

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

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5 DATE: JULY 15, 2015
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7 CASE NO.: 7/15/2015-1
8
9 APPLICANT: ALFRED CARDELLO
10 265 EDWARD J. ROY DRIVE, #306
11 MANCHESTER, NH 03104
12
13 LOCATION: 126 PILLSBURY ROAD, 9-50, AR-I
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15 BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
16 JACKIE BENARD, VOTING MEMBER
17 JIM TIRABASSI, VOTING MEMBER
18 NEIL DUNN, VOTING MEMBER
19 BILL BERNADINO, NON-VOTING ALTERNATE
20 DAVID PAQUETTE, CLERK
21
22 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
23 ADMINISTRATOR/HEALTH OFFICER
24
25 REQUEST: RELIEF OF ADMINISTRATIVE DECISION IN ACCORDANCE WITH THE
26 PROVISIONS OF RSA 676:5.
27
28 PRESENTATION: D. PAQUETTE READ THE CASE INTO THE RECORD. NO PREVIOUS CASES.
29 NO LETTERS.
30
31 JIM SMITH: Who will be presenting?
32
33 DAVID PAQUETTE: Mr. Chairman?
34
35 JIM SMITH: Yeah.
36
37 DAVID PAQUETTE: Does this letter need to be read in into the case because it's not in the original...ahh...
38
39 JIM SMITH: Which letter? Is that the...
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41 DAVID PAQUETTE: Regarding retaining the services of...
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43 NEIL DUNN: The applicant's name is the only thing on the application. This is saying he's...

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JIM SMITH: Ahh, it's a moot point, but I don't...

DAVID PAQUETTE: You're decision?

JIM SMITH: I don't think so?

DAVID PAQUETTE: All set?

JIM SMITH: Yeah, it's a moot point.

DAVID PAQUETTE: Okay.

ASHLEY SCOTT: My name is Ashely Scott appearing on behalf of the applicant. Where would you like me to stand?

JIM SMITH: Well, want to sit there and...

ASHLEY SCOTT: Speak...

[Overlapping comments]

ASHLEY SCOTT: ...ask loudly as I can?

JIM SMITH: Yes, please. We usually have a more elaborate recording system.

ASHLEY SCOTT: I understand, so I have with me tonight Mr. Cardello and I also have with me Charles Brown who is a church elder at the Presbyterian Church.

JIM SMITH: Why don't you pull over one of those other chairs over?

ASHLEY SCOTT: So, I have both of these gentleman available for questions, but I've also asked them to stop me if I say anything inaccurate, but truly it's because they obviously have more knowledge of the facts of the case than I do. The reason we are here today is because Alfred Cardello, Cardello, I'm sorry, operates a driving school and he uses a classroom at the Presbyterian Church to host the classroom portion of that private school. His license to teach the driving school does not list the church as his business address. Members of the general public cannot walk into the church and consume his classes. You have to be pre-registered and that registration goes through his business address which is not the church address. Also, the driving portion of the class does not occur at the church obviously. None the less, Mr. Canuel determined that he's operating a business out of the church and has ordered his to stop, so we're tonight to appeal that decision. While I appreciate the Town's efforts enforcing its zoning ordinance and the objectives of zoning, this enforcement action is unnecessary for three principle reasons. The first reason, really should end the inquiry and that is this church was constructed between 1836 and 37, and it's always been used as a place of

87 public assembly including for things like education since 1836-37. So, the churches use pre-dated zoning and
88 zoning wouldn't apply to this specific use at this specific site, and that should end the inquiry. Zoning doesn't
89 apply. Moving forward beyond that assuming zoning applies which we dispute, there's no commercial use
90 occurring at this school. As I mentioned briefly, you zoning ordinance defines commercial use as quote
91 "involving in part or in whole the sale of merchandise, materials, or services". As I said earlier, Mr. Cardello
92 doesn't sell any services at the church. Students pre-register for his classes. There are two primary parts to
93 the course. One is the in-class portion. One is the driving portion. The in-class portion occurs at the church
94 because it's a better classroom facility than any other facility Mr. Cardello has identified in the last fifteen
95 years he's been operating this school. The driving portion does not occur there. Members of the general
96 public cannot walk in to the school to consume the service that he would be providing. He doesn't have an
97 office at the church. He doesn't conduct nine to five business. These are hour two hour long classes that
98 take place four days a week and each class is between ten and sixteen students at the most. Very small
99 amount of use at the school, but it is a great classroom atmosphere for good educational experience for
100 these children. It's not a distracting environment. There's lots of open space, and the church as part of this
101 agreement gets monetary reimbursement. Mr. Cardello makes a donation to the church that allows the
102 church to pay many of its bills. Third, assuming you don't like my first or my second theories here that church
103 is generally speaking use their facilities for public assembly, and that's considered an accessory use of church
104 facility. In the context of churches and other places of worship accessory use is defined much more broadly
105 than it is in a residential context. In the case of the Presbyterian Church the lot that it owns operates a pre-
106 school, so educational use is already occurring there as an accessory use, or as a use that existed prior to
107 zoning. Additionally, there are other groups that meet at the church that are not directly affiliated with the
108 churches religious mission and those groups include boy scouts, alcoholics anonymous, narcotics anonymous.
109 There have been groups that have come and gone over the years. Other educational type groups that have
110 come and gone over the years they all use the church as their meeting places as a place of assembly which is
111 consistent with an accessory use of a church which is usually a central meeting place for the community to
112 foster community development. It doesn't hurt that the church then has a body of people of which to solicit
113 new member and those groups usually pay a nominal donation as a thank you for the church making their
114 space available. There is no fee for these spaces. The church makes them availability to the community and
115 the community in turn helps the church support itself more than just the membership. Finally, there's no
116 different nature to the use of the property for educational purpose for a driving school versus a pre-school
117 versus ministry of bible study. The classroom use is the same; the resources required at the school are the
118 same. Parking is the same. There's not different nature in Mr. Cardello's use of the school for teaching
119 driving, and the churches use of the buildings for its own educational endeavors.

120
121 JIM SMITH: Anything further?

122
123 ASHLEY SCOTT: Anyone of those three reasons would mean that there's no need for any type of zoning relief
124 request.

125
126 JIM SMITH: Okay, the Board.

128 NEIL DUNN: If I may? So if the church...if somebody wanted to put a retail store in there you're arguing
129 under option one, or argument one that because the building was built prior to zoning you think they could
130 put a retail store going in?
131

132 ASHLEY SCOTT: No, if the use is the same as the use that existed in the 1830's then that use is what is
133 allowed to continue forward. So, if there was a retail store in the 1830's in the church than yes, but if there
134 wasn't which I'm pretty confident there wasn't then no. So this is different because it's just an educational
135 facility which did exist in the 1830's.
136

137 NEIL DUNN: Do we know that they had educational...I mean other than their church services?
138

139 ASHLEY SCOTT: We know that in the 1830's no, but we know that prior to zoning this is the type of thing that
140 the church would have conducted. It would have...
141

142 NEIL DUNN: Possibly could have had?
143

144 ASHLEY SCOTT: Well they did. They had educational facilities at the church all through the history of the
145 church. This church has occupied that building the entire time it's been there, and it's...they've had these
146 types of educational programs. The whole history of the church.
147

148 NEIL DUNN: But none of them were for profited business that were doing education in there that you were
149 aware of are they?
150

151 ASHLEY SCOTT: I don't know that. Some pre-schools that churches run do make a profit. This church, I can't
152 tell you whether in the history of this church it's preschool at time did make a profit.
153

154 JIM TIRABASSI: But, those were run by the church you're saying?
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156 ASHLEY SCOTT: Well...
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158 JIM TIRABASSI: You're...
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160 ASHLEY SCOTT: At times, the church may have sort of outsourced who was in charge of running it, but...
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162 JIM TIRABASSI: You're going on...you're assuming? You're not sure?
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164 ASHLEY SCOTT: No, I know the church had educational...
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166 JIM TIRABASSI: I understand that, you know they did, but you don't that they were sourced out to
167 somebody...
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169 CHARLES BROWN: Can I speak to that?
170

171 JIM TIRABASSI: Yeah.
172
173 CHARLES BROWN: The kindergarten, preschool thing had changed from time to time over the years. In other
174 words, it ran itself for a period of time then the church ran it for a period of time. There was different ways
175 that it was run.
176
177 JIM TIRABASSI: But, who...?
178
179 CHARLES BROWN: And, it changed because they decided that it would be better to do it one particular way
180 than the other.
181
182 JIM TIRABASSI: Who is they? I mean who ran it? The kindergarten itself didn't run.
183
184 CHARLES BROWN: The church. The ruling elders of the church.
185
186 JIM TIRABASSI: The ruling elders of the church, so they allowed it to be a commercial enterprise?
187
188 JIM SMITH: Before we go too far. Richard, is the kindergarten a permitted use in that situation?
189
190 RICHARD CANUEL: Yes, yeah the kindergarten as a pre-school and a day care is a permitted accessory use
191 to...which is a typical function of a religious facility, and it is allowed.
192
193 JIM SMITH: So, that's not a good example of...that's not a use that's not permitted?
194
195 ASHLEY SCOTT: Well, it's permitted as an accessory use.
196
197 JIM SMITH: Right, but I mean we aren't arguing over that. I mean whether its run by the church or a
198 different group it's still an accessory use and it's still an accepted use.
199
200 ASHLEY SCOTT: Yes.
201
202 JIM SMITH: So, that's not a good argument to make.
203
204 ASHLEY SCOTT: Well that argument would apply as well that was my second, or that was my third argument.
205
206 JIM SMITH: Yeah.
207
208 ASHLEY SCOTT: So you're at one which makes sense, Mr. Dunn that you had started point number one with
209 questions...
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211 JIM SMITH: Yeah.
212
213 ASHLEY SCOTT: ...but point number three was this is an acceptable accessory use for a church, so...

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215 JIM SMITH: The kindergarten is. Not necessarily something else.

216
217 ASHLEY SCOTT: Well, an educational facility. It doesn't have to be a kindergarten because that...

218
219 JIM SMITH: Yes, well...

220
221 ASHLEY SCOTT: ...would preclude adults...

222
223 JIM SMITH: Wait a minute. What's the accessory uses permitted?

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225 RICHARD CANUEL: Goodness, there's a number of them that's like I say that's typically allowed with those
226 uses associated with a religious facility. Schools, daycare, other assembly uses; however, in this particular
227 situation, the function of Mr. Cardello's business given classroom instruction is not associated with what you
228 would normally find with a religious facility. There's no argument that yeah it's educational, but it's not the
229 typical educational use that you would see associated with a religious facility.

230
231 JACKIE BENARD: Well, may I Mr. Chairman?

232
233 JIM SMITH: Sure.

234
235 JACKIE BENARD: Mr. Cardello in your letter that we have dated June 16th, your last paragraph is asking, and
236 I'll read it "since classroom sessions have been conducted at this location from 1/7/2013 with no harm to the
237 community, it is sincerely hope that this request to extend the vacate deadline to be moved to 8/1/15". So,
238 you would like to...in this letter, I'm interpreting it that you would like us to consider for you not to vacate
239 right away, but for us to extend it to August 1st.

240
241 ALFRED CARDELLO: No.

242
243 JACKIE BENARD: Okay.

244
245 ALFRED CARDELLO: No. That wasn't...I was asking that the original letter came to me on May 15th, and asked
246 me to vacate within thirty days which would have been June 11th.

247
248 JACKIE BENARD: Okay.

249
250 ALFRED CARDELLO: Because by the timeframe I received the letter...so then I made inquiries as how to get an
251 appeal started, and I did. Then we got it postponed to July. I don't know if it was like July 11th, or something,
252 but in the process of trying to get to a July 11th, we got this meeting...the hearing application in. It's cause I
253 missed the June hearing. Yes, and we had to wait to July. So, I was waiting for this to be conducted, and now
254 this would allow me...and the school has already given me permission to stay there until the 1st whether you
255 know...things go in my favor, or things go against me tonight. You know, it gives me a couple of weeks to you
256 know move off. Ahh...

257
258 JACKIE BENARD: Okay, so that explains that paragraph.

259
260 ALFRED CARDELLO: Yes.

261
262 JACKIE BENARD: My second question...this is a driving school, and you sell a service. You sell the service of
263 educating the person, so that they can obtain their driver's license. The selling of that includes that you sell
264 them classroom time and you sell them driving time in a vehicle.

265
266 ALFRED CARDELLO: Um, hmm.

267
268 JACKIE BENARD: So, it is a service that is being sold, and it may not be tangible in the classroom, but it's still a
269 service being sold. So, you are conducting business when you sell them the education...the classroom time
270 there. Because part of their service that they are buying from you is not to just drive in the car, or truck, it is
271 to also be educated by text, or video. Whatever the curriculum that you sell them, so my question to you is
272 how can you convince me that this is part of the accessory use that the church originally conducts when you
273 clearly are selling something in that classroom? It's not like the AA's, or the other groups that were
274 mentioned. Those tend to be groups that go there for a service that is...

275
276 DAVID PAQUETTE: A community service.

277
278 JACKIE BENARD: Community service. Thank you. You're selling something here.

279
280 ASHLEY SCOTT: Well, if I can answer that? In the context of churches and other places of worship, accessory
281 use is very broadly defined. It doesn't have to be a community service. It just has to be a service that is in
282 line with the mission of the church. In this case, the mission of the church is very broad. It has no specific
283 mission to help the community. It has been a foundation in this community for over two hundred...for
284 hundreds of years, for...I can't do that math. Since the 1830's, and accessory uses that have historically
285 occurred at this property include educational services that we know have been offered for a price over the
286 years. Additionally, driving courses are part of how we create safe drivers who will not be harmful to public
287 health and safety in our communities. That is a community service. I mean that service helps promote public
288 welfare which is the first mission. The first purpose of your zoning ordinance, so if we're just going based on
289 the purpose of the course because you can't really base it on whether it's for profit or not because
290 historically there have been for profit businesses at this facility. For if we're just going on community
291 oriented services, it is community oriented. Let me give you another example. In Manchester, I know it's not
292 Londonderry. There was a mental health rehabilitation center that wanted to locate in a high residential
293 zoning district with very high property values. It was going to be affiliated with the church. It was going to be
294 ceded in a church, and it was going to have overnight stays. In that case the trial judge, it's not the supreme
295 court, it's not the law of the land, the trial judge held that churches are generally permitted to support a wide
296 variety of uses as long as they are consistent with the mission. It cited transitional housing for homeless
297 women and children, a little league baseball field, a church activities building, a playground, and another
298 baseball field. Those are community services that aren't all alcohol or drug related. They aren't all boy
299 scouts.

300
301 JIM TIRABASSI: They're not commercial enterprises, and this is more of an instructional than an educational
302 organization running. Educational and instructional have quite a bit of difference to the tone. You had a
303 question?

304
305 CHARLES BROWN: Yes, I'd like to make a comment from the churches perspective of this. The attitude of the
306 church for having a class there was that we thought we were helping the children out, and they could have
307 their classes at the church, and it seemed like a worthwhile thing. We didn't have any thoughts any business
308 going on or anything like that.

309
310 JIM TIRABASSI: Well...

311
312 CHARLES BROWN: That was never the purpose.

313
314 DAVID PAQUETTE: Children aren't the only customers you would service right?

315
316 ALFRED CARDELLO: Yeah, alright this is what I don't understand. We're into this big battle over whether I
317 can run a driver education school out of a beautiful classroom in a beautiful church that is a much better
318 atmosphere for the students to come to because I'm making money on...which isn't a lot...I don't make a
319 tremendous amount of money. I help this church out in a way, so they can help maintain their property and
320 they appreciate that, so they need this contribution and it helps them in turn. Where am I going to go from
321 here? I'm going to go right back to the Lyon's hall. Where I'm going to have my students go into a smaller
322 classroom that I don't really care...the building is very much older. Its parking lot isn't as nice, and there's
323 people there doing christenings and weddings and all kinds of activities. There's Zumba classes going on
324 downstairs, and that's just fine, I'll just take my group and we'll go over there and we'll just dance around in
325 the parking lot with the other people that are coming in and out to go to Zumba class, or whatever. I'm not
326 going to go anyplace far. I'm going across the street. Into another non-profit building that's owned by the
327 Town, but the Lyon's Club is allowed to do just about anything they generally want over there to raise money
328 to pay for you know the maintenance of the building, and that's what they do. Whatever money they get to
329 put into their college funds. I understand they do these kinds of things, so they're trying to raise money.
330 That's why they have the yard sales. I was in the Lyon's hall for nine years. Alright, so I'm only going back
331 there. I just don't really want to go back to the Lyon's hall alright. I'd like a better place for my students to
332 come. Have a classroom and I really don't feel that the church is in any way in violation in allowing me to
333 use...cause churches all over the place rent rooms for an occasion that's got nothing to do...I don't know if
334 we're going to get into the technicality of a business...“Is he selling something, or what's going on there?”
335 Well, I don't know. If you want to split hairs then that's your job. I'm just asking you, can't we be allowed to
336 run a driving school out of this room that is not being used, and the church benefits it as well as my students
337 and myself cause I feel it's a better place for us to conduct a school there. Alright, and that's all I have to say.

338
339 ASHLEY SCOTT: Well, I do just want to clarify. You're not running the school...

340
341 ALFRED CARDELLO: No, I'm not running the school...

343 ASHLEY SCOTT: ... out of a classroom.
344
345 [Overlapping comments]
346
347 ASHLEY SCOTT: Your paperwork, your registration...
348
349 ALFRED CARDELLO: Right.
350
351 ASHLEY SCOTT: ...your payments.
352
353 ALFRED CARDELLO: In a nice facility.
354
355 JACKIE BENARD: Richard, they Lyon's hall. What kind of zoning is at the Lyon's hall?
356
357 RICHARD CANUEL: A little different situation...
358
359 JACKIE BENARD: Okay.
360
361 RICHARD CANUEL: ...there. It's still in the AR-I zoning district.
362
363 JACKIE BENARD: Yup.
364
365 RICHARD CANUEL: Or if it's a Town owned property, and prior to relocating his school to the church Mr.
366 Cardello was conducting his school at the Lyon's hall. Prior to that, he was granted by the Town Council to
367 continue operating his school there. Based on the situation here with the notice of violation recently to Mr.
368 Cardello the Council has agreed him to return there and continue conducting his business there that's all.
369 Again, being a Town property, it's strictly of control of the Town council.
370
371 JACKIE BENARD: Okay.
372
373 NEIL DUNN: If I may, Mr. Chairman? Richard,...where was I going...what brought this up? You just know
374 they've been there for a while? Was there a complaint, or was there...?
375
376 RICHARD CANUEL: Oh boy, that's...
377
378 NEIL DUNN: Well, if there was a complaint then it bring a different issue.
379
380 [Overlapping comments]
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382 RICHARD CANUEL: There is a little there. You know Mr. Cardello did relocate to the church, and what this
383 brought this to my attention is that he had originally placed a temporary sign/A-frame sign that was chain
384 locked to one of the State's...in the State right of way along Mammoth Road chained to one of the traffic
385 signs, of course that [Indistinct] my attention. Number one, that he would have required a sign permit for

386 that temporary sign which we did issue him a sign permit with the condition that it would be on the property,
387 and not out in the Town right of way. At the time issuing that sign permit I did inform Mr. Cardello that he
388 shouldn't be conducting a commercial business at the church site. So, until recently, he reapplied for another
389 sign permit, I believe back in May of this year. Of course, I could not approve a permit for a use that I
390 deemed not to be allowed on the site, so here we are.

391
392 DAVID PAQUETTE: Do you collect payment for these services at this classroom location ever?

393
394 ALFRED CARDELLO: No, there's a tuition fee and it's paid in full...received you know through the mail.

395
396 DAVID PAQUETTE: Okay. Have you ever answered a phone call, or done any business other than teaching?

397
398 ALFRED CARDELLO: I mean my cell phone is on me. If I see a phone number...a parent isn't...can't get to drop
399 off the child to a class you know...yes, okay, I understand he's not coming to class tonight, yet.

400
401 DAVID PAQUETTE: So that's arguably doing business? Right? If you're not just there to teach the class
402 you're performing duties that you would do in your office, or would you do...

403
404 ALFRED CARDELLO: No, I'm not doing duties that I would do in my office. I don't do my recordkeeping for
405 the DMV, or my recordkeeping for my federal taxes, or anything. I don't answer the phone call. I'm not
406 talking to the DMV from the church and on. I'm not conducting business operations from the church in that
407 manner. You know, if you're asking if I use my cell phone to answer a phone call from a parent who can't get
408 their child to the class and wants to...I'll look at my cell phone and answer them, or text answer them back
409 okay.

410
411 DAVID PAQUETTE: Even a perspective customer?

412
413 ALFRED CARDELLO: No, these are people that are coming to class that night that are supposed to be there at
414 7:00 o'clock, right and their not showing up, but I might receive a text or a phone call that the child isn't going
415 to make it to class.

416
417 DAVID PAQUETTE: Okay.

418
419 JACKIE BENARD: May I ask you one more question? You stated you corporate address for the State of New
420 Hampshire says 265 Edward J. Roy Drive and that's Manchester.

421
422 ALFRED CARDELLO: Um, hmm.

423
424 JACKIE BENARD: So, it's clearly stated when you file with the Secretary of the State that that's your business
425 location, so what is that location?

426
427 ALFRED CARDELLO: That is my condominium in Manchester. I lived in Londonderry from 1986 to 2007.
428

429 JACKIE BENARD: Okay, so this address change...
430
431 ALFRED CARDELLO: Yes, back when I bought the condo...
432
433 JACKIE BENARD: ...that's...
434
435 ALFRED CARDELLO: ...and that's...the address follows me, if I move...anywhere I move is where the school is
436 basically...even if I rented, if I went out down onto 102 and rented a building to run the school from...
437
438 JACKIE BENARD: Yup.
439
440 ALFRED CARDELLO: ...the address would still be my home address. That would be my classroom address.
441
442 JACKIE BENARD: Okay.
443
444 ALFRED CARDELLO: That's how the State looks at it.
445
446 JACKIE BENARD: Correct, and the State also requires you state where your business address is, so that's why
447 I'm asking you...
448
449 ALFRED CARDELLO: Right.
450
451 JACKIE BENARD: ...what do you claim is your business address?
452
453 ALFRED CARDELLO: Right.
454
455 JACKIE BENARD: Which is 265 Edward J. Roy Drive is your business address?
456
457 ALFRED CARDELLO: Yes, that's what's shown on...
458
459 JACKIE BENARD: Okay.
460
461 ALFRED CARDELLO: ...the application for driver's education school license every year.
462
463 JACKIE BENARD: Yeah, well that's a P.O. Box that I see for the renewal of the trade name...
464
465 ALFRED CARDELLO: No, that's my mailing address. My mailing address is P.O. Box...
466
467 JACKIE BENARD: Okay, in Londonderry?
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469 ALFRED CARDELLO: In Londonderry, right and the legal address is...
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471 JACKIE BENARD: is the Manchester address for your business?

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ALFRED CARDELLO: Yes.

JACKIE BENARD: Okay, alright. Thank you.

ALFRED CARDELLO: Okay.

BILL BERNADINO: Is there driving being done on the property, or is it just a meeting place?

ALFRED CARDELLO: Just a meeting place.

BILL BERNADINO: You said there is AA there, or NA...they got NA meetings...

ASHLEY SCOTT: Boy Scouts.

BILL BERNADINO: ...Boy Scouts, okay you changed it to...

CHARLES BROWN: For New Hampshire.

BILL BERNADINO: ...driving education, or something?

ALFRED CARDELLO: Well, see I'd have to try...

[Overlapping comments]

ALFRED CARDELLO: ...to contact my bookkeeper somehow and try to turn this into a non-profit organization where I'm going to be paying myself for my non-profit organization to be the administrative person of the non-profit. I meant that can be done I guess?

BILL BERNADINO: Right, but you're saying...

ALFRED CARDELLO: I just don't see why I have to chase that avenue down?

BILL BERNADINO: ...your tuition, your checks, everything is not going to this location? It's going somewhere else, so you're basically bringing a group of people together for book study?

ASHLEY SCOTT: Yes.

ALFRED CARDELLO: Right.

ASHLEY SCOTT: Right, which is exactly the same thing that you do for bible study.

BILL BERNADINO: Or an AA, or a NA...

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ASHLEY SCOTT: Or NA, or AA, or Boy Scouts...

BILL BERNADINO: Because you're not leaving that property going out into a car...?

ASHLEY SCOTT: No.

BILL BERNADINO: ...and doing parallel parking, or...

ASHLEY SCOTT: That happens off-site.

BILL BERNADINO: ...all that stuff?

CHARLES BROWN: I think this is important?

ASHLEY SCOTT: Yes.

CHARLES BROWN: I'd like to mention of course you have a phone number. You can call get Londonderry Presbyterian church. You cannot call Londonderry Presbyterian church and ask for Al Cardello's driving school. There is no such thing. They wouldn't know what to tell you because it don't exist. Just the churches phone.

[Overlapping comments]

JIM TIRABASSI: He has a business entity. The business entity is located in Manchester. He delivers a distribution of a product at your site.

ALFRED CARDELLO: The church...

JIM TIRABASSI: It's the distribution of a product.

ALFRED CARDELLO: Well, we're going down to splitting hairs. There's where I look at it. When I hear you know...you sound like you're trying to find some type of a legal technicality that you support to you know find in your favor. Alright, then we'll have to move on to another jury of Board people to see if they agree with you. You know that's how this thing will go along. I don't really feel we're doing any harm to the community. The church is benefitting. The church wants us there. I haven't a clue why we are really here. I really don't understand the reason why. I think it's perfectly legal in this country to do what we're doing. We're not...there has been no legal complaints from anybody in the community. Alright, and everybody I talk to says "Are you for real? They're going to try to evict you out of the church because churches use the church for everything." They sell, they rent it out. They rent rooms so they can raise money to do things. Actual rent for christenings. So, I'm at a loss why we're really here. Alright, I had to hire a lawyer. I'm trying to get this straightened out, and do you people really want to stick to you guns and back up Mr. Canuel on this? I'm just going to go to the next level. That's all there is to it because I can't understand why we can't in this

558 country alright run a simple little driving school eight hours a week out of a classroom in a building that's
559 zoned. It has fire alarms. It has stairwells. It's a schoolhouse. It's been built and zoned for this to occur in
560 and I mean you're going to deny me because...I don't know the reason why. I really don't. That's enough.
561 I'm all done.

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563 JIM SMITH: Any other questions?

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565 NEIL DUNN: Richard, if you could help me with part of the RSA here. Did we reference it? I think they do
566 reference it, 675:5 II(b); this is really your discretionary decision to commence formal or informal
567 enforcement right? I mean it's...we really don't have jurisdiction over that? I understand why...

568
569 RICHARD CANUEL: Right.

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571 NEIL DUNN: ...the sign would give me the impression that he was conducting a business out of there, so I
572 would be opposed to the sign; however, I'm still trying to get back to...do we really have jurisdiction of
573 enforcing?

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575 RICHARD CANUEL: Well, you don't necessarily have any jurisdiction over my choice to take enforcement
576 action. No, but you do have jurisdiction to decide whether the decision was made was appropriate, or not.

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578 NEIL DUNN: The only reason why I read it 675:5 II(b), it does not include a discretionary decision to
579 commence formal, or informal enforcement.

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581 JIM SMITH: I think what that is saying is if they went to Richard and asked him to enforce something and he
582 looked at the situation and decided it wasn't appropriate to do so, someone could not appeal that type of
583 decision to us.

584
585 NEIL DUNN: I just...you know to me...

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587 JIM SMITH: I think that's...

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589 NEIL DUNN: ...it gets a little...

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591 JIM SMITH: ...yeah, but I think that's what's they're trying to say.

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593 ASHLEY SCOTT: If you look at 6:76 5:1, this is a decision of a officer and it agrees Mr. Cardello which makes
594 this an appeal that you have jurisdiction over under 6:76 5.

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596 NEIL DUNN: Right, but you have to read the whole chapter to come down to a decision...I mean it's all part of
597 the reg. When you go to II(b), a decision of the administrative officer, and then again it gets back to the...not
598 his discretion, if he chose not to enforce it, or if he does, we don't really have...

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600 JIM SMITH: No, no.

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ASHLEY SCOTT: No, he's...the decision has been made...

JIM SMITH: Right.

ASHLEY SCOTT: ...and now it's either Mr. Cardello vacates, or he's subject to fines. There's no other avenue of re-dress except the ZBA.

NEIL DUNN: Right, which is a different application that's coming over here asking for a special exception or variance...

ASHLEY SCOTT: No.

JIM SMITH: No, no, no.

NEIL DUNN: No?

ASHLEY SCOTT: The first step is to appeal the initial decision.

JIM SMITH: In other words...

ASHLEY SCOTT: The initial decision stands. The next step is an application for a variance, or a special exception. The first step is you initial determination is incorrect. That's where we are now. The next step is an application for a variance or special exception.

BILL BERNADINO: So, we're basically just seeing if Richard over stepped his bounds as the...is that right Richard? Well you hit the zoning...their coming to us to see if we agree with your zoning?

RICHARD CANUEL: Yeah.

ASHLEY SCOTT: Yeah, the basic gist of our argument is that zoning doesn't apply to this property; one, because the use preexisted zoning, so it's exempt; two, is that it's not a business use, which I see you don't like that idea; and three, that it's an accessory use of a church, and specifically this church. So, for any of those three reasons, zoning doesn't apply which means respectfully Mr. Canuel's enforcement action is moot, so there is not second step.

NEIL DUNN: And, if I may, the reason why I asked what brought the thing was because there was signage out there obviously advertising the driving school, or something of that nature which makes it look like a business.

ALFRED CARDELLO: So, I was in business since 2004 in Londonderry when I began this, and I started out at the YMCA up on Mammoth Road and I had a sign out there and nobody ever said anything to me about sign. I don't know laws, and I don't know what's going on, I just see sandwich signs out in the road, and I don't

644 know there's supposed to be a permit pulled, or anything else about signs, I just figured if you're a business
645 owner you throw a sign out there on the street. So, that's what I did up there and I was there for about a
646 year and I didn't like the place there because it wasn't a very good facility for my students and I'm always
647 thinking about them. So, I decided I would try to find something else around here and I ended up down at
648 the Lyon's Club, and it was acceptable at the time. It was a lot better than the YMCA, so we went there and I
649 put my a-frame out there. My a-frame sat out there for five years and there was no complaints about the
650 sign at all until around 2009, and then I got a complaint. So, the Town Council agreed since I was on Town
651 property they would allow me to leave my sign out there as it had been for five years without any problems.
652 Because again, I'm just a community service. Yes, I do make money at it, but it is a community service. It is
653 necessary. Alright to have somebody doing a good job at drivers education. So, when I moved over to there
654 in 2013...cause I'd been at the Lyon's Club for nine years and they had done absolutely nothing in this
655 building as far as what I was using, and I asked them if I could upgrade it and they just didn't want to deal
656 with that. I said, "Can I spend three thousand dollars here and make this a nice room for my...". They said
657 "No, don't do anything", so I said "Don't do anything". So, I started looking around for another place and I
658 found the church. So, when I moved over to the church in 2013, I thought I could put my a-frame sign back
659 out again which Mr. Canuel immediately told me "No, you can't do that". He tells me, "If you want to do
660 that, you come over and you get a permit". So from 2013, I took four permits and I put the sign out there and
661 on the fifth permit for some reason now all of the sudden...he could have told me that "Hey, you know, it's
662 alright if you're using the classroom, but I really don't want to do this permit thing anymore. It's advertising
663 your business and I'm going to deny your permit for the sign usage for thirty days". I would have backed off;
664 "I understand what you're talking about Richard". I can...you explained it to me "I shouldn't put the sign out
665 there", but instead he sends me a registered letter that I have to vacate in thirty days. Alright, that's what I
666 got. It was kind of like a shock. My life has been upside down since May 15th trying to get this rectified. If
667 the sign bothered him that much, or if it was the key to this, I would have just withdrew trying to put an
668 application in if he had just explained to me "You're a commercial business and that's a church and it ain't the
669 Lyon's Club and so you can't come in here and ask me to put the sign up here anymore. I'm not going to
670 allow it", and I would have said "Fine Richard, I can understand that".
671

672 JIM SMITH: Okay, I think I want to make one point just so everybody understands the difference between the
673 Lyon's Club and the church. The Lyon's Club is owned by the Town and since it's owned by the Town it's not
674 subject to the Town zoning. That's why for you to operate there you had to go to the Town Council because
675 the Town Council controls that building, so it's outside the zoning.
676

677 [Overlapping comments]
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679 ALFRED CARDELLO: It wasn't a question about my operation there.
680

681 JIM SMITH: Yeah.
682

683 ALFRED CARDELLO: It was a question about the a-frame sign that was on the sidewalk.
684

685 JIM SMITH: Again, that because it's Town property.
686

687 [Overlapping comments]

688
689 ALFRED CARDELLO: Right.

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691 JIM SMITH: Again, it's Town property. It was outside of zoning.

692
693 ALFRED CARDELLO: Right.

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695 JIM SMITH: So, zoning had no bearing on that sign at that point.

696
697 ALFRED CARDELLO: So, we're here tonight to ask the Town you know ZBA members basically if you can
698 understand the situation. The church wants us over there. I'd like to be there and there's really nothing
699 going badly. We're not doing any harm to the community. If you can make an exception and say "Yes, we'll
700 allow your school. You cannot put the sign out there. You cannot have any signs that you're at there. You
701 can conduct your classroom". Then everything would be fine. That's all we're looking to attain here. Not
702 looking to put the sign back out. If the sign was a problem in the first place, I just explained that situation.
703 So, I'm just leaving it up to your discretion. You know, we do have legal avenues that we could further go on
704 about you know the actually description of the church and what the church can do. She knows that and we'll
705 have to bring it to a body of people you know for their judgement if you can't seem to understand what
706 we're asking for tonight.

707
708 JIM SMITH: Okay, further questions from the Board? Is there anyone in support of this that would like to
709 speak? In opposition? Any further comments?

710
711 CHARLES BROWN: Speaking for the church, we've enjoyed having the classes there and the students and
712 we'd like Mr. Cardello to be able to continue coming using the room for this class.

713
714 JIM SMITH: Okay.

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716 ASHLEY SCOTT: I'd like to highlight that in the same way that the Lyon's Club because their owned by the
717 Town is exempt from zoning this property because of how long it dates back and being continually used by
718 the same organization for educational purposes for this use at this site for those reasons should be viewed
719 the same way, and if you disagree with that it's an accessory use as an educational endeavor at a church.

720
721 JIM SMITH: Okay.

722
723 NEIL DUNN: If I might speak to that. If the business and I think we'll all admit, it's a business and whether the
724 education is a allowed use went in there at 2013 when zoning was in place, so I understand kind of where
725 you're going with the concept of it, but for me he moved in there with a business in 2013. My thought is a
726 variance might be requested, but that's not what's in front of us right now. So, that's just might though.

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728 ASHLEY SCOTT: Right, I understand that might be the next legal avenue, but there's no reason that it would
729 be necessary because zoning doesn't apply to this church for these types of activities. That is our position.

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NEIL DUNN: That is your position, yes.

JIM SMITH: Okay, any further comments from the Board? At that point the public hearing is closed and we'll discuss and deliberate.

DELIBERATIONS:

ALFRED CARDELLO: We're going home then?

JIM SMITH: No, you can...if you wish...

ASHLEY SCOTT: We stay.

JIM SMITH: ...you can wait for us to make a decision.

ALFRED CARDELLO: Oh, yeah, yeah, okay.

ASHLEY SCOTT: Yeah, we just can't say anything.

ALFRED CARDELLO: Okay.

JIM SMITH: So what's everybody's pleasure?

DAVID PAQUETTE: My position on it is that...I'm paraphrasing the ordinance that you know any activity involving the sale of merchandise, materials or services...so to me this is a sale of services regardless of its community oriented, or what have you, but there's still a commercial process happening. So, maybe the sale isn't happening there where there's walk up and I want to take your class and they sign some papers and hand over a check and what have you, but I think that that still falls under a delivery of a service that is from a commercial stand.

JIM SMITH: Anyone else?

JIM TIRABASSI: Yeah, it's still a commercial enterprise regardless of product being sold. A product is still distributed there. The zoning is clearly defined as to what uses are and aren't allowed. It's not grandfathered. It wasn't protected from day one because nobody can verify it was done the same ways they...for profit organization.

JACKIE BERNARD: The examples of the other types of instructional were the examples that were given were all community type services. They were somewhat church oriented. Community as far as AA meetings. These were things that were not charged a fee for. They are people that show up to assembly and testimony from their counsel also stated that it was...it's the same type of business that the church would conduct, so this is clearly a commercial use in a...

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JIM TIRABASSI: AR-1 zone.

JACKIE BERNARD: ...AR-1 zone. I mean...and that's clearly what we have to decide tonight and I agree with you, Jim on...to me seems like the next step is to apply for...

JIM TIRABASSI: A variance.

JACKIE BENARD: ...a variance, and we're not here to decide that tonight.

JIM SMITH: Yeah, because we either have to support or vacate what he's...

JACKIE BENARD: That's correct, yeah.

JIM SMITH: ...what decision was made, it's either up, or down.

JACKIE BENARD: So, if we keep clear site of that, is what we're actually here for tonight.

JIM SMITH: So, we have to decide whether or not the issuance of a violation was in fact a correct decision. Any further comments?

NEIL DUNN: I guess I'd support Jackie, and I think that's what I said earlier is that we're here on Richard's decision and his choice to commence the formal decision prior to this is not something that is really in front of us, or reviewable. I understand what the applicant is saying, but in this case it's really about was Richard right, or wrong? I don't think he was wrong, I think they need to come for a variance and that's a whole different story.

JACKIE BENARD: Correct. That's another whole application and another set of facts that we have to review.

DAVID PAQUETTE: I agree.

JIM SMITH: Okay. Would someone care to make a motion?

DAVID PAQUETTE: Sure. Mr. Chairman in regards to Case No. 7-15-2015-1, I'd like to raise a motion to deny the relief of administration decision.

JIM SMITH: Okay.

DAVID PAQUETTE: For comments, it's a commercial use in an AR-I zone. Company delivering a service.

JIM SMITH: Okay, when we vote, we're checking off denied right?

DAVID PAQUETTE: Correct.

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JACKIE BENARD: Correct.

JIM SMITH: Okay, because this is...

JACKIE BENARD: I'd like to second that.

JIM SMITH: Jackie seconded. All those in favor, or none? These are always backwards.

[Overlapping comments]

JIM SMITH: All those in favor of the motion to deny the appeal?

ALL: Aye.

JIM SMITH: So when you right your thing out, you say denied.

RESULTS: THE MOTION TO DENY CASE NO. 7/15/2015-1 WAS APPROVED, 5-0-0.

DAVID PAQUETTE: Mr. Chairman, I'd like to raise a motion to adjourn tonight's meeting?

JIM SMITH: Okay.

JACKIE BENARD: I second that motion for adjourning.

JIM SMITH: All those in favor?

ALL: Aye.

RESPECTFULLY SUBMITTED,



DAVID PAQUETTE, CLERK

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

APPROVED (AUGUST 19, 2015) WITH A MOTION MADE BY N. DUNN, SECONDED BY J. BENARD AND APPROVED 5-0-0.