

Zoning

Accepted by ZBA _____
Date: _____
Case #: _____

Amt Pd / Chk # \$551.00 / cash
Date: 3-15-24
Rec'd By: (mp)

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

RECEIVED
MAR 15 2024

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

This appeal is for property recorded at the Merrimack County Registry of Deeds in Book(s) # 8295 EPSOM SELECT BOARD
Page(s) # 1960 and is identified on Epsom Tax Map #: R01 Lot #: 30 Sub-lot #: 09

1. Name of present property owner: Keeler, Michael D/Trustee & M. Keeler 2011 Revocable Trust
(and principal officer if business): _____
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
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.
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)

Per RSA 676:5 III,

"If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section;"

This is an administrative appeal to the ZBA (as opposed to a special exception or variance appeal) from the Planning Board decision 2/14/24 approving the site plan application submitted by Mike Keeler to operate a firearms business as permitted by FFL 01 and FFL 07 at his home.

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

The character of the neighborhood (if not the whole zone) will slip-slide (slippery slope) into a more commercial and illegally spot zoned 2ndary use that unreasonably disturbs the peaceful & quiet enjoyment of the primary residential use due to the potential highly intensive nature of this business that covers all 3 aspects of commercial, that being manufacturing, sales and service. This potential intensity is unlimited due to the fact that RSA 159:26 preempts and voids local regulations as to the conditions by which the Planning Board attempts to regulate or limit "the sale ... transportation (deliveries) ... or other matter (manufacturing) pertaining to firearms, firearms components (etc.)". In addition to the general & categorically intensive commercial potential, this business in particular, due to the adult and controversial nature of the product/merchandise, not only is age restricted to buy, but also has received extra-special attention and treatment by the state legislature and federal government. The controversial nature stems from the inherent safety risks with firearms. It's one thing knowing that those with an attachment to the neighborhood, such as fellow residents together with whom they choose to invite over, may be carrying weapons, but it's another stressful & burdensome thing to know armed strangers with no personal attachment are coming in and out of the neighborhood.
(Continued on attached paperwork.)

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 Reperwork

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: *[Signature]* DATE: *3/15/24*

APPLICATION FOR APPEAL TO EPSOM ZBA

Continued from pg. 1, # 6 of application form:

- 1) The stress of strangers in close proximity whose primary purpose to be there is to acquire weapons is further exacerbated by the potential sale of the real estate to a buyer whose primary motivation is not peaceful and quiet residential enjoyment, but seeking the convenient outlet running with the land for the commercial enterprise to swallow and make a facade out of the supposed primary residential use.
- 2) This coincides with the fact that as a matter of law this firearms business is not a 2ndary accessory use but is a primary use in itself.
- 3) An actual or presumed inventory of firearms/components presents an attractive target for theft.
- 4) This neighborhood is far from the police station, which increases chances of theft or attempted theft.
- 5) A sizable percentage of the neighborhood already signed a statement pertaining to the 1st firearms site plan approval (still under further appeal) that all things equal but for the firearms approval, and due to the inherent stress of added safety risk, added traffic potentially speeding , and neighborhood character change, I/we/they would have purchased elsewhere. (See appendix P.9-10)
- 6) A sizable percentage of Epsom voters, about 200 out of 700 voted for citizen proposed zoning amendments to clarify more specifically what the ordinance states in general about regulating what zone/locations/premises are available for both this type of and this specific business.
- 7) It can be inferred that this percentage also feels/suffers the inherent stress of added safety risk and the character change of residential locations that are threatened by the planning board's spot zoned and illegal zoning amendment(s) under color of a site plan review hearing.
- 8) It can be inferred from the above neighborhood signed statement and the above roughly 200 voters that these concerns and stress tend to lower residential property values for a sizable percentage of the public, notwithstanding it might also increase the value of commercially approved residential property.
- 9) I, Robert Topik, am personally stressed at the prospect of the gun business site plan approval(s) in question surviving to the detriment of my peaceful enjoyment of residing/owning in this neighborhood, and for which it does not/would not tend to protect my investment in said property unless I, too, would sell my neighbors "short" by "selling out" to become a gun business also.
- 10) It's not right that a non-voter-approved zoning amendment under color of a site plan review, which attempt of an amendment is tantamount to spot zoning, and which so-called 2ndary use is actually a primary use in itself, that this use is able to oppress the peaceful enjoyment of those who reasonably

relied upon the zoning ordinance to also protect their investment in their primary residential use.

Continued from pg. 2, SECTION 1 - APPEAL FROM AN ADMINISTRATIVE DECISION

Decision of enforcement officer related to:

- 11) The site plan approval was contrary to the Glossary definition of Home Occupation,
- 11a) contrary to Glossary definition of Accessory Building or Use,
- 11b) contrary to Article III, General Provisions, K. Home Occupations, 1. "Residences may be used to house home occupations as defined under this Ordinance." & 2. "Home occupation shall mean such use which is not the primary use, but secondary, accessory, incidental to that of a residential dwelling;"
- 11c) contrary to Article VII, Conflicting Provisions, "the provision which imposes the greater restriction or higher standard shall govern",
- 11d) contrary to Article II, Zones and Districts, C. Table of Uses, Retail and Service, # 2. retail establishment selling general merchandise, and # 6. consumer service establishment, and Wholesale and Industrial # 27. Manufacturing., and
- 11e) contrary to site plan review regulations (captured by Article VII, Conflicting Provisions), Section 1.6 Conflict With Private Provisions (restrictive covenants)

Applicants Opposing Interpretation to follow after this, the ZBA's Jurisdiction to Take the Measure:

- 12) Article VI, Administration and Enforcement, E. Board of Adjustment, 2. Powers of Board, "The Board of Adjustment shall have the following powers, as well as any other power conferred upon such Board by the Statutes of the State of New Hampshire: a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Compliance Officer in enforcement of this Ordinance." ... "d. In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the powers granted to it under RSA 674:33, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and to that end **shall have all the powers of the Zoning Compliance Officer from whom the appeal is taken** (emphasis added).
- 13) Same Article VI, C. Zoning Compliance Officer, 1. Description, "... The Zoning Compliance Officer **shall administer the Zoning Ordinance literally** (emphasis added) and shall not have the

power to permit any use of and/or buildings which is not in conformance with this Ordinance."

14) *15 Land Use Planning and Zoning § 22.01 (2022)*

§ 22.02 Administrative Appeals

The zoning board of adjustment has the power to hear and decide appeals if it is alleged that there is error in any order, requirement, decision,¹¹ or determination made by an administrative official¹² in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16.¹³ In exercising this power, the board has all the powers of the administrative official from whom the appeal is taken,¹⁴ but no more. In other words, the board can grant or deny the relief requested of the administrative official or modify the relief granted or denied by the official,¹⁵ but it cannot grant a variance from the terms of the ordinance when it has only been asked to grant an administrative appeal. In an administrative appeal situation, the board is essentially putting itself in the place of the administrative official. ...

While the Zoning Board of Adjustment is obligated to consider the "spirit of the ordinance" when considering a variance request,¹⁸ when interpreting an ordinance in an administrative appeal, the board must confine its review to the language of the ordinance when that language is plain and unambiguous.¹⁹

The board of adjustment's authority to hear administrative appeals is limited strictly to zoning appeals. The authority of the planning board is exclusive in New Hampshire²⁴ in the areas of subdivision and site review, and appeals of any decision of the planning board are exclusively to the superior court.²⁵ An exception to this rule, however, are Planning Board subdivision or site plan review decisions based upon the terms of the zoning ordinance, or upon the construction or interpretation of the zoning ordinance, which would otherwise be appealable to the Board of Adjustment if made by an administrative officer. These decisions may be appealed directly to the board of adjustment.²⁶

15) The permissive variety of zoning ordinance, in absence of variance or special exception language, functions generally to prohibit uses of land unless they are expressly permitted as primary uses or are found to be accessory to a permitted use. *Windham v. Alford*, 129 NH 24 (1986) ... The Supreme Court reversed, stating that an accessory use must be "occasioned by and subordinate to the permitted primary use and customarily or habitually associated with it," and ruled that the evidence presented in the case did not support the finding of an accessory use.

16) Since the highest standard/most restrictive provision, encompassed by Article VII Conflicting Provisions, that is "prescribed by any statute, Ordinance or other regulations" is the one that shall govern" or control, all pertinent provisions bearing on the use in question are threshold tests that must be met, or the use fails for not meeting the most restrictive or highest standard relative to that use.

17) A letter from Keith Cota was submitted after the Planning Board decision now being appealed from herein. The letter refers to exceeding the limitations/regulations/jurisdiction specified in relevant

sections of the Ordinance, as well as the fact/law that such a departure from what is written can only be made by submission to the voters for their approval (and then only if it does not constitute spot zoning).

17a) Since Keith Cota was on the Planning Board back about the time of amendments in 1991 and 1996 to Article III, Section K., Home Occupation, he is in a position to comment on any interpretation if someone thinks that the language is not stated plainly enough. (See letter, appendix P. 11-13).

18) The only way Article VII, Conflicting Provisions could not be controlling is if RSA 159:26 preempted all of zoning rather than the specific list of regulations expressly stated as preempted, and which "laundry list" conspicuously omits "location" to be preempted. Furthermore, it adds language to make certain that zoning (that is to say location) regulation is not to be preempted.

Applicant's Opposing Interpretation and How None of the Relevant Tests/Provisions are Met:

19) As for RSA 159:26, when interpreting statutes, no words are to be added or ignored. "Location" can not be added to the expressly stated list of preemptions. Nor can "Nothing in this section shall be construed as affecting a political subdivision's right to adopt zoning ordinances for the purpose of regulating firearms or knives businesses in the same manner as other businesses" be ignored.

19a) As was stated above in pg. 1, # 6 of the APPLICATION FOR APPEAL form, (up to) 3 aspects of the firearms business are manufacturing, sales and service. Per RSA 159:26 the manufacturing aspect (FFL type 07 includes all 3 aspects) is regulated/relegated to the same zones as is # 28 Manufacturing in the Table of Uses, and the sales & service aspects (FFL type 01 includes both) are to the same zones as is # 2 Retail establishment selling general merchandise (that is "including, but not limited to" the stated examples of merchandise).

19b) "Establishment" is defined in Merriam Webster online dictionary: 1: something established: such as d : a place of business or residence with its furnishings and staff.

20) Since RSA 159:26 defers "To the extent consistent with federal law," and "Application for Federal

Firearms License, #20. Applicant Certification (*Please read AND INITIAL each box*)

 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** (emphasis added). (*Please contact your local zoning department PRIOR TO submitting application*)

___ 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.

___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." (see appendix ___), this is further grounds that zoning/location/premises regulation is not preempted by RSA 159:26.

21) Turning now to the Ordinance, if the uses of manufacturing, sales, gunsmithing and transfers to end-users do not fit into the Table of Uses' designated zones/locations for the 3 aspects of this business as stated in paragraph 19a) above,

21a) and if the use of gun mfgr/dealer does not qualify as an accessory use of a residence, and/or is a primary use in itself,

21b) and if the use of gun mgfr/dealer does not qualify as either a customary domestic or recognized profession of a home occupation "such as" (not "such as but not limited to") those expressly listed, as well as "such as" a Certified Public Accountant, which is another learned or recognized profession,

21c) and if the use of gun mfgr/dealer is not (and/or will not be) expressly listed as with the learned business, if not the learned profession, of real estate which is expressly included,

21d) then gun mfgr/dealer, at least insofar as the attempt to locate within the residential/agricultural zone is concerned, would/does constitute spot zoning because it is singling out for treatment different from that of similar surrounding land which cannot be justified on the basis of health, safety, morals or general welfare of the community and which is not in accordance with a comprehensive plan [see *Munger v. Exeter*, 128 NH 196 (1986)].

22) As for gun mfgr/dealer as a learned or recognized profession requiring extended academic study or apprenticeship/residency for advanced degree and/or licensing, see Ordinance, APPENDIX A:

ZONING INDEX OF ACTIVITIES REQUIRING PERMITS, m) Home Occupation Permit required from the Planning Board, and see Appendix ___ , email from ZCO to Chief of Police 6/21/23 that although the Planning Board decision was under appeal (and the permit is still not in hand), the gun-applicants were "good to go" from a "Town and Zoning aspect", so the Chief, justifiably relying upon the ZCO, issued 6/22/23 the state license to sell pistols and revolvers, upon which the ATF then issued the gun-applicant the FFL for 3 years as of 7/1/23. Contrary to both planning and zoning statutes that stay proceedings upon appeal(s), and the appeal to zoning filed 5/26/23 it did not stop the ZCO from emailing the Chief to proceed. This scenario is far from the standard of a recognized/learned profession as well as a professional licensing authority.

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23) Real estate has been classified as a business, not a profession, due to outside sales. It is a Home Occupation here only because it is expressly listed/included in the definition as such. Likewise, firearms sales at gunshows/tradeshows are like real estate sales outside the home, and another reason why a business and not a profession.

24) (See accessory use doctrine in Forster v Town of Henniker 167 NH 745 @ 747. Appendix ____.) The accessory use doctrine is akin to the common law whereby certain uses clearly and customarily incidental to the primary use do not need a special exception or variance from the Ordinance no matter if expressly permitted or not. A home office for keeping the books does not need a permit, if the use does not reach manufacturing, sales or service business to be performed there as well.

25) While gun ownership is occasioned by home ownership, gun mfgr/dealer for profit/business is not.

26) The record does not reflect long-standing, habitual, common occurrence of gun mfgr/dealers in the Epsom locality more than a rarity.

27) Wherefore, the site plan approval for gun mfgr/dealer is in excess of the literal administration of the Ordinance's restrictions as to what is meant by customary, by accessory use, by recognized profession, and since the phrase "similar in scope & impact" refers back, not to a standalone criteria, but to the preceding group of recognized professions, it is not applicable to carry any weight. [see ejusdem generis (Forster id. @ 745)].

28) Therefore the Planning Board exceeded its jurisdiction in taking the measure to arrive at its approval decision.

Please overturn the decision appealed from; thank you for your attention to this matter.

by Robert Topik Robert Topik 3/15/24

46 Lena Ln, Epsom 03234, 603_340_6766

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

~~✗~~

~~✗~~

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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 HAYMON 16 Spring St Misella Haymon 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 Bradon 111 N. Pembroke Rd Bruce Bradon 5/22/23
Cynthia Bradon 111 N. Pembroke Rd Cynthia Bradon 5/22/23
Keith Brown 45 Lena Lane Keith Brown 5/22/23
Shania Lee 45 Lena Lane 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 5/22/23

X X 10

From: Keith Cota
16 North Pembroke Road
Epsom, NH

Subject: Epsom Planning Board Procedural Errors in Interpretation
of Zoning Regulations Regarding the Issuance of
Home Occupation Site Plan Approval
for Mike Keeler (Firearms Sale and Manufacturing)
In Residential/Agricultural Zoning District

Date: February 25, 2024

To: Epsom Planning Board

On February 20, 2024, the Epsom Planning Board (Board) issued a non-residential site plan approval for home occupation to Mike Keeler who's resides at 22 Spring Street in Epsom NH within the Residential/Agricultural (R/A) Zoning District. The home occupation application as presented to the Board is for sale and manufacturing of firearms and firearms parts, as well as, firearms accessories such as firearm holders, flashlight, knives and silencers.

As outlined under the Board's Notice of Approval, it summarizes that Mr. Keeler agreed to several site plan conditions at the January 10, 2024 Public Hearing that would limit customer time of day pickup, delivery, limitation on sales of ammunition, no business signage at the property and no discharge of firearms (unless self-defense).

In support of the Home Occupation Site Plan Approval, the Board justified the decision based upon fourteen findings. From those findings, it is clear that the Board has conclusively found the home occupation business will consist of retail and manufacturing within the R/A Zoning District (Findings # 2, 4, 5, 7, and 13).

The Board correctly defines the current Zoning Ordinance definition for home occupation (Findings # 8) and the rights for home occupation use within the R/A Zoning District (Findings # 9). However, the Board's justification based upon their interpretation of the Zoning Ordinance is in error under Findings #10, 11 and 12.

Findings #10 – "Home Occupations, by their very nature, allow uses in the Zone that would not otherwise be permitted because there are done on a small scale. For example, while retail establishments and manufacturing are not permitted in the Zone, a dressmaker clearly manufactures and sells apparels. Likewise, professional offices require special exception in the Zone; however, real estate, insurance, engineer, doctor, dentist architect, and lawyer offices are permitted as home occupations."

Argument to Findings #10 - First and upmost, the Home Occupation definition within the current zoning ordinance creates conflicting interpretations within the ordinance as outlined by the Board's explanation. It is clear that the intent of the Home Occupation uses within the Zoning Ordinances is to allow for "recognized professions" similar to those listed by the definition which is believed to have low impact to the livelihood and general character of the zoning district as outlined by the Zoning Preamble. In addition, the Zoning Ordinance has a defined list of "principal

uses” that are permitted and/or allowed under special exceptions, as well as, uses that are not permitted under R/A Zoning Districts, however may be otherwise allowed under the Residential/Commercial (R/C) Zoning District or the Residential Light Commercial (RLC) Zoning District. As a result a home occupation within the R/C or RLC Zoning District will have greater land use rights and options (i.e.: retail sales).

The Board’s interpretation goes beyond the zoning regulations to justify a business operation that will exceed “similar professions” as outlined in the Home Occupation to include retail sales and manufacturing. The basis of the Board’s interpretation is “a dressmaker” is a listed used under Home Occupation and it will “presumably” include retail sale of apparel as part of its business plan. While this may be a reasonable expectation, it is not sufficient of a justification to apply to all dressmakers. The distinction comes into what scale of dressmaking for the land use zone it resides in. For example, a dressmaker seeking to do specialized repairs or contract specialized services for gown/wedding dresses would fall under “similar professions” and would be permitted in the all zoning districts including the R/A Zoning District. However, a dressmaker making dresses for retail sales would fall under the # 2 use within the List of Principal Use Table and not be permitted under the R/A Zoning District, but would be allowed under the R/C Zoning District and permitted under the RLC Zoning District by Partially Permitted Subject to Restrictions. It is incorrect to say the wholesale conclusion that dress making is all retail.

The second argument and justification by the Board makes the emphasis that professional offices are allowed under the Ordinance’s List for Principal Uses Table # 9 as a special exception within the R/A Zoning District in contrary to the professional office use as defined under Home Occupation. This is a good example of the differences in the Table of Use and interpretation under the Ordinance. For example, the List of Principal Uses Table #9 defines Professional and Business Offices and Services (please note the “plural context”) as a permitted use in the R/A Zoning district under special exception. However, the distinction under Home Occupation, the professional office use will be a singular office, therefore meeting the reduced impact to the R/A zoning district. Should a home occupation in the R/A zone wish to have more than one professional office, then a special exception will be necessary.

Findings #11 – What is a customary home occupation, has evolved over the years since the definition of home occupation was adopted over 50 years age. Specifically, the Board finds that, in 2024, selling goods via the internet is a customary home occupation.

Argument to Findings #11 – The Board is correct that over time society and social change, as well as, advancements in technology and commerce requires a thorough review of the Zoning Ordinances to recommend revisions to stay current. However, redefining the definition of Home Occupation through rule making is not permitted under State Law. This needs to be carried forward to the local Legislative Body for approval to expand the definition of Home Occupation to include internet sales of goods, not through land use decisions.

Findings #12 – The Board also recognizes the objections expressed by the public to the nature of the proposed home occupation – the manufacturing and sales of firearms. However, RSA 159:26 prohibits the Planning Board from treating the manufacture and sales of guns any different than the Board would treat any other product, such as dresses.

Argument to Findings #12 – The decision process does not require the Board to selectively treat fire arms manufacturing or sales any different than other products. The Board is incorrectly applying a permitted right for retail and manufacturing, even on a small scale, to be in compliance for Home Occupation and the List of Principal Uses under the Zoning Ordinance within the R/A Zoning District. The current Zoning Ordinance does not currently distinguish limitations on gun sales or manufacturing or defined exceptions that grants even small scale retail or manufacturing to be permitted in the R/A Zoning District. Based upon the List of Principal Use Table #2 for the R/A Zoning District and the provisions in Article VII (Conflicting Provisions), the Land Use Board should logically determine that retail and manufacturing use in this district would not be allowed unless a variance is obtained.

I ask the Board to reconsider the February 20, 2024 decision for approval of the home occupation use for Mr. Keeler at 22 Spring Street, Epsom and correct the your decision to acknowledge that retail sales and manufacturing, regardless of the merchandize being sold or made, is not allowed the R/A Zoning District. I agree the Board outlines several Zoning Ordinance issues that need to be carefully discussed in open public forum and needs to be carried forward for consideration in future zoning amendments. I ask that the Board seek changes the ordinance through zoning amendments versus Board's decisions. I ask you to right your wrong. Thank you.



200 feet Abutters List Report

Epsom, NH
December 05, 2023

12 x \$13 = \$156.00
\$350.00
\$506.00

Subject Properties:

Parcel Number: 000R01-000030-09INT1
CAMA Number: 000R01-000030-09INT1
Property Address: 22 SPRING STREET

Mailing Address: KEELER, MICHAEL D, TRUSTEE M.
KEELER 2011 REVOC TRUST
22 SPRING STREET
EPSOM, NH 03234

Abutters:

Parcel Number: 000R01-000030-000004
CAMA Number: 000R01-000030-000004
Property Address: 133 NORTH PEMBROKE ROAD

Mailing Address: YEATON, DENISE L
133 NORTH PEMBROKE ROAD
EPSOM, NH 03234

Parcel Number: 000R01-000030-000005
CAMA Number: 000R01-000030-000005
Property Address: 149 NORTH PEMBROKE ROAD

Mailing Address: BURROWS, CONNOR, TRUSTEE
BURROWS, NICOLE, TRUSTEE
149 NORTH PEMBROKE ROAD
EPSOM, NH 03234

Parcel Number: 000R01-000030-000006
CAMA Number: 000R01-000030-000006
Property Address: 155 NORTH PEMBROKE ROAD

Mailing Address: MAY, DARCY M MAY, JAMIE A
155 NORTH PEMBROKE ROAD
EPSOM, NH 03234

Parcel Number: 000R01-000030-000007
CAMA Number: 000R01-000030-000007
Property Address: 12 SPRING STREET

Mailing Address: KILIAN, DAVID S KILIAN, KAY I
12 SPRING STREET
EPSOM, NH 03234

Parcel Number: 000R01-000030-000008
CAMA Number: 000R01-000030-000008
Property Address: 16 SPRING STREET

Mailing Address: FRYDMAN, PRISCILLA C
16 SPRING STREET
EPSOM, NH 03234

Parcel Number: 000R01-000030-000010
CAMA Number: 000R01-000030-000010
Property Address: 34 SPRING STREET

Mailing Address: STORMAN, KARL J STORMAN,
HEATHER R
34 SPRING STREET
EPSOM, NH 03234

Parcel Number: 000R01-000030-000011
CAMA Number: 000R01-000030-000011
Property Address: 38 SPRING STREET

Mailing Address: PINSONNEAULT, MICHELLE M
38 SPRING STREET
EPSOM, NH 03234

Parcel Number: 000R01-000030-000014
CAMA Number: 000R01-000030-000014
Property Address: 31 SPRING STREET

Mailing Address: MULLIGAN, ANNE E
31 SPRING STREET
EPSOM, NH 03234

Parcel Number: 000R01-000030-000015
CAMA Number: 000R01-000030-000015
Property Address: 25 SPRING STREET

Mailing Address: RICHARD DANIELLE Y RICHARD
TRAVIS J
25 SPRING STREET
EPSOM, NH 03234



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Page 1 of 2



200 feet Abutters List Report

Epsom, NH
December 05, 2023

Parcel Number: 000R01-000030-000016
CAMA Number: 000R01-000030-000016
Property Address: 17 SPRING STREET

Mailing Address: BOISVERT, DANIEL E. BOISVERT,
CHRISTINE
17 SPRING STREET
EPSOM, NH 03234

Parcel Number: 000R01-000030-000017
CAMA Number: 000R01-000030-000017
Property Address: 46 LENA LANE

Mailing Address: LEZON, BARBARA E
46 LENA LANE
EPSOM, NH 03234



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12/5/2023

Page 2 of 2