

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

DATE: MARCH 16, 2011

CASE NO.: 1/19/2011-2 (MOTION TO REHEAR)

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: JIM SMITH, ACTING CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
MICHAEL GALLAGHER, VOTING ALTERNATE
NEIL DUNN, CLERK
JAY HOOLEY, VOTING ALTERNATE

REQUEST: MOTION TO REHEAR CASE 1/19/2011-2, A REQUEST BY ROBERT J. LEE, (KATHRYN J. LEE, PROPERTY OWNER), TO APPEAL AN ADMINISTRATIVE DECISION OF THE SENIOR BUILDING INSPECTOR.

ACTING CHAIR J. SMITH OPENED THE MEETING AND INTRODUCED THE MEMBERS. J. HOOLEY RECUSED HIMSELF FROM HEARING THE CASE AND SAT WITH THE AUDIENCE. CLERK N. DUNN THEN READ THE ORIGINAL CASE AND PREVIOUS CASE INTO THE RECORD, FOLLOWED BY THE LETTER SUBMITTED BY THE APPLICANT'S ATTORNEY ON FEBRUARY 17, 2011, OFFICIALLY REQUESTING A REHEARING (EXHIBIT "B").

JIM SMITH: At this point, I'll open it up to the Board for any discussion.

LARRY O'SULLIVAN: What we really are looking for here is different and new information in order to be able to do a rehearing. Isn't that correct?

JIM SMITH: Correct.

LARRY O'SULLIVAN: And that's the reason for an appeal. We would like to have the rehearing if there is new and additional information, or unknown information at that time. I don't know of any information that was presented either in the letter....well, in this letter that has anything new as far as I'm concerned. The letter was addressing his licensing and such, which is not a concern of this Board. We're talking only and exclusively about zoning and the special exception that was provided and the Code Enforcement Officer did say that it conflicted, so I agree with what we had allowed.

JIM SMITH: Anyone else? Neil?

NEIL DUNN: Well, going through the points here, I guess in item number one (1), he's saying it's unreasonable because the sale of firearms is allowed and that the political subdivisions like the Town is barred from barring the sale of firearms. But we're not, again, like Larry said, we're here about the zoning. Based on the original case, on the exception, we were talking about sales and it was strictly, the special exception, was strictly for repair with the revolvers. So we're not barring the sale of firearms in town, we're just not in this zone. I mean, zoning, last I knew, was legal or this Board wouldn't be here. Again, to part two (2), is referring to the ZBA's decision was illegal because the Chief of Police gave him a license. Again, that doesn't pertain to the zoning. We are a Zoning Board here only for the zoning ordinance and we do have the authority to say what kind of business is allowed in what part of town. Item number three (3), the decision of the ZBA is unreasonable and illegal because nowhere in the ordinance is the sale of firearms specifically prohibited or disallowed is his statement. Well, it is in certain areas. I mean, that's what the zoning's all about. So, going through all the points here, number four (4), the decision of the ZBA is illegal and unreasonable because the appellant process not only the State license to issued by the Chief, and also a Federal...again, they're not speaking to the point of the zoning. We're strictly here for the zoning. We do get to decide what's allowed in what zoning district. That's why we have a zoning ordinance. And number five (5), in regards to the case of the second amendment, we're not arguing that he can bear guns in that location, we're just arguing he cannot sell from them according to the ordinance, the zoning, and that's what we're here all about. So I don't see anything new here that would make me change my mind.

MICHAEL GALLAGHER: I don't see anything new, either. I mean, we're not barring him. We have the ability to regulate, like you said, where it's sold. We can't tell him yes or no about [indistinct]. He agreed that he would not sell them and it was a point of contention. I mean, that was addressed, I believe, and discussed and it was highlighted that..."no sales." Again, I don't see anything new here that would change my mind.

JIM SMITH: Well, the only comment I would make as far as zoning regulations in general; generally, zoning regulations can be written in two formats. One is permissive, one is restrictive. And it's kind of the opposite of how you would perceive them. In the restrictive mode, only those things which are permitted are listed, so that everything that's not listed is prohibited. And in the more open type, permissive type, they just list those which are, in fact, prohibited. And we tend to follow the restrictive mode of where we list those things which are, in fact, permitted in the various zones. And I would agree with the rest of the Board that I don't believe there was any really new or different information presented in the appeal that wasn't considered or had any bearing on the actual case as whether or not he was in conformance with the special exception. So, having said that, I'm open for a motion...if there's any other comments?

LARRY O'SULLIVAN: Okay, so you're looking for a motion?

JIM SMITH: Well, if you have no other comments.

LARRY O'SULLIVAN: Okay. I'd like to make a motion to deny the request for appeal.

MICHAEL GALLAGHER: Second.

JIM SMITH: Okay.

LARRY O'SULLIVAN: On the grounds that there's basically no additional information or new information that we hadn't already considered.

JIM SMITH: Okay. Having a motion and a second...

MICHAEL GALLAGHER: I'll second Larry's motion.

JIM SMITH: All those in favor?

LARRY O'SULLIVAN: Aye.

MICHAEL GALLAGHER: Aye.

NEIL DUNN: Aye.

JIM SMITH: Aye. All those opposed? Four (4) to zero (0) in favor.

LARRY O'SULLIVAN: Of the motion, right, to deny?

JIM SMITH: Of the motion.

LARRY O'SULLIVAN: Okay.

RESULT: THE MOTION TO REHEAR CASE 1/19/2011-2 WAS DENIED, 4-0-0.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Neil Dunn". The signature is written in dark ink and is positioned below the text "RESPECTFULLY SUBMITTED,".

NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED MAY 18, 2011 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JIM SMITH AND APPROVED 3-0-2 WITH MATT NEUMAN AND JAY HOOLEY ABSTAINING AS THEY HAD NOT ATTENDED THE MEETING.