

EPSOM BOARD OF ADJUSTMENT

1598 DOVER ROAD, EPSOM, NEW HAMPSHIRE 03234

RECORD OF DECISION

Zoning Appeal: Case 2023-06 (Topik – AA)

Applicant: Robert Topik et al. (complete list of applicants identified by an * in cc below)

Owner: Steven and Patricia Rhodes

Tax Map: R01 **Lot:** 30-26

Zoning District: Residential/Agricultural

Notice is hereby given that the **Administrative Appeal** seeking to overturn the Planning Board's May 10, 2023 decision that a proposed Federal Firearms Licensed gun and sporting goods business was permitted as a home occupation in the Residential/Agricultural Zone in accordance with the Epsom Zoning Ordinances was **affirmed** by unanimous vote of the Zoning Board of Adjustment at the Public Hearing held on Wednesday, July 5, 2023. The subject property is located on Lena Lane within the Residential/Agricultural Zone and is identified on Epsom Tax Map R01 as Lot 30-26.

Discussion:

The ZBA overturns the Planning Board's May 10, 2023 decision based on the definition of home occupation as listed in the ordinance's glossary:

"Home Occupation: Use of a dwelling by the resident owner or tenant for a customary home occupation such as 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 similar in scope and impact."

Taken collectively, home occupations are technical and professional services commonly offered to the general public and in no way relate to the retail sale of a specific item.

Alternatively, retail sales of guns are objectively captured in the description provided in Article II.C (Table of Uses), Retail and Service Use #2:


"Retail establishment selling and/or renting general merchandise, including, but not limited to, dry goods, apparel and accessories, furniture and home furnishings, home equipment, small wares, and hardware, and including discount and limited price variety stores."

Wares are defined as a "manufactured item of a specific type" or "items offered for sale". As such, guns meet the definition of a ware. Hardware is defined as "tools, machinery, and other durable equipment". Guns are durable equipment and commonly used as a tool for hunting. In both instances, this use is consistent with a Retail and Service Use #2.

Zoning Appeal Case 2023-06 (Topik – AA)
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Conclusion:

Gun sales are considered a Retail and Service Use #2 and not a home occupation. Per the Table of Uses, gun sales are not permitted in the Residential/Agricultural Zone. In order to establish a Federal Firearms Licensed gun and sporting goods business in this zone, variance approval from the Zoning Board of Adjustment is required.



Glenn A. Horner, Chairman
Zoning Board of Adjustment
Date: July 6, 2023

Note: Any person affected has the right to appeal this decision and/or conditions of the approval. If you wish to appeal the decision, or any conditions contained herein, you must act within a thirty- (30) day period beginning with the next working day after the Zoning Board of Adjustment meeting when the decision was made. The first step, before any appeal can be taken to Superior Court, is to apply to the board of adjustment for a rehearing. The motion for a rehearing must set forth all the grounds on which you will base your appeal.

cc: Steven & Patricia Rhodes, 61 Lena Lane, Epsom, NH 03234
*Robert Topik, 46 Lena Lane, Epsom, NH 03234
*David Kilian, 12 Spring Street, Epsom, NH 03234
*John Tucker, 29 Lena Lane, Epsom, NH 03234
*David Goulet, 51 Lena Lane, Epsom, NH 03234
*Keith Brown, 45 Lena Lane, Epsom, NH 03234
Epsom Board of Selectmen
Epsom Planning Board Chair
Epsom Zoning Compliance Officer
Epsom Town Clerk
File Case 2023-06 (Topik – AA)