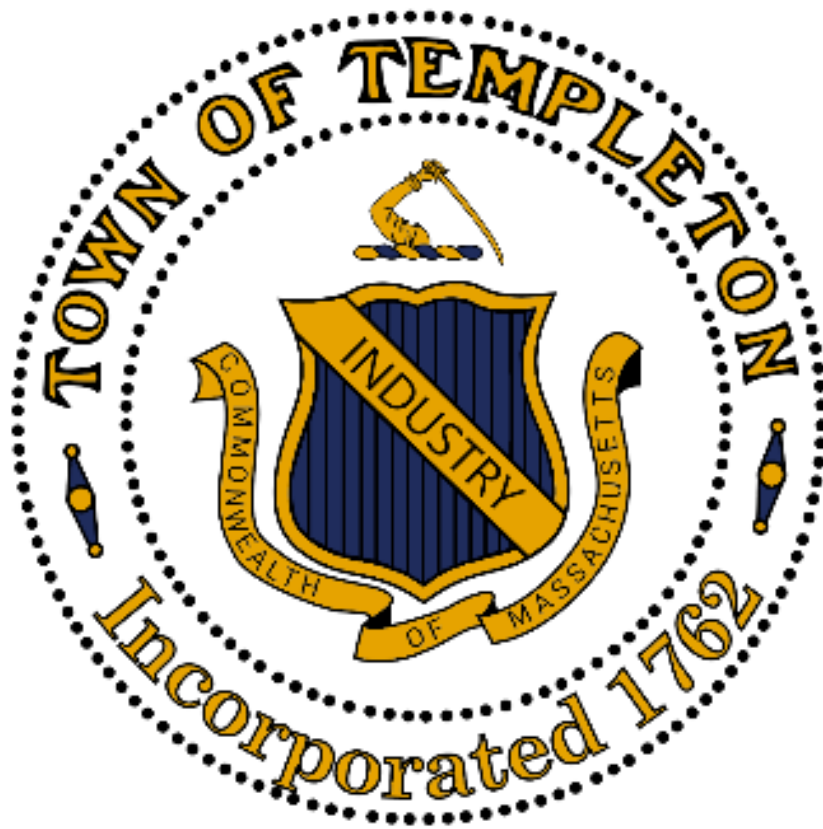


**Sale of 10
Pleasant
Street Lot**



**Michael Currie, Chair
Templeton Select Board**

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Legal Notice of Sale

The Town of Templeton offers for sale a parcel of tax deeded land for which the former owner's right of redemption has been foreclosed. Sealed bids will be accepted until 2:00 p.m. on April 17, 2024, in the Offices of the SelectBoard, 160 Patriots Road PO Box 620, East Templeton MA 01438 at which time they will be opened and publicly read aloud.

The bid package is available at www.templetonma.gov [Click on "Paid, Volunteer, & Contract Opportunities" and then on "Contract Opportunities".]

Parcel: 10 Pleasant Street; Land of 12,250^{+/-} s.f. [Parcel 1-04.132. Worcester County Registry of Deeds Bk 61845 Pg 212.]

All bids may be held for a period of forty-five (45) days to evaluate them and account for certain rights of refusal. Successful bidders must close on the sale within forty-five (45) days of being notified that their bid has been accepted.

If mailed, each bid should be in a separate sealed envelope marked, Sale of 10 Pleasant St., Templeton, MA to protect against them being opened in error.

Any questions with respect to this invitation must be received in writing by mail (above address), or email (alamontagne@templetonma.gov), by Adam Lamontagne, Town Administrator, no later than 4:00 p.m. on April 2, 2024. Answers and/or any additional notices or bid requirements will be posted on the town website as an addendum. It is the bidder's responsibility to view and account for any addendums relating to this request.

The town reserves the right to reject any and all bids, and waive any minor or non-material informalities, if deemed to be in its best interests.

Michael Currie, Chair,
Select Board

Advertised:
Gardner News

Central Register

Posted: Town Website

Bids due: April 17, 2024

GENERAL CONDITIONS OF SALE

- 1.) The Town had the parcel appraised which came in at \$60,000. There is a required minimum acceptable bid of \$60,000. All other bids below \$60,000 will not be allowed.
- 2.) All bids must be submitted using the attached bid forms.
- 3.) If you are informed that you are the successful bidder, you will have fifteen days in which to pay any the amount you have proposed to pay for the parcel that you have bid upon. This will be held until the various rights of first refusal have been exhausted and the closing. At that time, you will pay any final sums owed to the Town. If you do not pay the amount you bid on the parcel within fifteen days, the town will move to the next.
- 4.) Abutters (i.e. those whose property lines touch upon the property line of the property being sold) who bid on a parcel will have the right of first refusal at the highest bid price. In the case of more than one abutter having bid on the property, the right of first refusal will first be assigned to those abutters which jointly made a bid so that they might each improve their respective lots and then in order of the highest to lowest bid of any other abutters who may have bid on the parcel.
- 5.) If the land is acquired by an abutting property owner(s), the bidder(s) will be required to merge the parcel being acquired with their lot(s) at the time the property is transferred.
- 6.) If no abutter bids on a parcel, then the Town will select the highest-priced proposal from a responsive and responsible proposer.
- 7.) The Town makes no expressed or implied warranties of any information contained herein. This parcel is sold with the right of redemption foreclosed but without warranty as to suitability for building, the ability to gain any desired regulatory approval from the town (i.e. zoning compliance), or the absence of any environmental hazard. Bidders are responsible for performing their own due diligence appropriate to the purchase of any real estate.
- 8.) The Town reserves the right to reject any and all bids, and waive any minor or non-material informalities, if deemed to be in its best interests.
- 9.) The Town is currently perfecting its taking of the adjoining lot #131. It will be offered for sale as soon as practicable after that action occurs either in the form of a sale of the tax lien or a deed for which the right of redemption has been foreclosed upon.
- 10.) Bids will be opened at 2:00 pm on April 17, 2024 at the Offices of the Select Board.
- 11.) Any questions with respect to this invitation must be received, in writing, by mail (160 Patriots Road PO Box 620, East Templeton MA 01438), or email (alamontagne@templetonma.gov), by Adam Lamontagne, Town Administrator, no later than 4:00pm on April 2, 2024. Copies of the answers will be posted online no later than 4:00pm on April 4, 2023. It is the responsibility of the bidders to check on-line and account for any addendum so issued.

Sale of 10 Pleasant Street Lot

EXHIBIT A

Determination Letter,

Zoning Board of

Appeals Decision And

10 Pleasant St

Parcel

Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill Ivria Glass Fried Bryan F. Bertram Christopher L. Brown
Ethun B. Dively Maurice D. Miller Ryan R. Holmquest Andrew N. Bettinelli Emily A. Meehan

December 8, 2023

Via Email (alamontagne@templetonma.gov)

Adam Lamontagne
Town of Templeton
160 Patriots Road
East Templeton, MA 01438

Re: Application of Zoning Bylaws to 10 Pleasant Street Reconstruction

Dear Mr. Lamontagne:

You asked whether a single-family home can be constructed at 10 Pleasant Street given that a prior, nonconforming house was damaged by fire and demolished by the Town.

Background

The single-family home at 10 Pleasant Street was owned by an individual until 2020, when the Town took the property in a tax title action. The house had burned about a decade prior to the Town's taking and remained standing but fire-damaged before the Town demolished the structure in the summer of 2023.

The property is located in the Village District, where single-family homes are allowed. It was therefore not a nonconforming use. However, the single-family home was a nonconforming structure because it does not conform to current lot size or dimensional requirements.

Analysis

G.L. c. 40A, § 6 provides that "A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more."

The Templeton Zoning Bylaws state that:

Catastrophe or demolition. Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe, or after demolition, provided that such reconstruction is completed within 12 months after such catastrophe or after voluntary demolition, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure and located on the original building footprint, unless a larger volume or area or a new building footprint

is authorized by special permit from the Board of Appeals. Such time for reconstruction may be extended by the Board of Appeals for good cause.

Section 300-19(G). This section indicates that a special permit is not necessary to rebuild a house demolished after a fire provided that the house is completely rebuilt within 12 months of voluntary demolition and that the volume and area of the new building are no greater than the original building, and the building is constructed on the same footprint as the original. If any of these conditions will not be met by the new structure, a special permit is necessary.

The Town was the owner of the parcel and completed the demolition; therefore, the demolition was "voluntary."

The standard for the Board of Appeals to grant an extension of the 12-month deadline is good cause. The standard for the Board of Appeals to grant a variance to allow increased dimensions or a changed building footprint is "that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood." Section 300-19(E)(2).

Notwithstanding the above, a nonconforming building *cannot* be reconstructed if it has been abandoned or unused for a period of two years. The Bylaws provide that "A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this bylaw." Section 300-19(F). Therefore, it must be determined whether the nonconforming structure at 10 Pleasant Street was abandoned or unused for two years.

To constitute an abandonment [other than where defined by ordinance], the discontinuance of a nonconforming use [structure or lot] must result from 'the concurrence of two factors, (1) the intent to abandon and (2) voluntary conduct, whether affirmative or negative, which carries the implication of abandonment. . . . The voluntary demolition of a building constitutes abandonment . . . but [n]onuse or sale of property does not, by itself, constitute an abandonment.

Dial Away Co. v. Zoning Bd. of Appeals of Auburn, 41 Mass. App. Ct. 165, 172, 669 N.E.2d 446, 450 (1996) (internal quotations and citations omitted). However, "nonuse" is not subject to the same standard as abandonment. Rather, "Proof of intention is not part of the analysis when nonuse is the basis on which extinguishment is asserted." *Plainville Asphalt Corp. v. Town of Plainville*, No. 10 MISC 428686 GHP, 2012 WL 1264448, at *7 (Mass. Land Ct. Apr. 12, 2012), *aff'd*, 83 Mass. App. Ct. 710 (2013). "The 'not-used' test 'contemplates a simple cessation of a nonconforming use for a period of at least two years,' with no regard to whether the cessation was intentional or unintentional." *120 Front St., LLC v. Leblanc*, No. 18 MISC 000191 (MDV), 2019 WL 858767, at *5 (Mass. Land Ct. Feb. 21, 2019), *judgment entered*, No. 18 MISC 000191 (MDV), 2019 WL 856270 (Mass. Land Ct. Feb. 21, 2019) (*quoting Town of Orange v. Shay*, 68 Mass. App. Ct. 358, 363 (2007).

In *120 Front Street*, the Land Court found that a two-family structure that had been damaged by fire—left standing, but with the interior destroyed—had not been “used” for the nonconforming two-family purpose since the fire. The Land Court reasoned that because there was no certificate of occupancy for the house, no one had been allowed to occupy it and the property therefore “lost its ability to continue to host a nonconforming two-family residence.” 2019 WL 858767, at *5.

The facts of this case are similar. The nonconforming structure at 10 Pleasant Street was damaged about a decade ago by fire. No person has lived in the house since the fire. The Town placed signage marking the structure as dangerous and condemned. During that time, no person would have been allowed to occupy the structure.

However, the issue at 10 Pleasant Street is not that the *use* as a single-family home is nonconforming, but that the *structure* is nonconforming with dimensional requirements. In this case the definition of “use” may differ from the definition used by the Court in *120 Front Street*, in which the issue was that two-family homes were no longer a permitted use in that district.


“When looking at whether a lawful nonconformity has been lost due to non-use or abandonment, a board or the court must keep in mind that the non-use or abandonment must concern the nonconformity.” *Kearney v. Sullivan*, No. 21 MISC 000325 (RBF), 2023 WL 355516, at *5 (Mass. Land Ct. Jan. 23, 2023) (internal quotations omitted) (finding that that the defendants’ abandonment of their nonconforming use for a conforming use did not affect property’s status as a lawful nonconforming structure, which had not been abandoned.). This case tells us that nonuse of a structure is different than discontinuance of a particular use. The building at 10 Pleasant Street, by the definition of *120 Front Street*, was not being used for single-family home purposes during the decade or so prior to the Town’s taking. However, it had not ceased to occupy its pre-fire footprint before the Town demolished it, which is the relevant fact for nonuse of a structure.

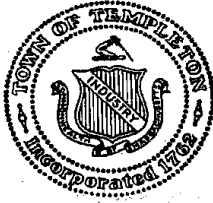
Conclusion

The single-family home at 10 Pleasant Street had stood unoccupied and fire damaged for many years before the Town took possession of the property and demolished the building in summer of 2023. However, it still occupied its nonconforming footprint and its lawful dimensional nonconformities continued until the date of its demolition. The home may therefore be rebuilt within 12 months of demolition unless that time period is extended by the Zoning Board of Appeals for good cause.

Please do not hesitate to reach out to my office if you have further questions on this matter.

Sincerely,


Rian Holmquest



**Town of Templeton
Zoning Board of Appeals**

P.O. Box 620
E. Templeton MA 01438
978-894-2771
Email: lwiita@templetonma.gov

REC'D 2/4/2024 3:54
TEMPLETON TOWN CLERK

DECISION

Request – Members heard a request by the Town of Templeton, under zoning bylaw, section 300-19(G) Non-Conforming Uses and Structures, to consider a special permit to extend the period of time to allow for construction of a residence at 10 Pleasant Street. After hearing all the information pertaining to the request, the members voted to approve the request.

Votes:

Granted: x or Denied:

David Smart, Chair

Yes or No

David Smart

Joseph Risi, Vice Chair

Yes or No

Joseph Risi

Alan Drouin

Yes or No

Absent

Dennis O'Brien

Yes or No

Dennis O'Brien

Edwin Figueroa Torres

Yes or No

Absent

Copies of this decision and all plans referred to herein have been duly filed with the Town of Templeton Town Clerk.

Certified this 31st day of January 2024.

Templeton Zoning Board of Appeals

David Smart
David Smart, Chair

Joseph Risi
Joseph Risi, Vice Chair

I, Carol Harris, Town Clerk, for the Town of Templeton, hereby certify that twenty (20) days have elapsed since the filing with my office for the preceding decision by the Zoning Board of Appeals, and that no appeal concerning said decision has been filed or that any appeal has been filed has been dismissed or denied.

Carol Harris
Carol Harris, Templeton Town Clerk

2/26/2024
Date

A copy of this certificate and a copy of the application must be filed with the Worcester Registry of deeds and noted on the owner's certificate of title; the fee for recording or registering shall be paid by the owner or applicant. A copy with the book and page recording must be provided to Development Services prior to work commencing



ZONING BOARD OF APPEALS

160 Patriots Road, E. Templeton

Conference Room

Broadcast on TCTV

1/30/24 @ 6:30 pm

Present members: David Smart, Joe Risi, Dennis O'Brien
Admin Assistants: Jessica Case, Laurie Wiita
Absent members: Edwin Figueroa Torres, Alan Drouin
Guests: Laurie Wiita, representing Town of Templeton

The meeting opens at 6:30 pm by David Smart. Pledge of Allegiance.

Agenda:

**The Chair rearranges the agenda.*

Members will hear a request from the Town of Templeton under zoning bylaw 300-19(G) Non-conforming Uses and Structures, for a request to consider a special permit to extend the period of time to allow for construction of a residence at 10 Pleasant Street: Laurie Wiita, Director of Development Services is present to represent the request on behalf of the Town of Templeton. She explains that the property of 10 Pleasant Street was taken down using the revolving fund for demolition due to it being burnt down. During the process asbestos was found, and an in-ground oil tank was found – this caused a delay but has since been cleaned up and the site is approved. According to the Bylaws, the rebuild time is 1 year. The Town of Templeton is requesting a Special Permit to extend that period of time to 24 months to allow for proper procedure, auction, and construction to occur. Motion made by Joe Risi to vote to issue the Special Permit for 10 Pleasant Street for an additional 24-month extension; Seconded by Dennis O'Brien; No discussion. Vote: Dennis O'Brien = yes, Joe Risi = yes, David Smart = yes; Motion passes unopposed at 6:37 pm.

Review minutes of 12/19/23: The minutes of 12/19/23 were reviewed. Motion made by Joe Risi to accept the minutes as written; Seconded by Dennis O'Brien; No discussion. Vote: Dennis O'Brien = abstain, Joe Risi = yes, David Smart = yes; Motion passes at 6:41 pm.

Motion to adjourn: Motion to adjourn made by Joe Risi; Seconded by Dennis O'Brien; No discussion. Vote: Dennis O'Brien = yes, Joe Risi = yes, David Smart = yes; Motion passes unanimously at 6:42 pm.

Clerk's signature: _____ **Date:** _____

10 Pleasant Street



NOTE THAT THE HOUSE AND GARAGE ON THE PARCEL HAVE BEEN DEMOLISHED.

BID FORMS

Town of Templeton
10 Pleasant Street Lot
Sale

Bid Form

(Please Print or Type)

Name of Bidder: _____

Address: _____

Contact Person: _____

Telephone _____ Fax _____

Email _____

Submitted herewith is my bid for 10 Pleasant St Lot _____

In Numbers

In Words (Dollars and Cents)

I certify, under the penalties of perjury, that (1) I have had an opportunity to view the full bid package and am aware it was my responsibility to perform my own due diligence appropriate to the purchase of real estate, (2) I am fully authorized to submit this bid, (3) I have not engaged in discussions, negotiations, or collusion with any person to determine what my bid will be and (4) that I, to the best of my knowledge and belief, have paid all local taxes, fees, assessments, betterments or other municipal charges that I am liable for.

The undersigned Acknowledges addenda # _____
(If None, Write None)

If I am notified my proposal is accepted, all bids may be held for a period of forty-five (45) days to evaluate them and account for certain rights of refusal. The successful bidder must close on the sale within forty-five (45) days of being notified that their bid has been accepted.

Signature

**TO BE RETURNED WITH BID
SUBMISSION
CERTIFICATE OF AUTHORITY**

At a duly authorized meeting of the Board of
Directors of the

_____ held on _____
(Name of Corporation) (Date)

it was VOTED that: _____
(Name) (Officer)

of this company, be and he/she hereby is authorized to execute contracts and bonds
in the name, and on behalf of, said company, and affix its corporate seal hereto;
and such execution of any contract or obligation in this company's name on its
behalf by such

_____ under seal of the Company; will be binding upon this Company.
(Officer)

A True Copy,

ATTEST: _____

TITLE: _____

PLACE OF BUSINESS: _____

I hereby certify that I am the _____ of _____
(Title) (Name of Corporation)

and that _____
(Officer/Name)

is duly elected _____ of said company;
(Position/Title)

and the above vote has not been amended or rescinded and remains in full force and
effect as of the date of this contract.

CORPORATE SEAL:

Clerk's Signature

Clerk's Printed Name

CERTIFICATE OF TAX COMPLIANCE

(Corporate)

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I,
_____, authorized signatory for _____
printed name name of consultant/business

do hereby certify under the pains and penalties of perjury that said contractor has
complied with all laws of the Commonwealth of Massachusetts relating to taxes,
reporting of employees and contractors, and withholding and remitting child support.
Federal ID # _____

Signature _____

Name _____

Title _____

Date _____

OR

CERTIFICATE OF TAX COMPLIANCE

(Individual)

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I,
_____ do hereby certify under the pains and
penalties of perjury that said contractor has complied with all laws of the
Commonwealth of Massachusetts relating to taxes.

(Signature of person signing bid or bid)

(Date)

CERTIFICATION OF NON COLLUSION & GOOD FAITH

The undersigned certifies under pains and penalties of perjury that this Contract has been obtained in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

The Contractor by:

Print Name

Title/Authority

Disclosure of Parties with Beneficial Interest
MGL Ch. 7 § 40J

I do hereby certify that the following parties have – or are anticipated to have – a beneficial interest in our submissions seeking to acquire the 10 Pleasant Street lot sale in Templeton, MA.

Party 1 _____

Party 2 _____

I do make this declaration under the pains of penalties of law and understand that any material omission or misrepresentations may not only lead to the disqualification of my proposal but prosecution under the pains and penalties of law.

Section 40J. No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder hold less than ten percent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement made with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners.

A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change in interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request. The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

Acknowledgment for Individual

State of Massachusetts

County _____

On this _____ day of _____, 20____, before me personally appeared

_____ (or _____
and _____), to me known to be the person (or persons)
described in and who executed the foregoing instrument, and acknowledged that he/she/they
executed the same as his/her/their free act and deed.

Notary Public

Print Name: _____

My commission expires:
