

Accepted by ZBA _____
Date: _____
Case #: _____

Zoning Board Copy
Original

Amt Pd / Chk # \$500 / Cash
Date: 5-26-23
Rec'd By: (MD)

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

RECEIVED

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

MAY 26 2023

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

SELECTMEN'S OFFICE
EPSOM, NH

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

- Name of present property owner: Steven & Patricia Rhodes, 61 Lena Ln
(and principal officer if business): Dusty Inc., NAICS Code- Other/ Consulting Services, Steven Rhodes, Director Dusty Arms, 61 Lena Ln NAICS Code- Other/Retail Sales, Trade Name Registered/Owned by Dusty Inc., 61 Lena Ln
- 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, reside with wife 46 Lena Ln, R1-30-17, and own R1-30-19, both abut Phase 3
- Telephone #: 603-340-6766 Email rotop@gmx.com
- 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.
- 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)
See ZBA Rules of Procedure, Application/Decision, 1. Application, Appeals from an administrative decision. Per RSA 676:5 III, "If, in... site plan review, the planning board makes any decision... based upon the terms... any construction, interpretation or application of the zoning ordinance, which would be appealable to the (ZBA) if it had been made by the administrative officer, then such decision may be appealed to the (ZBA)...". In between the vote on application completeness and vote on site plan approval with conditions, at the hearing on 5/10/23, the Planning Board voted 4 to 3 that the application by the Rhodes, to register their home as the business address for a Federal Firearms Licensed gun dealer, was permitted by the Ordinance (or by its spirit per prior discussion) as a Home Occupation (see Draft Minutes for 5/10/23, lines 132-133, 165-178, & the draft-minutes-motion 207-210, draft since amended.) I (or we if amended on 5/30/23 due-date) **appeal to the ZBA, and appeal from the Planning Board's 4-3 vote that this use is permitted. Any spirit substantiates, and is subordinate to, the plain language in the Ordinance including, but not limited to, the definition of Home Occupation.** (See attached statement of the case.) The Planning Board, as the one **appealed from**, also gets copied on this per RSA 676:5 I.
- USE:** What is the proposed use for your **PLAN**, or how is the existing use of your property affected:

The gun dealer applicants are in the end of a cul de sac cluster-subdivision, Phase 3 Whitehouse Acres on Lena Ln. Phase 2, Whitehouse Acres Spring St. (dead-end) is off to one side as Lena Ln passes through Phase 2, not a cluster, plus Phase 2 has houses on N. Pembroke Rd. This all approximates the neighborhood in the R/A zone. With only one-way in & out most all of the neighborhood, and with private covenants (both phases), the character is more restrictive than the R/A zone in general, and the R/A zone restricts more than R/LC or R/C zones by design & spirit of the Ordinance. I am personally stressed and afraid of the character of the zone & the neighborhood changing to more commercial, more speeding traffic, more gun danger, also tending to lower property value, if the Planning Board can obtain, **without a variance, a spot zoning amendment under color of a site plan review, against the general welfare.** (See attached signed statement by neighbors as to property value, etc.)

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) * see below section(s)

 and Applicant's opposing interpretation of this ordinance (incl. applicable

correspondence, use additional sheets as necessary): * The decision was contrary to the controlling plain-language Glossary definition of Home Occupation (p.118), contrary to the definition of Accessory Building or Use (p.117), contrary to Article III General Provisions, K. Home Occupations, 1. "Residences may be used to house home occupations as defined under this Ordinance." (p.43), contrary to Article VII Conflicting Provisions, "... the provision which imposes the Greater restriction or higher standard shall govern." (p.101), contrary to Article II Zones and Districts, C. Table of Uses, Retail And Service Uses, 2 "general merchandise" (p.15) Not Permitted, contrary to C Table of Uses, Wholesale, Transportation, And Industrial Uses, 27. Manufacturing, (p.17) Not Permitted, and contrary to the letter and spirit of Article I, A. Preamble (p.9). "In order... to protect property values... to encourage the most appropriate use of land... and to promote health, safety, morals, order, convenience, peace, prosperity, and the general welfare of its inhabitants, the following Ordinance is hereby

SECTION 2 – SPECIAL EXCEPTION APPEAL

Enacted...". (See attached statement of the case.) 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: Bob Vojid DATE: 5/26/23

List of abutters for 61 Lena Lane

MAP-LOT-SUB

000R01-000023-000000

O'CONNELL, DEREK J & CHRISTINA, 55 N PEMBROKE RD

000R01-000030-000018

~~WHITEHOUSE ACRES, PHASE III, CID - C/O GOULET, 51 LENA LANE~~

000R01-000030-000024

GOULET, DAVID W & KAREN D, 51 LENA LANE

000R01-000030-000025

HUTSON, CURTIS & CAITLEN, 57 LENA LANE

000R01-000030-000027

MAGOON, JAMES, 63 LENA LANE

000R01-000030-000028

YOUNG, JOSHUA P & PENNY, 64 LENA LANE

000R01-000030-000029

MALAFRONTE, THOMAS J, 60 LENA LANE

000R01-000030-000029

SKAFIDAS, THOMAS WILLIAM & SARAH PARKER, 58 LENA LANE

R1-30-17

Barbara Lezon (LEZON) /

Robert Topik (TOPIK) /

46 LENA LN

Case Against Gun Dealer in Lena Ln Neighborhood & R/A Zone

I / we oppose retail and retail-like sales (general merchandise) & manufacturing by a gun transferrer-manufacturer-smither-seller out of his/her house in our neighborhood in the residential-agricultural zone. This disproportionately benefits the one household, here not a long time, to the real and psychological detriment & stress of households, some here near 30 years, who are opposed.

Anyone can buy & sell firearms as a hobby & effect the transfers through FFL's in a commercial zone without themselves getting zoning compliance for an FFL in the residential zone. This attempted use of a Federal Firearms Licensed (FFL) gun dealer fails as a matter of law, not fact, by the Ordinance itself in the R/A zone. That is, there are no (zero) possible facts by which this use can be allowed in this zone or our neighborhood. Once the correct reading/meaning of the home-occupation-use is done/understood, a gun dealer is not permitted.

In the Ordinance Glossary p.117, " Certain words contained in this ordinance shall be defined as follows:" See p.118, "Home Occupation: Use of a dwelling by the resident owner or tenant for a *customary* (emphasis added) home occupation *such as* (emphasis added, *note that it Does Not Say, *such as but not limited to**) dressmaking, hairdressing, home day care, teaching, or the offices for real estate, insurance, engineer, doctor (other than veterinarian), dentist , architect, lawyer, or *other recognized profession* (emphasis added) similar in scope and impact." Home occupation is an accessory use. See p.43 "K. Home Occupations (#)2. ... shall mean such use which is not the primary use, but is secondary, *accessory, and incidental* (emphasis added)...". See p.117, "Accessory Building or Use: A building or use subordinate and *customarily incidental* (emphasis added) to the main building or use on the same lot." See p.43 again "K. Home Occupations (#) 1. Residences may be used to house *home occupations as defined under this Ordinance* (emphasis added)".

So basically, an FFL gun dealer as a home occupation would have to be a "customary home occupation" that is "customarily incidental" to residing in a dwelling, *and* (in this case) a "recognized profession" that aligns with the named professions in the preceding group. There is no doubt that all do apply. See p.101

ARTICLE VII CONFLICTING PROVISIONS ... the provision which imposes the greater restriction or higher standard shall govern".

As for whether or not an FFL gun dealer meets the test of a "recognized profession", any 21 year old (renting or living with parents), and with his parent's or landlord's permission, and with exterior doors in the house or apartment that have locks on them, and with a gun-safe, and that can come up with the \$200 license fee, and pass a background check as is required in order to buy a gun, and certify compliance with zoning, then after notifying the local Chief of Police as to their intention to get an FFL, they can get an FFL application preliminarily approved to schedule an in-the-business-location personal interview with a (BATFE) Bureau of Alcohol, Tobacco, Firearms and Explosives agent (to insure application completeness & compliance with zoning), before getting final approval as an FFL [see BATFE DO I NEED A LICENSE TO BUY AND SELL FIREARMS? (pgs. i,ii,& 9 in appendix 1), and see The Firearm Blog Part 6: Getting a Home-Based FFL: The Interview (pgs.2-3 out of the 5 in appendix 1)].

No state licensing is required in NH for an FFL, only the local zoning compliance for FFL business (see PB minutes 2/25/2004 pgs.1-2 in appendix 2), "Public Hearing - Peter Muise - "Peter (Tri-Eagle Firearms LLC) was told by the State Police that the only requirement is approval by the Town. There is no state licensing involved, only the Federal licenses." It is common knowledge that this cannot begin to compare with one of the "recognized profession(s)" in the aforementioned group. No state license is required. No learned study is required to pass a proficiency exam. No apprenticeship, no Bar exam as in law & no accreditation as in medicine, is required.

As for "customary home occupation", see Home Based FFL [2023] – How to Get License by Ryan Cleckner, Firearms Attorney (p.4 of 4 screenshot-copies & p.2 of 8 full-text copies, see appendix 3 - "Although *an FFL is not a customary home-based occupation*," (emphasis added), which is all the evidence, beyond common knowledge and the plain language of the Ordinance, as might be required to be the final word on the matter.

2

This neighborhood (see appendix__ including Phase 2 & 3 subdivision plans in appendix^{1e}) may be about to have its character changed, which character is conducive for strolling/jogging, etc. with its double-dead-ends, upgraded (upon requests) with a florescent speed-limit sign & a "no outlet" sign due to speeding problems (including speeding by a substantial % of delivery trucks/vans as well as speeding by passenger vehicles). I / we worry the passenger-vehicle-speeders on the way to a gun dealer would or could likely include a higher % that are concealed-carrying. It's common knowledge that most gun buyers are already gun owners. Recently, Robert Topik says he went to the gun business applicant's house to request a speeder to slow down, which speeder turned out to be a construction worker who likely was to be paid by this household. This begs the question, if there is a lack of control exercised upon those being paid, how likely is it that sufficient control can/will be exercised upon those doing the paying for guns and transfers?

Regarding traffic, PB minutes of 3/8/23 (see appendix⁴) say (in 1st paragraph of business inquiry) "He stated... no increased traffic to the neighborhood", but see next paragraph "Ms. Gilpatrick stated that would contribute to an increase in traffic." And see in 5th paragraph "Mr. Goulet asked if people would be bringing firearms for repairs. Mr. Rhodes stated yes, they would be offering gunsmithing". This has since been retracted as to used guns, but not retracted as to new guns; but either gunsmithing or manufacturing includes, for example, the assembling or building, out of made or bought parts, AR-15 rifles for sale-transfer. The number of description-of-use changes made so far (and maybe more to come after getting an FFL), might be why in the PLANNING BOARD BUSINESS INQUIRY APPLICATION, the "Description of Intended Use" is left blank (see appendix⁵).

Further bearing on traffic volume is sales volume. R. Topik & S. Rhodes talked with D. Goulet listening at the end of Goulet's driveway on Friday 4/28/23. Rhodes stated some personal issues that might be eased by, or fit compatibly with, the convenience of this FFL business, and that he was looking forward to building it up so he would not have to work for anyone else other than himself. This would require more profit which means more sales volume. Unless the personal issues abate, it is more likely than not for more of this business to be

conducted from home. (See Home Based Gun Dealers Fail ATF Inspections Nationwide in appendix 6.) Furthermore, the above-referenced business model lends itself to the highest profit item(s) per sale, meaning it lends itself to the manufacture, sales, & transfers of AR-15 rifles, which are among the most dangerous of items contributing to an epidemic of gun violence.

Assuming that all households in the neighborhood (on average) generate equal traffic incidental to a residence, the Phase 3 Cluster Subdivision with lots of 100 ft. frontage vs Phase 2 with lots of 200(+) ft. has residential traffic density 2+ times more intensive on the road, and it has to pass in & out through Phase 2. Rhodes is applying to increase the use (for home occupation gun dealer), but already has a previously existing home occupation. A consulting business office is registered out of his house, which might also impact traffic (see Dusty Inc. for consulting vs Dusty Arms for retail sales in appendix 7).

The character of this neighborhood (both Phases 2 & 3) is further distinguished by private protective covenants (see appendix 8) which, for example, don't allow poultry or livestock, making the character of this place more restrictive than the R/A zone in general. Guns are an adult use & inappropriate where children are around as is the case here. Not only should gun dealers not be allowed in this zone, but there could/should be a 150 ft. buffer between gun dealers & residences (and maybe a greater buffer for more sensitive uses like schools).

Per all the uses in the table of uses, very few are permitted in the R/A zone. Sales of "convenience goods" in a mom & pop store requires a special exception in which the applicant has to demonstrate the public need for that use at a ZBA hearing. If selling soda pop, chips & Snickers requires a ZBA hearing, then selling and transferring guns out of residence must likewise require such a hearing. If this use was put in for a variance, the applicant would have the burden of proof as to no loss to surrounding property values. No business spot zoning is here yet, and this use raises controversy even in zones for business (see appendix 9).

Peter from Tri-Eagle Firearms (Epsom) told R. Topik per phone conversation 5/3/23 that he is no longer interested in sales to other than police & military. He related an incident in which one of the delivery carrier's drivers left boxes of

weapons outside his house. When he called the carrier co. to ask/ complain, he was told the driver got a signature, but the signature was forged. After Peter escalated the complaint with that co.'s internal security, he thought that would cover it, but remarkably, there was a repeat occurrence, this time (he heard) that the driver was fired & charged. This could happen in our neighborhood if this use would be approved.

In this ZBA appeal from an administrative decision, not only the neighborhood, but the whole R/A zone could be affected & should be aggrieved. This mistaken application of "Home Occupation" is acting as an exception that swallows the whole table of uses, and cuts into the R/A zone by spot zoning it. Spot zoning "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" (New Hampshire Practice, 2.17 Spot Zoning, p.52, see appendix ____).

See appendix ____, New Hampshire Practice, Chapter 9, Accessory Uses, supplement p.29, 9.03 Examples of Accessory Uses, "(petitioner) 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." (citing 167 NH 745, 758).

See appendix ____, New Hampshire Practice, Chapter 6, Construction of Zoning Ordinances, supplement p.114, 6.01 Generally, "Where the ordinance defines the term and issue, the definition will govern.", and p.116-117, "Extraneous sources cannot be used to contradict the plain language of an ordinance." (citing 141 NH 329). And see p.117, "Whenever possible, ordinance provisions should be construed as consistent with each other." (citing 141 NH 329 at 335). This use does not "promote health, safety, morals, order, convenience, peace, prosperity, and the general welfare of its inhabitants" (Ordinance Preamble), which is the spirit & foundation upon which the definition of Home Occupation is interwoven.

Thank you for your attention to this matter.

Peter Vogel 5/26/23

Given the choice between two (2) substantially similar homes to buy in two (2) substantially similar neighborhoods, but for the only notable or significant difference being that in one neighborhood there is known to be a Federal Firearms Licensed gun dealer registered to conduct business out of the house, then I and / or we would choose to buy in the neighborhood without the gun dealer rather than the one with the gun dealer.

This, collectively by & with all the undersigned residents, constitutes evidence that the proposed gun dealer on Lena Ln (whose site plan has since been approved by Epsom Planning Board) would tend to lower surrounding home property values here more than it would tend to increase them. If such a gun dealer were to be allowed into a residential neighborhood (maybe with the exception in some residential neighborhood with variance or special exceptions for retail or manufacturing business already approved), it is especially more likely to lower property values in a neighborhood with private covenants recorded that make the character of the neighborhood (as is the case here) more restrictive than the residential zone in general.

For this reason, among other reasons including, but not limited to, an increased danger risk from more traffic, and from strangers coming into the neighborhood to receive personally dangerous items of an adult nature (which they also might be concealed-carrying on their (one) way in before picking up more items for on their (one) way out), we are aggrieved by the Planning Board decision interpreting this as a permitted use on Lena Ln, as well as generally in the residential zone.

This particular business, ***which business activity needs local zoning approval in order to obtain a Federal Firearms License***, can be distinguished from unlicensed and personal selling of items that either don't need or can be done without Zoning Compliance, Planning Board or Zoning Board approval. ***Once it is more widely known that any business manufacturing or manufacturing-like (of guns out of parts), and / or retail or retail-like (gun sales and transfers) is allowed out of the home, and once any business of a different nature from those specified in the Home Occupation definition of the Ordinance is known to be allowed***, then


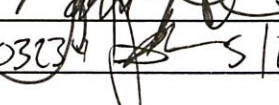
the residential character of the neighborhood and district will more likely than not become more and more commercial in character, as the conditions placed on such a business are also more likely than not to become less and less restrictive as well.

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 (1st) 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.

ROBERT TOPIK, 46 LENA LN Robert Topik 5/21/23
Barbara Lezon, 46 Lena Ln Barbara Lezon 5/21/23
THOMAS MAIAFRONTE 60 LENA LANE Thomas 5/21/23
Anne Mulligan, 31 Spring St, Anne Mulligan 5/21/23
MISCELLA FAYMAN 16 Spring St Miscella Fayman 5/21/23
RONALD CONNORS 16 Spring St Ronald Connors 5/21/23
DAVID KILIAN 12 Spring St David Kilian 5/21/23
KAY KILIAN 12 Spring St Kay Kilian 5/21/23
David W. Goulet 51 Lena Lane David W. Goulet 5/21/23
Karen D. Goulet 51 Lena Lane Karen D. Goulet 5/21/23
Bill Acheson 112 N. Pembroke Rd Bill Acheson 5/22/23
Lisa Acheson 112 N. Pembroke Rd Lisa Acheson 5/22/23
Bruce Bradford 111 N. Pembroke Rd Bruce Bradford 5/22/23
Cynthia Bradford 111 N. Pembroke Rd Cynthia Bradford 5/22/23
Keith Brown 45 Lena Lane Keith Brown 5/22/23
Shania Lee 45 Lena Ln Epsom Shania Lee 5/22/23
William Lang 127 N. Pembroke Rd William Lang 5/22/23
Denise Featn 133 N. Pembroke Rd Denise Featn 5/22/23
Travis Richard 25 Spring St Travis Richard 5/23/23

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 (1st) 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 Turner 29 Lower Ln Epsom, NH 03224  5/23/23