and Answer 30 days after service. You may register and respond on any private or public computer. For your convenience, there is also a computer available in the courthouse lobby.

If you are working with an attorney, they will guide you on the next steps. If you are going to represent yourself in this action, go to the court's website: [www.courts.state.nh.us](http://www.courts.state.nh.us), select the Electronic Services icon and then select the option for a self-represented party.

1. Complete the registration/log in process. Click Register and follow the prompts.
2. After you register, click Start Now. Select **Hillsborough Superior Court Southern District** as the location.
3. Select "I am filing into an existing case". Enter **226-2021-CV-00188** and click Next.
4. When you find the case, click on the link and follow the instructions on the screen. On the "What would you like to file?" screen, select "File a Response to Civil Complaint". Follow the instructions to complete your filing.
5. Review your Response before submitting it to the court.

**IMPORTANT:** After receiving your response and other filings the court will send notifications and court orders electronically to the email address you provide.

A person who is filing or defending against a Civil Complaint will want to be familiar with the Rules of the Superior Court, which are available on the court's website: [www.courts.state.nh.us](http://www.courts.state.nh.us).

Once you have registered and responded to the summons, you can access documents electronically filed by going to <https://odypa.nhecourt.us/portal> and following the instructions in the User Guide. In that process you will register, validate your email, request access and approval to view your case. After your information is validated by the court, you will be able to view case information and documents filed in your case.

If you have questions regarding this process, please contact the court at 1-855-212-1234.