

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: AUGUST 19, 2015

CASE NO.: 7/15/2015-1

APPLICANT: ALFRED CARDELLO
265 EDWARD J. ROY DRIVE, #306
MANCHESTER, NH 03104

LOCATION: 126 PILLSBURY ROAD, 9-50, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
JACKIE BENARD, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
ANNETTE STOLLER, VOTING ALTERNATE
BILL BERNADINO, NON-VOTING ALTERNATE
NEIL DUNN, ACTING CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
ADMINISTRATOR/HEALTH OFFICER

REQUEST: A MOTION TO REHEAR CASE NO. 7/15/2015-1

PRESENTATION: N. DUNN READ THE CASE INTO THE RECORD. NO PREVIOUS CASES. ONE
NEW LETTER.

DELIBERATIONS:

JIM SMITH: We have a fairly lengthy letter from the applicant, and it's really up to the Board as to whether or not there's enough information raised to warrant a rehearing. Anybody's thoughts?

JACKIE BENARD: I went through it an all the points that are raised warrant to be reheard again based on this letter.

NEIL DUNN: I don't know, I read through it and there's a lot of talk about we used profit versus non-profit. I don't think it was quoted properly. I mean, what we were seeing was it was a commercial business in a non-commercial use zone. Yes, we did talk about it being a for profit business. We didn't ask him if he made a profit. We didn't talk to any of that, but it is a business. It's really, I don't know, I'm looking at it ...it's all about having a sign out there. What he's doing with his business wasn't really the point of the hearing. It's about was Richard right in deciding in deciding that he couldn't have a sign? I don't see where anything changed? I don't think it's really accurate in all of its things. We did talk about him being a for profit. We

45 didn't talk about, you know, there's something about...here whether he made money or not mattered. We
46 didn't go into that. We're just saying he's a for profit business. A commercial business and it was really
47 about the signage. So, I personally don't see anything there. I mean, there's a lot there. I don't know that I
48 necessarily agree with it all. I think the town does have a right to limit signage for a commercial business in a
49 non-commercial spot. I don't know, that's my opinion?
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51 JACKIE BENARD: I agree with that, and maybe I didn't use the word commercial business maybe enough.
52 That's part of one of the reasons because for-profit versus non-profit, and it think that was just a simple way
53 of trying to express whether or not it was commercial use. I didn't use commercial use terminology enough.
54 As I recall, what I did, and I guess that's why it bring that up with the use of commercial, and whether it was
55 commercial use.
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57 NEIL DUNN: The original hearing was a decision over allowing a sign there, and Richard told them they
58 couldn't have a sign. You know the conversation...or it came here because they wanted a sign. I don't see
59 where any...
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61 JIM SMITH: You can't, no sir...
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63 NEIL DUNN: ...I can't see where anything change, so to me, that's just my take on it.
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65 JACKIE BENARD: YEAH.
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67 JIM TIRABASSI: IT'S a commercial entity regardless of profit, or non-profit. Operation of it that's allowed
68 there.
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70 JIM SMITH: You know one of the things about that particular case, all we have to make a decision is to
71 whether or not the decision was correct. We weren't arguing over, you know all the semantics as to whether
72 it was for profit, or not-profit. It was...what we were trying to do is determine the decision made by the
73 zoning officer – was it correct in deciding that that was a violation? That was the intent of it. Anything
74 beyond that is...I think what a lot of what they are raising is something probably that would be better raised if
75 somebody...if they were to apply for a variance to run that business from that location.
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77 JACKIE BENARD: Which I recall was given as advice.
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79 JIM SMITH: Right and we mentioned that.
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81 JACKIE BENARD: Yes.
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83 JIM SMITH: Now, one of the other things about this procedure is...an applicant to go to the next step, In
84 other words take it to the Superior Court, they have to apply for a rehearing, and if it's denied then they have
85 the right to take the case to the superior court if they wish to. They can't do that unless we make a decision
86 one way or the other on this. If we just decide to have a rehearing then we again have to go back through
87 and have another re-hearing, but again, we still faced with that same decision on whether or not the basic
88 decision to site them as a violation was it correct, or not?

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90 JACKIE BENARD: So, could the re-hearing put to rest all the pages of...
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92 JIM SMITH: I don't' think so.
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94 JACKIE BENARD: Okay.
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96 JIM SMITH: They only way you can raise all those issues, I think would be on a variance.
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98 JACKIE BENARD: Which is not the case of what the original...
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100 JIM SMITH: Right.
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102 JACKIE BENARD: ...case was that we heard...why we're hearing the case...
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104 JIM SMITH: No, we...yeah...
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106 JACKIE BENARD: ...why we were hearing the case originally.
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108 JIM SMITH: It was an appeal of a decision made by the zoning officer. Was his decision correct? Jim?
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110 JIM TIRABASSI: Yes.
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112 JIM SMITH: Bill?
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114 BILL BERNADINO: I'm looking it as how long has it been running there. Boy's clubs have been meeting there.
115 Bible studies been meeting there.
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117 JIM SMITH: Well, I...
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119 BILL BERNADINO: It might be twenty/thirty years that a business was running out...all of the sudden, this
120 gentleman wants to put a sign out and there's a big stink.
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122 JIM SMITH: Well again, we're not...all we're looking at is whether or not he's running a commercial operation
123 and the decision by the zoning officer to site him as being a violation. Was that a correct decision?
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125 JIM TIRABASSI: Yes.
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127 [Overlapping comments]
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129 JIM SMITH: That's all we...that's all that case was about.
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131 ANNETTE STOLLER: And what I'm looking at here, I can't...it appears to be a correct decision. I mean, I don't
132 in terms of sheer emotion, I understand there are other issues here, but perhaps had anybody suggested, or
133 looked into special exception, rather than...

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135 JIM SMITH: No...

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137 ANNETTE STOLLER: ...rather than...

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139 JIM SMITH: ...you can't, see a special exception and the zoning ordinance is for specific things which are
140 listed as special exception.

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142 ANNETTE STOLLER: Right.

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144 JIM SMITH: But, if you don't have that listed, you can't do it.

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146 BILL BERNADINO: And, as again, as a business that's been running out of there...it only came to our attention
147 because he code a code enforcement for a sign he put out there.

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149 JIM SMITH: Well, he was...

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151 BILL BERNADINO: Other than that, he was...we would never know about this.

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153 NEIL DUNN: This is all about the sign.

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155 BILL BERNADINO: Right, this is all about the sign.

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157 JIM SMITH: The sign triggered it.

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159 BILL BERNADINO: Now it's saying he can't run his study classes, or so call driving school classes.

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161 JIM SMITH: Sir, you have no input at this point. I'm sorry. Well...

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163 ANNETTE STOLLER: Having missed the meeting, and I apologize for that. What did the signs say? I'm sure it
164 came up in discussion?

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166 JIM SMITH: Well, it really wasn't...it was the question that they were running a commercial business in an AR-
167 I zone.

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169 ANNETTE STOLLER: I understand that.

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171 JIM SMITH: And, it wasn't a listed use.

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173 ANNETTE STOLLER: Yeah.

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175 JIM SMITH: And, that was the whole question.
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177 ANNETTE STOLLER: I was just curious though?
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179 JIM SMITH: The sign just happened to trigger it.
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181 NEIL DUNN: It was similar to the one that's out there not. Right now there's one out there for Southern New
182 Hampshire roofing. I don't know if they're doing roofing work, or if it's a member, but just to give you an
183 idea, it was another one of those...what would be a temporary...
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185 ANNETTE STOLLER: Oh, it was a temporary sign?
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187 NEIL DUNN: Well, but it was chained to some structure and it had so and so's driving school, and so they
188 would know where to meet, but...I mean there's one there now, and again, it gets back to...it's really about
189 the sign, and whether Richard was right, or wrong.
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191 BILL BERNADINO: Absolutely right about the sign.
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193 NEIL DUNN: That's what...
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195 BILL BERNADINO: The zoning part of it...the ordinance.
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197 ANNETTE STOLLER: That is correct.
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199 BILL BERNADINO: But, it's been there for years. It's been...
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201 JIM SMITH: No...
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203 BILL BERNADINO: ...used as...it's been used Boy's clubs makes money. Girls clubs make money.
204 He's...nothing's going to this place. There's no checks. He's just basically having a school. He's having a class
205 to read on how to drive. That's it.
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207 NEIL DUNN: But, again...
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209 BILL BERNADINO: It's not a big commercial...a big commercial business.
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211 NEIL DUNN: ...but again...to me it's over Richard's decision on the sign. If they want to talk about a variance,
212 that's a different...
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214 ANNETTE STOLLER: Right.
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216 NEIL DUNN: ...issue.
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218 BILL BERNADINO: For the sign, but if he drops the sign there is no violation here.

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JIM SMITH: No, he's still running...

BILL BERNADINO: He's still running right...

JIM SMITH: ...a business there.

BILL BERNADINO: Right.

JIM SMITH: That's the problem. He's running a business activity in a AR-I zone.

ANNETTE STOLLER: Well, then it's denied.

JIM SMITH: Yeah, ahh...we'll entertain a motion at this point, I think? The motion would be whether or not to grant a re-hearing.

NEIL DUNN: Mr. Chairman, I'd like to make a motion to deny the motion to deny the motion for re-hearing on Case 7-15-2015-1 – motion for rehearing based on the fact that the...although there's a lot in the letter that there's nothing that really addresses Richard's decision, and he made the right call from what our ordinance reads. I don't know how else to put it?

ANNETTE STOLLER: I second your motion.

JIM SMITH: Okay, ahh, on this one, I'll have Bill vote as the alternate, because you were here, weren't you?

BILL BERNADINO: Yes.

JIM SMITH: Yeah, since you were...okay? Do I have a second?

JIM TIRABASSI: Second.

JIM SMITH: Jim seconds. All those in favor?

Four Members: Aye.

BILL BERNADINO: I'm a no.

JIM SMITH: And, one opposition.

RESULTS: THE MOTION TO REHEAR CASE NO. 7/15/2015-1 WAS DENIED, 4-0-1.

263 RESPECTFULLY SUBMITTED,

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266 NEIL DUNN, ACTING, CLERK

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268 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
269 SECRETARY.

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271 **APPROVED (SEPTEMBER 16, 2015) WITH A MOTION MADE BY J. TIRABASSI, SECONDED BY J. BENARD AND**
272 **APPROVED 4-0-0.**