

WADLEIGH, STARR & PETERS, P.L.L.C.

WILLIAM C. TUCKER
JAMES C. WHEAT, Of Counsel
MARC R. SCHEER
GREGORY G. PETERS
FRANK P. SPINELLA, Jr.
DEAN B. EGGERT
MICHAEL R. MORTIMER
KATHLEEN C. PEHL
RICHARD THORNER
CHARLES F. CLEARY
CHRISTINE GORDON
TODD J. HATHAWAY
ALISON M. MINUTELLI
MICHAEL J. TIERNEY
DONNA J. BROWN

Attorneys At Law
95 Market Street
Manchester, New Hampshire 03101
Telephone (603) 669-4140
Facsimile (603) 669-6018

WWW.WADLEIGHLAW.COM

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ROBIN D. MELONE
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CHRISTOPHER P. MCGOWN
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STEPHEN N. ZAHARIAS
ABBY TUCKER
STEPHEN M. BENNETT, Of Counsel
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ELIZABETH E. EWING
WILLIAM P. REDDINGTON
MICHAEL G. EATON
GRETCHEN M. WADE
AUTUMN H. KISH
CATHERINE C. BOUSQUET

Direct Dial: (603) 206-7239
mtierney@wadleighlaw.com

May 12, 2022

Temple Zoning Board of Adjustment
423 N.H. Rt. 45
PO Box 191
Temple, NH 03084
Via email at boardassistant@templenh.org

Re: Boo Martin/Stepping Stones Event Center Special Exception Application

Dear Zoning Board:

As you know, this firm represents Alec MacMartin and Arlene Laurenitis, both individually and in her capacity as Trustee of the Arlene Laurenitis Revocable Trust. In addition to residing in close proximity to the proposed Stepping Stones Event Center, my clients own the abutting properties to the north and east of the Event Center. One of my client's abutting properties is located in the Town of Temple while a different abutting lot is located in the Town of Wilton.

I. Abutters Must Be Given an Opportunity to Present Rebuttal

Pursuant to the Temple ZBA Rules of Procedure, VI(D)(4), abutters must be allowed to present rebuttal to applicant's testimony. Nevertheless, abutters were not provided an opportunity for rebuttal at the April 14th or April 21st hearings. They need to be given an opportunity to provide rebuttal.

II. Applicant Cannot Meet Both Noise Ordinance and Fire Code

At the hearing on April 14, 2021, the applicant offered to comply with a condition of complying with the Temple Noise Ordinance. Article IV, Section 31(5) sets forth the standards for compliance with the Temple Noise Ordinance. In the Rural Residential and Agricultural District, the absolute limits are 35 dBA (10-min L10) for nighttime noise "anywhere at any time on another property." If applicant was able to meet this standard, then any approvals board

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should be subject to a specific condition that noise **shall not exceed 35 decibels at any property line**. Nevertheless, applicant is not able to meet this standard. The applicant has submitted a sound report from Reuters based on the barn doors remaining closed in order to keep the sound contained within the barn. Keeping the original barn doors closed is necessary to comply with the noise ordinance. The State Fire Marshal, in a June 14, 2021 Letter to Temple Fire Chief George Clark, determined that it was necessary to have the original barn doors “secured in the open position when the facility is occupied.” See attached as Exhibit A. Keeping the barn doors open is necessary to comply with fire safety. The ZBA cannot condition that the doors remain closed while simultaneously requiring that the doors remain open. Therefore, the application must be denied.

III. Parking is Within the 55 Foot Setback of Lot Lines

Section 13A(2) provides that “off street parking shall, at a minimum, be set back at least fifty-five (55) feet from all lot lines.” The applicant’s plans show a parking lot, consisting of 9 spaces, including required handicap accessible parking, within the 55 foot setback.

IV. ZBA Secretary Sliviak Should Recuse Herself

ZBA Secretary Emily Sliviak should recuse herself from hearing this case. Pursuant to RSA 673:14, no zoning board member “shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.” Included in the applicant’s special exception application is a petition from Amber L Fisk of 83 Webster Highway. As Ms. Sliviak has acknowledged, Ms. Fisk is her mother-in-law. In addition to the familial relation, Amber and Wendell Fisk own the land (HCRD Bk 5082, Pg 030 and dated 1/11/1989) where Ms. Sliviak and her husband, Ben, currently run Ben’s Sugar Shack at 83 Webster Highway. Given the factual assertions of Ms. Sliviak’s mother-in-law have been raised in the application for a special exception, Ms. Sliviak should have recused herself from considering this application and the board should move forward with either an alternate or a smaller board based solely on Ms. Sliviak’s relationship with Ms. Fisk. At the April 14, 2022 hearing, Ms. Sliviak’s husband testified. Ms. Sliviak’s husband vocal support of the application, including how increasing traffic will increase his business at Ben’s Sugar Shack, is such that Ms. Sliviak must recuse herself from further consideration.

V. The April 14th and 21st Meetings Were Not Lawful Public Hearings and Therefore the ZBA Must Restart the Public Hearing Process

Finally, it is undisputed that proper notice was not provided to the Town of Wilton prior to the April 14th and April 21st meetings. In *Warner Road Holdings v. Town of Warner*, Docket 217-2017-CV-00199, the Merrimack Superior Court has held that when a ZBA gives notice to

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some but not all, the partially noticed public hearing is void and a new public hearing must be held. Likewise, because notice was not properly provided to Wilton, all parties, including my clients, must be given an opportunity to present on all aspects of the application.

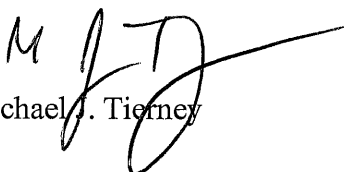
VI. Any Conditions, Including Site Plan Approval, Should be Fulfilled Before A Special Exception is Effective

The ZBA should not grant a special exception as the applicant has not and cannot meet the criteria in the Temple Zoning Ordinance. If, however, the ZBA were inclined to grant approval, subject to conditions, the ZBA should make clear that its conditions are pre-conditions prior to the applicant being able to operate her commercial venture. For example, the ZBA might adopt as a condition that *“The Barn shall not be used for events and the Lodge shall not be used for commercial lodging until the applicant has first obtained final site plan approval from the Temple Zoning Board for all activities taking place on the property.”*

CONCLUSION

Stepping Stones’ application for a special exception to utilize their property as a commercial event center cannot be considered as presented. Stepping Stones has not demonstrated that it meets the requirements of Article IV, Section 13(A) and cannot meet the conditions of Article IV, Section 13(B).

Very truly yours,


Michael J. Tierney

MJT
Enclosure

cc: Mr. Alec MacMartin
Ms. Arlene Laurenitis



Robert L. Quinn
Commissioner

State of New Hampshire

DEPARTMENT OF SAFETY

Division of Fire Safety

Office of the State Fire Marshal

Office: 110 Smokey Bear Boulevard, Concord, NH 03301

Mailing Address: 33 Hazen Drive, Concord, NH 03305

Telephone: 603-223-4289 • **Fax:** 603-223-4294

www.nh.gov/firesafety



Sean P. Toomey
State Fire Marshal

June 14, 2021

Chief George Clark
Temple Volunteer Fire Department
PO Box 80
423 Rt. 45
Temple, NH 03084

Re: Stepping Stones Event Center, 19 Putnam Rd. Temple.

Dear Chief Clark,

On June 1, 2021 I accompanied you on an inspection of the Stepping Stone Event Center, 19 Putnam Road in Temple. The owner of the facility would like to convert an existing barn to a rental facility for weddings and similar functions. In preparation for that conversion, the owner secured the services of Triangle Fire Consultants (TFC) to evaluate the facility. The purpose of our inspection was to compare the consultant's report with the existing conditions of the facility.

Based on conversations with the owner, fire chief and others, it appears that the barn has been used occasionally as a place of assembly for a number of years. However, the facility has never formally been approved by the town fire, building or other authorities as a change of use from an agricultural building to a place of assembly. Applying the codes as a new facility or as an existing assembly is a determination for the local authorities. For the purposes of this report I will address the code requirements of the facility both as an existing assembly and new assembly occupancies. This report is based on, but not limited to my observations, the consultant's report, NFPA 101, 2015 edition (101), the International Building Code, 2015 edition (IBC) and the International Existing Building Code, 2015 edition (IEBC). I offer the following.

General Conditions:

The building in question is 158 feet long by 52 feet wide, with 3 stories, and is of unprotected wood frame (VB) construction. The first (lowest) level and second level both exit at grade. The intent is to occupy the second level as the place of assembly. The first and second levels are full the full 158' x 52'.

The third level is a former hay loft and is approx. 12 feet wide for about 60% of the structure and full width of the remaining 40%. Consequently, the third level occupies more than 1/3 of the floor below and cannot be classified as a mezzanine (101, 8.6.10.2, IBC 505.2.1). The hay loft is not totally enclosed and the guards do not meet the requirements of (101) or (IBC). Based on the structural deficiencies and the lack of code compliant access and egress, the third level could be considered unoccupied space.

Classification of Occupancy:

The original occupancy classification of the facility storage (101) and utility (IBC). The facility was not separated and the entire facility held the same classification. The new proposal is the use the second level as a place of assembly (101), A-2 (IBC) and continuing to use the lower level as storage. The TFC report classifies the facility as a "mixed- use non-separated barn building." NFPA 101, 6.1.14.3.2 allows for mixed non-separated occupancies and states "The building shall comply with the most restrictive requirements of the occupancies involved, unless separate safeguards are approved." The IBC 508.3.1 also allows for mixed nonseparated occupancies provided that "the most restrictive provisions of Chapter 9 that apply to the nonseparated occupancies shall apply to the total occupancy area." I agree that the changing rooms and office space on level two can be considered accessory uses to the main assembly space and could be treated as such.

Fire Protection:

If considered a new A-2, assembly occupancy, the IBC would require an automatic sprinkler system in accordance with 902.2.1.2 (1) The fire area exceeds 5000 square feet and (2) The fire area has an occupant load of 100 or more. NFPA 101 requires that all dance halls, discotheques, nightclubs, and assembly occupancies with festival seating have an automatic sprinkler system. Otherwise all assembly occupancies with occupant loads exceeding 300 persons must be so equipped.

If considered as an existing A-2, assembly occupancy, the IBC would not be applicable. The IEBC 703.1 says that, "Alterations shall be done in a manner that maintains the level of fire protection provided." NFPA 101 requires existing dance halls, discotheques, nightclubs and assembly occupancies with festival seating be equipped with an automatic sprinkler system. Otherwise they would not be required. If the facility cannot be defined as a dance hall, discotheque, or nightclub then a sprinkler system would not be required under 101.

A fire alarm system is not required.

Means of Egress:

I agree with TFP that 2 exits are required by the IBC, IEBC, and 101. The main exit consists of two barn style doors that are going to be secured in the open position when the facility is occupied. The walking surface as you enter the facility is dirt and transitions to a wood floor. NFPA 101 7.1.6.3.1 requires that "Walking surfaces shall comply with all of the following: (1) Walking surfaces shall be nominally level. (2) The slope of a walking surface in the direction of travel shall not exceed 1 in 20, unless the ramp requirements of 7.2.5 are met. (3) The slope perpendicular to the direction of travel shall not exceed 1 in 48." Section 7.1.6.2 Changes in Elevation may also apply. The main entrance egress access should be reconstructed to meet the requirements of the code. The second means of egress was newly constructed. At the time of my inspection the new stairs did not meet the requirements of 101 or IBC. TFP outlined the requirements for the exits, including the new egress stairs on pages 3 and 4 of their report. These conditions were not applied when the stairs were constructed.

Interior Finish:

As stated in the TFP report, the interior finishes in the assembly space and egress access must meet Class A, B or C. TFP cites NFPA 101 10.2.3.1 as allowing untreated wood as interior finish. This section is not applicable as it only applies to type IV construction and this building is type V.

The exposed wood must meet the interior finish requirements of class A, B, or C. The owner should verify how this is to be accomplished.

On page 5 of the TFP report it is recommended that hard wired smoke detectors be installed in the lower level. Based on the description, my assumption is that they are recommending 110 volt, hard wired smoke alarms. Although I agree with the recommendation for detection, I would caution you on accepting this type of detection for the following reasons: 1) 110 volt alarms are usually listed and reserved for use in residential type occupancies. 2) In the lower level of the facility the varying temperatures due to lack of heat or air conditioning, could have an adverse effect on the back up batteries. The smoke detectors could easily get dirty or be subject to occupancy by insects etc. 4) Maintaining a presence in a "constantly attended location" may be difficult.

As part of the *separate approved safeguards* as required in NFPA 101 6.1.14.3.2 You may want to consider a commercial fire alarm system. Heat detectors could be installed in those areas where dirt and contamination could become a factor. It would eliminate the need for a constantly attended location because of the occupant notification via horn strobes. Newer FACPs can have cabinet heaters installed to maintain the batteries when cold weather becomes a factor.

I also reviewed the Lushes Curtain submittal. Lushes Curtain does offer fire resistive curtains that appear to meet the code requirements for draperies. The owner must insure that the fire resistive curtains are purchased for this facility.

This is certainly not an exhaustive code review. I believe that this report will give you some guidance and comfort that the Stepping Stone Event Center can be occupied safely and in compliance with the adopted codes without rebuilding the entire facility. If I can be of any further assistance, please feel free to contact me.

Best Regards,

A handwritten signature in black ink that reads "Ron Anstey". The signature is written in a cursive, slightly slanted style.

Inspector Ron Anstey, CBO, CFI, CFPS, CFEI
Fire Protection Specialist

Saving lives and property through education, engineering and enforcement