

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

**MOTION TO REHEAR**

DATE: MAY 21, 2007

APPLICANTS: PAUL AND DIANE SLATER  
11 HIDDEN MEADOW DRIVE  
LONDONDERRY, NH 03053

REQUEST: MOTION TO REHEAR THE FOLLOWING CASE:

CASE NO. 4/16/2008-1, A REQUEST BY KERIN AND ROBERT BROWN FOR A SPECIAL EXCEPTION UNDER SECTION 3.12 AND 3.12.2 TO ALLOW A FAMILY DAY CARE AS A HOME OCCUPATION AT 2 RABBIT RUN, 11-68-8, AR-I. THE REQUEST WAS GRANTED WITH RESTRICTIONS: 1) A FENCED IN PLAY AREA FOR THE CHILDREN MUST BE INSTALLED AND 2) THAT THE TYPICAL HOURS OF OPERATION NOT EXCEED FORTY (40) HOURS OF OPERATION PER WEEK.

BOARD MEMBERS PRESENT: MARK OFFICER, CHAIR  
BARBARA DILORENZO, VOTING MEMBER  
YVES STEGER, ACTING CLERK

PRESENTATION:

MARK OFFICER: For the record, we do have a full voting Board of three (3) members, so, the motion to rehear requires a unanimous vote of three (3), zero (0), so...Alright, so this is 4/16/2008-1, which is the day care center...for Kerin and Robert Brown. And this is from Paul and Diane Slater. Is it just this letter, Jaye?

JAYE TROTTIER: Yup.

MARK OFFICER: Okay. Alright, so they really are just essentially...

YVES STEGER: Asking for a rehearing.

MARK OFFICER: ...asking for a rehearing. No reason stated as to why. It's just a letter, right? I could have sworn the letter...

YVES STEGER: No, it was something additional where they mentioned that it was because of the...

JAYE TROTTIER: Yeah, are you talking about this letter?

YVES STEGER: Yes.

MARK OFFICER: Oh, is that it?

YVES STEGER: Yes.

MARK OFFICER: Yeah.

JAYE TROTTIER: Yeah.

MARK OFFICER: Okay.

JAYE TROTTIER: There's a copy of it on the drive.

MARK OFFICER: Oh, there is? Okay.

JAYE TROTTIER: Yeah, it's a pdf.

MARK OFFICER: Oh, I got it.

YVES STEGER: "It is my client's position that the Board failed to consider and address the protective covenants on the Brown's property.

BARBARA DILORENZO: Oh, that was the case.

MARK OFFICER: Mm-hmm.

BARBARA DILORENZO: Okay. Was that the one that they were all claiming there was a covenants but she had...nothing was ever said to her and...

MARK OFFICER: Right. So, you know, there was contradic...well, there's a few things here. I mean, there's...there was contradictory information provided to the Board as to whether her property was in the covenant or not. I remember she claimed that she had not signed anything. Somebody else in the public said that her lot specifically was not part of that covenant.

BARBARA DILORENZO: Mm-hmm.

MARK OFFICER: And then someone else, probably Mr. Slater, said that it was, whether it was by the deed or not, so, it could have been in the deed and when she bought the property, she effectively bought into the covenants, whether she knew it or not, and some people probably just don't even know it.

YVES STEGER: When you started the case, you mentioned that we should not look into the covenants. You had received counsel on that subject?

MARK OFFICER: We might have in the past, but...

YVES STEGER: Okay.

MARK OFFICER: ...on my time in the Board, we have never taken the covenants under advisement.

YVES STEGER: Mm-hmm.

MARK OFFICER: To do so, then we effectively become the governing body for that covenants.

YVES STEGER: Exactly.

MARK OFFICER: Now, it may be that there is a covenants that prohibits her from doing this type of activity. It may be that the covenants, then, therefore, trumps what we, as the Board, grant her but my opinion is they have to go to the...

YVES STEGER: Civil court.

MARK OFFICER: ...the civil court to do that.

YVES STEGER: Mm-hmm.

MARK OFFICER: If we become...if we deny this because of this covenants, then we effectively are saying that we become the governing body for all covenants. We don't have it on record. We have conflicting evidence, as you saw, and we evaluate and judge our zoning bylaws of the Town of Londonderry, not individual covenants, so, I think the way this should play out is that if the Slaters do believe this is in violation of the covenants, they can go to the civil court or whatever the legal steps are...

BARBARA DILORENZO: Mm-hmm.

MARK OFFICER: ...and if they win, then it trumps the variance of this Board. That's my opinion.

YVES STEGER: Yeah, I thought about it and I think that the obligation of the Zoning Board is to apply the laws of the United States, of the State of New Hampshire and the Town of Londonderry. Individual private agreements are not public law.

MARK OFFICER: Mm-hmm.

YVES STEGER: And so we cannot vote on those.

BARBARA DILORENZO: Right.

YVES STEGER: And in this case, overwhelmingly, she met all the requirements of the public law.

MARK OFFICER: Mm-hmm.

YVES STEGER: And so we could not refuse to do that, even if the covenant was there and was true and real. But we did evaluate the covenant and we essentially decided that it was not part of the public law and we could not take it into consideration. I believe that they have...if they believe that they have a real...

MARK OFFICER: Mm-hmm.

YVES STEGER: ...covenant that should be implemented, they can go to the civil court, but from a pure zoning point of view, we could not use that because we would not be implementing the law.

MARK OFFICER: Right. Right. And if they have an issue with what she's doing now, which she didn't even have to come to the Board for...

BARBARA DILORENZO: Right.

YVES STEGER: Mm-hmm.

MARK OFFICER: ...they wouldn't come to us. They would go to civil court.

YVES STEGER: Exactly.

MARK OFFICER: So...

BARBARA DILORENZO: And I bet you there's other people in that neighborhood who mind kids off and on, too.

MARK OFFICER: Mm-hmm. Yup. Alright, any other discussion?

BARBARA DILORENZO: No.

MARK OFFICER: Alright, I'll do my share tonight and I'll pass the gavel to the Vice Chair in order to make a motion. I'd like to make a motion that we deny the motion to rehear case number 4/16/2008-1.

YVES STEGER: I second that.

MARK OFFICER: Okay. All those in favor, say 'aye.'

BARBARA DILORENZO: Aye.

MARK OFFICER: Aye.

YVES STEGER: Aye.

MARK OFFICER: Those opposed?

[no response in opposition]

MARK OFFICER: Alright, the motion to rehear is denied.

RESULT: THE MOTION TO DENY THE MOTION TO REHEAR CASE NO, 4/16/2008-1 WAS APPROVED, 3-0-0.

RESPECTFULLY SUBMITTED,

YVES STEGER, ACTING CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED JUNE 18, 2008** WITH A MOTION MADE BY BARBARA DILORENZO, SECONDED BY YVES STEGER AND APPROVED 3-0-2 (LARRY O'SULLIVAN & VICKI KEENAN ABSTAINED AS THEY HAD NOT ATTENDED THE MAY 21, 2008 MEETING).