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EPSOM, NH

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Amendment to ZBA Administrative Appeal from a Planning Board Decision  
Interpreting Zoning Ordinance (or its Spirit)  
During Site Plan Review Hearing 5/10/23  
(ZBA Copy)

This amendment adds applicants to the appeal filed Friday 5/26/23. I / we will now pay the notification fees for these applicants as well as for the property owner since the property owner is not the applicant herein. Also added are a couple more signatures to the signed statement by neighbors as to property values, etc. (See Appendix 1, more applicants for notification & Appendix 2, more signers to property value statement.)

Copies of both Draft and Approved Minutes from the hearing 5/10/23 are added (see Appendix 3). The issue to be decided is if the use of a Federal Firearms Licensed gun dealer (rather than a hobby not needing any license or local business permit) is expressly permitted by the definition of Home Occupation in the Ordinance, and if not, whether it then is prohibited in the R / A zone, which zone includes our neighborhood. The gun dealer applicant would then have to apply for a variance to pursue the matter. (See Appendix 4, 15 Loughlin, NH Practice, Land Use Planning and Zoning, 2022 supplement, section 6.02, p. 19, citing Harborside Assocs. V City of Portsmouth 163 NH 439, "... the Court will not give deference to a land use board's interpretation if it is contrary to the express statutory language.").

The ZBA considers this issue "de novo", and can decide this appeal as if from the time when the Zoning Compliance Officer first permitted the application to go to Planning, not Zoning, but before Planning could hear it. (See Appendix 5, 15 Loughlin, NH Practice, Land Use Planning and Zoning, 2022 supplement, section 33.02, p.109, footnote 10, citing Ouellette v. Town of Kingston 157 NH 604, "the proper standard of review by a zoning board of adjustment on all administrative appeals is de novo. The ZBA does not give deference to the decision of the administrative official (including HDC and planning board) in making its determination.").

The law on appeals from the Planning Board is now bifurcated. The fork on any interpretation of the Ordinance is appealed to the ZBA. The fork on an appeal from the site plan hearing on the merits, which was not on the merits but only on what conditions to impose, is to be appealed to Superior Court. The attorney used by the Planning Board may have to appear & represent them in court. If the ZBA wants a legal opinion beyond the plain language of the Ordinance, I / we request that a different attorney be consulted to avoid a conflict of interest.



As with “standing to sue” in court, applicants on appeal to the ZBA are asked to show they are aggrieved, or as the ZBA appeal form requests, to say how our property is affected. The signed statement by neighbors in the appeal addresses this. More on this is in the appeal’s Statement of the Case because it is hard to differentiate between how we are affected & aggrieved and how this business use should not be permitted here.

As was submitted to Epsom Police Dept., a copy (with some redactions by Epsom PD) of Dusty Inc.’s Application for Federal Firearms License, type 01 (sales & gunsmithing) and 07 (manufacturing of firearms), is included (in Appendix 6). It is signed by Steven Rhodes (Dusty Inc., director) on 1/30/23 certifying zoning compliance at the residence address that is the subject of this appeal. On Thursday 6/1/23, Megan in the town office told Rob Topik that no permit has issued yet for this business. This signature 1/30/23 is before the business inquiry meeting with the Planning Board on 3/8/23 and also before the hearing on 5/10/23.

Some history of this case can be seen from emails by Rob Topik to Cheryl (BOS Chair & Rep to PB), to S. Rhodes (applicant), to Scott (Justin) (ZCO), and to Kathy (PB Chair) (see Appendix 7). Also see Rob Topik’s filed ZBA appeal from the ZCO’s steering of this application to Planning, not Zoning. While disagreeing with the ZCO on whether it was appealable at this stage, (which then would have made a Planning Board hearing on the merits not ripe to be held), the appeal came up short anyways because only one copy, not two, was filed at the time. (See Appendix 8).


On the last page of the Statement of the Case are some case references. The reference to spot zoning should refer to 15 Loughlin, NH Practice, Land Use Planning and Zoning, section 2.17, p. 52 (see Appendix 9). The reference to accessory uses should refer to 15 Loughlin, NH Practice, Land Use Planning and Zoning, section 9.03. p. 29, and citing on p. 30, 167 NH 745 (see Appendix 10). The references to construction (interpretation) of zoning ordinances should refer to 15 Loughlin, NH Practice, Land Use Planning and Zoning, section 6.01, pgs. 114-117 (see Appendix 11).

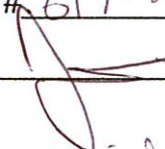
Long story short, this case can simply be decided on the plain and express language of the definition of Home Occupation, along with Article III, General Provisions, K. Home Occupations # 1. referring back to the definition of Home Occupation, and lastly to Article VII Conflicting Provisions which imposes the greater restriction. After the vote on application completeness, the Planning Board’s 4-3 vote was taken before opening up the hearing to accept both oral and written testimony, the timing of which vote blocked such testimony from being considered on the merits, and the timing of which vote was contrary to their own rules for public hearings (see Appendix 12). In this case (with no regional impact) their rules only allow for the vote on application completeness (#4.) before opening up the hearing on the merits for public comments. Thank you for your attention to this matter.

*Submitted 6/5/23 Robat Topik*  
2

Additional Applicants to Application for Appeal to the Epsom Zoning Board of Adjustment

The following individuals respectfully request to add their names on the appeal to the Epsom ZBA concerning the property recorded at the Merrimack county registry of deeds in book# 3760, page 483 and is identified on Epsom Tax Map# R1, Lot#30, Sub-lot#26. Owned by Steven & Patricia Rhodes 61 Lena Lane.

Name DAVID S KILIAN  
Address 12 Spring St Lot# R1 30-7  
Telephone # 603-724-8974 Email DAVIDKILIAN@comcast.net  
Signature  29 May 23

Name John Tugel 5-29-23  
Address 29 Lena Ln Lot# R1 30-21  
Telephone # 617-935-4676 Email toyo@workshop@gmail.com  
Signature 

Name David W. Goulet 5/29/23  
Address 51 Lena Lane Lot# 30-24  
Telephone # 603-736-8272 Email dougoulet50@gmail.com  
Signature David W. Goulet

Name Keith Brown 5/29/23  
Address 45 Lena Lane Lot# 30-22  
Telephone # 603-953-8575 Email KEITHBROWN@Gmail.com  
Signature KBrown

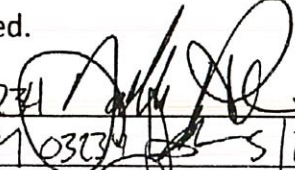
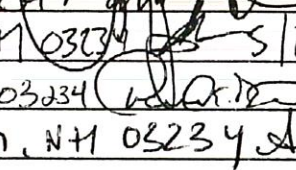
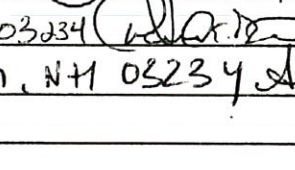
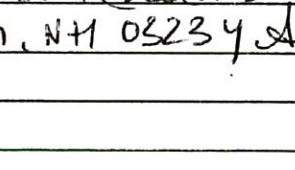
Name \_\_\_\_\_  
Address \_\_\_\_\_ Lot# \_\_\_\_\_  
Telephone # \_\_\_\_\_ Email \_\_\_\_\_  
Signature \_\_\_\_\_

Thank you for your consideration in this matter.



the residential character of the neighborhood and district will more likely than not become more and more commercial in character, as the conditions placed on such a business are also more likely than not to become less and less restrictive as well.

If the line between residential and commercial districts cannot be held strong by the definition of Home Occupation in the Ordinance, then the line will be diluted, smeared and blurred, as will the districts themselves. This is contrary to why the preamble in the Ordinance supports the reasons for having different zoning districts in the first (1<sup>st</sup>) place. The spirit in the preamble to promote the general welfare, etc., is linked to the very letter and plain language of the definition of Home Occupation. This same spirit is now being twisted by the Planning Board's 4 to 3 vote to disregard that controlling plain language. This is tantamount to obtaining a zoning amendment, not by the prescribed method, but under color of a site plan review. For all the above reasons, we are aggrieved.

Danielle Richard 25 Spring St. Epsom, NH 03224  5/23/23  
John Tucker 29 Lena Ln Epsom, NH 03234  5/25/23  
DANIEL FOISVET 17 SPRING ST. EPSOM, NH 03234  5/29/23  
Aimee Tucker 29 Lena Ln. Epsom, NH 03234  5/29/23



1  
2  
3 **TOWN OF EPSOM**  
4 **PLANNING BOARD MEETING**  
5 *Epsom Bible Church Meeting Room, 398 Black Hall Road, Epsom*  
6 **May 10, 2023, 6:30PM**

7 **PRESENT**

8 Kathy DesRoches, Chair  
9 Bob McKechnie, Vice Chair  
10 Cheryl Gilpatrick, Board of Selectmen Representative  
11 Betsy Bosiak, Member  
12 Miriam Cahill-Yeaton, Member  
13 David Goulet, Member  
14 Sean Heichlinger, Alternate Member  
15 Dan McGuire, Member

16 **ALSO PRESENT**

17 Jennifer Riel, Recording Secretary	28 Ann Mulligan, resident
18 Justin Guth, Zoning Compliance Officer	29 Karen Goulet, resident
19 Ricky Harrison, resident	30 Derek O'Connell, resident
20 Rob Topik, resident	31 Christina O'Connell, resident
21 Barb Lizon, resident	32 Caitlen Hutson, resident
22 Kay Kilian, resident	33 Shania Lee, resident
23 David Kilian, resident	34 Steven Rhodes, applicant
24 Bill Lang, resident	35 Patricia Rhodes, applicant
25 Josh Young, resident	36 Virginia Drew, resident
26 Penny Young, resident	37 Chris Jakes, resident
27 Bill Achessa, resident	38 John Tucker, resident

39  
40 **CALL TO ORDER**

41 Chair DesRoches called the meeting to order at 6:38PM.

42  
43 Chair DesRoches asked Mr. Heichlinger to sit on the Board for this meeting in Mr. Goulet's  
44 absence.

45  
46 **AGENDA REVIEW**

47 Mr. McGuire added review of the Zoning Atlas.

48  
49 **Ms. Gilpatrick motioned to accept the agenda as amended. Mr. McGuire seconded the**  
50 **motion. Motion passed, 7-0-0.**

51  
52 **NEW BUSINESS**

53 **Inquiry**

54 □ *Inquiry: Ricky Harrison, 1778 Dover Road, U5-83*

55 Mr. Harrison presented photographs of his property for review by the Board. He stated they are  
56 building a house with an attached dwelling unit for his parents; he stated he owns a paving

103 **State of New Hampshire Zoning Atlas**

104 Mr. McGuire stated a group at St. Anslem College conducted a project on zoning around the  
105 State of New Hampshire; the Board reviewed a summary of the data collected. He stated all the  
106 information is online and interactive and explained its part of a larger nationwide project.

107

108 **Public Hearing- 7:15**

109 □ *Steven & Patricia Rhodes, 61 Lena Lane, R1-30*

110

111 The Board reviewed the application for completeness.

112

113 Chair DesRoches stated the public hearing was posted on the Town website and at the Post  
114 Office: all but one abutter notice return receipt was received.

115

116 **Ms. Gilpatrick made a motion to accept the application as complete. Vice Chair  
117 McKechnie seconded the motion. Motion passed, 7-0-0.**

118

119 Ms. Cahill-Yeaton read the public notice into the record:

120

121 *Notice is hereby given in accordance with RSA 676:4 & 675:7 that an application for a Site Plan*  
122 *Review submitted by Steven Rhodes & Patricia Rhodes, 61 Lena Lane, Map and Lot No. R01-*  
123 *30-26 will be submitted to the Planning Board on May 10, 2023, at 7:15 PM at the Epsom Bible*  
124 *Church, 398 Black Hall Rd, during a regular meeting of the Board. Upon a finding by the Board*  
125 *that the application meets the submission requirements of the Subdivision and Site Plan Review*  
126 *Regulations, the Board will vote to accept the application as complete, and a public hearing on*  
127 *the merits of the proposal will follow immediately. Should a decision not be reached at the*  
128 *public hearing, this application will stay on the Planning Board agenda until such time as it is*  
129 *either approved or disapproved. Anyone needing assistance in attending this meeting should*  
130 *contact the Selectmen's Office one week prior to the scheduled date.*

131

132 Vice Chair McKechnie stated before opening the public hearing, the Board needs to determine  
133 whether this is a permitted use as an in-home occupation.

134

135 Chair DesRoches stated per the zoning map, this property is located in a residential area; retail  
136 business is not permitted; however an in-home business is permitted.

137

138 Mr. Rhodes stated the proposed business is for selling sporting goods via the internet or at a trade  
139 show. There will be no sale of items at their home. Ms. Rhodes stated no one will be coming to  
140 the home for pick up as all orders will be shipped, with the exception, if a customer chooses a  
141 Federal Firearms licensed transfer. Chair DesRoches asked if they can take themselves off the list.  
142 Mr. Rhodes stated they will not advertise the service, but they can't take themselves off the list,  
143 however they can choose not to accept the appointment. He stated the federal ATF puts their  
144 information on a list, but they will not be advertising themselves as a preferred vendor. Mr.  
145 Rhodes stated it would be a rare occasion where someone would come to the house to pick up an  
146 item.

147



193  
194 Mr. Rhodes explained their reasoning for not wanting a lot of customers coming to their home,  
195 noting his wife deals with a lot of allergy issues so they can't allow just anyone to enter their  
196 home as it can be life-threatening; they will be extremely selective who they allow to have  
197 appointments. Ms. Gilpatrick explained any approval by the Board for the site plan, goes with  
198 the property not the owners. Ms. Rhodes stated the previous property owner ran a cabinet  
199 business out of the home.

200  
201 Mr. Guth stated the occupations listed in the Zoning Ordinance would have at least a minimal  
202 amount of traffic; he stated he believes the application by the Rhodes would be minimal as well.  
203

204 Ms. Cahill-Yeaton noted this is a cluster-residential development so therefore it is residential and  
205 doesn't believe any business should be permitted.  
206

207 **Mr. McGuire motioned that this application is for a home occupation. Ms. Gilpatrick**  
208 **seconded the motion. Roll Call: Ms. Bosiak-no; Ms. Cahill-Yeaton-no; Chair DesRoches-**  
209 **no; Mr. McKechnie-aye; Ms. Gilpatrick-aye; Mr. McGuire-aye; Mr. Heichlinger -aye.**  
210 **Motion passed, 4-3-0.**

211  
212 Chair DesRoches asked if the Board believes there is regional impact. The Board agreed there is  
213 no regional impact.

214  
215 **Ms. Gilpatrick motioned that there is no regional impact. Mr. McGuire seconded the**  
216 **motion. Motion passed, 7-0-0.**

217  
218 Chair DesRoches opened the public hearing at 7:39PM.  
219

220 Mr. Rhodes outlined their intentions to start a small business selling sporting goods and other  
221 items, which includes firearms. All of the items they intend to sell will be sold via a website or at  
222 a trade show, flea market or the like. There will be no over the counter sales from the residents.  
223 Those items will be sent to the purchasers chosen Federal Firearms License. There will be more  
224 pick up of items from residents. Mr. Rhodes stated if a warehouse doesn't agree to drop-ship,  
225 they won't sell the item. He stated there will be no manufacturing, reloading, or selling  
226 ammunition. No discharging of firearms on the property, excluding self-defense. Mr. Rhodes  
227 stated they don't want a high volume of traffic to their residence for many reasons although UPS  
228 and Fed Ex may visit once per day.  
229

230 Mr. Goulet joined the meeting at 7:43PM and stated he is an abutter so would be recusing  
231 himself for this public hearing.  
232

233 Mr. McKechnie asked for public comment from abutters in favor of the application.  
234

235 Caitlen Hutson, abutter, stated she is in favor of any entrepreneurial venture; she stated she is the  
236 next-door neighbor and she and the Rhodes each have 5-6 acre lots, while the other lots in the  
237 cluster development have one acre. Ms. Hutson stated she has small children at home but has no  
238 concerns and is not opposed to the business.

285 Chair DesRoches reiterated this public hearing is for the merits of a home occupation and the  
286 Board has already voted that this is a home occupation.

287  
288 David Kilian, resident, Spring Street, stated he has a hard time with opening a retail store; he  
289 doesn't care of its online or occasional customers to the home; he stated once this permit is  
290 granted, and a customer is allowed to come to the residence, it is a retail sale. He stated the area  
291 is residential and there is a lot of foot traffic in the neighborhood, and they don't want a lot of  
292 delivery trucks speeding through the area. Mr. Killion stated the product doesn't matter to him,  
293 but he is opposed to the fact is that a retail business is being proposed and he doesn't want to see  
294 the neighborhood changed. He stated he is retired military and doesn't have a problem with guns,  
295 but his concern is in the changes to the area.

296  
297 Kay Kilian, resident, stated she is concerned for the safety of their neighborhood, and they don't  
298 want to see a lot more traffic.

299  
300 Chris Jakes, resident, Spring Street, stated he believes this is going to majorly change the  
301 neighborhood with an increase in traffic; he stated with the rezoning of the property, and a retail  
302 store, it is going to decrease the values of homes in the neighborhood. Mr. Jakes stated he is a  
303 gun owner but doesn't believe it's the appropriate place for this type of retail business.

304  
305 John Tucker, resident, Lena Lane, stated he has a problem with the FFL dealer transactions and  
306 questions how a future property owner could use that.

307  
308 Mr. Goulet stated he agrees with what other abutters and residents have indicated; he stated the  
309 application indicates there no pickups but that seems to be conflicting. He asked how they will  
310 ensure there aren't customers coming and going for retail and how often the Zoning Compliance  
311 Officer is going to be checking on it. He stated he also has questions about how product will be  
312 stored, whether there will be a sign and with the success of a business, an increase in traffic.

313  
314 Mr. Jakes asked what the point of doing the FFL transfers was and why they would have people  
315 coming from out of state. He stated that seems to be inviting people to come and purchase guns  
316 they couldn't purchase otherwise in their own state.

317  
318 Chair DesRoches stated that is not in the purview of the Site Plan. She explained they can put  
319 conditions around the operations and those would be discussed later in the meeting.

320  
321 Mr. Goulet stated he is also concerned about the delivery of items being dropped off via UPS and  
322 Fed Ex, and asked what happens if someone else takes the package and firearms.

323  
324 Mr. Topik stated he spoke with an individual who used to sell firearms, but he doesn't do that  
325 any longer as there was a problem with a carrier leaving a package with a forged signature. Ms.  
326 Gilpatrick noted this should not be considered as fact but hearsay.

327  
328 Virginia Drew, resident, stated she isn't in favor or against the application, but sees where this  
329 may show areas where the Planning Board needs to consider about home businesses. She stated  
330 there are a lot of changing dynamics for a small town.



376 Chair DesRoches asked if there will be employees. Mr. Rhodes stated there will be no employees  
377 and it will be just himself and his wife.

378  
379 Mr. McKechnie asked if they could restrict deliveries to morning time. Mr. Rhodes stated he is  
380 not aware whether this is possible; he stated he could look into having a shipping address and  
381 they would pick up the packages at another facility. Ms. Rhodes stated they can request a  
382 timeframe with UPS. Mr. Rhodes stated the delivery trucks will also likely be making deliveries  
383 to other homes in the area.

384  
385 Ms. Bosiak stated the delivery companies don't always hold to a timeframe.

386  
387 Ms. Gilpatrick asked when it comes to people picking up products, how much traffic is  
388 anticipated from the general public. Ms. Rhodes stated there will be very little, as most things  
389 will be directly shipped to the customer; she stated it will only occur when a customer selects  
390 them for an FFL transfer. Mr. Rhodes stated if the FFL transfer is not required, the item will be  
391 shipped. Ms. Rhodes stated a customer can choose any FFL dealer and clarified out-of-state  
392 customers aren't going to happen and explained if a customer is from a restricted state where an  
393 item can't be shipped, they also can't do a transfer.

394  
395 Ms. Bosiak asked how many trade shows they plan to attend. Mr. Rhodes stated he isn't sure but  
396 there aren't very many in the area.

397  
398 Ms. Gilpatrick noted in regard to the safety of firearms in the home and the FFL license, this  
399 would be something under the purview of the Police Department. She also stated, in response to  
400 a resident, that if a home business is approved for a property, any future business still needs to  
401 come before the Planning Board for approval. Ms. Gilpatrick stated per the Table of Uses,  
402 "retail" is generally used for a commercial application; she stated there won't be displays and  
403 this is not a retail store. She stated in regard to deliveries, everyone in the neighborhood could be  
404 getting a delivery each day; she stated she doesn't see how this would be any different. She  
405 stated she is concerned how the Zoning Compliance Officer will monitor the limit of customers  
406 coming to the home for FFL transfers if that is put as a condition. Mr. Rhodes stated detailed  
407 logs are required; he explained the process of the transfer, verifying identification and  
408 conducting background checks. Ms. Bosiak stated she is concerned about an FFL being shipped  
409 to the property and having to sit around.

410  
411 The Board discussed potential conditions for approval. It was the opinion of the majority of the  
412 Board that there would be a limit of one pickup per week; no signage; and signature required for  
413 firearms deliveries.

414  
415 **Ms. Gilpatrick motioned to approve the Site Plan Application submitted by Steven Rhodes**  
416 **& Patricia Rhodes, 61 Lena Lane, Map and Lot No. R01-30-26, with the following**  
417 **conditions:**

- 418  
419
  - *Customer pick-up of firearms must be by appointment only Monday through Friday,*  
420
  - *9:00AM-3:00PM., and only scheduled once per week.*

**TOWN OF EPSOM  
PLANNING BOARD MEETING**  
*Epsom Bible Church Meeting Room, 398 Black Hall Road, Epsom*  
**May 10, 2023, 6:30 PM**

**PRESENT**

Kathy DesRoches, Chair  
Bob McKechnie, Vice Chair  
Cheryl Gilpatrick, Board of Selectmen Representative  
Betsy Bosiak, Member  
Miriam Cahill-Yeaton, Member  
David Goulet, Member  
Sean Heichlinger, Alternate Member  
Dan McGuire, Member

**ALSO PRESENT**

Jennifer Riel, Recording Secretary  
Justin Guth, Zoning Compliance Officer  
Ricky Harrison, resident  
Rob Topik, resident  
Barb Lizon, resident  
Kay Killian, resident  
David Killian, resident  
Bill Lang, resident  
Josh Young, resident  
Penny Young, resident  
Bill Achessa, resident

Ann Mulligan, resident  
Karen Goulet, resident  
Derek O'Connell, resident  
Christina O'Connell, resident  
Caitlen Hutson, resident  
Shania Lee, resident  
Steven Rhodes, applicant  
Patricia Rhodes, applicant  
Virginia Drew, resident  
Chris Jakes, resident  
John Tucker, resident

**CALL TO ORDER**

Chair DesRoches called the meeting to order at 6:38 PM.

Chair DesRoches asked Mr. Heichlinger to sit on the Board for this meeting in Mr. Goulet's absence.

**AGENDA REVIEW**

Mr. McGuire added review of the Zoning Atlas.

**Ms. Gilpatrick motioned to accept the agenda as amended. Mr. McGuire seconded the motion. Motion passed, 7-0-0.**

**NEW BUSINESS**

**Inquiry**

*Inquiry: Ricky Harrison, 1778 Dover Road, U5-83*

Mr. Harrison presented photographs of his property for review by the Board. He stated they are building a house with an accessory dwelling unit for his parents; he stated he owns a paving company, and he wants to park his trucks at the property when not in use. Mr. Harrison



confirmed approval was received from the Zoning Board of Adjustment for the Accessory Dwelling Unit.

Chair DesRoches noted the property is in the aquifer protection zone and asked if there is washing of the vehicles or storage of materials on the property. Mr. Harrison stated no materials are stored on the property; he washes the vehicles with a typical vehicle cleaner purchased from Walmart.

Vice Chair McKechnie asked for clarification on whether a business will be operated from that location. Mr. Harrison stated it is the registered business address and trucks would be parked on the property, however, no customers or materials would be on the property.

Mr. Guth stated Mr. Harrison has submitted a business permit application and will be going before the Zoning Board of Adjustment for the business to operate on the property. He stated the recent decision by ZBA was approval for an ADU, with stipulations. Mr. Guth stated Mr. Harrison has also done a lot of work in cleaning up the property and resolved the civil dispute with a neighbor. He explained prior to the Harrisons purchasing the property, they talked with Scott Lacroix, and they were informed a business could be run from the property, but weren't informed variances and special exceptions may be needed. Mr. Guth stated from his standpoint, the Harrisons are doing everything they can to do things right.

Ms. Harrison confirmed she discussed the driveway permit with the State of New Hampshire Department of Transportation and is waiting to hear back.

Ms. Gilpatrick clarified the business would still be run out of the home. Mr. Harrison confirmed that is correct; it is zoning for residential/light commercial.

Chair DesRoches asked if this business would be considered light commercial. The Board discussed the type of business and agreed further details would be needed along with a Site Plan. Chair DesRoches stated her concern is to protect the aquifer.

Ms. Cahill-Yeaton asked if employees would be coming and going. Mr. Harrison stated there would be two employees' cars left at the property to drive the trucks; they leave at the beginning of the day and come back around 4:30 PM. He explained he works all over the Merrimack Valley area; his trucks leave his property empty, go pick up materials, and return empty. Ms. Bosiak asked if there is other equipment. Mr. Harrison stated that is stored on a trailer hooked to the back of one of the trucks. Mr. Guth stated that currently there is a single-axle dump truck, a tri-axle dump truck with a trailer, and a smaller ancillary truck.

The Board reviewed the Ordinance table of uses. Mr. Heichlinger noted the Ordinance doesn't list this specific use as light commercial, however, it's not much different than parking any other equipment at the end of the day. Mr. Harrison thanked the Board for their input and questions.

#### **APPROVAL OF MINUTES**

Meeting of April 26, 2023 – Edits were made. **Ms. Gilpatrick motioned to approve the minutes as amended. Mr. McGuire seconded the motion. Motion passed, 5-0-2.**

### **State of New Hampshire Zoning Atlas**

Mr. McGuire stated a group at St. Anslem College conducted a project on zoning around the State of New Hampshire; the Board reviewed a summary of the data collected. He stated all the information is online and interactive and explained its part of a larger nationwide project.

### **Public Hearing- 7:15**

*Steven & Patricia Rhodes, 61 Lena Lane, R1-30*

The Board reviewed the application for completeness.

Chair DesRoches stated the public hearing was posted on the Town website and at the Post Office; all but one abutter notice return receipt was received.

**Ms. Gilpatrick made a motion to accept the application as complete. Vice Chair McKechnie seconded the motion. Motion passed, 7-0-0.**

Ms. Cahill-Yeaton read the public notice into the record:

*Notice is hereby given in accordance with RSA 676:4 & 675:7 that an application for a Site Plan Review submitted by Steven Rhodes & Patricia Rhodes, 61 Lena Lane, Map and Lot No. R01-30-26 will be submitted to the Planning Board on May 10, 2023, at 7:15 PM at the Epsom Bible Church, 398 Black Hall Rd, during a regular meeting of the Board. Upon a finding by the Board that the application meets the submission requirements of the Subdivision and Site Plan Review Regulations, the Board will vote to accept the application as complete, and a public hearing on the merits of the proposal will follow immediately. Should a decision not be reached at the public hearing, this application will stay on the Planning Board agenda until such time as it is either approved or disapproved. Anyone needing assistance in attending this meeting should contact the Selectmen's Office one week prior to the scheduled date.*

Vice Chair McKechnie stated before opening the public hearing, the Board needs to determine whether this is a permitted use as an in-home occupation.

Chair DesRoches stated per the zoning map, this property is located in a residential area; retail business is not permitted; however, an in-home occupation is permitted.

Mr. Rhodes stated the proposed business is for selling sporting goods via the Internet or at a trade show. There will be no sale of items at their home. Ms. Rhodes stated no one will be coming to the home for pick up as all orders will be shipped, with the exception, if a customer chooses a Federal Firearms licensed transfer. Chair DesRoches asked if they can take themselves off the list. Mr. Rhodes stated they will not advertise the service, but they can't take themselves off the list, however, they can choose not to accept the appointment. He stated the Federal Alcohol Tobacco and Firearms, puts their information on a list, but they will not be advertising themselves as a preferred vendor. Mr. Rhodes stated it would be a rare occasion when someone would come to the house to pick up an item.



Mr. Guth stated after discussions with the applicant, as well as prior discussions by Scott Lacroix, the former Zoning Compliance Officer, it was agreed this would be considered a home occupation.

Vice Chair McKechnie stated the Rhodes have indicated there are no sales from the home however on rare occasions, there could be someone coming to the home for Federal Firearms License transfers so it could then be considered retail. Mr. Rhodes indicated that it would still be purchased online, but a Federal Firearms License transfer would be in person if it is chosen.

Mr. McGuire stated people would only be showing up by appointment and doesn't consider that as over-the-counter retail sales.

Ms. Rhodes stated many of the items sold on their website would be direct shipped from the manufacturer.

Ms. Gilpatrick read the following statement into the record:

I offer this as my opinion on this matter. The "spirit of the Ordinance" is often mentioned during applications brought before the Zoning Board of Adjustment. Although this specific type of business (an internet sales business) is not mentioned in the Glossary definition of a Home Occupation, which gives examples "such as", it does seem to fall into a general definition of what most people would think of an in-home business in this day and age. It also meets the guidelines as outlined in Article III, K of the Ordinance.

I am likely to believe that in the "spirit of the Ordinance," the intention is for persons to be able to have an in-home occupation, as long as it does not disrupt the everyday typical residential expectations of the neighborhood. This can be controlled by specific conditions set forth by the Planning or Zoning Boards when reviewing any application for an in-home occupation-type business. This would apply to any product or service for an in-home business, no matter what the product is. It is the Planning Board's duty to treat this issue, and the site plan, as if the product was something as simple as bundles of bananas being sold, and that should be followed while we are reviewing this application and making this decision.

Ms. Bosiak asked the Rhodes how they will obtain the items they are selling at trade shows and whether those items would be stored in the home. Mr. Rhodes stated some items that they make will be stored at their home. Ms. Rhodes stated the items they will be selling at trade shows are going to be parts and accessories; there won't be any firearms as those will be direct shipped from a manufacturer to the customer. Ms. Gilpatrick stated that is irrelevant in her opinion because anyone can purchase items to take to a trade show and isn't part of a home occupation.

Chair DesRoches stated it makes a difference to her because there is the possibility that people will be coming to their home for pickup.

Ms. Bosiak asked if firearms will be stored in the home. Ms. Gilpatrick stated the Board should not be base their decision on specific items and products; as long as it is legal, they can only consider the in-home occupation question no matter what the product.

Mr. Rhodes explained their reasoning for not wanting a lot of customers coming to their home, noting his wife deals with a lot of allergy issues so they can't allow just anyone to enter their home as it can be life-threatening; they will be extremely selective who they allow to have appointments. Ms. Gilpatrick explained any approval by the Board for the site plan, goes with the property, not the owners. Ms. Rhodes stated the previous property owner ran a cabinet business out of the home.

Mr. Guth stated the occupations listed in the Zoning Ordinance would have at least a minimal amount of traffic; he stated he believes the application by the Rhodes would be minimal as well.

Ms. Cahill-Yeaton noted this is a cluster-residential development so therefore it is residential and doesn't believe any business should be permitted.

**Mr. McGuire motioned that this application qualifies as a home occupation. Ms. Gilpatrick seconded the motion. Roll Call: Ms. Bosiak-no; Ms. Cahill-Yeaton-no; Chair DesRoches-no; Vice Chair McKechnie-aye; Ms. Gilpatrick-aye; Mr. McGuire-aye; Mr. Heichlinger -aye. Motion passed, 4-3-0.**

Chair DesRoches asked if the Board believes there is a regional impact. The Board agreed there is no regional impact.

**Ms. Gilpatrick motioned that there is no regional impact. Mr. McGuire seconded the motion. Motion passed, 7-0-0.**

Chair DesRoches opened the public hearing at 7:39 PM.

Mr. Rhodes outlined their intentions to start a small business selling sporting goods and other items, which include firearms. All of the items they intend to sell will be sold via a website or at a trade show, flea market, or the like. There will be no over-the-counter sales. Mr. Rhodes stated if a warehouse doesn't agree to drop-ship, they won't sell the item. He stated there will be no manufacturing, reloading, or selling of ammunition. No discharging of firearms on the property, excluding self-defense. Mr. Rhodes stated they don't want a high volume of traffic to their residence for many reasons although UPS and Fed Ex may visit once per day.

Mr. Goulet joined the meeting at 7:43 PM and stated he is an abutter so would recuse himself from the Board for this public hearing.

Vice Chair McKechnie asked for public comment from abutters in favor of the application.

Caitlen Hutson, abutter, stated she is in favor of any entrepreneurial venture; she stated she is the next-door neighbor and she and the Rhodes each have 5-6 acre lots, while the other lots in the cluster development are smaller. Ms. Hutson stated she has small children at home but has no concerns and is not opposed to the business.

Vice Chair McKechnie asked for public comment from abutters in opposition to the application.



David Goulet, abutter, who recused himself from the proceedings as a member of the Board, stated this is a principal use, "Retail 2" zone, so a retail business is not permitted; he stated based on that, he doesn't see how this application even came before the Board as it's not a home occupation. Vice Chair McKechnie stated prior to Mr. Goulet's arrival at this meeting, the Board discussed the application and voted in favor of accepting this application as an in-home occupation. Mr. Goulet stated he is still in opposition because there will be guns being bought and sold at home and this is something that should be done at a commercial place. He stated it's a quiet neighborhood and people coming and going to buy guns will increase the traffic. Vice Chair McKechnie stated in the earlier discussion of this public hearing, the application addressed those concerns.

Mr. McGuire asked for clarification on Mr. Goulet's objection and whether he feels it is a business operation or if it's the product, guns. Mr. Goulet stated it's because the product being sold is guns.

Vice Chair McKechnie asked for public comment from the public in favor of the application. None was indicated.

Vice Chair McKechnie asked for public comment from the public in opposition to the application.

Rob Topik, resident, stated a zoning appeal was filed and presented documentation regarding the filing. Ms. Gilpatrick noted the document Mr. Topik was trying to submit to the Planning Board is his appeal documents to the ZBA that were submitted to the Town Office, in regard to the Zoning Compliance Officer's findings regarding a home occupation, which has no bearing on the site plan review and purpose of the Hearing. She felt they should not be allowed to be part of the record or submitted to the Board, especially since the Applicant has not had time to review the documents and respond accordingly. Chair DesRoches confirmed that is correct and stated Town Counsel advised the Appeal to the ZBA has no bearing on this case. Vice Chair McKechnie stated nothing has been reviewed by the Zoning Board of Adjustment.

Mr. Rhodes clarified an application has been submitted to the Zoning Compliance Officer, and he indicated that he understood it did not have to go before the ZBA for a public hearing based on what the ZCO told him.

Mr. Topik made comments in regard to the process for a public hearing.

Vice Chair McKechnie called for a point of order; he stated this public hearing is for testimony regarding the Site Plan review and Mr. Topik's comments are regarding the Zoning Board of Adjustment and the in-home occupation. He noted the comments and documents should not be allowed and asked that Mr. Topik speaks only to whether he is for or against the site plan.

Mr. Topik stated he is against the proposal and stated the Zoning Ordinance does reference specific items, noting the business has to be customary or one of the recognized professions so if this specific product isn't listed, it shouldn't be allowed.

Chair DesRoches reiterated this public hearing is for the merits of the Site Plan and the Board has already voted that this is a home occupation.

David Killian, resident, Spring Street, stated he has a hard time with opening a retail store; he doesn't care if its online or occasional customers to the home; he stated once this permit is granted, and a customer is allowed to come to the residence, it is a retail sale. He stated the area is residential and there is a lot of foot traffic in the neighborhood, and they don't want a lot of delivery trucks speeding through the area. Mr. Killian stated the product doesn't matter to him, but he is opposed to the fact is that a retail business is being proposed and he doesn't want to see the neighborhood changed. He stated he is retired military and doesn't have a problem with guns, but his concern is in the changes to the area.

Kay Killian, resident, stated she is concerned for the safety of their neighborhood, and they don't want to see a lot more traffic.

Chris Jakes, resident, of Spring Street, stated he believes this is going to majorly change the neighborhood with an increase in traffic; he stated with the rezoning of the property and a retail store, it is going to decrease the values of homes in the neighborhood. Mr. Jakes stated he is a gun owner but doesn't believe it's the appropriate place for this type of retail business.

John Tucker, resident, of Lena Lane, stated he has a problem with the Federal Firearms License dealer transactions and questions how a future property owner could use that.

Mr. Goulet stated he agrees with what other abutters and residents have indicated; he stated the application indicates there are no pickups but that seems to be conflicting. He asked how they will ensure there aren't customers coming and going for retail and how often the Zoning Compliance Officer is going to be checking on it. He stated he also has questions about how products will be stored, whether there will be a sign, and with the success of a business, an increase in traffic.

Mr. Jakes asked what the point of doing the FFL transfers was and why they would have people coming from out of State. He stated that seems to be inviting people to come and purchase guns they couldn't purchase otherwise in their own State.

Chair DesRoches stated that is not in the purview of the Site Plan. She explained they can put conditions around the operations and those would be discussed later in the meeting.

Mr. Goulet stated he is also concerned about the delivery of items being dropped off via UPS and Fed Ex, and asked what happens if someone else takes the package and firearms.

Mr. Topik stated he spoke with an individual who used to sell firearms, but he doesn't do that any longer as there was a problem with a carrier leaving a package with a forged signature. Ms. Gilpatrick noted this should not be considered fact but hearsay.



Virginia Drew, resident, stated she isn't in favor or against the application, but sees where this may show areas where the Planning Board needs to consider about home businesses. She stated there are a lot of changing dynamics for a small town.

Ms. Hutson stated Fed Ex and UPS, as well as the trash truck, already comes into the cul-de-sac; she stated they are making the issue bigger than it is; she stated when they lived in Missouri, they have a very similar home business, and the traffic really was minimal. She also suggested the applicant could consider doing the FFL transactions off-site.

Mr. Guth stated speaking as a resident of Epsom, he doesn't have a problem with the application. He clarified the FFL license does not travel with the property but only goes with the FFL holder, which has a significant background check process and is a lengthy, in-depth process. Mr. Guth stated when firearms show up at the residence, significant record keeping is required, they must sign for receipt of packages, and the Rhodes will have annual audits.

Mr. Topik stated the application for an FFL is very easy and basic.

Mr. Kilian stated everyone bought a property in this neighborhood because it is quiet and asked the Board not to change the character; he stated there should be no in-home sales businesses in the area.

Josh Young, resident, stated he is on the fence about this application but online sales is very common and a lot of people are selling from their home, whether they are a business or not. He stated as far as the concerns about the increase in traffic, it probably happens a lot more than people realize.

Mr. Topik stated the business is registered with the Secretary of State and noted Mr. Rhodes already has another business registered at the home address.

Vice Chair McKechnie asked if any member of the public had any more comments. None was indicated and he closed the public hearing at 8:28 PM. He asked if any member of the Board has questions for Mr. Rhodes.

Mr. Heichlinger asked about the business that was previously operating at the home. Ms. Rhodes stated they don't know how long the cabinet business was in operation. Mr. Rhodes stated they purchased the home in 2021.

Mr. McGuire asked how much traffic for shipping would be reasonable for the business being proposed. Mr. Rhodes stated he has discussed this with UPS and if there are packages going out, pickup and delivery would occur in the same trip; same for Fed Ex so there would only be two trucks a day.

Ms. Gilpatrick asked what time the school buses pick up and drop off. Mr. Rhodes stated he does not know. Mr. Killian stated the morning bus is at 8:10 AM and the afternoon bus is 3:30 PM.

Ms. Gilpatrick asked if there will be signage. Mr. Rhoades stated they will be available when deliveries come and there won't be any signage. He stated he can be sure a sign is posted that no packages are to be left if a signature is required.

Chair DesRoches asked if there will be employees. Mr. Rhodes stated there will be no employees and it will be just himself and his wife.

Vice Chair McKechnie asked if they could restrict deliveries to the morning time. Mr. Rhodes stated he is not aware whether this is possible; he stated he could look into having a shipping address and they would pick up the packages at another facility. Ms. Rhodes stated they can request a timeframe with UPS and the delivery trucks will also likely be making deliveries to other homes in the area.

Ms. Bosiak stated that delivery companies don't always hold to a timeframe.

Ms. Gilpatrick asked when it comes to people picking up products, how much traffic is anticipated from the general public. Ms. Rhodes stated there will be very little, as most things will be directly shipped to the customer; she stated it will only occur when a customer selects them for an FFL transfer. Mr. Rhodes stated if the FFL transfer is not required, the item will be direct shipped. Ms. Rhodes stated a customer can choose any FFL dealer and clarified out-of-state customers aren't going to happen and explained if a customer is from a restricted state where an item can't be shipped, they also can't do a transfer.

Ms. Bosiak asked how many trade shows they plan to attend. Mr. Rhodes stated he isn't sure but there aren't very many in the area.

Ms. Gilpatrick noted in regard to the safety of firearms in the home and the FFL license, this would be something under the purview of the Police Department. She also stated, in response to a resident, that if a home business is approved for a property, any future business still needs to come before the Planning Board for approval. Ms. Gilpatrick stated per the Table of Uses, "retail" is generally used for a commercial application; she stated there won't be displays and this is not a retail store. She stated in regard to deliveries, everyone in the neighborhood could be getting a delivery each day; she stated she doesn't see how this would be any different. She stated she is concerned about how the Zoning Compliance Officer will monitor the limit of customers coming to the home for FFL transfers if that is put as a condition. Mr. Rhodes stated detailed logs are required; he explained the process of the transfer, verifying identification and conducting background checks. Ms. Bosiak stated she is concerned about an FFL being shipped to the property and having to sit around.

The Board discussed potential conditions for approval. It was the opinion of the majority of the Board that there would be a limit of one pickup per week; no signage; and signature required for firearms deliveries.

**Ms. Gilpatrick motioned to approve the Site Plan Application submitted by Steven Rhodes & Patricia Rhodes, 61 Lena Lane, Map and Lot No. R01-30-26, with the following conditions:**



- *Customer pickup/delivery of firearms may occur only by appointment, Monday through Friday, 9:00 AM to 3:00 PM.*
- *Only one customer pick-up may be scheduled per week.*
- *Customer Firearms cannot be loaded at any time during the transfer.*
- *No discharging of customers' weapons on the property except in the case of self-defense.*
- *The Epsom Police Department shall perform all necessary inspections.*
- *No business signage is permitted on-site.*
- *No firearms packages may be delivered on-site without the recipient's signature.*
- *The manufacture or sale of ammunition is prohibited.*

**Mr. McGuire seconded the motion. Roll Call: Ms. Bosiak-no; Ms. Cahill-Yeaton-no; Chair DesRoches-aye; Vice Chair McKechnie-aye; Ms. Gilpatrick-aye; Mr. McGuire-aye; Mr. Heichlinger -aye. Motion passed, 5-2-0.**

Mr. Goulet rejoined the Board.

The Board discussed procedures for public hearings.

Chair DesRoches adjourned the meeting at 9:50 PM.

Respectfully Submitted,

**Jennifer Riel**

Jennifer Riel, Recording Secretary

whether sent electronically or by first class mail, must include a statement describing, to the greatest extent practicable and in easily understood language, the proposed changes to the zoning ordinance, the areas affected, and any other information calculated to improve public understanding of the proposal.<sup>56.7</sup>

**56.1** Laws 2014, ch. 161:8; exactly why these additional notice requirements are thought to be necessary is unclear. The notice requirements existing as of 2014 have been in place unchanged since they were added to the zoning law in the 1983 recodification of all land use laws (Laws 1983, ch. 447). What is clear is that these changes will create additional expense for municipalities, create uncertainty as to the validity of various zoning enactments and lead to litigation of zoning enactments as municipalities are required to try to prove that notice was provided to individual property owners.

**56.2** RSA 675:7, I.

**56.3** RSA 675:7, I-a.

**56.4** RSA 675:7, I-a.

**56.5** RSA 675:7, I-a.

**56.6** RSA 675:7, I-b (if the full cost of notice is not paid at the time of submission, the municipality shall inform the voter whose name appears first on the petition of the cost of notice within five (5) business days, and the balance must be paid within another five (5) business days. If full payment is not made and received within five (5) business days, the selectmen or village district commissioners may, in their discretion, decide to accept or decline the petition for submission. Failure by the municipality to inform the responsible person of the cost of notice shall be deemed a waiver of the payment requirement).

**56.7** RSA 675:7, II.

### § 5.17 Zoning Powers Versus Police Powers

*Page 107: [Add the following to n. 139:]*

**139** ; Trustees of Dartmouth College v. Town of Hanover, 171 N.H. 497, 514, 198 A.3d 911, 925 (2018) (Planning Board members did not have authority to deny site review for a 69,860 square foot indoor practice facility on Dartmouth's 41-acre athletic complex because they did not feel proposed use was appropriate for the land where it was a permitted use under the Zoning Ordinance).

## CHAPTER 6

# CONSTRUCTION OF ZONING ORDINANCES

### § 6.01 Generally

*Page 116: [Add the following to n. 21 in the main volume:]*

**21** ; Working Stiff Partners, LLC v. City of Portsmouth, 172 N.H. 611, 623, 232 A.3d 379, 388 (2019) (the definition of "dwelling unit" in the ordinance provided the plaintiff with a reasonable opportunity to understand that its conduct was not permitted as a dwelling unit. A municipal ordinance must be framed in terms sufficiently clear, definite, and certain so that an average person after reading it will understand when one is violating its provisions. However, perfect clarity and precise guidance have never been required).

### § 6.02 Effect of Administrative Interpretation

*Page 118: [Add the following to n. 31:]*

**31** ; Harborside Assocs. v. City of Portsmouth, 163 N.H. 439, 42 A.3d 858 (2012) (the Court will not apply the administrative gloss doctrine when there is no ambiguity in the regulation being considered, and the Court will not give deference to a land use board's interpretation if it is contrary to the express statutory language).

*Page 118: [Add the following to n. 34:]*

**34** ; Town of Carroll v. Rines, 164 N.H. 523, 527, 62 A.3d 733, 737 (2013) (there was no ambiguity in the ordinance concerning the excavation regulations so it was not appropriate to apply administrative gloss to the situation).

## CHAPTER 7

# ENFORCEMENT

### § 7.02 Building Permits

*Page 123: [Add the following to n. 15:]*

**15** ; Bosonetto v. Town of Richmond, 163 N.H. 736, 48 A.3d 973 (2012); Sunapee Difference, LLC v. State, 164 N.H. 778, 66 A.3d 138 (2013).

*Page 124: [Add the following at the end of this section in the main volume:]*

Note that when enforcing provisions of the State Building Code or State Fire Code, all local enforcement agencies and selectmen are required to provide information on the local and state appeals process when issuing a building permit or notice of violation.<sup>17.1</sup> Similarly, all local fire chiefs and their duly authorized subordinates must provide information on the local appeals process for local fire code ordinances and the variance process for the State Fire Code upon review of plans and notice of violations.<sup>17.2</sup>

**17.1** RSA 155-A:7, IV; note that RSA 153:14, VI requires that any notice of violation issued by the State Fire Marshal, or the State Fire Marshal's authorized representative, must include the relevant section of the state or local building or fire code.

**17.2** RSA 154:2, II(b); RSA 153:14, V; note that RSA 155-A:7, V requires that any notice of violation issued by an enforcement authority as described in RSA 155-A:7, I, must include



that the rights conferred by the amendment “shall not apply when the challenged governmental action is the subject of a judicial or administrative decision from which there is a right of appeal by statute or otherwise by the parties to that proceeding.”

*Page 593: [Change the name of this section to “Appeal of Planning Board Decisions”:]*

### § 33.02 Appeal of Planning Board Decisions

*Page 593: [Strike out the last two paragraphs in this section in the main volume and substitute the following:]*

Thus, if any aggrieved party desires to appeal a decision of the Planning Board and if any of the matters to be appealed are appealable to the Board of Adjustment under RSA 676:5, III, those matters must be appealed to the Zoning Board of Adjustment before any appeal is taken to the Superior Court.<sup>10</sup> If any party appeals any part of the Planning Board’s decision to Superior Court before all matters appealed to the Board of Adjustment have been resolved, the Superior Court shall stay the appeal until resolution of those matters, after which the aggrieved party may appeal to the Superior Court, by petition, any or all matters concerning the subdivision or site plan decided by the Planning Board or the Board of Adjustment.<sup>11</sup> The petition must be presented to the Superior Court within thirty (30) days after the Board of Adjustment’s denial of a Motion for Rehearing under RSA 677:3, subject to the provisions of RSA 677:15, I-12

If, on appeal of a Planning Board decision filed with the Superior Court, the court, on its own motion, within thirty (30) days after delivery of proof of service upon the defendants, or on motion of any party made within the same period, determines that any matters in the appeal should have been appealed to the Board of Adjustment under RSA 676:5, III, the court shall issue an order and stay all proceedings until final resolution of all matters before the Board of Adjustment.<sup>13</sup> If the Superior Court determines that a matter should be before the Board of Adjustment, the party who brought the appeal has thirty (30) days to present such matters to the Board of Adjustment pursuant to RSA 676:5, III.<sup>14</sup> Except as provided in RSA 677:15, I-a(b), no matter contained in the appeal shall be dismissed on the basis that it should have been appealed to the Board of Adjustment under RSA 676:5, III.<sup>15</sup>

When RSA 676:5, III was enacted in 1991, Laws 1991, ch. 231:13, it was generally thought that this would simplify and expedite the land use process as it would allow an expeditious review of planning board interpretation by the board of adjustment. Instead, it has resulted in a dual appeal track that

only very rarely resolves the appealed issue and more frequently, adds cost and delay to the appeal process. This dual appeal process has been a trap for the unwary.<sup>15.1</sup> It has not infrequently led to harsh results.<sup>15.2</sup> Laws 2013 ch. 179, which created RSA 677:15, I-a, constituted an attempt to address at least some of the problems created by RSA 676:5, III, but it will likely add still further delay to the appeal process.

<sup>10</sup> RSA 677:15, I-a(a); *Hoffman v. Town of Gilford*, 147 N.H. 85, 87, 786 A.2d 93, 94 (2001); *Ouellette v. Town of Kingston*, 157 N.H. 604, 612, 956 A.2d 286, 294 (2008) (the proper standard of review by a zoning board of adjustment on all administrative appeals is *de novo*. The ZBA does not give deference to the decision of the administrative official (including HDC and planning board) in making its determination).

<sup>11</sup> RSA 677:15, I-a(a).

<sup>12</sup> RSA 677:15, I-a(a).

<sup>13</sup> RSA 677:15, I-a(b).

<sup>14</sup> RSA 677:15, I-a(b).

<sup>15</sup> RSA 677:15, I-a(b).

<sup>15.1</sup> See *Hertz v. City of Concord*, 148 N.H. 325, 808 A.2d 76 (2002) (planning board decision concerning site plan of the Greek Orthodox Church in Concord was found to be a zoning interpretation which had to be appealed to the ZBA and when it was not, the plaintiff’s writ filed directly with the Superior Court was dismissed) and *Route 12 Books & Video v. Town of Troy*, 149 N.H. 569, 576, 825 A.2d 493, 498 (2003).

<sup>15.2</sup> See *Atwater v. Town of Plainfield*, 160 N.H. 503, 510–11, 8 A.3d 159, 165 (2010) (petitioners filed appeal with the ZBA within thirty (30) days of the decision of the planning board. However, because the ZBA ruled that the appeal was not filed within a “reasonable time,” which it defined to be fifteen (15) days, the appeal was denied on the grounds that it was filed too late. The Supreme Court affirmed, interpreting RSA 676:5, III to mean that a planning board decision about a zoning ordinance is ripe and appealable to the ZBA when the decision is made and that parties do not need to wait for final approval of the site plan before filing an appeal to the ZBA challenging the planning board’s interpretation or application of a zoning ordinance).

### § 33.03 Time Limits on Appeal

*Page 595: [Strike out the first two paragraphs in this section in the main volume and insert the following:]*

While time limits for an appeal of a planning board decision seem straightforward, they are fraught with traps for the unwary. RSA 677:15, I is very clear in requiring that a superior court [Petition for Certiorari] appeal of a planning board decision must be presented to the court “within thirty (30) days after the date upon which the board voted to approve or disapprove the application . . . .” If the minutes at which the planning board vote was taken, including the written decision of the planning board, were not filed within five (5) business days after the vote of the planning board pursuant to



## Application for Federal Firearms License

**Part A**

1. Applicant's Business/Activity is:  Individual Owner (*Sole Proprietor*)  Partnership  Corporation  LLC  
 Collector (*which can be an individual/partnership/corporation or LLC*)  Other (*specify*) \_\_\_\_\_

2. Licensee Name (*Enter name of Owner/Sole Proprietor OR Partnership (include name of each partner) OR Corporation Name OR LLC Name*)  
 DUSTY INC.

3. Trade or Business Name(s), if any DUSTY ARMS	4. Employer Identification Number (EIN), if any (see definition #17) 92-0863897	5. Name of County in which Business/Activity is Located Merrimack
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6. Business/Activity Address ( <i>RFD or Street Number, City, State, and ZIP Code</i> ) ( <i>NOTE: This address CANNOT be a P.O. Box.</i> ) 61 Lena Lane Epsom, New Hampshire 03234	7. Mailing Address ( <i>if different from address in item #6</i> )
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8. Contact Numbers (*Include Area Code*)  
 Business/Activity Phone (603) 815-2787 Fax Number \_\_\_\_\_  
 Cell Phone (603) 815-2787 Business Email management@dustyarms.com

9. Describe the specific activity applicant is engaged in or intends to engage in, which requires a Federal Firearms License (*sale of ammunition alone does not require a Federal Firearms License*).  
 Firearm Dealer, Manufacturer and Gunsmith

10. Application is made for a license under 18 U.S.C. Chapter 44 as a: (*Place an "X" in the appropriate box(es). Multiple license types may be selected- see instruction #8. Submit the fee noted next to the box(es) with the application. Licenses are issued for a 3-year period. See instruction #5 for payment information.*)

Type	Description of License Type	Fee
01	Dealer in Firearms Other than Destructive Devices ( <i>Includes: rifles, shotguns, pistols, revolvers, gunsmith activities, and National Firearms Act (NFA) weapons</i> ) (see instruction #10)	\$200 <input checked="" type="checkbox"/>
02	Pawnbroker in Firearms Other than Destructive Devices ( <i>Includes: rifles, shotguns, pistols, revolvers, gunsmith activities, and National Firearms Act (NFA) weapons</i> ) (see instruction #10)	\$200 <input type="checkbox"/>
03	Collector of Curios and Relics ( <i>NOTE: This is not a license to conduct business, see instruction #8</i> )	\$30 <input type="checkbox"/>
06	Manufacturer of Ammunition for Firearms Other Than Ammunition for Destructive Devices or Armor Piercing Ammunition (see instruction #11)	\$30 <input type="checkbox"/>
07	Manufacturer of Firearms Other than Destructive Devices (see instruction #11)	\$150 <input checked="" type="checkbox"/>
08	Importer of Firearms Other than Destructive Devices or Ammunition for Firearms Other than Destructive Devices, or Ammunition Other than Armor Piercing Ammunition ( <i>NOTE: Importer of handguns and rifles, see instruction #9</i> )	\$150 <input type="checkbox"/>
09	Dealer in Destructive Devices (see instruction #10)	\$3000 <input type="checkbox"/>
10	Manufacturer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition (see instruction #11)	\$3000 <input type="checkbox"/>
11	Importer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition (see instruction #9)	\$3000 <input type="checkbox"/>

11. Method of Payment (*Check one*) Total Fees \$0 ~~350.00~~

Check (*Enclosed*)  Cashier's Check or Money Order (*Enclosed*)  Visa  Mastercard  American Express  Discover  Diner's Club

Credit/Debit Card Number ( <i>No dashes</i> )	Name as Printed on Your Credit/Debit Card	Expiration Date ( <i>MM/YY</i> )
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Credit/Debit Card Address:	City:	State:	ZIP Code:
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**Please complete to ensure payment is credited to the correct application:**

I am paying the application fee for the following Person, Corporation, or Partnership:	Total Application Fees: \$
--	-------------------------------

I authorize ATF to charge my Credit/Debit Card the above amount. Your credit/debit card will be charged the above stated amount upon receipt of your application and a charge from "ATF Licensing Fee" will be reflected on your credit/debit card statement. In the event a license is NOT issued, the above amount will be credited to the credit/debit card noted above.

Signature of Cardholder	Date
-------------------------	------



12. Hours of Operation and/or Availability of Business/Activity (please provide at least one hour in which you can be contacted by ATF personnel)

Hour(s): Please indicate AM or PM	Sun	Mon	Tues	Wed	Thu	Fri	Sat
		09:00-12:00P ET	09:00-12:00P ET	09:00-12:00P ET	09:00-12:00P ET		

**IF YOU ARE ONLY APPLYING FOR A TYPE 03 (COLLECTOR OF CURIOS AND RELICS) LICENSE, SKIP ITEMS 13-17 AND GO TO ITEM 18. FOR ALL OTHER LICENSE TYPES, CONTINUE WITH ITEM 13.**

13. Was the business obtained from someone else? (If "Yes," please provide the name of the previous business and their FFL Number)

Yes  No

Name of Previous Business

Federal Firearms License Number

14. Indicate type of business premises

Zoned Residential:

- Single Family Dwelling
- Condominium/Apartment
- Hotel/Motel
- Public Housing

Zoned Commercial:

- Store Front
- Office
- Rod & Gun Club
- Military Installation (see instruction #13-additional information required)
- Other (specify) \_\_\_\_\_

15. Applicant's business premises is:

Owned Premises

Rented/Leased Premises- provide name, telephone number, and address **of the property owner:**

Military Installation

Name

Street Address

Telephone Number (with area code)

City, State, and ZIP Code

16. Do you intend to sell firearms at Gun Shows and/or conduct Internet sales?  Yes  No

17. Do you intend to use your license ONLY to acquire firearms to enhance your personal collection?  Yes  No

18. Name of Chief Law Enforcement Officer (CLEO) (Please print the name of the CLEO to whom a copy of this application was provided. See instruction #4 and definition #1.)

Brian Michael

19. Address of CLEO (Include Number, Street, City, County, State, and ZIP Code)

980 Suncook Valley Highway  
Epsom, NH 03234

county:

Merrimack

**ATTENTION Chief Law Enforcement Officer (CLEO):** This form provides notification of a person's intent to apply for a Federal Firearms License (FFL). It requires no action on your part. However, should you have information that may disqualify the person from obtaining a Federal Firearms License, please contact the Federal Firearms Licensing Center toll free at 1-866-662-2750. Issuance of an FFL in no way guarantees the business or activity is not in violation of State and/or local law.

20. Applicant Certification (Please read AND INITIAL each box)

- SR a. The business/activity to be conducted under the Federal Firearms License is not prohibited by State or local law at the premises shown in item 6. This includes compliance with zoning ordinances. (Please contact your local zoning department PRIOR TO submitting application)
- SR b. Within 30 days after the application is approved, the business/activity will comply with the requirements of State and local law applicable to the conduct of the business/activity.
- SR c. Business/activity will not be conducted under the license until the requirements of State and local law applicable to the business/activity have been met.
- SR d. A completed copy of this application has been sent (mailed or delivered) to the Chief Law Enforcement Officer (CLEO) of the locality in which the premises listed in item 6 is located (see instruction #4 and definition #1).
- SR e. As required by 18 U.S.C. 923 (d)(1)(G), I certify that secure gun storage or safety devices will be available at any place in which firearms are sold under this Federal Firearms License to persons who are not licensees. (See definition #4) (If applying for a Type 03, Collector of Curios and Relics License ONLY, write "N/A" instead of initialing this certification box.)
- SR f. Part B of this application has been completed and will be submitted for EACH responsible person (RP) (See definition #3)

21. Certification: Under the penalties imposed by 18 U.S.C. 924, I declare that I have examined this application in its entirety and the documents submitted in support thereof and to the best of my knowledge and belief, they are true, correct, and complete. This signature, when presented by a duly authorized representative of the U.S. Department of Justice, will constitute consent and authority for the appropriate U.S. Department of Justice representative to examine and obtain copies and abstracts of records and to receive statements and information regarding the background of the applicant. Specifically, I hereby authorize the release of the following data or records to ATF: Military information/records, medical information/records, police and criminal records. This certification must be signed by a Responsible Person (see instruction #2 and definition #3).

VEN IRWIN RHODES

Print Applicant Name (First, Middle, Last)

  
Applicant Signature

2023 Jan 30  
Date

Check Application Status (For ATF Use Only)  Approved  Abandoned  Withdrawn  Denied Reason for Denial:

Signature of Licensing Official:

Date:



**Part B - Responsible Person Questionnaire**

**EACH RESPONSIBLE PERSON MUST COMPLETE AND SIGN A SEPARATE QUESTIONNAIRE/ATF Form 7/7CR Part B.** In the future, if you need to add an additional Responsible Person (RP) to your FFL, the RP being added may complete this Part B-Responsible Person Questionnaire. If adding a RP to an existing license, be sure to include a signed written request from an existing RP on the license, giving permission to add the new Responsible Person (*see instruction #7*).

2. Issuance of your license or addition as a Responsible Person will be delayed if Part B is incomplete or otherwise improperly prepared.
3. **IMPORTANT!** All new responsible persons must submit a properly prepared FD-258 (*Fingerprint Card*) with this questionnaire. The fingerprints must be clear for accurate classification and taken by someone properly equipped to take them. The FD-258 should include "WVATF1100 ATF-FFLC, MARTINSBURG, WV" in the ORI block to facilitate processing of fingerprints.
4. LIST any given, married, and maiden names in Item 4, e.g., "Mary Alice (Smith) Jones," not "Mrs. John Jones." (If additional space is needed, attach a separate sheet. See instruction #1)

1. License or Applicant Name ( <i>From block 2 of Part A</i> ) DUSTY INC	2. Federal Firearms License Number ( <i>If being added to an existing FFL</i> )
---	---

3. Name of Responsible Person ( <i>Last, First, Middle</i> ) PATRICIA LOUISE RHODES	4. Aliases ( <i>Include given, married, maiden names</i> ) REESE, GARNETT, DAVIS	5. Position/Title Founder
--	---	------------------------------

6. Social Security Number ██████████	7. Date of Birth ( <i>MM/DD/YYYY</i> ) ██████████	8. Place of Birth ( <i>City &amp; State OR foreign country</i> ) ██████████
---	--	--

9. Current Residence Address 61 Lena Lane Epsom, New Hampshire 03234	10. Telephone Number ( <i>Personal Contact # with Area Code</i> ) ██████████
--	---

11. E-mail Address ██████████
----------------------------------

12. Previous Address(es) - Please provide every address you have had in the last five years and dates which you lived at the address(es) ( <i>If additional space is needed attach a separate sheet. See instruction #1</i> ) ██████████ ██████████ ██████████	13. Sex <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female <input type="checkbox"/> Non-Binary	14. Height ● Feet ● Inches	15. Weight ● (lbs)	16. Eye Color <input type="checkbox"/> Black <input type="checkbox"/> Blue <input type="checkbox"/> Brown <input type="checkbox"/> Gray <input type="checkbox"/> Green <input checked="" type="checkbox"/> Hazel <input type="checkbox"/> Maroon <input type="checkbox"/> Multiple <input type="checkbox"/> Pink <input type="checkbox"/> Other	17. Hair Color <input type="checkbox"/> Bald <input type="checkbox"/> Black <input type="checkbox"/> Blond <input checked="" type="checkbox"/> Brown <input type="checkbox"/> Gray <input type="checkbox"/> Red <input type="checkbox"/> Sandy <input type="checkbox"/> White <input type="checkbox"/> Other
18. Ethnicity Hispanic or Latino <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
19. Race ( <i>Please check one or more boxes</i> ) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Asian <input checked="" type="checkbox"/> White					

**For the following questions give full details on a separate sheet for all "Yes" answers (*see instruction #1*)**

	Yes	No
20. Have you ever held a Federal Firearms License? ( <i>If so, please include FFL#</i> ) _____		✓
21. Have you ever been a Responsible Person on a Federal Firearms License? ( <i>If so, please include FFL#</i> ) _____		✓
22. Have you ever been an officer in a corporation holding a Federal Firearms License? ( <i>If so, please include FFL#</i> ) _____		✓
23. Have you ever been an employee of a Federal Firearms Licensee?		✓
24. Have you ever been denied a Federal Firearms License?		✓
25. Have you ever had a Federal Firearms License revoked?		✓
26. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year, or are you a current member of the military who has been charged with violation(s) of the Uniform Code of Military Justice and whose charge(s) have been referred to a general court-martial? ( <i>See definition #10</i> )		✓
27. Have you ever been convicted in any court, including a military court, for a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? ( <i>See definition #10</i> )		✓
28. Are you a fugitive from justice? ( <i>See definition #11</i> )		✓
29. Are you under 21 years of age?		✓
30. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? <b>Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.</b>		✓
Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution? ( <i>See definitions #12 and #13</i> )		✓
32. Have you been discharged from the Armed Forces under <b>dishonorable</b> conditions?		✓
33. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? ( <i>See definition #5</i> )		✓
34. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? ( <i>See definition #7</i> )		✓



35. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.)

United States of America     Other Country/Countries (specify): \_\_\_\_\_

	Yes	No
36. Have you ever renounced your United States citizenship?		✓
37. Are you an alien illegally or unlawfully in the United States?		✓
38. a. Are you an alien who has been admitted to the United States under a nonimmigrant visa? (See definition #8)		✓
b. If you are such an alien, do you fall within any of the exceptions stated in definition #9? Attach supporting documentation to the application. (U.S. citizens/nationals leave 38b blank)		

39. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or I94#): \_\_\_\_\_

40. Under the penalties imposed by 18 U.S.C. § 924 and 1001, I declare that I have examined any related documents submitted in regard to this questionnaire/ATF Form 7/7CR Part B, and to the best of my knowledge and belief, they are true, correct and complete. This signature, when presented by a duly authorized representative of the U.S. Department of Justice, will constitute consent and authority for the appropriate U.S. Department of Justice representative to examine and obtain copies and abstracts of records and to receive statements and information regarding my background. Specifically, I hereby authorize the release of the following data or records to ATF: Military information/records, medical information/records, police and criminal records.

Patricia L. Rhodes  
Signature

PATRICIA LOUISE RHODES  
Printed Name

1/30/2023  
Date

**EACH RESPONSIBLE PERSON MUST COMPLETE AND SIGN A SEPARATE QUESTIONNAIRE/ATF FORM 7/7CR PART B**

Attach a 2" X 2" Photograph Here



Name, last 7 of SSN, and business address.

**If applying for a NEW FFL:**  
Mail application, fingerprint cards, photographs, and application fees, including a separate questionnaire/Part B for EACH Responsible Person, to:  
  
Federal Firearms Licensing Center  
P.O. Box 6200-20  
Portland, OR 97228-6200

**If only adding a RP to an existing FFL:**  
Each Responsible Person being added must complete a separate questionnaire/ATF Form 7/7CR Part B and mail it, along with their fingerprint card and photograph, to: ATF, Attn: FFLC, 244 Needy Rd, Martinsburg, WV 25405. Each questionnaire must be accompanied by a signed written request from a current/existing RP on the license, giving permission to add the Responsible Person.

**Type 03 Applicants:**  
A photograph and fingerprint card are not required if you are applying for a Type 03 Collector of Curios and Relics license only.

**Questions:**  
If you have any questions relating to this form, please contact the ATF Federal Firearms Licensing Center at 1-866-662-2750, or your local ATF Industry Operations Office.

Patricia Louise Rhodes  
Print Full Name

**Paperwork Reduction Act Notice**

This request is in accordance with the Paperwork Reduction Act of 1995. The information collection is used to determine the eligibility of the applicant to engage in certain operations, to determine the location and extent of operations, and to determine whether the operations will be in conformity with Federal laws and regulations. The information requested is required in order to obtain or retain a benefit and is mandatory by statute (18 U.S.C. § 923).

The estimated average burden associated with this collection of information is 60 minutes per respondent or recordkeeper, depending on individual instances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Resource Management Staff, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.



**Part B - Responsible Person Questionnaire**

**EACH RESPONSIBLE PERSON MUST COMPLETE AND SIGN A SEPARATE QUESTIONNAIRE/ATF Form 7/7CR Part B.** In the future, if you need to add an additional Responsible Person (RP) to your FFL, the RP being added may complete this Part B-Responsible Person Questionnaire. If adding a RP to an existing license, be sure to include a signed written request from an existing RP on the license, giving permission to add the new Responsible Person (*see instruction #7*).

2. Issuance of your license or addition as a Responsible Person will be delayed if Part B is incomplete or otherwise improperly prepared.
3. **IMPORTANT!** All new responsible persons must submit a properly prepared FD-258 (*Fingerprint Card*) with this questionnaire. The fingerprints must be clear for accurate classification and taken by someone properly equipped to take them. The FD-258 should include "WVATF1100 ATF-FFLC, MARTINSBURG, WV" in the ORI block to facilitate processing of fingerprints.
4. **LIST** any given, married, and maiden names in Item 4, e.g., "Mary Alice (Smith) Jones," not "Mrs. John Jones." (If additional space is needed, attach a separate sheet. See instruction #1)

1. License or Applicant Name ( <i>From block 2 of Part A</i> ) DUSTY INC	2. Federal Firearms License Number ( <i>If being added to an existing FFL</i> )
---	---

3. Name of Responsible Person ( <i>Last, First, Middle</i> ) STEVEN IRWIN RHODES	4. Aliases ( <i>Include given, married, maiden names</i> )	5. Position/Title Founder
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6. Social Security Number [REDACTED]	7. Date of Birth ( <i>MM/DD/YYYY</i> ) [REDACTED]	8. Place of Birth ( <i>City &amp; State OR foreign country</i> ) [REDACTED]
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9. Current Residence Address 61 Lena Lane Epsom, New Hampshire 03234	10. Telephone Number ( <i>Personal Contact # with Area Code</i> ) [REDACTED]
--	---

11. E-mail Address [REDACTED]
----------------------------------

12. Previous Address(es) - Please provide every address you have had in the last five years and dates which you lived at the address(es) ( <i>If additional space is needed attach a separate sheet. See instruction #1</i> ) [REDACTED] [REDACTED] [REDACTED] [REDACTED]	13. Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Non-Binary	14. Height ____ Feet ____ Inches	15. Weight ____ (lbs)	16. Eye Color <input type="checkbox"/> Black <input type="checkbox"/> Blue <input type="checkbox"/> Brown <input type="checkbox"/> Gray <input type="checkbox"/> Green <input checked="" type="checkbox"/> Hazel <input type="checkbox"/> Maroon <input type="checkbox"/> Multiple <input type="checkbox"/> Pink <input type="checkbox"/> Other _____	17. Hair Color <input type="checkbox"/> Bald <input type="checkbox"/> Black <input type="checkbox"/> Blond <input checked="" type="checkbox"/> Brown <input type="checkbox"/> Gray <input type="checkbox"/> Red <input type="checkbox"/> Sandy <input type="checkbox"/> White <input type="checkbox"/> Other _____
	18. Ethnicity Hispanic or Latino <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		19. Race ( <i>Please check one or more boxes</i> ) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Asian <input checked="" type="checkbox"/> White		

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20. Have you ever held a Federal Firearms License? ( <i>If so, please include FFL#</i> ) _____		✓
21. Have you ever been a Responsible Person on a Federal Firearms License? ( <i>If so, please include FFL#</i> ) _____		✓
22. Have you ever been an officer in a corporation holding a Federal Firearms License? ( <i>If so, please include FFL#</i> ) _____		✓
23. Have you ever been an employee of a Federal Firearms Licensee?		✓
24. Have you ever been denied a Federal Firearms License?		✓
25. Have you ever had a Federal Firearms License revoked?		✓
26. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year, or are you a current member of the military who has been charged with violation(s) of the Uniform Code of Military Justice and whose charge(s) have been referred to a general court-martial? ( <i>See definition #10</i> )		✓
27. Have you ever been convicted in any court, including a military court, for a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? ( <i>See definition #10</i> )		✓
28. Are you a fugitive from justice? ( <i>See definition #11</i> )		✓
29. Are you under 21 years of age?		✓
30. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? <b>Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.</b>		✓
31. Have you ever been adjudicated as a mental defective <b>OR</b> have you ever been committed to a mental institution? <i>See definitions #12 and #13</i>		✓
32. Have you been discharged from the Armed Forces under <b>dishonorable</b> conditions?		✓
33. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? ( <i>See definition #5</i> )		✓
34. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? ( <i>See definition #7</i> )		✓



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United States of America  Other Country/Countries (specify): \_\_\_\_\_

	Yes	No
36. Have you ever renounced your United States citizenship?		✓
37. Are you an alien illegally or unlawfully in the United States?		✓
38. a. Are you an alien who has been admitted to the United States under a nonimmigrant visa? (See definition #8)		✓
b. If you are such an alien, do you fall within any of the exceptions stated in definition #9? Attach supporting documentation to the application. (U.S. citizens/nationals leave 38b blank)		

39. If you are an alien, record your U.S.-Issued Alien or Admission number (AR#, USCIS#, or I-9#): \_\_\_\_\_

40. Under the penalties imposed by 18 U.S.C. § 924 and 1001, I declare that I have examined any related documents submitted in regard to this questionnaire/ATF Form 7/7CR Part B, and to the best of my knowledge and belief, they are true, correct and complete. This signature, when presented by a duly authorized representative of the U.S. Department of Justice, will constitute consent and authority for the appropriate U.S. Department of Justice representative to examine and obtain copies and abstracts of records and to receive statements and information regarding my background. Specifically, I hereby authorize the release of the following data or records to ATF: Military information/records, medical information/records, police and criminal records.



Signature

STEVEN IRWIN RHODES

Printed Name

2023 Jan 30

Date

**EACH RESPONSIBLE PERSON MUST COMPLETE AND SIGN A SEPARATE QUESTIONNAIRE/ATF FORM 7/7CR PART B**

Attach a 2" X 2" Photograph Here



Name, last 4 of SSN, and business address.

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Federal Firearms Licensing Center  
P.O. Box 6200-20  
Portland, OR 97228-6200

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**Questions:**  
If you have any questions relating to this form, please contact the ATF Federal Firearms Licensing Center at 1-866-662-2750, or your local ATF Industry Operations Office.

Steven Irwin Rhodes  
Print Full Name

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An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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application completeness, hearing tonight 7:15

5/10/23

To: [planning@epsomnh.org](mailto:planning@epsomnh.org)

Info

Hi Planning Board Chair from Rob Topik. Monday I gave the town office a copy of the completed argument, less attached exhibits/appendices, of my appeal from the administrative decision which got the application for a Lena Ln gun dealer over to the Planning Board 1st, rather than 1st to the ZBA. I asked / told please forward this to everyone that might be concerned, especially you. Tuesday when I filed the finished put together appeal for the ZBA, I was told it did not go to you (rather than to the lawyer) for fear of compromising you impartiality. I assume it was meant in good faith, but this like saying you, and the rest of the PB, can't sit on the case because you were informed of details of the proposal in the business inquiry meeting. You are a quasi-judicial board that must afford equal treatment (rights & responsibilities) to those both for & against.

Since my appeal is now filed with the town office before the site plan hearing is to be held tonight, this bears upon whether or not the site plan is ripe for hearing on the merits, when, as I have argued, it should not be before the PB yet in the 1st place. Further, the application is not complete for having left blank the "description of intended use". No average John or Jane party can tell if they are or should be interested in this proposed gun business because nowhere did the application or notice say the word gun.

If you don't get this in time, I will, at a minimum request the hearing on the merits be continued, that is not decided, until the ZBA appeal is decided.

Thanks, Rob Topik



PB hearing scheduled 5/10 / opposition to gun dealer Lena Ln

To: [planning@epsomnh.org](mailto:planning@epsomnh.org) Sent Friday, May 05, 2023

Hi PB Chair from Rob Topik, Please be advised that the opposition will be filing probably Monday before the hearing Weds., a written (copy for you, too) ZBA appeal from what ZCO's administrative decision can now (last few days) be inferred as to: OK-ing this retail business application in, not just this neighborhood, but in this res/ag zone. Whether or not this comes into play at the preliminary stage of deciding application completeness, it certainly should bear upon whether or not the subject-matter is ripe for hearing on the merits. Furthermore, written reasons will also be filed (same time) why the application is not complete. And akin to our (to be filed) ZBA appeal's reasoning, the written reasons will be filed as to why there is not, not only any "material facts" at issue, but no (zero) possible facts at all by which this application should be approved; that is this use fails as a matter of law, not facts, in this zone by this ordinance in this town. If the hearing on the merits does proceed anyway, kindly have our objection noted at the time. Thanks, Rob

opposition to ffl on Lena Ln

To: [scott.lacroix@epsomnh.org](mailto:scott.lacroix@epsomnh.org) Sent Thursday, May 04, 2023

RE: Opposition, based on Zoning Ordinance, to FFL on Lena Ln

Hi Mr. Zoning Compliance Officer Scott,

I'm Robert Topik (Rob) & I reside with my wife on Lena Ln on the last lot in Phase 2 subdivision before Phase 3 Cluster-subdivision, and I own the last lot before Phase 3 across the street on Lena Ln.

It's my understanding that this proposal for ffl business as a home occupation has preliminarily passed muster with you & the town attorney on its way to the Planning Board hearing.

You might be advised by the BOS & the attorney not to correspond with me at this stage due to the possibility and/or likelihood that the Planning Board decision may be appealed no matter which way they decide. It's my further understanding that any such appeal would suspend a business permit until the appeal would be decided.

On the other hand, assuming none of us wants to pursue this as an academic but fruitless exercise, perhaps you, with the blessing of the BOS and/or town attorney, would care to have a 5 or so minutes of frank exchange with me on the application of the ZO in this matter.

I left a message as to this at 2:44 pm to 603\_608\_7101, believing this to be your cell. In the alternative, if you would care to note by return email which provisions of the ordinance are controlling, & with the particular key words quoted to me, I would be happy to return what I think is the same back to you, & with what law supporting why I think so (for clarification).

Generally, the sooner narrowing the divide or difference, the better & more efficient it is getting to an acceptable, prevailing conclusion. The offer I make to you, I make to the town's attorney, too.

You & the Planning Board have to navigate between helping the applicant & not over-extending yourselves. I/we (the neighbors) are trying to navigate between stepping as lightly as possible on the Town's toes while, at the same time, hard-stopping this gun dealer proposal here.

Let me know something, thanks, Rob

Re: Re: from Rob on the corner, update from where we left off talking at Dave's driveway

To: Steven Rhodes Sent Monday, May 01, 2023

Hi Steven, all Sat. morning I talked with neighbors, including more than 1 of each Republican & Democrat households, + an Independent. I cast in a light most favorable to you two, stating from the onset that, based on your new stated info, my position of formerly a pot-stirrer is presently a temperature-taker, before I decide based on hearing most other opinions 1st (if changed or not). I mentioned hypersensitivity disorder & chronic fatigue syndrome. I mentioned my mom had progressive multiple sclerosis her mostly-all adult life, that started out with tough-to-pin-down-symptoms, so I feel for your issues. However, everyone had same opinion against your proposal. Trust is just too hard a commodity to come by these days, & once you have green-light permit it's opening Pandora's box. Nobody asked me to ask you this, but because I'm aware of how (long) these things tend to take/go until finally they are over, kindly consider pulling / withdrawing your proposal for in this neighborhood. Thanks for your consideration, Rob

> Hi Rob,

> There are only 2 people that have access to this email account. Patricia and myself.

> I understand and respect the old-school way. I share that description in many ways. I am planning to set aside time Monday evening after 5pmET to try connecting with neighbors and could meet with you then if that is easier for you. Honestly, I have a very busy day with work Monday and Tuesday to meet deadlines so my availability during the day will be limited. I can make time to chat with you in the afternoon/evening.

> Best,

> Steven Rhodes

> General Manager

> Dusty Arms

>> On Apr 30, 2023, Ro Top <rotop@gmx.com> wrote:

>> 1st would like to be sure this is Steven and/or Patricia. I log in old-school here (no computer always on, no email client, no smart-phone notification/ connection) to see if any messages. Faster way if your interested, probably is 603\_340\_6766 call or text.

To: Cheryl Gilpatrick

Sent Monday, May 01, 2023



Hi Cheryl, kindly make available the Zoning Compliance Officer's opinion to applicant and/or Planning Board (on this business inquiry of Steven Rhodes).

I just saw that the applicant did get back to me & is making time to talk more after 5pm today.

> Rob, can you give me your phone number please. Thanks.

> Cheryl, Chair

> Epsom Select Board.

EPSOM ZONING BOARD OF ADJUSTMENT  
TOWN OF EPSOM, NEW HAMPSHIRE 03234

MAY 09 2023

APPLICATION FOR APPEAL TO THE EPSOM ZONING BOARD OF ADJUSTMENT  
(PLEASE PRINT OR TYPE ALL INFORMATION CLEARLY)

SELECTMEN'S OFFICE  
EPSOM, NH

This appeal is for property recorded at the Merrimack County Registry of Deeds in Book(s) # 3760

Page(s) # 2483 and is identified on Epsom Tax Map #: R1-30-26 Lot #: \_\_\_\_\_ Sub-lot #: \_\_\_\_\_

1. Name of present property owner: Residence - Steven + Patricia Rhodes  
(and principal officer if business): 1st Home Occ - Dusty Inc, Steven Rhodes  
Director

2. Name of applicant (N/A if the same as owner; if different; both applicant and property owner must be present at public hearing or a signed statement from the owner must be provided authorizing the applicant's appeal):  
Robert + TOPIK, 46 LENALN + OWN R1-30-19

3. Telephone #: 603 340 6766 Email rotop@gmx.com

4. On separate sheet list all abutters to this property. An abutter is any person whose property is located in N.H. and is within 200 feet of your property's boundary lines. The applicant is also considered an abutter and should be included (see ZBA Fee Schedule). How to Find Abutters.  
→ R1-30-17 (46 LENALN)

5. PLAN: Explain exactly what you plan to build and/or do. Use additional sheets for sketches (include project location on lot with dimensions including all lot dimensions where applicable)

Appeal ZCO's Administrative decision allowing Rhodes (AKA Dusty Arms) to proceed to Planning Board for Site Plan Review without first having to have hearing by ZBA. Rhodes / Dusty Arms is proposing a (2nd) home occupation to go forward by which to obtain zoning approval in order to obtain Federal Firearms License (FFL) for gun dealer business registered out of his house.

6. USE: What is the proposed use for your PLAN, or how is the existing use of your property affected:

Traffic Increases, Safety Danger-risk Increases. This can only Decrease Not Increase property values in the neighborhood. This Spot-zones a not-permitted business use into a residential neighborhood + R/A zone. What may benefit one household (Rhodes) is bad for those who are opposed (many of us).



7. This application is for a (check all that apply):

ADMIN. APPEAL (Complete Sect. 1)

SPECIAL EXCEPTION (Complete Sect. 2)

VARIANCE ( Complete Sect. 3)

EQUITABLE WAIVER (Complete Sect. 4)

SPECIAL USE PERMIT (JUNK YARD) (Complete Sect. 5)

**SECTION 1 – APPEAL FROM AN ADMINISTRATIVE DECISION**

(Relating to the interpretation and enforcement of the provisions of the zoning ordinance.)

Decision of the enforcement officer related to zoning ordinance article(s) \_\_\_\_\_ section(s) \_\_\_\_\_ and Applicant's opposing interpretation of this ordinance (incl. applicable correspondence, use additional sheets as necessary):

See Attached Petition / Appeal

**SECTION 2 – SPECIAL EXCEPTION APPEAL**

A Special Exception is requested per article(s) \_\_\_\_\_ section(s) \_\_\_\_\_ of the zoning ordinance to permit the proposed use detailed in paragraphs **5 (PLAN)** and **6 (USE)** of this application. Complete Section 2 questions related to the Zoning Board's Special Exception checklist on page 3.

**SECTION 3 – VARIANCE APPEAL**

A Variance is requested to deviate from article(s) \_\_\_\_\_ section(s) \_\_\_\_\_ of the zoning ordinance to permit the proposed use detailed in paragraphs **5 (PLAN)** and **6 (USE)** of this application. Complete Section 3 questions related to the Zoning Board's Variance checklist on page 4.

**SECTION 4 – EQUITABLE WAIVER APPEAL**

An Equitable Waiver of Dimensional Requirements is requested to deviate from article(s) \_\_\_\_\_ section(s) \_\_\_\_\_ of the zoning ordinance to permit the proposed use detailed in **5 (PLAN)** and **6 (USE)** of this application. Complete Section 4 questions related to the requirements of an Equitable Waiver on page 5.

**SECTION 5 – SPECIAL USE PERMIT APPEAL**

A Special Use Permit, as specified in article III, section D.5 of the zoning ordinance is requested to permit the proposed junk yard detailed in paragraphs **5 (PLAN)** and **6 (USE)** of this application. Complete Section 5 questions related to the requirements for a junk yard on page 6.

Information on page 7 is provided to assist you with understanding the zoning process and completing this application. It is not necessary to submit application pages which do not apply to your case. Sign and date below following completion of the application.

This application is not acceptable unless it is complete, accurate and all information necessary to fully understand and advertise your request has been submitted. Use additional sheets as necessary

The undersigned alleges that the information provided on this application is true and accurate to the best of their knowledge.

APPLICANT: *Rolant Rojas* DATE: 5/8/23



in accordance with a comprehensive plan.<sup>216</sup> It is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners.<sup>217</sup>

Zoning ordinances are presumed to be valid. The person challenging a zoning change has the burden of proving that a zoning change is unreasonable or unlawful.<sup>218</sup> Changes in zoning boundaries can be justified only when they are for the purpose of promoting health, safety, morals, or the general welfare of the community. Furthermore, they must be made in accordance with a comprehensive plan. Adjoining property owners are entitled to rely on the rule that a classification, once made, will not be changed unless the change is required for the public good.<sup>219</sup>

A court will find that a change has resulted in "spot zoning" when the area is singled out for a treatment different from that of similar surrounding land which cannot be justified on the basis of health, safety, morals, or the general welfare of the community, and is not in accordance with a comprehensive plan. On the other hand, the mere fact that an area is small, is zoned at the request of a single owner, and is of greater benefit to that owner than to others does not make out a case of spot zoning if there is a public need or a compelling reason for it.<sup>220</sup>

Spot zoning was not found in *Schadlick v. Concord*.<sup>221</sup> In this case, sixty acres were rezoned from agricultural and single residential to multi-family residential. The rezoned area was adjacent to land currently used for multi-family residences.<sup>222</sup> Under the previous zoning, suitable space did not exist for needed apartments.<sup>223</sup> Therefore, the Court held that the zoning change was not unreasonable.<sup>224</sup> On the other hand, the court did find spot zoning in *Bosse v. Portsmouth*.<sup>225</sup> Here the legislative body rezoned an area surrounded by single-family residential to light industrial although hundreds

<sup>216</sup> 1 P. Salkin, *Anderson's American Law of Zoning*, § 6:12 (5th ed.).

<sup>217</sup> 1 P. Salkin, *Anderson's American Law of Zoning*, § 6:12 (5th ed.).

<sup>218</sup> *RSA 677:6*; *Rochester v. Barcomb*, 103 N.H. 247, 169 A.2d 281 (1961).

<sup>219</sup> *Bosse v. Portsmouth*, 107 N.H. 523, 226 A.2d 99 (1967) (rezoning of a 4.2-acre parcel to light industrial when it was surrounded by hundreds of acres of residentially zoned property was invalid; testimony showed no compelling need for more limited industrial land, since the city had over 800 acres zoned for this purpose and almost 700 of those acres were vacant).

<sup>220</sup> *Shadlick v. Concord*, 108 N.H. 319, 234 A.2d 523 (1967).

<sup>221</sup> *Shadlick v. Concord*, 108 N.H. 319, 234 A.2d 523 (1967).

<sup>222</sup> *Shadlick*, 108 N.H. at 323, 234 A.2d at 526.

<sup>223</sup> *Shadlick*, 108 N.H. at 323, 234 A.2d at 526.

<sup>224</sup> *Shadlick*, 108 N.H. at 323, 234 A.2d at 526.

<sup>225</sup> 107 N.H. 523, 226 A.2d 99 (1967).

of acres of industrial property were vacant.<sup>226</sup> In *Munger v. Exeter*,<sup>227</sup> the court found no public need or compelling reason for the rezoning of a half-acre lot from residential to commercial. The court remanded the case to the Superior Court with instructions to vacate the decision of the town meeting.

In *Portsmouth Advocates, Inc. v. City of Portsmouth*,<sup>228</sup> the New Hampshire Supreme Court found that spot zoning had not occurred when the city council amended the historic district to remove a two-block area containing seven buildings.<sup>229</sup> Even though the rezoning was instigated solely at the request of one landowner who wanted to avoid the restrictions in the historic district, the court found that the seven buildings which were removed from the district were not of historical value and that the rezoning was not inconsistent with the city's comprehensive plan.<sup>230</sup>

In *Miller v. Town of Tilton*,<sup>231</sup> the expansion of an agricultural buffer zone to include plaintiffs' land which had previously been zoned industrial was not spot zoning. Plaintiffs' land was on the border between the industrial and agricultural zones. Although the property was zoned for industrial use when plaintiffs purchased it and when an abutting property owner submitted a petitioned zoning article to enlarge the agricultural zone to its original border, including the plaintiffs' land, the zoning of that particular parcel had changed several times over the years.<sup>232</sup> The Court seemed to be swayed by the fact that the zoning amendment did not create a new, incongruous district, but merely extended a pre-existing district. It also seemed influenced by the fact that the amendment had been supported by a majority of the public and that it could be found to protect the health and welfare of area residents.<sup>233</sup>

<sup>226</sup> The *Bosse* case is a good example of a legislative body attempting to use the zoning process to accomplish a particular good for a person or group of persons without paying proper attention to the fact that land use regulation is designed to affect the land and not necessarily just the persons presently desiring to use it. The small island of land had been rezoned at the request of a popular and useful citizen so that she could construct a new, handicapped workshop and expand to a different area of the community a meritorious use that she had started in another location.

<sup>227</sup> 128 N.H. 196, 512 A.2d 418 (1986).

<sup>228</sup> 133 N.H. 876, 587 A.2d 600 (1991).

<sup>229</sup> *Portsmouth Advocates, Inc. v. City of Portsmouth*, 133 N.H. 876, 880, 587 A.2d 600, 603 (1991).

<sup>230</sup> *Portsmouth Advocates, Inc. v. City of Portsmouth*, 133 N.H. 876, 880, 587 A.2d 600, 603 (1991).

<sup>231</sup> 139 N.H. 429, 655 A.2d 409 (1995).

<sup>232</sup> *Miller*, 139 N.H. 429, 655 A.2d 409 (1995).

<sup>233</sup> *Miller*, 139 N.H. at 432, 655 A.2d at 410.



## § 8.02

### N.H. LAND USE PLANNING & ZONING

6.2 1808 Corp. v. Town of New Ipswich, 161 N.H. 772, 777, 20 A.3d 984, 988 (2011).

#### § 8.02 Purpose

Page 157: [Add the following to n. 10:]

10 ; Dartmouth Corp. of Alpha Delta v. Town of Hanover, 169 N.H. 743, 159 A.3d 359 (2017); New Hampshire Alpha of SAE Trust v. Town of Hanover, 172 N.H. 69, 207 A.3d 219 (2019) (fraternity had owned and operated house for more than six decades but when the National Chapter suspended the local charter, the Building Inspector informed the organization that the house was in violation of the Land Use Regulations similar to the organization by the Town in Dartmouth Corp. of Alpha Delta v. Town of Hanover, 169 N.H. 743, 159 A.3d 359 (2017). ZBA initially determined the house to be a nonconforming use but, on rehearing, reversed and upheld the Building Inspector's determination. The Court noted its limited review but (1) pointed out that under the circumstances, the Town had not illegally delegated its authority regarding land use to the college; (2) noted the right of the ZBA to reject or accept evidence; (3) recognized the ability of a ZBA to reverse itself prior to a final decision; and (4) reiterated that law enforcement of an ordinance in the past does not prohibit enforcement in the present. The Court did, however, remand the case to the Trial Court to consider SAE's claim that under the definition of "Institution" in the Ordinance, its use continued to be permissible).

#### § 8.03 Elements

Page 157: [Add the following to n. 11:]

11 ; Dartmouth Corp. of Alpha Delta v. Town of Hanover, 169 N.H. 743, 159 A.3d 359 (2017) (although a fraternity house had existed west of the College Green in Hanover since 1920, it technically had never received the status of a nonconforming use and, when the college revoked recognition of the fraternity for various violations, its existence was determined to be in violation of the zoning ordinance); New Hampshire Alpha of SAE Trust v. Town of Hanover, 172 N.H. 69, 207 A.3d 219 (2019) (fraternity had owned and operated house for more than six (6) decades but when the National Chapter suspended the local charter, the Building Inspector informed the organization that the house was in violation of the Land Use Regulations similar to the action taken by the Town in Dartmouth Corp. of Alpha Delta v. Town of Hanover, 169 N.H. 743, 159 A.3d 359 (2017). ZBA initially determined the house to be a nonconforming use but, on rehearing, reversed and upheld the Building Inspector's determination. The Court noted its limited review but (1) pointed out that under the circumstances, the Town had not illegally delegated its authority regarding land use to the college; (2) noted the right of the ZBA to reject or accept evidence; (3) recognized the ability of a ZBA to reverse itself prior to a final decision; and (4) reiterated that law enforcement of an ordinance in the past does not prohibit enforcement in the present. The Court did, however, remand the case to the Trial Court to consider SAE's claim that under the definition of "Institution" in the Ordinance, its use continued to be permissible).

#### § 8.06 Expansion of Nonconforming Uses

Page 164: [Add the following at the end of the first full paragraph (after n. 57) in the main volume:]

It goes without saying that if a use is established by special exception or by

### 2022 CUMULATIVE SUPPLEMENT

## § 9.03

variance, it is not a nonconforming use and the doctrine of natural expansion of a nonconforming use does not apply.<sup>57.1</sup>

57.1 1808 Corp. v. Town of New Ipswich, 161 N.H. 772, 777, 20 A.3d 984, 988 (2011) (prior landowner had received a special exception for office space in the town's village district zone. Thus when expansion of the space was desired, it was not an expansion of a nonconforming use. Although it was not an issue discussed by the Court in this case, it is not clear why the original landowner would qualify for a special exception since the special exception provisions did not allow a building with a footprint in excess of 1,500 square feet, and the original landowner requested and obtained a variance from that requirement).

## CHAPTER 9 ACCESSORY USES

### § 9.02 Purpose of Doctrine

Page 174: [Add the following to n. 7:]

7 ; Town of Lincoln v. Chenard, 174 N.H. 762, 774, 274 A.3d 1181, 1189 (2022) (in a brilliant, well-reasoned dissent citing 15 Peter Bassett pointed out that even if he agreed that the defendant's storage of junk did not fit the definition of "junk yard" under the Town's ordinance, which he did not, the ordinance in question was a permissive ordinance and since junk yards were not permitted under the terms of the ordinance, such a use was not allowed).

### § 9.03 Examples of Accessory Uses

Page 178: [Add the following at the end of this section in the main volume:]

In *Forster v. Town of Henniker*,<sup>42.1</sup> the Court reprised the requirements for finding a use to be accessory.<sup>42.2</sup> Petitioner claimed that the holding of weddings and other outdoor events between May and October on his 10 acre farm was an "accessory use"; however, the Court found that the petitioner failed to establish that his proposed uses have "commonly, habitually, and by long practice been established as reasonably associated with the primary use . . . in the local area."<sup>42.3</sup> Petitioner had presented a list of northern New England farms that purportedly "hold events and weddings"; however, the Court pointed out that the petitioner had demonstrated, at best, that out of approximately 4,200 farms in New Hampshire, only nine or 10 farms host commercial events similar to his proposed uses.<sup>42.4</sup> The Court noted that even assuming the relevance of the petitioner's evidence, as a matter of law, it failed to prove that his proposed uses have commonly, habitually and by long practice been established as reasonably associated with the primary use in the local area.<sup>42.5</sup>



42.1 167 N.H. 745, 118 A.3d 1016 (2015).

42.2 167 N.H. 745, 758, 118 A.3d 1016, 1026 (2015).

42.3 167 N.H. 745, 758, 118 A.3d 1016, 1026 (2015) (quoting *Becker v. Hampton Falls*, 117 N.H. 437, 441, 374 A.2d 653, 655 (1977)).

42.4 167 N.H. 745, 759, 118 A.3d 1016, 1027 (2015).

42.5 167 N.H. 745, 760, 118 A.3d 1016, 1027 (2015).

### § 9.05 Burden of Proof

*Page 179: [Add the following to n. 44:]*

44. Forster v. Town of Henniker, 167 N.H. 745, 118 A.3d 1016 (2015) (the Court noted that petitioner did not demonstrate its burden of proving that weddings were an accessory use to agricultural uses on a tree farm, and also noted that whether a proposed use constitutes an accessory use is a question of law for the Court to decide (*citig* 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning, § 9.03, at 174 (4th ed. 2010)).

*Page 179: [Add the following at the end of this section in the main volume:]*

However, in the context of a variance application, the applicant for variance relief is not required to alternately plead the accessory use doctrine as the ZBA must consider what uses of a property are allowed before it can decide whether unnecessary hardship exists.<sup>45</sup>

[C]ontained in every variance application is the threshold question whether the applicant's proposed use of property requires a variance because . . . the ZBA will invariably consider this issue in deciding whether unnecessary hardship exists. Given the complexity of zoning regulation, the obligation of municipalities "to provide assistance to all their citizens seeking approval under zoning ordinances," *Richmond Co. v. City of Concord*, 149 N.H. 312, 314, 821 A.2d 1059 (2003) (quotation omitted), and the importance of the constitutional right to enjoy property, see *Simplex Technologies v. Town of Newington*, 145 N.H. 727, 731, 766 A.2d 713 (2001), we cannot accept that the mere filing of a variance application limits the ZBA or superior court's consideration of whether the applicant's proposed use of property requires a variance in the first place. *Cf. In re Keeper of Records (XYZ Corp.)*, 348 F.3d 16, 23 (1st Cir. 2003) ("Claims of implied waiver must be evaluated in light of principles of logic and fairness.")<sup>46</sup>

Although the question of whether a particular use is an accessory use is a question of law, the resolution of that question requires a sufficiently developed factual record, including evidence of substantial customary association of the principal and subordinate uses, whereas evidence of the peculiar character of the property in question does not address that issue.<sup>47</sup>

45 *Bartlett v. City of Manchester*, 164 N.H. 634, 641–42, 62 A.3d 855, 861 (2013).

46 *Bartlett v. City of Manchester*, 164 N.H. 634, 641, 62 A.3d 855, 861 (2013).

47 *Bartlett v. City of Manchester*, 164 N.H. 634, 643, 62 A.3d 855, 862 (2013) (the Court went on to quote 15 P. Loughlin, New Hampshire Practice, Land Use Planning & Zoning, § 9.03 at 174 (4th ed. 2010) that "[w]hether a particular use is an accessory use is generally a question of both law and fact").

*Page 179: [After section 9.05, Burden of Proof, add the following new section in the main volume:]*

### § 9.06 Accessory Dwelling Units (New)

An accessory dwelling unit has been defined by the Legislature as "a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking and sanitation on the same parcel of land as the principal dwelling unit it accompanies."<sup>49</sup>

All municipalities that have adopted zoning must allow accessory dwelling units as a matter of right or by either conditional use permit pursuant to RSA 674:21 or by special exception, in all zoning districts that permit single-family dwellings.<sup>50</sup> That accessory dwelling must be allowed without additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single-family dwelling unit without an accessory dwelling unit.<sup>51</sup> However, municipalities are not required to allow more than one accessory dwelling unit for any single-family dwelling.<sup>52</sup> If a municipal zoning ordinance contains no provisions pertaining to accessory dwelling units, then one accessory dwelling unit shall be deemed a permitted accessory use, as a matter of right, to any single-family dwelling in the municipality, and no municipal permits or conditions shall be required other than a building permit.<sup>53</sup>

While accessory dwelling units must be permitted in all zoning districts that permit single-family dwellings, municipalities have the flexibility to require, by ordinance, the following:

- (a) **Interior Door:** An interior door may be required between the principal dwelling unit and the accessory dwelling unit, but the municipality may not require that it remain unlocked.<sup>54</sup>
- (b) **Lot Coverage:** The lot coverage requirements that apply to single family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit.<sup>55</sup>
- (c) **Maximum Occupancy Per Bedroom:** A municipality may require the standards for maximum occupancy per bedroom consistent with



ordinance be interpreted in such a way as to give a meaning which was not intended by its framers once that intent has been determined.<sup>5</sup>

Where the ordinance defines the term and issue, the definition will govern. Where no definition is provided in the ordinance, the ordinance as a whole will be examined to attempt to determine the meaning intended by the framers.<sup>6</sup> When no time limit is spelled out in the ordinance, a reasonable time limit will be imposed. The court will look at other provisions of the ordinance and state statutes governing similar activities.<sup>7</sup> The courts, however, have no function in redrafting ordinances to make them conform to an intention not fairly expressed in the language of the ordinance.<sup>8</sup> A court cannot speculate on any supposed legislative intent not appropriately

<sup>5</sup> Tremblay v. Hudson, 116 N.H. 178, 355 A.2d 431 (1976).

<sup>6</sup> Trotter v. Lebanon, 117 N.H. 148, 370 A.2d 275 (1977); Carnie v. Town of Richmond, 139 N.H. 21, 648 A.2d 205 (1994) (Richmond's zoning ordinance exempted "chimneys and antennas" from its 35' height limitation. Paragon Communications argued that their 100' "tower to support antennas" fit under this exemption. The term antenna was not defined in the ordinance, and the Supreme Court looked to Webster's Dictionary. The court then used a common sense approach indicating, "We cannot envision that such a result was contemplated by the town residents when they adopted the zoning ordinance. Rather, it is more likely that what was contemplated by the term 'antenna' was the ordinary, pre-cable television receiving antenna, albeit with a short supporting mast, mounted and affixed to many residences." *Carnie*, 139 N.H. at 23, 648 A.2d at 206.); Note that Laws of 1995, ch. 176 amended RSA 674:16-17 to essentially exempt certain FCC approved amateur radio antennas from zoning ordinance height limitations; Sundberg v. Greenville Board of Adjustment, 144 N.H. 341, 740 A.2d 1068 (1999) (undefined words and phrases will be given their common meaning and the court will look to legislative history of a regulation only if a term is ambiguous. In this case the court used *Webster's* for the plain meaning of the word "employ" as applied to a home occupation); Batchelder v. Town of Plymouth Zoning Bd. of Adjustment, 160 N.H. 253, 999 A.2d 323 (2010) (the term "incidental to lawful construction" was not defined in the ordinance so the Court looked to the common usage of "incidental," using dictionary definitions for guidance).

<sup>7</sup> Dearborn v. Milford, 120 N.H. 82, 411 A.2d 1132 (1980) (ordinance contained no specific time limit for selectmen to act on mobile home park application; court looked to provision for time limits on planning board applications and applied 90-day limit); State v. Lake Winnepesaukee Resort, LLC, 159 N.H. 42, 977 A.2d 472 (2009) (extensive discussion of the doctrine of *nullum tempus occurrit regi*, the common law rule excepting the sovereign from general limitations periods. The rule is founded upon the common law policy of preserving public rights, revenues and property from injury and loss, by negligence of public officers. It is the policy basis for prohibiting prescriptive periods from running against public highways and for providing that no right may be acquired by adverse possession against the state or its grantees. The doctrine protects the State of New Hampshire but its general application to municipalities is not as clear).

<sup>8</sup> Arnold v. Manchester, 119 N.H. 859, 409 A.2d 1322 (1979) (special act of the legislature creating the Manchester Board of Health had failed to authorize the board to hire and fire inspectors and the court refused to infer that power).

expressed in the language of the act itself.<sup>9</sup>

Generally, the intention of the legislative body as expressed in the ordinance is the touchstone of its meaning, but if the literal meaning of particular words is inconsistent with the general purpose or inconsistent with a well-stated principle of law of general application, there is grave reason to doubt whether the literal sense is the sense intended by the legislature.<sup>10</sup> Words used in a zoning ordinance must be given their ordinary meaning unless it appears from the context that a different meaning was intended.<sup>11</sup> The meaning of an ordinance is determined from its construction as a whole and not the construction of isolated words and phrases.<sup>12</sup> Proper construction requires that all words be given effect.<sup>13</sup> Doubt about the meaning of an ordinance is determined in accordance with the intent of the municipal body that enacted it, and any ambiguity is to be resolved by reference to the apparent object of the provision.<sup>14</sup> When attempting to determine the intent of the enacting body, the entire record underlying a ballot question presented to the voters must be considered.<sup>15</sup>

The validity of an ordinance will be upheld upon review if the ordinance bears a reasonable relationship to its objective and does not unduly restrict fundamental rights.<sup>16</sup> It will be found invalid if its infringement on private property rights is greater than necessary to effectuate the municipality's

<sup>9</sup> Derry v. Adams, 121 N.H. 473, 431 A.2d 766 (1981).

<sup>10</sup> Blais v. Goffstown, 119 N.H. 613, 406 A.2d 295 (1979) (statutory provisions for double damages in dog bite cases held not to apply to reasonable use of police dogs).

<sup>11</sup> Greenland v. Bunker, 118 N.H. 783, 394 A.2d 321 (1978); Meadowbrook Inn Corp. v. Sheridan, 120 N.H. 613, 419 A.2d 1072 (1980).

<sup>12</sup> King v. Lyme, 126 N.H. 276, 490 A.2d 1369 (1965).

<sup>13</sup> Windham v. Alford, 129 N.H. 24, 523 A.2d 42 (1986) (fact that one section of zoning ordinance permitted "fields" did not allow keeping of horses when it was clear from review of remaining terms of ordinance that such use was not intended); Belluscio v. Town of Westmoreland, 139 N.H. 55, 648 A.2d 211 (1994) ("We will not insert into a statute words that the Legislature has not chosen to include." *Belluscio*, 139 N.H. at 56, 648 A.2d at 212.).

<sup>14</sup> Storms v. Eaton, 131 N.H. 50, 549 A.2d 1208 (1988) (plaintiff claimed structure was "snow deflector" not structure subject to the setback requirements of ordinance; court held that in determining whether ordinance applies in particular instance, functional capacity of structure involved will control, and not subjective intent of builder).

<sup>15</sup> Hurlley v. Town of Hollis, 143 N.H. 567, 729 A.2d 998 (1999) (wording of special exception provisions was somewhat ambiguous; however, the intent could be discerned by examining the entire record of the planning board's action on the amendment).

<sup>16</sup> Powers v. Hampton, 125 N.H. 273, 480 A.2d 143 (1984) (24-foot fire lane across a private right-of-way was found to be unreasonable in light of fact that fire chief testified that 15-foot lane was adequate and that 24-foot lane would have eliminated most parking in right-of-way).



legitimate interest.<sup>17</sup> Partial invalidity of a zoning ordinance due to the fact that authority exercised by a town under that ordinance exceeds the limits of a statutory delegation does not require that the whole ordinance be struck down but just the invalid provisions.<sup>18</sup> Where conflict exists between two ordinances, the latter ordinance will control, especially when the latter deals with a subject in a specific way and the earlier enactment treats the subject in a general fashion.<sup>19</sup> Implied repeal of a former ordinance is a disfavored doctrine in New Hampshire, therefore the party arguing repeal by implication must demonstrate it by evidence of convincing force.<sup>20</sup> If any reasonable construction of the two ordinances taken together can be found, the court will not find that there has been an implied repeal.

The terms of an ordinance will not be void for vagueness as long as language adequately apprises one of the standards to be used in determining whether a proposed use is permissible.<sup>21</sup> The terms of the ordinance must be framed with sufficient clarity and in a definite and certain manner so that an average person, after reading it, will understand when he is violating its provisions. It will not necessarily be vague because it does not precisely apprise one of the standards by which an administrative board will make its decision.<sup>22</sup> The New Hampshire Supreme Court has held that the testimony of a planning board member who drafted a particular zoning ordinance may be relevant in the construction of an ambiguous provision since the proper inquiry is the ascertainment of intent of the enacting body.<sup>23</sup> Such testimony must be used carefully, however, for the subjective intent of one member may not reflect the thinking of the majority of the members of the planning board or, for that matter, of the legislative body, and use of such testimony could result in undue weight being given to an interpretation which may have simply reflected a special agenda of one member voting for a particular ordinance. Extraneous sources cannot be used to contradict the plain

<sup>17</sup> Powers v. Hampton, 125 N.H. 273, 480 A.2d 143 (1984).

<sup>18</sup> Durham v. Cutter, 121 N.H. 243, 428 A.2d 904 (1981).

<sup>19</sup> Board of Selectmen v. Planning Board of Merrimack, 118 N.H. 150, 383 A.2d 1122 (1978).

<sup>20</sup> Board of Selectmen v. Planning Board of Merrimack, 118 N.H. 150, 383 A.2d 1122 (1978).

<sup>21</sup> Carboneau v. Rye, 120 N.H. 96, 411 A.2d 1110 (1980).

<sup>22</sup> Freedom v. Gillespie, 120 N.H. 576, 419 A.2d 1090 (1980) (defendant claimed that there were no standards for granting relief from septic system setback requirement and thus alleged that ordinance was void; court found that standards for variances under subdivision regulations would be applied by planning board which administered ordinance and thus upheld ordinance).

<sup>23</sup> Saidla v. Stratham Planning Board, 123 N.H. 714, 465 A.2d 802 (1983).

language of an ordinance.<sup>24</sup>

When interpreting a zoning ordinance, all zoning provisions on the same subject matter should be considered.<sup>25</sup> Whenever possible, ordinance provisions should be construed as consistent with each other.<sup>26</sup>

In construing the terms of any ordinance, it is basic zoning law that if a particular use is not expressly permitted by the ordinance, it is prohibited as a matter of law unless the plaintiff obtains relief from the zoning ordinance or has some type of vested right under the ordinance.<sup>27</sup>

#### Library References

8 E. McQuillin, *Municipal Corporations*, §§ 25:77-25:81 (3d ed. 2010)

4 P. Salkin, *American Law of Zoning*, §§ 41:1-41:16 (5th ed.)

S. M. Stevenson, *Anticau on Local Government Law*, § 55:09[1] (Matthew Bender & Co. 2009)

1 E. Ziegler, *Rathkopf's The Law of Zoning and Planning*, ch. 5

#### § 6.02 Effect of Administrative Interpretation

As was pointed out in the previous section, the construction of a zoning ordinance is a question of law and the court is not bound by the interpretations of local boards or officials.<sup>28</sup> The administrative construction of a zoning ordinance by the zoning authorities is neither conclusive nor binding, but it is entitled to consideration.<sup>29</sup> The construction of an ordinance by those charged with its administration, however, is entitled to substantial deference and, in some cases, an administrative interpretation may be persuasive.<sup>30</sup>

<sup>24</sup> Bradley v. City of Manchester, 141 N.H. 329, 682 A.2d 1194 (1996) (planning board memorandum concerning the expansion of a non-conforming use could not be used to contradict the plain language of the ordinance regarding non-conforming uses).

<sup>25</sup> Appeal of Town of Hampton Falls, 126 N.H. 805, 498 A.2d 304 (1985).

<sup>26</sup> Bradley v. City of Manchester, 141 N.H. 329, 682 A.2d 1194 at 1198 (1996) (*citing* Appeal of Derry Educ. Assoc., 138 N.H. 69, 71, 635 A.2d 465, 466 (1993)).

<sup>27</sup> Old Street Barn, LLC v. Town of Peterborough, 147 N.H. 254, 787 A.2d 171 (2001) (since ordinance did not contemplate using property for commercial water venture involving pumping and removing four 8,200 gallon trucks per day as proposed by the applicant, plaintiff needed relief from the board of adjustment in order to be able to expand its operations).

<sup>28</sup> Brennan v. Winnepesaukee Flagship Corp., 122 N.H. 524, 446 A.2d 1175 (1982) (on two occasions, the Meredith ZBA found that the parking and docking facilities proposed by defendants for their cruise ship, Mt. Washington, were permitted as "outdoor recreation facility" under ordinance; court disagreed with ZBA and reversed).

<sup>29</sup> Trotter v. Lebanon, 117 N.H. 148, 370 A.2d 275 (1977).

<sup>30</sup> Litky v. Winchester School District, 129 N.H. 626, 529 A.2d 399 (1987) (Department of Education had defined term "teacher" to include "principal" for certain purposes; since legislature had not expressed any intent to contrary, court used that definition).



**Town of Epsom Planning Board  
Rules and Procedures for Public Hearings**

1.      **Open Public Hearing:** Chair opens the Public Hearing and announces the time.
2.      **The Public Hearing Notice is read into the record.**
3.      **Chair Announcement: The public hearing was posted:**
  - a. In the Concord Monitor,
  - b. On the Town's website, and
  - c. In the Town office windows.

All abutters were notified and the list has been verified as to whom returned receipt of the notice.

4.      **Application Review:** Board Review of Application.

If complete, entertain Motion to accept the Application, 2<sup>nd</sup>, and Vote. Roll call if any virtual Board Member attendees. If the application is determined to be incomplete a continuance may be granted by the Board.

If incomplete, or that a hearing must be continued, a date is set once it is agreed there needs to be a continuance.

5.      **Opening Remarks by the Chair: Skip this step if no one from the public attends, but announce no one from the public is in attendance for the record.**

This public hearing is open to the general public.

- a. Anyone from the public testifying will first state and spell their name for the record.
- b. All members of the public wishing to speak must sign the sign-in sheet, and shall address the Board directly, not the Applicant.
- c. Should a member of the public wish to ask a question of the Applicant, the question shall be directed to the Board. The Chair shall then determine if the question is directly related to the merits of the public hearing and instruct the Applicant to answer.

The Board will not allow excessive repetition and irrelevant remarks, and will follow general rules of conduct for any Members of the Board, the Applicant or their representative, and the public. The Board shall also preserve the right for all negative and positive comments against or in favor of the subject matter to be heard; however, those comments must be limited to the purpose of the Public Hearing. The Board will not tolerate any obscenity, personal attacks, rude, or possibly slanderous remarks.

6. \_\_\_ **Determine Regional Impact:** The Board reviews and determines if the Application has Regional Impact and if so asks if anyone affected by regional impact is here to speak. This is typically determined prior to the Public Hearing so regional abutters can be notified. See Page 3, Regional Impact Checklist.
7. \_\_\_ **Waiver Review:** Board reviews requested Waivers. Hold on decision to accept the Waiver until Public Hearing is complete.
8. \_\_\_ **Applicant Presentation.** Only the Board can ask questions during presentation. Presentation and Board question phase concludes.
9. \_\_\_ **Abutter Comments:** Board entertains Abutter comments of those **in** favor.
10. \_\_\_ **Abutter Comments:** Board entertains Abutter comments of those **not in** favor.
11. \_\_\_ **Anyone, other than abutters who wish to speak, if time permits.**
12. \_\_\_ **Close Public Comments:** No need to Motion to close the public comment portion of the hearing, but no public comments should be allowed after this portion is closed.
13. \_\_\_ **Final Review:** Review any final questions from the Board to the Applicant.
14. \_\_\_ **Close the Public Hearing.** No further comments from Applicant.
15. \_\_\_ **Review Waiver Request:** Review waiver submitted at the beginning of the hearing to determine if the waiver will be granted. Take vote to accept or deny.
16. \_\_\_ **Board discussion.** The Board members review all information provided.
17. \_\_\_ **Conditions:** The Chair reviews the list of Conditions, if any, with the Board.
18. \_\_\_ **Board Vote:** The Chair facilitates the vote process to determine all Board Members in favor, all opposed, all who abstain, and announces the outcome of the vote. The Chair votes last in the case of a tie. The initial Motion **must** contain all Conditions, if any.



19. **Final Procedure Notes:** The Chair reviews the final procedures with the applicant depending on the type of application made.
- a. Notice of Decisions are provided to the Applicant within five days of the hearing with all conditions listed if applicable.
  - b. Approved Sub-Division Plans, Site Plans, and Lot Line Adjustment Plans: A set of mylars for all plans must be provided to the Town Office along with the recording fee paid in full. Once the payment is processed, (and if by check the payment clears), the mylars shall be delivered and recorded with the Merrimack County Registry within five days. The Decision shall then be filed, by e-file, to the Registry. LCHIP Surcharge Fee is required, it is an additional \$25.00 check to the Merrimack County Registry of Deeds.
  - c. Any Conditions that are required to be met prior to the filing at the Registry shall be reviewed by the Planning Board Chair before the plans are sent to the Registry.