

**TOWN OF EPPING, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING**

Tuesday October 30, 2018

PRESENT: Don MacLaren, Mark Vallone, Charlie Goodspeed, Joe Bodge, Kim Sullivan; Alternate John Dold; Planner Brittany Howard; Secretary Phyllis McDonough.

CALL TO ORDER: Chairman MacLaren called the meeting to order at 6:00 P.M.

PLEDGE OF ALLEGIANCE TO THE FLAG

BRIAN DERRICO/ BLACK BELT FIREARMS – Chairman MacLaren read notice for an Appeal from an Administrative Officer’s Decision Per RSA 676:5, from the Board of Selectmen’s denial for a Home Occupation for the sale of firearms at their meeting on October 8, 2018. Parcel is located at 10 Sydney Lane, Tax Map 016 – Lot 061-009 located in the Rural Residential Zone. Abutters present: Ross Roland, John & Emily Jalbert, Sandra Johnson, Sean, Mike Conte, Brian Crutchely.

Brian Derrico came before the Board with his appeal. He explained he submitted with his package a letter of intent that also shows the nine criteria for a home occupation, meeting minutes from an applicant who also has an FFA License that he operates out of his house, and at that time this applicant explained he would be doing gun smithing and test firing and that application was denied as it didn’t meet one of the nine criteria. Derrico explained this applicant redid his application and removed the test firing and was granted his request.

Derrico explained his request is for sale and transfer of fire arms. There will be no test firing as part of the transaction happening. He stated there is no heavy machinery, no vehicles, and no signage. He explained he did this same business for three years when he lived in Florida.

Chairman MacLaren opened up questions to the Board and also to the Alternate.

Sullivan stated he understands this type of business in this area is not prohibited. Howard explained if the Board feels it meets the nine criteria then, yes. Sullivan noted when looking at the letter of intent it states there will be no signage, no employees, no heavy equipment, have customer come after the completion of the ATF application, no inventory. Sullivan inquired the business would be if a weapon arrives at the house and it’s been sold the purchaser comes to pick it up. Derrico said firearms would be sold under ATF regulations, with proper checks performed before each sale. He said he operated a similar business in Florida and sold 15 to 20 firearms a year. Sullivan asked if there will be any inventory of firearms. Derrico explained there will be no inventory at all. Sullivan asked if the customer will test fire the weapon. Derrico stated there will be no shooting of the weapons bought by the customers. Sullivan asked Derrico if he would agree to not do any shooting of his own private weapons. Derrico stated he would not agree to that. Sullivan explained he is asking this question to help keep peace in the neighborhood.

Vallone asked what the range of sales that is anticipated. Derrico replied when he lived in Florida he sold between 15 and 20 firearms a year. Vallone asked Derrico if he would agree to how many customers he could have. Derrico stated he wouldn’t agree to a limit of sales, but would completely agree to how many customers limit per day or per week. If one customer ordered more than one the customer. Can’t agree to

the limit of transactions. Vallone added if one customer were purchasing three weapons, that would be one transaction. Derrico stated to limit the amount of transactions wouldn't be beneficial to him. Vallone asked if there would be any selling of ammunition. Derrico responded there will be no selling of ammunition.

Bodge reiterated about the selling of ammunition. Derrico will not sell ammunition. Bodge asked if someone came to his place to purchase and a person fails background check does not want to have inventory. Derrico explained a background check can't be done before the sale.

John Dold questioned in the application to the Zoning Board, Derrico stated he is appealing the denial by the Board of Selectmen. Dold stated in the regulations that the Zoning Board can hear appeals if it's alleged there is an error is a decision made by an official. Dold questioned what Derrico feels was the error that was made by the Selectmen on the home occupation. Derrico explained the error was nothing within the home occupation violates the zoning regulations and his rights as a home owner were overlooked in the Selectmen's decision.

Dold questioned if the Selectmen's decision, did it have to do strictly with Derrico meeting the home occupation intent. Howard explained the way the zoning ordinance, to have a home occupation it needs Selectmen's approval.

Chairman MacLaren explained to the abutters how the process works when there's an appeal before the Zoning Board. After the public session there will be a motion made by the board and there will be restrictions set by the board. He stated no shooting as part of the transaction, no signage, no inventory and will limit discussions around these restrictions. The Chairman has his own restrictions listed. He asked the abutters that will speak to give name and address.

Sean Cottrill 8 Sydney Lane questioned the abutters list with the LLC's. Howard explained the abutters are the property owners and those are the abutters that will be notified, whichever properties touch Derrico's property. Cottrill explained he expressed his concerns at the Selectmen's meeting. He stated the effect on the neighborhood bringing in both to purchase and traffic into the neighborhood. Cottrill questioned who will monitor who's shooting on this property. Chairman MacLaren explained that is not the purview of the Zoning Board.

Cottrill asked Derrico if he believes in supporting the neighborhood, the safety, the children. Derrico responded, yes.

Cottrill asked the Chairman if he could show a Facebook post by Derrico. The Chairman accepted and after viewing the post stated the Board was not going to get into that post. Chairman MacLaren explained to the abutters, any restrictions the Board poses on the home occupation that are broken, if the appeal is granted, they have the right to contact the local authorities.

Cottrill questioned the hearing is if he has the right to have the business. Chairman MacLaren explained the Board operates different than the Board of Selectmen. The Chairman explained the Zoning Board is a judicial board and has to operated within the guidelines.

Mike Conte 14 Sydney Lane unless he receives the gun on one day and person can't pick up next day that would be inventory. Chairman MacLaren asked that common sense is used, there will be no inventory and only a customer that ordered the weapon.

John Jalbert, builder of the subdivision in question. He asked about shooting out back, the combination of selling and shooting is the problem. Chairman MacLaren explained this will be part of a restriction for his business, as far as what he does on his property that he can do is not the purview of the Zoning Board.

Sullivan spoke to Jalbert about a statement he made being disappointed in this business because he wanted it to remain a family community. Jalbert explained even if he put it down in rules and regulations he would have taken it to the board. Chairman MacLaren responded if there were restrictions in the association, the association can become more restrictive than the Town.

Abutter Justin Michaud 6 Sydney Lane stated Derrico has made it clear he's putting in a shooting range on his property for personal use. Chairman Maclaren stated that is not a topic for the Zoning Board.

The Chairman explained he knows he is cutting people off and assured them he is not doing it to be rude or picking sides, this is a judicial board and have to stay on the topic of the appeal for this business only, not on their feelings of what Derrico is doing personally.

Brian Crutchely 4 Sydney Lane he brought up the impact of property values and what this business will do. Next concern is the Selectmen asked Derrico to reach out to the neighbors and he has not, and another concern is the restriction on no ammunition.

Derrico responded on the reason he did not reach out to his neighbors. He explained he doesn't want to be a nuisance to everybody, and doesn't want to be made out to be the "big bad wolf." Derrico explained he just recently moved to Epping from Florida to raise a family, and just got married. Derrico also brought up the concerns of shooting on his own property. He stated he has done no shooting on his property since moving in.

Bodge, referring to the Selectmen's comment about reaching out. Bodge stated it's a two-way street, that he is does not believe there are any no trespassing signs on Derrico's property.

Ross Roland questioned if this home occupation would have to be renewed each year. Chairman MacLaren stated Derrico will follow all the guidelines of the Town. Howard explained there is no renewal, although if the property is sold the home occupation goes with Derrico and cannot be used by the new home owner.

Sandy Johnson 11 Sydney Lane spoke about the traffic with transactions. Bodge stated he doesn't see how the Board can set restrictions with purchases. The Chairman spoke about all the other traffic such as UPS, newspaper delivery, etc., so it's hard to say how much traffic will be in that neighborhood just because of this business.

Johnson was under the impression this was a variance request. Vallone responded this is an appeal from the Board of Selectmen's decision and falls under different criteria.

Selectman Cody Belanger speaking for himself, not as a Selectman explained he voted in favor for the people at the Selectmen's meeting. He stated he understands Derrico has fulfilled all requirements, and if this application were back before the Board of Selectmen, he would have changed his vote. Belanger noted if Derrico is caught selling private sale that is not under his business then his license could be revoked. Belanger stated people who sell firearms have good heads on their shoulders.

A question was asked what else could be done on the property with an FFL license. The Chairman reiterated Derrico has come before the Board for his business and the Board will add restrictions to that business if approved.

Selectman Adam Munguia speaking for himself, not as a Selectman noted he will stand by his vote against the permit and sees overturning will not be the best solution for anyone.

Chairman MacLaren noted he understands the emotional side but the Zoning Board shall follow to the guidelines. He noted every year there are amendments to the regulations that come with a vote of the people.

Chairman MacLaren thanked all those who had comments and closed the public hearing.

Vallone stated he remembers Dan Harvey speaking about the zoning board as the “quasi-judicial board”. Vallone explained the role of the Board is they are bound by the law as it’s applied. Vallone explained if the board was to follow the criteria of a Variance, different standards are applied.

The Board addressed the criteria for Home Occupation

- A home occupation is to be located within the principle dwelling unit or in a building structure which is accessory to the principle dwelling unit – No comment
- The exterior of the building must not create or display any evidence of the home occupation, except a permitted sign. Variation from the residential character is prohibited – No comment
- A home occupation must not utilize more than twenty-five percent (25%) of the gross floor space area, including basement and accessory structures of the principle structure – No comment.
- No more than two (2) non-residents may be employed with the Home Occupation – No comment.
- No more than two (2) commercial motor vehicles may be parked overnight – Bodge commented no lettered or wrapped vehicles allowed
- No more than two (2) pieces of large/heavy commercial equipment (frontend loader, bulldozer, excavator, skid steer, backhoe, etc.) may be parked overnight – No comment.
- Adequate off-street parking must be provided for the Home Occupation – Derrico commented he has a 4-car driveway
- The Home Occupation must be owned and operated by the resident of the dwelling – No comment.
- The Home Occupation must not offend by emitting smoke, dust, odor, noise, gases of any type, fumes of any type, glaring lights, refuse matter of any type or stockpile material – No comment.

Howard explained if the Board approves the application they can make the stipulations on what he supplied in the application which is he will be the only employee, no commercial vehicles parked overnight as part of the nine criteria.

Chairman MacLaren noted the conditions he will be asking to be in place if the appeal is approved: no inventory, anything other than what a customer is going to purchase and no ammunition. No signage, no shooting by customers on this property, with the exception of direct family members. Limiting three transactions per week. Limiting hours of operation 8:30 -7:30 no business on federal holidays or Sundays.

Dold asked if the Board votes to approve the appeal do residents have a chance to appeal. Howard explained they do have thirty days to appeal.

Bodge stated he sees this business fits the criteria, and is in favor of the restrictions that were discussed. Bodge asked if there's a noise ordinance. Howard stated 9:00pm to 7:0am.

Goodspeed explained he is not a gun owner and respects the neighbors, but what's on the table what can the applicant add to how to face the shooting on site. Derrico stated as far as his business he will not shoot but as far as his personal shooting he doesn't want to restrict his own rights. Derrico noted he will speak to his neighbors about his personal shooting. He stated he has done no shooting since the request for this business.

Vallone reiterated there will be no shooting by customers on property, and will not support one transaction a day.

Bodge stated he has concerns with Vallone's thoughts. He stated Derrico will have months he won't do any business then hunting season he could be busy.

Sullivan questioned why Derrico would want to bring his new wife to the neighborhood and make her an outcast to the neighborhood, it's such an adverse feeling for the whole neighborhood. There was no response.

The Board had a lengthy discussion. The Chairman called for a motion.

Bodge moved Goodspeed seconded the motion to approve the request, with restrictions by the board.

Bodge withdrew his motion, Goodspeed withdrew his second.

Bodge moved Goodspeed seconded the motion to accept Derrico's appeal with the conditions made by the Chairman: no more than three customers per week; no customer, excluding family members, from shooting any firearm at any time; no ammunition sales; no inventory of firearms kept on the property; no business on federal holidays and Sundays; no signs; and no commercial vehicles on the property. The business can operate 8:30 a.m. to 7:30 p.m. The motion carried 4 to 1 to grant the appeal. Sullivan voted against granting the appeal.

MINUTES OF AUGUST 22, 2018 FOR APPROVAL – Goodspeed moved Sullivan seconded the motion to approve the minutes. The motion carried, Chairman MacLaren abstained

MINUTES OF AUGUST 1, 2018 FOR SIGNATURE – The minutes of August 1, 2018 were duly signed.

CORRESPONDENCE FROM ROB ELDRIDGE – REQUEST TO SERVE AS ALTERNATE – Goodspeed moved Bodge seconded the motion to appoint Rob Eldridge to serve as Alternate to the Board for a one-year term. The motion carried, MacLaren abstained

ADJOURNMENT – Vallone moved Bodge seconded the motion to adjourn at 8:30pm.

APPROVAL NOTIFICATION: October 30, 2018 - Minutes of August 22, 2018 were approved. Minutes of August 1, 2018 were duly signed.

Respectfully submitted,

Phyllis McDonough,
Zoning Board of Adjustment Secretary

Don MacLaren

Mark Vallone

Kim Sullivan

John Dold

Charlie Goodspeed