

FERNALD, TAFT, FALBY & LITTLE
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
14 GROVE STREET, P. O. BOX 270
PETERBOROUGH, NEW HAMPSHIRE 03458-0270

Tel: 603-924-3361

FAX: 603-924-4277

www.fff-law.com

SILAS LITTLE
MARK D. FERNALD

RICHARD R. FERNALD
(1929-2020)
RETIRED
ROBERT TAFT
J. RODERICK FALBY, JR.

March 2, 2021

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

Re: Variance Application of Ben's Pure Maple Products, LLC, Tax Map 2, Lot 27

Dear Members of the Board:

Enclosed please find five (5) copies of a Request for Rehearing with respect to the Zoning Board of Adjustment's decision on February 2, 2021.

A courtesy copy of this Request for Rehearing is provided to Thomas Hanna, Esq. by United States Mail.

Very truly yours,

Fernald, Taft, Falby & Little
Professional Association

By: 
Silas Little

Direct Line: 603-924-3364 Ext. 14

sl/djh
enc.

cc: Thomas Hanna, Esq. (w/enc.)
Mr. Robert Treadwell (w/enc.)
Ms. Debbie Diffley (w/enc.)
Mr. Seth Poirier (w/enc.)
Ms. Deb Balise (w/enc.)
Mr. Keith Charlton (w/enc.)
Ms. Kristin Charlton (w/enc.)
Mr. Tom Hawkins (w/enc.)



TOWN OF TEMPLE
ZONING BOARD OF ADJUSTMENT
RE: VARIANCE APPLICATION OF BEN'S PURE MAPLE PRODUCTS, LLC

REHEARING REQUEST

NOW COME Thomas Hawkins, Robert Treadwell, Debbie Diffley, Seth Poirier, Deb Balise, Keith Charlton, and Kristin Charlton and by their counsel respectfully request that the Board rehear its decision of February 2, 2021 on the issue of the need for a variance from the provisions of the Temple Zoning Ordinance, Section 13A and 13B.

Counsel for these parties opposing the application of Ben's Pure Maple Products, LLC anticipates a question as to the standing. Counsel asserts these parties have standing under the reported decision of Weeks Restaurant Corp. v. City of Dover, 119 NH 541 (1979) and cases subsequently decided applying the test announced in that case. The increased traffic generated by this application has a particular impact on these parties in regards to the existing network of roads providing access to these property owners. See Thomas v. Town of Hooksett, 153 NH 717 (2006.)

In support of this request for rehearing, counsel asserts that the decision of the Board is unlawful and unreasonable. In considering the Zoning Ordinance, the Board must give equal effect to all provisions of the Zoning Ordinance. The fact that a parking area must be 55' from the boundary line does not preclude that the parking lot as part of the use must also be 500' from a residence. Reflection on the nature of use of a parking lot in connection with a commercial use emphasizes that it be separated as part of the use from the dwelling. The clearest manifestations of a non-residential use of the property are the substantial area of black top, the in and out traffic to that commercial use, the illumination of the parking areas, the vehicle lights and engine noise, and the late hours of snow and ice control. Further, commercial use does not necessarily involve a structure

or building. For instance, a retail nursery may well have substantial area consumed by plants and stock for sale and only a small service building. The stock displayed around the area constitutes the use of the property. Another example would be a miniature golf or other amusement facility. Again, any structure associated with that operation would be a small portion of the actual commercial use of the property.

The Board's interpretation of the Zoning Ordinance does violence to the principle of statutory construction where within the regulation a possible construction that does not nullify one part of the regulation is required. The Board ignores the common and ordinary meaning of "use."

Use, (noun), the act of using; the application or employment of something for some purpose: The use of a pencil for writing. The condition or fact of being used. The manner of using usage. The permission, privilege or benefit of using something. The power or ability to use something. The need or occasion to use or employ. The quality of being suitable or adaptable to an end: usefulness. The goal, object or purpose for which something is used. Accustomed or usual procedure; habitual practice; accustom.

The common dictionary definition recited above from The American Heritage Dictionary of the English Language clearly embraces all the changes to Map 2, Lot 27 proposed by Ben's Pure Maple Products, LLC and not only the building. For the zoning ordinance to intend only the building to be separated under Article 13 of the Temple Zoning Ordinance, then that wording would have been inserted.

With respect to the issue of whether the property located at Tax Map 2A, Lot 51 on Route 45 can be divisible into a dwelling and non-dwelling is not supported by the Zoning Ordinance. Section 11 of the Temple Zoning Ordinance makes clear that a home business is to be part of the dwelling. In this case, the home business was operated entirely within the dwelling within the meaning of Section 11.A.2. No accessory building was devoted to the home business. See also

Section 11.B.2. The present condition of the property is that it is only used as a dwelling. There is nothing in the existing structure that precludes the “shop” from being part of the dwelling. The fact that that extension may have been used previously for a home business does not justify the Board in disregarding it as part of the dwelling. In fact, under the Zoning Ordinance and the definition for a home business, it is central that, in any portion of the dwelling that the home business is carried on, the nature and outward appearance of that portion of the dwelling should be residential. The fact the tax card may show the ell as a “shop” does not mean it is not part of the dwelling as certainly in the Town of Temple there are many residential structures which contain “shops” or “work spaces” as part of the residential use. See attached drawings which show that the shop was not in a detached dwelling, but was part of the dwelling at Tax Map 2A, Lot 51.

The Board is straining the common meaning of the English language in its application of the word “use” and of “dwelling.” Such elasticity is not supported by statute and by case law which commands that words in the Zoning Ordinance be given their ordinary meaning. The Board seems to have a preordained result with no fair and logical exegesis of the Zoning Ordinance and its purposes.


With citations omitted, the Supreme Court wrote:

The interpretation of an ordinance presents a question of law, and requires [the court] to determine the intent of the enacting body. [The court] uses the traditional rules of statutory construction when interpreting zoning ordinances. [The court] construes the words and phrases of an ordinance according to the common and approved usage of the language. Furthermore [the court] determines the meaning of a zoning ordinance from its construction as a whole, not by construing isolated words or phrases. [The court] can neither ignore the plain language of the ordinance nor add words which the lawmakers did not see fit to include. When the language of an ordinance is plain and unambiguous, we need not look beyond the ordinance itself for further indications of legislative intent. [at pg. 3, paraphrased]. Connolly v. Town of Madison February 22, 2021.

For these reasons, the Board is respectfully requested to rehear the issue and address the proper application of the Zoning Ordinance as written with proper attention to the ordinary meaning of the words as required by New Hampshire Revised Statutes Annotated Chapter 21, Section 1, and find that a variance is required and deny the variance as there is no unnecessary hardship for reasons previously argued to the Board on this point.

Respectfully submitted,
Thomas Hawkins
By His Attorneys
Fernald, Taft, Falby & Little, P.A.

Date: March 2, 2021

By: 

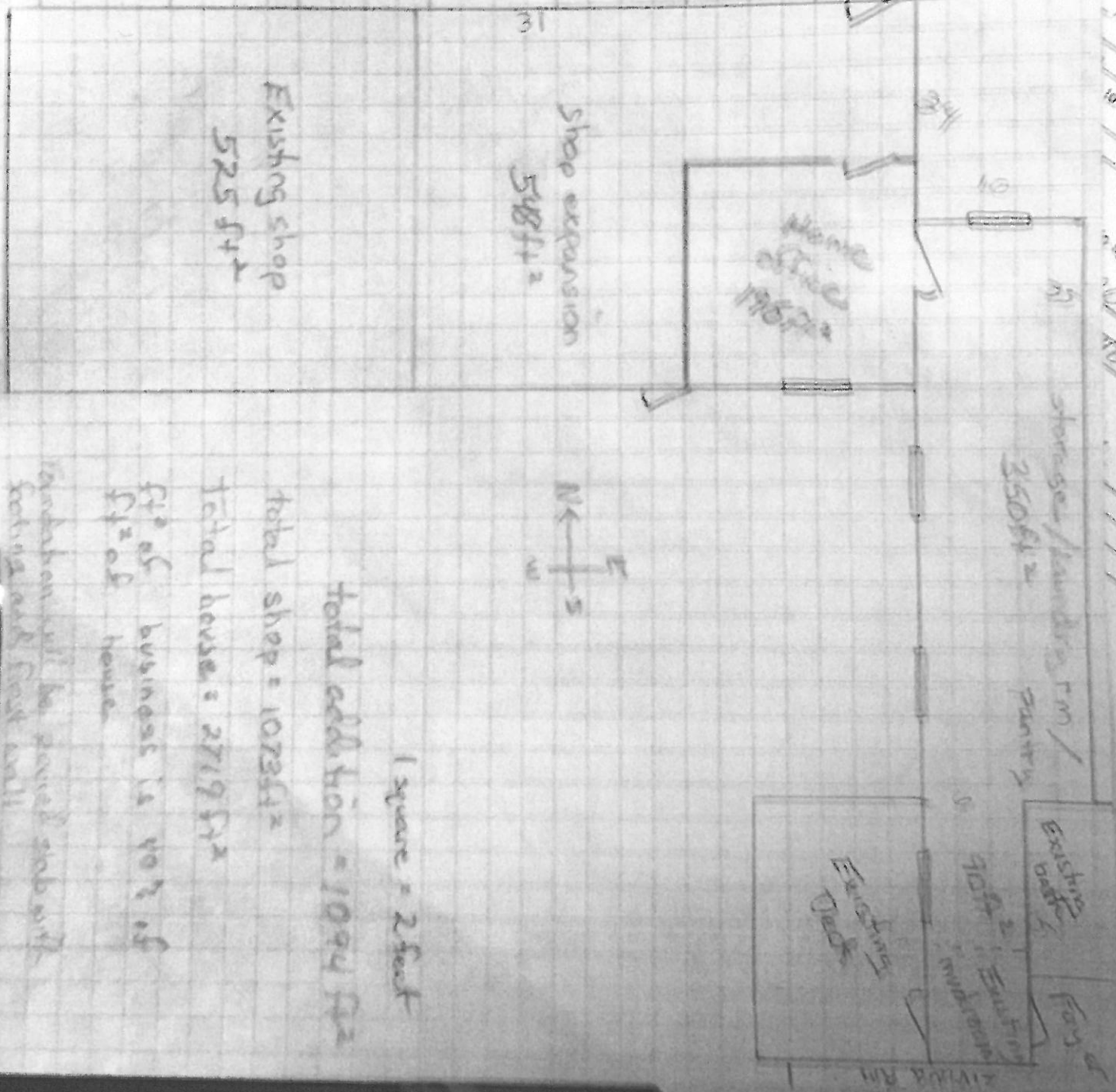
Silas Little, NHB #1495
14 Grove Street, P O Box 270
Peterborough, NH 03458-0270
(603) 924-3364 Ext. 14

parking area for 10+ vehicles
 68' x 45'

Driveway
 to RR 45

① ② ③ ④ ⑤ ⑥ ⑦

PARKING



OF TEMPLE
 IT TO BUIL

Address: 5
 Location: A
 4/A
 to construct sq. ft.
 sq. ft.
 Rear: 46

system
 ON
 TED D

total addition = 1094 sq ft

total shop = 1073 sq ft

total house = 2719 sq ft

sq. ft. of business is 40% of
 sq. ft. of house

Expansion will be a great job with
 both new food hall

1 square = 2 feet

parking area for 10+ vehicles
68' x 45'

Driveway
to Rt 45

PARKING

Existing shop
525 ft²

Shop expansion
548 ft²

Home office
196 ft²

storage/laundry rm/
pantry
350 ft²

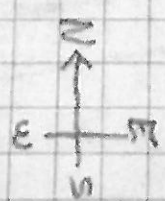
Existing
Deck

Existing
wood ramp
90 ft²

Existing
Deck

Fog
of

LIVING RM



1 square = 2 feet

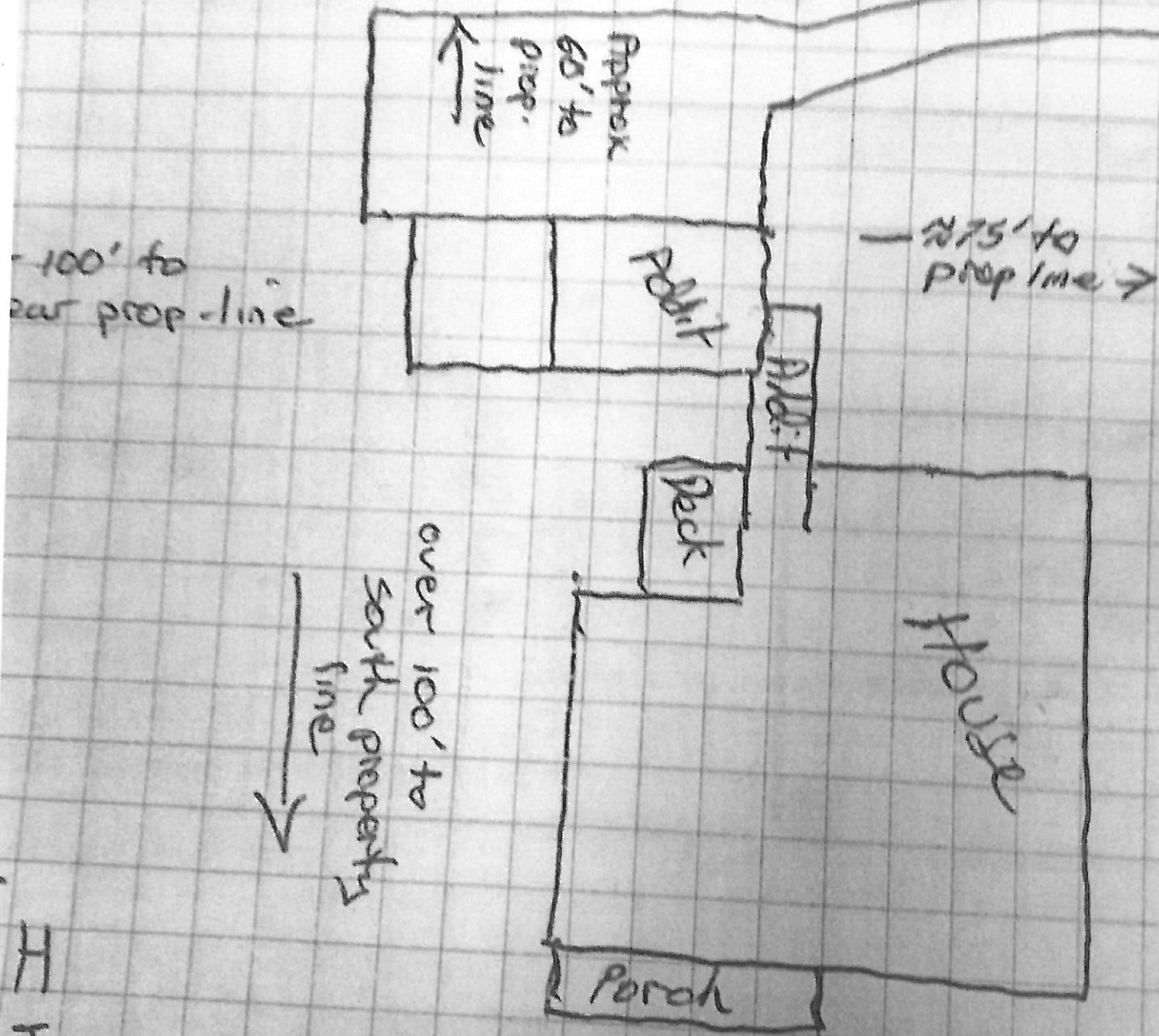
total addition = 1094 ft²

total shop = 1073 ft²

total house = 2719 ft²

ft² of
business is 40% of
house

Dube Driveway is a ROW



RT 45 → to temple

I have spoke