

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

DATE: SEPTEMBER 17, 2008

CASE NO.: 9/17/2008-3

APPLICANT: LEEMAN CORPORATION
C/O BODWELL PINES CORPORATION
220 MAIN STREET
NATICK, MA 01760

LOCATION: 44 NASHUA ROAD, 7-67, C-I

BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
VICKI KEENAN, NON-VOTING ALTERNATE
JIM SMITH, NON-VOTING ALTERNATE
MICHAEL GALLAGHER, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

REQUEST: USE VARIANCE TO OPERATE A GROUP CHILD CARE CENTER IN A C-I ZONING DISTRICT WHERE OTHERWISE NOT PERMITTED BY SECTION 2.2, TABLE OF USES.

PRESENTATION: CASE NO. 9/17/2008-3 WAS READ INTO THE RECORD WITH SEVEN PREVIOUS CASES LISTED.

YVES STEGER: Who will be presenting?

BRIAN SULLIVAN: Yes, Mr. Vice Chairman, members of the Board, my name's Brian Sullivan and I'm here representing the proponent of this Leeman Corporation.

YVES STEGER: If you could just give an overview of why you're requesting it and then go to the five (5) points of law. Thank you.

BRIAN SULLIVAN: Yup. Leeman Corporation, as you may know, owns, as you just made reference to, 44 Nashua Road, it's a shopping center known as Village Shops at Londonderry Commons. This owner has had a tenant by the name of The Discovery Stop, LLC since 2005. This limited liability corporation formed in New Hampshire in the same year, 2008 [sic], has leased unit twenty (20) in the same complex as unit six (6) as you made reference to earlier at that 44 Nashua Road. It consists of six thousand sixty (6,060) square feet and The Discovery Stop built that out to operate an indoor playground and a learning center for children. They also offer special events and

birthday parties, to host those for children, again. Leeman Corporation is seeking to increase the use, similar to for unit number six (6) which you previously granted, for unit number twenty (20), to permit The Discovery Stop and future tenants at that location to offer programs such as fitness classes, arts and crafts, drama classes and summer educational programs. This would be a complimentary use to what they're presently doing now. There's been a strong request by present customers of The Discovery Stop to offer programs that would necessitate them being, the children, being dropped off at the facility and as we spoke with your office, indicating that the fact that children are gonna be dropped off would come under the category of a Child Care Center, that led us, similar to the request for number six (6), to come before the Board for this use variance. There is no intention by this tenant to have a daycare facility as we would think about it but it's to allow them, the children, to be dropped off by their parents at the facility and they'd be offering classes, no more than twelve (12) students per class, ten (10) classes per week is what is contemplated by this tenant, The Discovery Stop, and again, this is for educational purposes. The Discovery Stop has already approached the Department of Health and Human Services regarding licensure for...under a child care center, and they received an exemption from that and specifically, and I have a copy of that letter for the Board members, I'll give them just a second, specifically they found under RSA 170-E:3(b) that as it is a business that operates an instructional program, they are not gonna be considered as a Child Care Center, and they did grant that exemption specifically RSA 170-E:3(b) exempts from child care licensing programs offering instructions to children, including but not limited to athletics, crafts, music or dance, the purpose of which is the teaching of a skill. And that's exactly what The Discovery Stop, the tenant in unit number twenty (20) is offering now and, again, they just wish to increase it to allow the drop off. I'd like to address those points. If I could just present the Board with a copy of that letter...

YVES STEGER: Yes, please.

VICKI KEENAN: Thank you.

JIM SMITH: Thank you.

YVES STEGER: Do you have a copy?

LARRY O'SULLIVAN: I'll give it to her. Oh, do you have an extra?

YVES STEGER: No. But I read it.

BRIAN SULLIVAN: I have an extra copy.

LARRY O'SULLIVAN: Thank you.

YVES STEGER: Okay.

BRIAN SULLIVAN: You see, the first letter is from the Board, from the State, and the second one is just a copy of the law so you can see exactly subparagraph 3(b). I suggest to the Board that this would not diminish from the neighborhood. This is a use which is already in existence right now where The Learning Stop is the business at unit number six (6) that provides that. It's not contrary

to public interest. There is a need that's been requested for, in fact, you know, it makes for additional business for the other location at unit number six (6). The drop offs at the location is the only increase in the activity that they want, so it's gonna be in...the facility here has adequate parking, adequate access to allow that, to do that in a safe manner. These programs would be limited in hours. It's not an all day, it'd be the fitness program that's contemplated would be, you know, a two (2) hour program. Others for arts and crafts may only be an hour, an hour and a half program. It's not an all day event. In the summer, they would have additional programs for that. The use is not contrary to the spirit of the ordinance. You know, we're not trying to be a daycare center, we just want to continue the permitted use as it is now and just allow with the drop off. Substantial justice, there's a hardship right now to the existing tenant there as far as not allowed to offer these programs where the parents would then go get a cup of coffee or whatever, go down the street or do some shopping while the child is having this educational program and then pick them up. Trying to comply exactly with the letter of the law, so as far as, you know, violating the spirit of that, I don't think that you would find that in this case. If there's any other issues you wish me to address, I'd be more than happy to do that.

YVES STEGER: Yeah, you didn't discuss the hardship.

BRIAN SULLIVAN: Yeah, the hardship to this unit, number twenty (20), as well as the tenant right here is that there is a need out there that she is trying to address with this drop off. In fact, you know, right now you have people who are parking, going into the facility for the playground activities, the instruction they have here. It would be a hardship to this tenant if they were not allowed to have this drop off, an added feature, which would allow these additional educational programs. As I said, the fitness programs, the arts and crafts, the drama courses that are being proposed.

YVES STEGER: So...

BRIAN SULLIVAN: There's other...

YVES STEGER: The use variance, the point one of this is the zoning restriction as applied to the property interferes with the landowners reasonable use of the property, so, that's essentially the point that you have to make to this Board.

BRIAN SULLIVAN: And the reasonable use of this property, as I said, regarding the driveway, the access way, the exits way does allow for a drop off to be done in a safe condition and it'd be a hardship, you know, not to permit the drop off as part of the use of this property. It has been done with the unit number six (6), and there hasn't been, as far as I'm aware in the research that I've done, any issues, accidents or interference with other tenants at that facility.

LARRY O'SULLIVAN: We're gonna have to dig on that one a little bit.

YVES STEGER: Yes.

LARRY O'SULLIVAN: What we're talking about, right now, you're using that building, you have business there, it is a reasonable use that you're using it now. This additional use is really what we're having to focus in on. Only and exclusively the additional use of the property, right?

BRIAN SULLIVAN: Yup.

LARRY O'SULLIVAN: So, the additional use is not permitted in a C-II zone. Your explanation was a good one because it referred to classes as opposed to day long sessions of child care and so forth, correct?

BRIAN SULLIVAN: Correct.

LARRY O'SULLIVAN: Okay. What we're trying to get to is just that and exclusively that. How is it a hardship that you don't have that business now? Why would it be a hardship to not have it?

BRIAN SULLIVAN: It's a hardship not to have it because the...you know, the facility is adequate space to allow that. The business, as it is right now, with the expenses of keeping that up necessitate this tenant to increase their business in order to remain a vital and active business in the community.

LARRY O'SULLIVAN: Okay.

BRIAN SULLIVAN: You know, under their lease they do have certain allowances regarding shops and things that would increase patronage to buy, you know, that hasn't worked out as far as doing any...bringing any income into the business but to remain a viable business, this company needs this additional classes, additional revenue to do that.

LARRY O'SULLIVAN: Okay. Would you give us an estimate on the number of children in a class and would there be concurrent classes or would the classes be scheduled throughout the day?

BRIAN SULLIVAN: Yup, the classes are limited to no more than twelve (12), primarily ten (10) children per class. We're looking at ten (10) classes a week. We're actually, you know, as far as...gone so far as...and I just provided as far as the exemption letter that you have there actually speaks to the application that The Discovery Shop [sic] permitted and that talked about three (3) classes per week for one (1) of their programs and then just, you know, an hour or two (2) hour program a week, so they're only talking...that, right now, would be five (5) classes a week. If the public presents itself and there's an additional requirement for additional classes, they would do that, again, limiting it to the number, to ten (10), you know, to twelve (12) students per class. In the summer, there may be more classes warranted because the children are out of school. So you're talking here, you know, younger children programs, drama, whatever or fitness for the younger kids who aren't in school would be in the morning hours, mother hours type of thing and then for the other children, late in the afternoon.

LARRY O'SULLIVAN: Okay, what I'm driving at is we have to get an idea of traffic. This is a mall that you're in and there's already lots of traffic. What we're trying to do is to get a guesstimate, get a feel of how the safety if going to be affected by what your use, your potential use of this property would bring.

BRIAN SULLIVAN: As far as the program that is proposed for three (3) days a week, that would be a nine (9) to eleven (11) in the morning, so after the heavy traffic time of the roadway would be over, you know, before the lunch time crowd comes in. That's what they're proposing right now and as far as the fitness class and an arts and craft, we're talking about a late afternoon, you know, three (3) o'clock, three forty five (3:45) type of program.

YVES STEGER: Okay.

VICKI KEENAN: Can I comment on that?

YVES STEGER: Go ahead.

VICKI KEENAN: Only because we frequent this location. I think by having these classes would actually probably reduce the traffic because right now it's sort of a free-for-all, so you can have as many, almost as many kids, I think, as would possibly fit in the jungle gym area, which would result in many, many cars out in the parking lot but it sounds like maybe with the classes that it would then not, at those times, be open to other children coming in to participate in that area?

BRIAN SULLIVAN: Yeah, the facility would remain open and...

LARRY O'SULLIVAN: There's an expansion...

VICKI KEENAN: Right, okay, so...I gotcha.

LARRY O'SULLIVAN: ...expansion of their business. They're taking over another 'cubie' is it, or another section of the building?

BRIAN SULLIVAN: No, it would still be within the six thousand (6,000) square feet.

VICKI KEENAN: Right.

BRIAN SULLIVAN: There is opportunity where things were proposed regarding like little gift shops or something like that would be made over or used specifically for one of these classes.

VICKI KEENAN: Gotcha. So the traffic may not really change as it is today.

BRIAN SULLIVAN: And again, like any other program like this, you have parents who are gonna drop them off and gonna be still parked there and just gonna be waiting in the wings. There's nothing that prevents that and that may be for, you know, a number of the students but others who wish to drop their children off and then go for a cup of coffee or go to the shopping mall, it would give them the opportunity to do that where you have the car just coming in and out, you know, basically an hour or two hours apart.

YVES STEGER: Okay. More questions?

NEIL DUNN: What is the business classified as now then?

BRIAN SULLIVAN: The business?

LARRY O'SULLIVAN: The existing business.

NEIL DUNN: Well, I...the existing business. So if all of a sudden you were told it's gonna be considered a Group Day Care, what is it classified as now? Do you know? It's just a retail or what...?

BRIAN SULLIVAN: I understand it's a retail business. I'm not specific regarding the...

YVES STEGER: So did you have to have a variance...?

BRIAN SULLIVAN: No. To operate the present business? No.

YVES STEGER: What?

LARRY O'SULLIVAN: It's in the strip mall, right?

YVES STEGER: No, no, no, wait. They are handling kids, too, at The Discovery Stop, so I'm just asking...

NEIL DUNN: See, that's what I...

YVES STEGER: Did they need a variance for that one or not and actually, my question is, why do they need a variance now if it's so similar to the old one? So it is because they are dropped off and that's why they are being considered a day care?

LARRY O'SULLIVAN: New licensing. They need new licensing to do this. They wanna be considered educational in training.

JIM SMITH: I think I'm having a little hard time with it. This letter that he's giving us is saying it's not a child care facility, which means they do not need a license.

LARRY O'SULLIVAN: Right.

YVES STEGER: Mmm.

LARRY O'SULLIVAN: But to...

JIM SMITH: Yet they're asking for a variance to have a Group Child Care facility which is what we typically would be looking for a license for.

YVES STEGER: Yeah.

BRIAN SULLIVAN: If I could address that, I mean, basically it comes under the province of a Child Care Center but there's an exemption in the statute that permits them to operate such a business without a license. That's specifically because it's intended for the teaching of educational classes. So that is the exemption. So it does come under...The Discovery Shop [sic] did have to approach the State regarding licensure and requested an exemption under that specific statute and it was granted because of the type of program they're offering. So they could not, according to the State, operate, you know, a day care facility. If they were just gonna take children in and babysit them, that would be a prohibited use, the State would come and shut them down.

NEIL DUNN: So what brought you here, though, again?

BRIAN SULLIVAN: It's specifically the conduct of dropping off and picking up students. We were informed that that was not permitted in this zone.

VICKI KEENAN: Because by definition, it's considered a Child Care Center.

BRIAN SULLIVAN: Right. Thank you.

LARRY O'SULLIVAN: This is not like the movie theater where they drop the kids off, leave them for two hours and then come back.

YVES STEGER: Mm-hmm.

NEIL DUNN: Pretty close.

LARRY O'SULLIVAN: Not at all like that.

VICKI KEENAN: No.

LARRY O'SULLIVAN: Oh wait a minute...

NEIL DUNN: Very similar.

[laughter]

YVES STEGER: Bizarre. So, the State does not consider this a group day care.

BRIAN SULLIVAN: Because of the instructional aspect of it, does not consider it a group day care that requires, you know, a license, correct.

[overlapping comments]

JIM SMITH: 'Cause they're still calling it a group day care, though.

BRIAN SULLIVAN: Well, it's not a group day care, no. No. Only under the zoning laws of Londonderry is it...basically, comes under the category under those bylaws as a child care center

and that's why we're here but as far as the State, they don't consider it a Child Care Center that requires a license. Correct.

VICKI KEENAN: So, by definition, it's a Child Care Center but it doesn't meet the conditions that require licensure by the State.

MICHAEL GALLAGHER: Which means you didn't have to address the dropping off of children as opposed to having to address it now?

BRIAN SULLIVAN: As far as the State, no, we didn't...they weren't concerned with the dropping off.

LARRY O'SULLIVAN: The State doesn't care about that because they're not address or location considering anything with this State permit. It's up to us to enforce the local requirements. So, that said, I think that what he's got here is, you know, one of those definition things that we're stuck with...

YVES STEGER: Yeah.

LARRY O'SULLIVAN: ...so we do our best to clear it up.

YVES STEGER: So, are you saying that The Discovery Stop, nobody ever drops their kids and goes away for a cup of coffee?

BRIAN SULLIVAN: No, there has to...no, the facility...

LARRY O'SULLIVAN: There's an adult with most of them and, you know, maybe I would take a neighbor's kid or something with me but there's always an adult.

YVES STEGER: Okay. Alright.

BRIAN SULLIVAN: And just so the Board knows, I do have Melissa Lopes here, who will speak in favor of this, is the manager and owner of The Discovery Stop. She's right behind me and she can answer specific questions for you.

YVES STEGER: We'll get to that after we're finished these questions. Okay. Any more questions from the Board? Okay, anybody in the audience that wants to speak in favor of the project, please go to the microphone and state your name and address.

MELISSA LOPES: My name is Melissa Lopes, I reside in Hudson. I'm the owner of The Discovery Stop, that's why I'm here. Just wanna clarify that I have no intention of having a day care. We were put under that category by the Zoning Board because basically, I fit outside of anything that exists. There was no...that was the one spot that we could figure out that would allow me to have enrichment classes in what I'm already doing because there's multiple children on the premises, I guess, it got into that category. I don't know, he had a hard time finding a spot in order for us to be categorized but that's why we're requesting it as a day care but I have no intention of having that as

a full time thing. It would be, like I said, ten (10) hours a week at most. This is just an enrichment. I'm here because my customers have basically requested this service and obviously, it would be a benefit to me as well to have that. I am offering it, we were talking about the traffic and stuff, the type of classes and the timing of classes is basically designed around my slow times. So, my first thing in the morning when I don't have a lot of customers is when I'm offering these classes to drive the customers in. Same thing in the summertime. It's very, very slow in the summertime. The classes would offer that and drive the business in at that point, so I don't feel it would be an impact on that respect, either.

YVES STEGER: Okay. Questions?

NEIL DUNN: I'm still confused. So you want to incorporate this new aspect to expand the business and you came to the Town requesting permission or...?

MELISSA LOPES: Yes, 'cause I wanted to offer drop off classes and I knew when I originally signed up to do The Discovery Stop, that was a major point that said you're not allowed to do drop off.

NEIL DUNN: Oh, okay.

MELISSA LOPES: So, I knew that was going to be, you know, that was the cut off, so when I approached the Town to do these classes for drop off, that's when we got categorized into this day care, so that's when I went to the State 'cause I said as soon as you hear 'day care,' I think 'licensing.' So I went to the State to see what they said and she had me write out exactly what I wanted to do, exactly what timing, how many children, type of classes, and that's what she responded with.

LARRY O'SULLIVAN: So if you had drop off with a four (4) hour drop off time frame or a drop off and pick up after four (4) hours or eight (8) hours, that would be what we have our definitions for, which, the business is gonna be an hour or forty five (45) minutes or an hour and a half...

MELISSA LOPES: Right.

LARRY O'SULLIVAN: ...and then none, normal business, and then an hour at the end of the day, so it is a different business, that's for sure.

YVES STEGER: Yup.

JIM SMITH: I think one of the big differences between the drop off and the non-drop off, if the parent is still there while the classes are on or whatever the child is doing, the parent is still responsible for the child. Once you go into a drop off, then it's whoever's running the program is then responsible for the child. So that's the big difference between the two.

YVES STEGER: Mm-hmm. Yup.

LARRY O'SULLIVAN: Yeah, but that's a State difference, that's not a difference to us.

YVES STEGER: No, only to us.

LARRY O'SULLIVAN: Why would that be important to us?

YVES STEGER: Because that's what the zoning laws are.

LARRY O'SULLIVAN: Wait a minute. I must be missing something.

NEIL DUNN: I'm having trouble finding it, though, is my point. Where's the mandate other than a chart in [Section] 2.2?

VICKI KEENAN: Well, we would be interested in it because of the safety and welfare, right? So, can I ask a question?

YVES STEGER: Sure.

VICKI KEENAN: Will you maintain, sort of, the locked gates on the interior so that children are not allowed to leave without an adult?

MELISSA LOPES: I mean, the same premises that we have now, the kids are wrist banded...

VICKI KEENAN: Yeah.

MELISSA LOPES: ...and the gates that are there, everything is still gonna be the same. The classes are held in one of the party rooms in the back, which is another door there. I mean, everything else is still the same. I mean, any requirements that, you know, the State wants to do inspections, I mean, I am all for it. That's fine. I have no problem with that and I'm...

VICKI KEENAN: So the child couldn't leave the enclosed area without a parent.

MELISSA LOPES: Exactly.

VICKI KEENAN: I don't know, can we make restrictions or something like that?

YVES STEGER: Yes. Definitely. I mean, essentially, you have to look at it as it's the McDonalds playground and those kind of things, think about that, but the parents are not there. That's all.

VICKI KEENAN: Without the chicken nuggets.

YVES STEGER: And without the chicken McNuggets, yeah.

[laughter]

YVES STEGER: Okay. Thank you. Anybody else in the audience that wants to speak in favor? Seeing none, anybody in the audience having questions or are opposed to the variance? Seeing none, let's get back to the Board.

BARBARA DILORENZO: I think maybe we should attach, like a statement that says 'restrict to enrichment classes only'.

YVES STEGER: We can do that when we do deliberation. I'd like to see if there were any more questions to the applicant.

BARBARA DILORENZO: Oh, I'm sorry, I thought we were...

YVES STEGER: We've not started deliberation yet.

BARBARA DILORENZO: Oh, sorry.

LARRY O'SULLIVAN: I'm all square on it I think.

YVES STEGER: No more questions? Thank you, sir.

BRIAN SULLIVAN: Thank you.

YVES STEGER: We're gonna start the deliberation.

DELIBERATIONS:

YVES STEGER: So we have to approve a day care which is not really a day care.

NEIL DUNN: It's a virtual. No, no, that wouldn't be it either, right?

YVES STEGER: Alright.

LARRY O'SULLIVAN: The wording on this one's gonna have to be really close 'cause the whole intention, I think, of...with our restriction needs to emphasize that it is an hourly program for drop off as opposed to a day long...there's no 'day' involved with this day care.

YVES STEGER: Mm-hmm. Yeah, we need to start thinking about the restrictions, you know, like, for example, because there is a drop off, we should have all the restrictions that we normally have, even when they stay longer. That is, you know, to protect the kids.

VICKI KEENAN: Right.

YVES STEGER: That there will be somebody that is responsible that would be constantly in attendance, that the doors will be watched, that the safety exits are, I mean, all those kind of things that are required to ensure the safety of the children needs to be ensured. And the reason we want to do that is because the difference between what they can do today with The Discovery Stop and this one is the fact that the parents are not gonna be there. So essentially, we wanna make sure that we put enough restrictions to guarantee the safety of the kids without their parents.

BARBARA DILORENZO: Didn't she, or somebody, say that really, under the State regulations, those things they had to abide by? Is that what I...?

YVES STEGER: I don't know. I don't...

JIM SMITH: As a suggestion on a restriction, I would say you should, if you grant it, based on the letter from the State, they would have to follow that criteria. 'Cause in it, it spells out..."The fitness class would be offered three times per week from nine (9) to eleven (11) [am] and the children will participate in an exercise and movement program. The drama class is offered by Drama...a host site for the program. They would send an instructor for a forty five (45) to sixty (60) minute program" [see Exhibit "A"]. The art class would, again, be forty five (45) to sixty (60), so I would say the restriction should be it would have to follow that criteria.

YVES STEGER: Okay.

BARBARA DILORENZO: Yeah and that would be really...

YVES STEGER: That would be fine.

BARBARA DILORENZO: ...to say those are enrichment classes...

YVES STEGER: That we would approve based on the letter which describes the activities.

JIM SMITH: Right. Right.

YVES STEGER: But do we need, out there, any State or local licensing or requirements that will be needed to ensure the safety of the children? That's the only thing I'm interested in at this time.

BARBARA DILORENZO: Could we take a second and just ask...?

NEIL DUNN: Well, no, the letter says "Based on your description of the program, you are exempt from obtaining a child care license." Unless there's a...an existing license is in place or some kind of...

BARBARA DILORENZO: Didn't you say the kids were going to be...?

YVES STEGER: Oh.

VICKI KEENAN: Yeah, I was saying, like, restrict access in and out. 'Parents escort child in and out of facility.' But here, I thought they had mentioned that this was sort of the initial class program and that should it be wildly accepted and there be a request for more classes, that they would expand on this? Did you hear that?

BARBARA DILORENZO: That they would expand?

LARRY O'SULLIVAN: You can ask for clarification from the applicant.

VICKI KEENAN: Can we ask...?

BRIAN SULLIVAN: Yeah, I can...

YVES STEGER: Yes, go ahead.

VICKI KEENAN: Okay.

BRIAN SULLIVAN: Okay. My only suggestion is, as far as the letter from the State was in response to the client's, to The Discovery Stop's request for this exemption and they're relying upon the statute which I presented to you, so I think if referenced to the statute, the permitted uses, the instructional type of...the instructional teaching that would go on with maybe a better reference to do than just the letter, which is in response to The Discovery Stop's application for that exemption. Does that make...am I making myself clear? Because if they don't fall within that...if they start performing a use which is beyond that language, which is pretty clear, within that exemption, they now would require licensure by the State.

JIM SMITH: Read specifically part (b) of that.

LARRY O'SULLIVAN: Mm-hmm.

BRIAN SULLIVAN: Specifically, that's correct. And that's the nature of this business, is teaching, it's puppet shows, reading to these children, the educational purpose of it is what's really being emphasized.

NEIL DUNN: How do you enforce that, Jim? Or how does the Town?

JIM SMITH: Well, could I ask a question of him first? As part of this, would you still be inspected by the State?

MELISSA LOPES: I'm expected for my own insurance because of the nature of the business. It's for children, so I'm inspected by...for my insurance purposes and I'm also inspected for my food service but I don't...according to that letter she's saying I'm exempt but I don't know if that still means that I...I'd be happy to [inaudible] inspections, I don't have any problem with that. But she didn't really say one or the other what I'd be complying to other than that.

NEIL DUNN: I guess...and the only reason I almost brought that up was because there's often times that there's no way but if we put it in the restriction, if something should come out, then we can say, 'well now you're not in compliance' with something that, you know...although maybe it's hard to enforce to monitor, not really enforce, that we would make reference...

JIM SMITH: I think if you, like he suggests, you refer to in your...

NEIL DUNN: To New Hampshire RSA 170...

JIM SMITH: ...part (b) of 170-E:3, exemptions...

YVES STEGER: Mm-hmm.

JIM SMITH: ...if it falls outside of that, then they'd be in violation of State law as well as...

NEIL DUNN: As the variance itself.

JIM SMITH: Right.

YVES STEGER: Yeah, because actually, we're only asked to do a use variance, correct?

JIM SMITH: Right.

VICKI KEENAN: Right.

YVES STEGER: We're not asked to do a special exception...

JIM SMITH: No.

YVES STEGER: ...because it's not a day care, a home occupation, because this is a business. It's just that that specific business is not allowed in that zoning.

JIM SMITH: I think they could have come up with a better term than Group Day Care, though.

NEIL DUNN: Yeah.

BARBARA DILORENZO: Yeah.

JIM SMITH: I think there should have been some other...

YVES STEGER: Well, we don't have that defined in the Zoning Board.

JIM SMITH: Well, you don't necessarily have to have everything defined. I mean...I don't...

NEIL DUNN: Yeah, that's what I...I was trying to figure out where...

BARBARA DILORENZO: Yeah...

YVES STEGER: Did you find anything that would define it better?

NEIL DUNN: No...

YVES STEGER: So we're stuck with what we have.

NEIL DUNN: Well, I just...it didn't even have to be defined at all that way. It's just [inaudible] an extension...whatever.

BARBARA DILORENZO: So, different, whatever.

YVES STEGER: Okay.

NEIL DUNN: So, being in deliberation, I guess, it does seem there's no fair and substantial relationship between the zoning ordinance and this particular...

[laughter]

YVES STEGER: You can say that.

NEIL DUNN: It's a pretty clear case. And I don't think the variance would injure the public or private rights. It probably would help the public and private rights. So, I guess it would...

YVES STEGER: Yeah, the only one I had a problem is, this really didn't cover really the point one (1), interferes with the landowner's reasonable use. That was a little bit fuzzy as far as I'm concerned.

NEIL DUNN: Yeah, and I think that's where this letter from the State covers a lot of those issues, saying, look, you guys are calling it a group care, not the State, so it's really...is it really just another angle on the business but we're grouping it funny? So that's where I almost looked at this taking care of the reasonable use of the property. You know, the State's saying, pretty much, do you want in the arts and craft and teaching and...

YVES STEGER: Yeah. Essentially, they just are looking for the right to be able to have a drop off.

NEIL DUNN: Correct.

VICKI KEENAN: Mm-hmm.

YVES STEGER: But not change, really, the use of what they're already doing today. That's the main difference between the two. Okay. Larry?

LARRY O'SULLIVAN: My major issue there was the traffic.

YVES STEGER: Yeah.

LARRY O'SULLIVAN: I had my consideration having just walked into their business some time ago, there was no doubt in my mind that there were enough parents there and enough adults there to handle the rambunctious little buggers anyway, so...

YVES STEGER: Mm-hmm.

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: This, to me, especially if it's during their slow time, they'll have more people available to keep their eyes on, you know, the ten (10) kids that are gonna be there, so...

YVES STEGER: Yeah.

LARRY O'SULLIVAN: And it's a training scenario, which is typically not as cuckoo as what she probably has day in and day out there, so...

YVES STEGER: Yup. When you do just entertainment.

LARRY O'SULLIVAN: Right.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: So, as far as I'm concerned, this is a minimal use, a minimal impact, forty (40) cars twice a day max. It's not a major deal.

VICKI KEENAN: I'll tell you, I'm the mother of an escape artist and he's never escaped from The Discovery Stop, so that tells you something.

YVES STEGER: Okay, any more questions from the Board and anybody ready to make a motion?

NEIL DUNN: I'll give it a shot. I'd like to make a motion that we grant case 9/17/2008-3 based on the presentation and with the restriction being that they maintain a program as stated in New Hampshire RSA 170-E:3(b).

LARRY O'SULLIVAN: Before anyone seconds that, can I ask you, why is it so chapter and verse as opposed to just that RSA?

VICKI KEENAN: Yeah, I thought we were gonna just have it...

LARRY O'SULLIVAN: Just leave for now on that RSA...

NEIL DUNN: Because all we have is that (b)...

JIM SMITH: Because that specifically pins it down.

BARBARA DILORENZO: Because that's specific. That's specific.

NEIL DUNN: 'Cause we don't know what the rest of it is. We only have that in front of us.

JIM SMITH: Yeah.

YVES STEGER: Okay. They never asked for anything outside the (b) anyway.

NEIL DUNN: And that's where the description "offering instruction to children...not limited to athletics, crafts, music [or] dance," ba-ba-ba.

JIM SMITH: 'Cause part (b) reads "Programs offering instruction to children, including but not limited to athletics, crafts, music, or dance, the purpose of which is [to teach] a skill."

BARBARA DILORENZO: Which is what the...

YVES STEGER: Yeah.

JIM SMITH: So, it's very specific.

YVES STEGER: Okay. Anyone would like to second this one?

BARBARA DILORENZO: I'll second it.

YVES STEGER: Okay, we have a motion by Neil, seconded by Barbara. Do you wanna have further discussion?

LARRY O'SULLIVAN: Not me.

YVES STEGER: No? Everybody in favor, say 'aye.'

LARRY O'SULLIVAN: Aye.

JIM SMITH: Aye.

MICHAEL GALLAGHER: Aye.

NEIL DUNN: Aye.

BARBARA DILORENZO: Aye.

YVES STEGER: Aye. Everybody against?

[no response in opposition]

RESULT: THE MOTION TO GRANT THE USE VARIANCE WITH RESTRICTIONS WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED OCTOBER 15, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY BARBARA DILORENZO AND APPROVED 5-0-1 (MARK OFFICER ABSTAINED AS HE HAD NOT ATTENDED THE MEETING).