

January 27, 2021

Thomas R. Hanna, Esquire
BCM Environmental & Land Law, PLLC
3 Maple Street
Concord, New Hampshire 03301

Re: Opinion: Temple Zoning Board of Adjustment
Application for Special Exception

Ben's Pure Maple Products, LLC
Map 2, Lot 17
Webster Highway & N.H. Route 101
Town of Temple, New Hampshire

Dear Mr. Hanna:

At your request, I am providing a supplement to my original opinion letter dated November 13, 2020. It is my understanding that there are concerns regarding the data provided along with my overall opinion. In addition, the ZBA received additional information subsequent to my testimony that I will address herein. The original purpose of this consulting assignment was to provide an opinion as to whether the proposed maple syrup production facility will impact the surrounding property values. This supplemental opinion further expands on that opinion and addresses issues raised since my original testimony.

It is important to note that the scope of my work related to this project included researching market data and evidence that either indicates an impact on surrounding property values from the proposed use or no evidence of an adverse impact on adjacent property. Sometimes the results are mixed, other times they are not. The town's ordinance provides the specific criteria of what I must consider. Section 13A, 3) of the Temple Zoning Ordinance states:

The proposed use shall not adversely affect the value of adjacent property. An adverse affect on adjacent property is one which would be obnoxious or injurious or limit use of neighborhood property by causing such problems as excessive noise, odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare, drainage, or other conditions that are associated with the intended use but are not typical of permitted uses within the area.

It is important to note that the ordinance refers to an adverse affect on "adjacent property". The ordinance is silent on the definition of "adjacent". Merriam Webster Dictionary defines adjacent as: 1a. not distant, nearby; 1b. having a common endpoint or border // adjacent lots; 1c. immediately preceding or following. Given that definition 1b. makes specific reference to real estate one could reasonably conclude that this applies to the intended definition in the ordinance. Therefore, it is the adjacent or abutting properties that have a common endpoint or border with the subject property that are in question. In my earlier opinion, I dealt with a broader view of the neighborhood that included many properties that were not "adjacent property".

There are a total of ten properties that are adjacent to the subject property. Two are owned by the applicant. Of the remaining properties, none of the owners have submitted evidence during multiple hearings that the proposed use would adversely affect the value of their property.

In a letter to the ZBA dated January 6, 2021, Attorney Silas Little submitted tax assessment cards from Dollar General Stores located in three New Hampshire towns. He compares the size of a Dollar General Store to that of the proposed building and suggests that the structure would "lend itself to this type of use". Mr. Little's comparison and analysis are misleading and flawed.

First, I am at a loss how a Dollar General Store located in another town is relevant to the application. Second, it is not necessarily the size of the building but the overall size of the site that is relevant. In this case, Mr. Little's three examples range in size from 1.64 to 2.52 acres. The subject site is 2.7 times larger than the biggest Dollar General site at 6.88 acres. When considering the size of the building located on the site, the subject property has 19:1 land to building ratio. In comparison, the three Dollar Store properties have 12, 9 and 8:1 ratios. This shows that much more of the land was developed with the retail stores compared to the subject property. The inference that the Ben's Sugar Shack is or could somehow be a low cost, budget retail store is also misleading. The fact is that all three of these rural southwestern New Hampshire towns (Bennington, Jaffrey, and Swanzey) within reasonable proximity to Temple all approved high volume, high traffic, open seven days per week retail operations located along state highways. In further comparison, the NH Department of Transportation traffic counts for each of these locations were 6,800, 13,000, and 14,000 vehicles per day respectively. Two of the sites had traffic counts nearly double of that of the subject property's location along N.H. Route 101. Third, a Dollar General Store is a low cost construction building and lacks any architectural appeal much less fitting for the region's rural character unlike what is being proposed, whereas Ben's proposed building is articulated, has windows at pedestrian scale and presents as an agricultural operation.

I have also been provided with a letter submitted to the Temple ZBA by Beth Fox dated January 5, 2021. Specifically, Ms. Fox suggests both mine and the assessor's conclusions are in question since the property located at 56 Webster Highway sold for \$375,000 or more than 10% less than the assessed value of \$422,000. On January 26, 2021, I interviewed Heather Peterson, the listing broker of the property in question. I was provided with the following information related to the property, conditions of sale, and its market value.

- The extended marketing period was due to the property being actively marketed beginning in September and then COVID came into being a factor through the winter months when there is typically minimal sales activity.
- The broker described the property as dated. The plumbing fixtures are circa 1980.
- The family retained 108 acres surrounding the property.
- The barn is not an animal barn but rather more for storage.
- The pool and hot tub require replacement. The pool has not been open in years, the pipes and cement are cracked and broken. The hot tub was gunite like the pool and will most likely require significant repairs & renovation at significant cost.
- The previous owner passed away in 2015 in her 90s and then the property was occupied by a grandson who subsequently moved away. Neither the prior owner nor the grandson did much, if anything, in the way of upkeep and renovation.
- The house has two main bedrooms. The ell has an additional three bedrooms all of which are walk through.
- The property has a drilled well and a two bedroom septic system circa 1980s despite the house having 5 bedrooms and was marketed as such.

- The broker indicated that the biggest objection from potential buyers was the traffic noise from N.H. Route 101. She also mentioned the shooting from Timberdoodle was an issue to potential buyers due to the noise.
- When asked about the two commercial establishments near the property, she indicated that there were no objections to either. "Everybody loved the fact that they could buy the fresh meat, milk, and vegetables on the street".
- The broker also disclosed the proposed project by Ben's Sugar Shack to potential buyers. She indicated that there were no objections and that prospective buyers' reactions were favorable.
- I asked: Did the property sell at market value? Answer: "Yes"
- I asked: Is the property overassessed? Answer: "Yes"
- She indicated that the reason the property sold at its price was because of the overall age and condition of the house and other improvements. The price had nothing to do with the surrounding commercial uses or Ben Fisk's proposed facility that were viewed favorably by potential buyers.

In summary, Ms. Fox's assertion that the sale of 56 Webster Highway calls into question my opinion. When, in fact, after researching the property and the conditions related to the sale, it is clear that the existing Ben's Sugar Shack location *and* the proposed location were not deterrents to prospective buyers but rather viewed favorably as attributes to the neighborhood. This is the most relevant and recent market derived data available related to a possible adverse affect on property values.

As stated in my original opinion letter, it is easy to claim an adverse impact; however, the supporting evidence and market data indicates otherwise. Regardless if there is limited data or an overabundance of data, the fact remains that the ZBA has not received any credible evidence or expert opinion to support that there would be an adverse affect on adjacent property.

After considering the additional correspondence submitted to the ZBA since my original opinion and testimony, the additional research and consideration contained herein further supports my opinion that there is no market evidence that the proposed project will diminish surrounding property values or have an adverse affect on adjacent property.

Respectfully submitted,
B.C. UNDERWOOD LLC



Brian C. Underwood, CRE, FRICS