

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

DATE: JANUARY 19, 2011

CASE NO.: 1/19/2011-2

APPLICANT: KATHRYN J. LEE AND ROBERT J. LEE  
27 ISABELLA DRIVE  
LONDONDERRY, NH 03053

LOCATION: 27 ISABELLA DRIVE; 9-52-25; AR-I

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR  
MATTHEW NEUMAN, VICE CHAIR  
NEIL DUNN, VOTING MEMBER  
JIM SMITH, VOTING MEMBER  
MICHAEL GALLAGHER, NON-VOTING ALTERNATE  
JAY HOOLEY, NON-VOTING ALTERNATE  
LARRY O'SULLIVAN, CLERK

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

REQUEST: ROBERT J. LEE (KATHRYN J. LEE, PROPERTY OWNER) REQUESTS AN  
APPEAL OF ADMINISTRATIVE DECISION OF THE SENIOR BUILDING  
INSPECTOR

PRESENTATION:

Alternate Jay Hooley recused himself from hearing the case and sat with the audience.

CASE NO. 1/19/2011-2 WAS READ INTO THE RECORD WITH ONE PREVIOUS CASE LISTED.

VICKI KEENAN: Please come up and state your name and address for the record and present the case.

ROBERT LEE: Who?

LARRY O'SULLIVAN: Mr. Lee.

ROBERT LEE: Mr. Lee first?

VICKI KEENAN: Yes, I'm sorry.

ROBERT LEE: I'd rather have the other people speak first so I can [indistinct] it, no? Or...

VICKI KEENAN: No, I'd like you to present your case first.

ROBERT LEE: Okay.

VICKI KEENAN: And then we'll give you an opportunity to respond if necessary.

ROBERT LEE: Okay, six (6) years ago when, basically, I applied for this, it does say "the sale of receivers," or "the bringing in of receivers" for...parts of the firearms. That is a part of a firearm. When I do bring those in, it is to repair a firearm. It doesn't state anywhere on there about the sale or non-sale of complete firearms. My Class I license at a Federal level allows me to do that along with gunsmithing. The Town approved it. Nowhere on the Town documents does it say "no sale of firearms." Okay? That's at a Federal level. The State level is an RSA that says I can do it and that a town can't stop me from doing it. And from a local level, the Police Chief, former Chief Ryan and now Chief Hart, have both given me license to sell pistols and revolvers out of my home. So from a Town level, it's been approved as well, not only by the Board six (6) years ago but by the Police Chief in the town for both terms that both of them have been in there. The people that are here tonight, a couple of them that want to argue this. There are other issues going on that this is the reason for doing it and...

VICKI KEENAN: Can I pause you just for one second?

ROBERT LEE: Sure.

VICKI KEENAN: Can you read the...?

LARRY O'SULLIVAN: I've got the minutes.

VICKI KEENAN: Can you read what was granted one more time?

LARRY O'SULLIVAN: What was granted? Yes.

VICKI KEENAN: And read it so we [indistinct].

LARRY O'SULLIVAN: The request was a special exception to allow gunsmithing of firearms as a home occupation. "Ken Hajjar made a motion that the Board grant the special exception for Case 51/7/2005-5 with the following restrictions: No discharging of firearms on the premises, no signs, maintain the current silent and monitored alarm system, and the sale of receivers is allowed only as an integral part of the repair of weapons." I seconded that motion and it was approved, five (5) to zero (0).

VICKI KEENAN: So the sale of receivers...

LARRY O'SULLIVAN: Of receivers.

VICKI KEENAN: ...is only allowed as the integral part of repair.

LARRY O'SULLIVAN: As a repair. Right. You can't fix a gun if there's a problem with the receiver without replacing the receiver, which means that it has to be sold. However, Mr. Lee can describe that better than I can, I'm sure.

VICKI KEENAN: So before we get into all this other stuff, can you specifically address that issue as to what you're looking for and then related to that? Because I don't know anything about gunsmithing, so I need an education.

ROBERT LEE: Do you want to know about the receiver? The receiver part of it?

VICKI KEENAN: Yeah.

ROBERT LEE: The receiver is a portion of the gun. To give you an example, the main part of the gun that is traceable by the Bureau of Alcohol, Tobacco and Firearms has a stamped number on that.

VICKI KEENAN: Mm-hmm.

ROBERT LEE: That stamped number is a receiver.

VICKI KEENAN: Okay.

ROBERT LEE: So if you brought in a gun that was damaged in the receiver part and the receiver needed to be replaced 'cause it couldn't be repaired, I would bring in a receiver to make the repairs to that gun.

VICKI KEENAN: Okay.

ROBERT LEE: Okay?

VICKI KEENAN: And you would sell that receiver after that repair?

ROBERT LEE: Well, obviously, that receiver would be sold under the repair for the person to get their gun back, yes. Absolutely.

VICKI KEENAN: Okay. Alright, so then before we get into that other stuff again...

ROBERT LEE: Sure.

VICKI KEENAN: ...can you spend more time on your application in explaining why you think that we should grant this?

ROBERT LEE: Because my application, which is an 01 license from the Federal level, states the gunsmithing, sale of guns, sale of ammunition, and sale of accessories for guns. That's what the application says on it. And the Federal Government would not have issued that to me if you had stipulations in your agreement with me

when I came to you six (6) years ago that said 'he can't sell firearms, he can't do this, he can't do that.' Because the 01 license that they grant me gives me the right to do all of that.

VICKI KEENAN: So you're only selling receivers as it relates to repairs today. There are no other sales of any other guns as...

ROBERT LEE: There's sales of complete firearms. In other words, not...I'm not selling receivers. In other words, you can't come into me and say 'I wanna buy a receiver for this,' whatever, 'Glock that I have.'

VICKI KEENAN: Mm-hmm.

ROBERT LEE: Okay? I don't sell those receivers. I sell the full gun, which is not a part of the gun. It is the full gun.

JIM SMITH: Okay, can I interrupt at this point?

VICKI KEENAN: Yeah, please do.

JIM SMITH: Larry, could you read what was applied for in that case? Not what was granted, what was applied for?

LARRY O'SULLIVAN: The original case? Okay, we're going back to 2005.

JIM SMITH: Right.

LARRY O'SULLIVAN: "Gunsmithing of firearms, rebluing, stock repair, bone sighting, scope mounting and trigger work. Receiving of firearms and shipment of firearms."

JIM SMITH: So nowhere in there was there a request for the sale of weapons?

LARRY O'SULLIVAN: No.

ROBERT LEE: What would "receiving of firearms and shipment of firearms" be?

NEIL DUNN: Repair.

ROBERT LEE: Obviously that's...why would I be bringing in firearms...I'm not gonna repair a full, brand new arm. That's...

VICKI KEENAN: But I don't think that that's what was granted. Alright, so I'm just gonna ask my question one more time.

ROBERT LEE: Sure, go ahead.

VICKI KEENAN: Are you selling any weapons...

ROBERT LEE: Yes.

VICKI KEENAN: ...from this location...

ROBERT LEE: Yes.

VICKI KEENAN: ...that are not as a result of a repair to the receiver?

ROBERT LEE: Yes.

LARRY O'SULLIVAN: Would you like me to read the minutes from the meeting? Or parts of the minutes?

VICKI KEENAN: Yeah, could you?

LARRY O'SULLIVAN: I'll just read Mr. Lee's words if you'd like.

VICKI KEENAN: We're just...

ROBERT LEE: No, I understand.

VICKI KEENAN: We're having you present in an unorthodox manner...

ROBERT LEE: Sure.

VICKI KEENAN: ...because I think there's some education that has to go on.

ROBERT LEE: Sure.

LARRY O'SULLIVAN: What we were attempting to do back then was to allow Mr. Lee to have a business that he can operate from the home where it wouldn't be influential on the neighborhood.

VICKI KEENAN: Okay.

LARRY O'SULLIVAN: One of the things that we were specific about and why we asked several times, Ken Hajjar, Neil and I, what he was going to be doing about inventory. And I'm quoting myself now, "Questions, I guess, are gonna be about inventory, powder, extra pieces, spare parts, things like that. Where do you keep it all?" Mr. Lee: "They'll be kept, powder, I mean I reload for myself, for own firearms, so there's minimal powder in my house. I'm not reloading as the business. That's a different license altogether." Ken Hajjar: "Mostly you're just repairing, renovating..." Robert Lee: "Just repairing guns, correct." Ken Hajjar: "...refurbishing..." Mr. Lee: "Firing pins, mounting and bore siting, blueing." Larry O'Sullivan: "Test them?" "I test them." "What's blueing?" and so forth. [ZBA minutes Case No. 5/17/2005-5, p. 2] There was another spot in here. I remember the case. Not that I remember a lot, but we were specific about the questions, and I'm trying to get there, about retail. We weren't expecting anybody to be walking into the store with the

intent to purchase a weapon, okay? Because as Mr. Lee said in his earlier statements, he was only hoping to be there for a couple of years and then be out of there so that he can actually get into the business.

VICKI KEENAN: Can you continue reviewing and maybe highlight those sections but in the meantime, can you continue to present your application and present your case and give us any other information you think is pertinent to the Board?

ROBERT LEE: Yes. Once again, like I said, from the Federal down to the State down to the Town level, this was all approved. Even...

JIM SMITH: You know...

VICKI KEENAN: Let him...

JIM SMITH: I think what you...

VICKI KEENAN: But, let's...

JIM SMITH: What you have to be careful about is, what we're looking at and reviewing is what was granted by that case and whether or not you're in conformance with the requirements of that case. And that's it.

VICKI KEENAN: Let's let him, Jim, just let him finish presenting.

ROBERT LEE: I understand that. But nowhere on there does it say I will not sell firearms, or does it say I will.

VICKI KEENAN: For the Board, time out, can we just time out for a second?

ROBERT LEE: Sure.

JIM SMITH: Yeah.

VICKI KEENAN: No more questions from the Board. Let's let him finish presenting his application and presenting his case and then we'll bring it back to the Board for questions.

ROBERT LEE: Okay, so basically, in the six (6) years I've been there, there's only been one (1) incident, okay? And that's what prompted all this tonight. I had a firearm stolen because the person didn't pass a background check that's required that I do anybody purchasing one. You got two (2) letters from two (2) people in the town wanting to stop this business, okay? And what you need to know is that one of the people, his name is Donald...for lack of pronunciation, Charette who lives on 20 Holton Circle. Prior to the gun theft, I have a police report here where he showed up at Jim Totten's house, who is here, too. He's the guy who lives beside me.

JIM TOTTEN: Totten.

ROBERT LEE: I'm sorry. Okay? And he turned around, I had to call the police on him because he threatened me,

VICKI KEENAN: Can...

ROBERT LEE: You need to know all this because it's part of it, okay?

VICKI KEENAN: I don't know that it is. I think we need to know the facts as to why you think you're presenting your case, as to why we should grant the special exception. I think I'd like you to focus on your application.

ROBERT LEE: Well, alright. Okay, based on all the laws of the State, Federal and local, I haven't done anything wrong. Alright? And basically, that's why. I've committed no crime, I've done nothing wrong. ATF has come down and gone through my books, I think four (4) times in six (6) years now and there's never been an issue. And, like I said, ATF would not issue that license if what the Town presented them was not sufficient for me to have that business. And the one step further that I...since I'm only gonna be allowed to talk and then not talk again, I take it after this?

JIM SMITH: No, you can.

VICKI KEENAN: That's correct, unless the Board has questions.

ROBERT LEE: Okay, my attorney could not be here tonight but I have his card and the suggestion is that you people or the Town's Attorney contact him before you people make any decision because I am within all legal rights. The Town documents, my attorney's gone over and basically, he's saying that I'm right and that's the way it is.

VICKI KEENAN: Of course he's saying that. I mean...

ROBERT LEE: I understand.

VICKI KEENAN: Can we bring it back to the Board to ask questions now?

ROBERT LEE: Sure. Absolutely.

VICKI KEENAN: 'Cause I'm really struggling with this a little bit because...

JIM SMITH: Okay, Vick...

VICKI KEENAN: Go ahead.

JIM SMITH: Okay, I think one thing we have to be careful about...

VICKI KEENAN: Yeah.

JIM SMITH: What he is appealing is the issuance of an administrative decision by the Zoning Officer.

VICKI KEENAN: Right.

JIM SMITH: That's all he's appealing. We're not looking at anything else. All we have to decide, whether or not the administrative decision was correct or not. Not whether he's legal or not. Whether he's correct or not.

VICKI KEENAN: Right, but don't we have to understand the background of the case in order to determine whether or not the decision was correct?

JIM SMITH: Up to a point. I would think we need to talk to the Zoning Administrator to ask his background on the issuance of the letter and I would ask that at this point.

RICHARD CANUEL: Alright, just let me interject here first on a couple of procedural matters for the Board. Number one, this is an appeal of an administrative decision, which means I'm a party to the case. Stating that, I can't give the Board any advice that would be interpreted as swaying their decision. So, basically, as a party to the case, as anyone else who would speak in opposition or in support of the applicant, you can merely ask me questions and I will respond accordingly. Secondly, as an administrative appeal, unlike variances or special exceptions, this being a public hearing, the Board doesn't necessarily have to hear from the public. This is basically between the administrator making a decision and the applicant appealing that decision. So, just to give the Board those procedural issues there. In stating, on my part, the reason for issuing the letter, by our ordinance, when the Board grants a special exception, there is a provision in the ordinance that says any failure on the part of the applicant to comply with the stated conditions will be subject to revocation of that special exception. Unlike the Planning Board that has statutory authority to conduct a public hearing whenever they are considering revocation of a site plan approval or any of their decision, the Zoning Board does not have that statutory authority. The Zoning Board does not do any revocation of any of their approvals. Once you give an approval, you're done unless there's an appeal filed. So the requirement for revocation comes strictly from the ordinance and that's what I relied upon, simply because in my opinion, the applicant was not in compliance with the conditions set forth in his home occupation special exception because the Board's decision that receivers be an integral part of repair of the weapon, in my opinion, was the intent to restrict gun sales on those residential properties. The Board has granted three (3) other similar home occupations with similar conditions attached to those. So it's not out of line that the Board would restrict the sales of guns on this residential property and not the others. It's the same decision that the Board has made in three (3) other cases, so strictly based on the requirements of the ordinance and the decision that the Board made in granting that special exception was the reason for my letter of violation and revoking the special exception.

LARRY O'SULLIVAN: Madam Chair?

VICKI KEENAN: Yes.

LARRY O'SULLIVAN: If you're ready for any additional highlights.

VICKI KEENAN: Yeah.



LARRY O'SULLIVAN: As Richard had mentioned, we were attempting at the time to go and question whether there would be sale of firearms because that was what our issue is going to be with anybody who's trying to open up a retail walk-in type clientele for any type of business in a home occupation. We ask it all the time. It's part of our Master Plan to allow home businesses where they don't affect neighbors with traffic and...That's why we asked you originally about traffic...

ROBERT LEE: Okay. Sure.

LARRY O'SULLIVAN: ...and so forth and you, at that time, you were saying yeah, there's twenty (20) a year maybe. "I'm just getting this started. It's a very slow process." "...would you deliver [guns] back...?" You would deliver them, in effect, you said "It would be mailed." You'd bring it to UPS and mail it, so we were attempting, and I believe we found while we were asking these questions, that you wouldn't have walk-in traffic and that you wouldn't expect somebody to pick up their gun. Then, as you continued, "Well, no, people may bring them to me in person, you know? And I may just send it back through UPS or tell them it's ready and they come by some night and pick it up. I mean, it's not gonna be like fifty (50) cars coming down the street at one time or even ten (10) or five (5), you know? [Probably] one (1)...at a time...possibly two (2) but that would be a rarity, I think." Ken Hajjar: "Then it's time to get the store front, right? You'll be big time by then." Robert Lee: "Well, yeah." "Will you be doing some business over the internet...?" Mark Officer. "Right now there wouldn't be anything over the internet because, like I said, [I'd] just be gunsmithing and I don't want to advertise it out there [as yet]. I'd just rather work with the that people I know and like, I belong to the gun club...You know? Do it for people I know and like I said, get it started there and then hopefully move into a store front and then go internet-wise and expand it." Larry O'Sullivan: "You specifically are asking for Gunsmithing where there's no sales?" Robert Lee: "Correct." [ZBA minutes Case No. 5/17/2005-5, p. 7]. It goes on and on. We ask several times about the same thing.

VICKI KEENAN: So I'm just gonna ask you a question, just so that I'm clear. Are there any sales of firearms or receivers beyond those being an integral part of the repair of a weapon?

ROBERT LEE: Yes.

VICKI KEENAN: Okay. Any other questions from the Board? Jim?

JIM SMITH: No. At this point.

VICKI KEENAN: Okay. I don't know that we should open it up to the public.

LARRY O'SULLIVAN: It's up to you.

MATT NEUMAN: I don't know what benefit it's gonna...

LARRY O'SULLIVAN: It's up to you, Madam Chair.

VICKI KEENAN: Anybody have any comment on that?

NEIL DUNN: My only thought is that if...

LARRY O'SULLIVAN: There's no need to.

VICKI KEENAN: No? How about you, Neil?

NEIL DUNN: If we're trying to decide if there's more of a retail presence than we wanted would, the public offer some input to that? I don't know that it really matters a whole lot but...

JIM SMITH: I don't think you need to. He's already stated that he has sold weapons.

VICKI KEENAN: There's sales beyond...

NEIL DUNN: And I'm good with that.

JIM SMITH: We've established that point.

VICKI KEENAN: What do you think?

MATT NEUMAN: I agree.

VICKI KEENAN: Okay. We are not gonna open this meeting up to public comment. So, unless you have anything else to add, we're gonna bring it back to the Board for deliberation.

ROBERT LEE: The only thing...

LARRY O'SULLIVAN: This hearing is closed. This particular appeal is closed, right?

VICKI KEENAN: Right.

ROBERT LEE: The only thing that I'm gonna say is you mentioned traffic. You were talking about traffic there. I don't have ten (10) cars in my driveway at one time or on the street. It's one (1), two (2), and it's not every day. There's no impact on the street at all as far as that goes. There aren't people hanging around down there, okay? So as far as it impacting the residential neighborhood as far as traffic-wise or any of those concerns, it hasn't been doing that and it just hasn't. I mean, it's not that huge of a business that I have...it's not like driving up to Riley's and seeing fifteen (15), twenty (20) cars parked out there. That's not the case.

VICKI KEENAN: Mm-hmm.

ROBERT LEE: It is, you know, onesy, twosies is probably a bad word to use today. At the time, that was a good word. But, you know, I mean I might see...there hasn't been anybody there now in...for that reason, in over a week, you know, that's called me or anything, so it's not like it's a traffic problem to the neighborhood or anything like that. So, you know, in rebuttal to that part of it. And, like I said, the business did grow from the onsey, twosy...

VICKI KEENAN: Mm-hmm.

ROBERT LEE: ...and I just grew along with the business. Do I plan on moving it? Yeah, eventually I do. As it grows, I do plan on getting out of there 'cause I would like to have fifteen (15) or twenty (20) cars showing up, you know, at any given one time but I guess that's all. I just wanted to answer to your part of it there as far as the traffic impact and stuff.

VICKI KEENAN: Okay. Let's bring it back to the Board for deliberation.

DELIBERATIONS:

VICKI KEENAN: Any discussion?

LARRY O'SULLIVAN: Sure. I think I know what Mr. Lee's business has grown into is more than what we had originally...we had envisioned as a Board. And I believe we were pretty specific about what our limitations were and I don't have any question that our Zoning Officer made the right decision, so...

VICKI KEENAN: No, I think it's clear. I think the decision was made for the sheer fact that there are sales of firearms or weapons and receivers beyond those related to repairs of weapons makes it very clear he's in violation of what was granted. I think there's no doubt in my mind. Okay? Is there a motion?

LARRY O'SULLIVAN: Anybody else?

NEIL DUNN: I also agree that it seems quite...it seems to me from what we've heard and by the letter sent to him that the sale of receivers is allowed only as an integral part of the repair of weapons, that it was quite clear in the original variance and that Richard is correct.

VICKI KEENAN: Okay...

JIM SMITH: Okay, I'd like to make a motion to deny the appeal...of this case.

NEIL DUNN: I'll second.

LARRY O'SULLIVAN: Could you be spec...

NEIL DUNN: I'm sorry...

JIM SMITH: Case number 1/19/2011-2.

VICKI KEENAN: Be very specific on your voting sheets as to how you vote. That we are denying the request for appeal, okay? Is there a second to the motion to deny?

NEIL DUNN: I'll second.

VICKI KEENAN: Any discussion around the motion? Seeing none, all those in favor of denying the request for appeal of administrative decision signify by saying 'aye.'

JIM SMITH: Aye.

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

MATT NEUMAN: Aye.

VICKI KEENAN: Aye. Opposed? Abstentions?

[No response for either]

RESULT: THE MOTION TO DENY CASE NO. 1/19/2011-2 WAS APPROVED, 5-0-0

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Larry O'Sullivan". The signature is fluid and cursive, with a long horizontal stroke at the end.

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED MARCH 16, 2011** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND APPROVED 5-0-0.