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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 Variance 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. The ZBA Should Consider the Variance Application Prior to Considering the Special Exception Application

The applicant has made clear in her application that she is applying for a variance as she cannot meet the special exception criteria. Where the special exception is dependent on first obtaining a variance, the ZBA should stay consideration of the special exception until it has completed its review of the variance application.

II. Regional Impact Notices Must Be Sent Prior to Holding a Public Hearing

New Hampshire statutes require, *prior* to considering the merits of this application, that the ZBA first determine if this constitutes a development of regional impact as defined in RSA 36:55. RSA 36:56 requires that the Temple ZBA "determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact." It clearly

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is a development of regional impact as this property abuts the Wilton town line. Nevertheless, the Temple ZBA has not yet made that determination for this particular variance application. Although notice of some form may have been sent to Wilton for the related special exception application, the Temple ZBA has not provided the statutorily required notice for the variance application. It should formally vote tonight that it is a development of regional impact and then follow the procedures in RSA 36:57 prior to acting on the application. RSA 36:57 requires the ZBA to "Not more than 5 business days after reaching a decision regarding a development of regional impact, the local land use board having jurisdiction shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made." If the vote of regional impact is made on May 12th, then it must provide minutes of that vote on or before May 19th. RSA 36:57, III goes on to provide that "At least 14 days prior to public hearing, the local land use board shall notify, by certified mail, all affected municipalities and the regional planning commission of the date, time, and place of the hearing and their right to testify concerning the development." The ZBA cannot hold a public hearing if it does not give the statutorily required 14 days notice after taking a vote to determine regional impact. As abutters resident in the Town of Wilton, my clients request that Wilton be provided an opportunity to present at a properly noticed public hearing.

III. One Cannot Obtain a Variance From Special Exception Criteria

The applicant has made clear that she is seeking a variance as not to comply with the special exception criteria. In other words she is asking the ZBA to waive the special exception requirement that all commercial uses be set back at least 100 feet from any property line. A ZBA cannot waive special exception criteria. If the applicant were to file an application for a variance to use her properties for commercial purposes then that request would need to be considered on its merits. The applicant cannot however, seek a variance from special exception criteria that she does not meet.

IV. Neither Spirit of the Ordinance Nor Hardship Criteria Are Met

The applicant has the burden of showing she meets all 5 variance criteria. This she cannot do. In particular, she fails to meet the spirit of the ordinance factor and she has failed to show a hardship arising from conditions of the land.

Section 13(B)(1) requires a 100 foot setback for commercial uses permitted by special exception. The spirit of this particular provision of the ordinance is to keep a greater setback of commercial uses in order to preserve the residential and agricultural character of the area. In her application, Stepping Stones asserts that the spirit of the ordinance is to protect against overcrowding. Protection against overcrowding is the purpose of the general 35 foot setback for all buildings found in Article IV, Section 5, not the 100 foot commercial use setback. Section 13(B)(1) includes a greater setback for commercial uses than non-commercial uses due to the negative effects that commercial uses in close proximity have on the character of the area.

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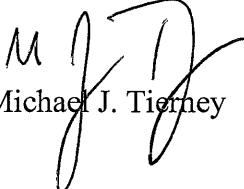
Furthermore, although the applicant is arguing that for the purposes of the variance application the ZBA should treat the properties owned by the Hagner Trust and the Martin Trust as if they are one operation, the applicant is arguing in her special exception application that the commercial use of the Lodge, Homestead and arena are not part of the application. She cannot have it both ways. When determining the spirit of the ordinance, the ZBA should look not just on this one property in isolation but the cumulative effect of if every application for a commercial use. *Perreault v. Town of New Hampton*, 171 N.H. 183, 185, 193 A.3d 266, 268 (2018). Finally, **while the spirit of the ordinance might not be harmed with a variance to have a 90 or 95 foot setback, the applicant in this case is proposing a variance from 100 feet down to only 33 feet.** That drastic of a departure would eviscerate the spirit of the ordinance.

The applicant fails to identify a hardship that she herself has not created by unlawful use or ownership patterns. The cases discuss that there must be “special conditions of the land” and that size and dimensions of existing buildings can be relevant to special conditions relating to the land. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 518, 34 A.3d 584, 592 (2011). There is no case, however, where the special condition is the ownership patterns. That is because a variance runs with the land but the ownership patterns change. The Hagner Trust only received the property in 2021 and could sell it to a third party tomorrow. Where the applicant has failed to identify any special conditions of the land, the variance must be denied.

CONCLUSION

Stepping Stones’ variance application to waive special exception criteria cannot be considered as presented. Stepping Stones has not demonstrated that it meets the spirit of the ordinance nor that there are special conditions of the land necessitating a variance.

Very truly yours,


Michael J. Tierney

MJT
Enclosure

cc: Mr. Alec MacMartin
Ms. Arlene Laurenitis