

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

DATE: SEPTEMBER 17, 2008

CASE NOS.: 9/17/2008-1 AND 9/17/2008-2

APPLICANT: PAUL M. AND ROBIN M. GILE
3 REO LANE
LONDONDERRY, NH 03053

LOCATION: 3 REO LANE, 10-145, C-II

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

REQUEST: CASE NO. 9/17/2008-1: USE VARIANCE TO ALLOW A HOME
OCCUPATION IN A C-II ZONE
WHERE OTHERWISE NOT PERMITTED BY SECTION 2.2, TABLE OF USES.

CASE NO. 9/17/2008-2: SPECIAL EXCEPTION TO OPERATE A HAIR
SALON AS A HOME OCCUPATION.

PRESENTATION: CASE NOS. 9/17/2008-1 WAS READ INTO THE RECORD WITH ONE
PREVIOUS CASE LISTED.

Clerk Larry O'Sullivan read Exhibit "A," a memorandum from the Zoning Officer Richard Canuel to the Zoning Board of Adjustment, into the record.

YVES STEGER: Okay, who will be presenting?

PAUL GILE: My name is Paul Gile, 3 Reo Lane. My wife couldn't make it tonight so I'll present everything to you. We're looking for a special exception for the home occupation in C-II. It entails installing a hair salon for my wife, it would entail approximately a hundred and eighty eight (188) square feet of the residence which is about ten (10) percent of the total use, ten (10), twelve (12) percent, I think, somewhere in that range. The home occupation is, I guess, I don't quite understand all these variances and rules but I guess it's not allowed in a C-II, which I guess would make sense 'cause you think of a C-II as, you know, a commercial area, where we're not...we are a residence, the road is resided, four (4) houses on the street, there's no commercial development on the street, so

it's basically all residents on the street. We're surrounded...I don't know if everyone knows where the road is but it's off of Londonderry Road, behind Phantom Fireworks and our back neighbor is Cracker Barrel, so the street's been there, all the houses have been there forty (40) plus years, so there's really, this would be the only commercial development on the street if we got this home occupation. So what we need is the home occupation to be allowed in the C-II for us which is only allowed in the AR-I, so once we get that accepted, I guess, the second half shouldn't be a big problem. So I can address the five (5) points. The proposed use would not diminish surrounding property values. We plan on doing no exterior changes to the house other than maybe changing the garage door and putting a window in. We're not changing any landscaping. We're not changing the parking. So, basically, the only way you'd know the business was there would probably be a sign. So, there should be no harm to any of the neighbors. There's not gonna be any safety issues, I don't think. There's no lighting issues. It's gonna be a part time thing for my wife by appointment only, so there's not gonna be a high traffic problem. Granting the variance would not be contrary to the public interest. It would be, you know, a hair salon would be an acceptable use in a C-II. It's just that where we are, it's, you know, a primary residence which, I guess you don't see a lot of primary residence in C-II's but there are other properties within a half mile of our house that do have home occupations. There's Louis Saab, the barber, there's a welding shop on Ash Street, there's Tisdell's transmissions shop, that's a home occupation, so there are other home occupations in this zone within a quarter to a half mile to our house. The zoning restriction as applied to the property interferes with the landowner's reasonable use of the property considering the unique setting of the property in its environment. It was AR-I zoned years ago, it was changed but it's, you know, for us to open up just a little hair salon, I guess it would be kind of like, you know, it should be an acceptable use. If we lived on Hardy Road, I probably wouldn't have to be here. I probably... I could have just gone upstairs, gotten the paperwork and been done with it but since it's this zone, we have to address the issue so it kind of interferes with our ability to open up the home occupation. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. From me reading the rules, I would say the reason why you wouldn't have a home occupation in a C-II is probably because you think of, you know, being on Route 102, say, you know, no one's gonna have a residence with a gas station out front or a residence with their commercial building and so, we're kind of, we're in that C-II but then again, like I said, we're still in that residential part of C-II. The variance would not injure the public or private rights of others. Like I said before, there's no impact to the neighborhood. There's no problem with any of the neighbors. I don't think there'd be any issue with any abutters. And granting the variance would do substantial justice. It'd just allow us to have our home occupation and not have to go outside the house. My wife could plan her day with the kids and then, you know, make her appointments to fit her schedule. She wouldn't have to go outside the house to work. The use is not contrary to the spirit of the ordinance. There's a lot of restrictions on us living in C-II. Every year we have to have the Town come in, they come in to check and make sure you don't have a business. Living in a residence in a C-II, there's a lot more restrictions. I know people in town that have home occupations and the Town doesn't even know about it. We get inspected every year by the...I think the Tax Collector or somebody comes in every year, we have to make an appointment, they come in, they walk through the house, look in the bathroom, look in the closets, so we're trying to have our home occupation and do it by the rules so the hardship is that we need this use variance in order to have a home occupation in the C-II and if you want me to address the special exception afterwards, I can do that or I can try and...

YVES STEGER: Yes, go ahead. Do the special exception at the same time.

PAUL GILE: The special exception?

YVES STEGER: Then we'll go with questions.

PAUL GILE: The special exception would be the home occupation in a residence. So, I guess if you grant the first variance.

LARRY O'SULLIVAN: Mr. Gile, I haven't read that one in.

PAUL GILE: Oh, okay.

YVES STEGER: I'm sorry.

LARRY O'SULLIVAN: You want it read?

YVES STEGER: Yes, please.

CASE NO. 9/17/2008-1 WAS READ INTO THE RECORD WITH ONE PREVIOUS CASE LISTED.

YVES STEGER: Thank you. Go ahead.

PAUL GILE: The special exception would be for a home occupation, convert the garage space which we have now into a hair salon. We're gonna add a bathroom. The State requires that you have a minimum one hundred and forty four (144) square feet, so we would have that. We had our septic system done about six (6) years ago in anticipation that we might do this someday. We had the septic designed so that it would be acceptable for the hair salon, any products or whatever that would go into the waste system. I think I gave a copy of that of the septic design. I don't know if you have it but...so the septic system should be up to snuff. We have parking, about fourteen hundred (1,400) square foot in our driveway, I think there's room for about six (6) cars. It's gonna be a couple days a week, by appointment only. My wife works outside of the house one (1) day a week now and she just wants to try and stay home with the kids more and run this home occupation, so that's what we're looking for with the special exception. Do I need to...I think the five (5) points are gonna be pretty close to the other five (5) points.

YVES STEGER: There are no five (5) points for the special exception.

LARRY O'SULLIVAN: No, we only have to hit...

PAUL GILE: Okay.

YVES STEGER: You just need to meet those that are on this sheet here. So, as long as you have covered them, and if you have not, we will actually ask the questions, just to make sure that we have an answer to each one of them.

LARRY O'SULLIVAN: Even if you have mentioned it, we'll probably ask.

YVES STEGER: We would probably have.

PAUL GILE: Okay. Is that the...one of these, here?

JAYE TROTTIER: Yeah.

PAUL GILE: Days of operation probably would be Monday through Friday by appointment. Maybe Saturdays, I don't know what that's gonna entail but I'm pretty sure it's gonna be a Monday through Friday, nine (9) to five (5), nine (9) to six (6). We are gonna request a sign. I'm not sure what the requirements are for the sign but whatever the Building Department says we need for a sign, whether it's free standing or something mounted on the house. The space that we're gonna use...

YVES STEGER: Are you saying you request a sign?

PAUL GILE: We haven't yet. I'm not sure what we're required for a sign but whatever we would need I guess I could get...I would get the details from the Building Department upstairs or...

YVES STEGER: So, it would be best if you told us what you plan to do so that when we approve, we may decide to make some restrictions or not, depending on the cases.

PAUL GILE: Okay.

LARRY O'SULLIVAN: Right now, you have to understand what you could do right now, not having a business, you could have a...what is it, a three (3) foot sign? Three (3) foot square?

YVES STEGER: Actually, he's in a Commercial-II.

LARRY O'SULLIVAN: It doesn't matter, he's a preexisting...the use already is a home, is a residence so he could still have the sign.

PAUL GILE: Well, three (3) square feet would be more than enough for what we would probably need. Like I said, if the Building Department wants it freestanding, that's fine. If they want it on the house, that's fine, whatever they allow. The calculated space of the hair salon compared to the living space is...there's about fifteen to sixteen hundred (1,500-1,600) square feet in the house and the hair salon would be about, I think a hundred and eighty (180) I said earlier. It's about ten (10) to twelve (12) percent of the total living space which, it comes underneath the twenty five (25) percent of your living area. I included a drawing, kind of a rough drawing, sorry, of the driveway, the parking area. Let's see...the home occupation will be inside the dwelling. There won't be any outside building. There's nothing new being built. It's all gonna be within the walls that we already have. And the home occupation will be the secondary use. We're still gonna use it as our primary residence. My wife is gonna be sole owner, operator. There's no outside employees. There's not gonna be any unusual sight, light, noise, smell, traffic or other effects from this home occupation. If I missed something, if someone has a question, I'll answer that.

YVES STEGER: Yeah, number of customers per day?

PAUL GILE: She's probably thinking four (4) to five (5). And they'll be appointments only. She's not gonna... 'cause she wants to plan her days out so that, like I said, around the kid's schedule, so, there's not gonna be five (5) people driving in the driveway at once. They'll be, you know, staggered throughout the day.

YVES STEGER: Okay, thank you. Any questions from the Board?

BARBARA DILORENZO: Yeah, I'd like to ask him...

YVES STEGER: Go ahead, Barbara.

BARBARA DILORENZO: You said four (4) to five (5) people a day? Patients, yeah...

LARRY O'SULLIVAN: Customers?

BARBARA DILORENZO: Customers, sorry. That's what you said? Four (4) to...?

PAUL GILE: Yeah, I'm guessing. I mean, some days it might, I guess it could be a few more, I don't know what...

BARBARA DILORENZO: You stated your hours are gonna be Monday through Friday, nine (9) to six (6), so Monday through Friday every day would be four (4) to five (5) customers?

PAUL GILE: She only wants to do a couple days a week, so I'm guessing she's gonna do a couple in the morning and a couple in the afternoon. I mean, it depends. I don't know, if it's prom season or whatever, it might be a heavier day or maybe a Friday might be a heavy day and that might be the only day of the week, I don't...she doesn't have a business right now so she doesn't...

BARBARA DILORENZO: So what you're saying is, really, she's open Monday through Friday but that doesn't mean that every single day she's gonna have customers?

PAUL GILE: No, no.

YVES STEGER: Okay. Anybody else have questions? No? No? Okay, anybody in the audience that would like to speak in favor of the variance and exception? Seeing none, anybody speaking against or having questions? Seeing none, I'll get back to the Board for further questions if you have any.

NEIL DUNN: So, if you were to move out of the house, you could make this a salon without a permit. Without coming to the Zoning Board.

VICKI KEENAN: Mmm.

PAUL GILE: Yeah. If I, actually, I gotta be nice but...

NEIL DUNN: No, I just...

LARRY O'SULLIVAN: No you don't.

PAUL GILE: Well, I was thinking if this doesn't go through, maybe I'll just flatten the place and put in a fireworks store 'cause they seem to be...

[laughter]

YVES STEGER: Actually, there's nothing to stop him to open a hair salon as a business.

LARRY O'SULLIVAN: If it's approved in a C-II, why not?

YVES STEGER: Yeah.

JIM SMITH: It would have to go through a site plan process, though.

YVES STEGER: Absolutely. Absolutely.

JIM SMITH: That's the big difference.

YVES STEGER: Yup.

NEIL DUNN: But he'd have to move out. Or come see us. That's really interesting. That's good, thanks.

LARRY O'SULLIVAN: That's what happens when zoning changes, though, so you wind up with things like that.

YVES STEGER: Yup.

LARRY O'SULLIVAN: That's what growth entails, you know, and there's gonna be lots of change.

YVES STEGER: Alright, any more questions? Jim? No? Okay. Thank you, sir. We're gonna take it under deliberation.

DELIBERATIONS:

YVES STEGER: Go ahead.

JIM SMITH: On the sign issue, if we grant the variance for the use, I would say we should put a restriction on it that it would have to follow all the rules of the home occupation, which then refers you to the three (3) foot square sign.

YVES STEGER: That's a very good point, so, anybody that would make a motion, if it is to approve, there should be a restriction that the sign should be based on the home occupation in AR-I not a sign in a C-II.

LARRY O'SULLIVAN: Right...

YVES STEGER: There's a big difference.

LARRY O'SULLIVAN: I'm sure he wouldn't wanna be making his neighbors upset either, so...

YVES STEGER: That's a good point. Good point. Yeah?

NEIL DUNN: Looking at the five (5) points of law for the variance, at least, I agree with him it wouldn't diminish the surrounding property values. It sounds like the rezoning to C-II handled that in one direction or the other, I'm not sure which. But it doesn't seem contrary to public interest because it is a C-II, it's a use allowed there, it's the fact that he's residential. He seemed to hit the points with reference to the property because of the uniqueness of the zoning and living there, so, I'm pretty good with that, I guess.

LARRY O'SULLIVAN: Yeah, this is a minimal impact type use as well. Especially if he's done the planning, as you mentioned, on getting the right septic in place. His neighbors will never know that they're there.

YVES STEGER: Well, the only thing is the spirit of the ordinance. I suppose that theoretically, the ordinance would be to prevent somebody to...the reason it is not considered a home occupation is because somebody that would have a real hair salon would not want to have the competition for somebody that does it as a home occupation. But I think in this case, that really doesn't make too much sense.

NEIL DUNN: Is it that or is it because they didn't think there'd be a lot of people having home occupations in C-II's?

YVES STEGER: This is a very...by itself, it's a special case, I mean, every residence...he didn't mention it as a special condition but I would say, myself, it is a special condition in this case.

JIM SMITH: I believe, if you look at the C-I use, you can have homes in that district but not in the C-II.

YVES STEGER: Correct. Correct. The C-II being, in theory, more commercial...

JIM SMITH: Right, yeah.

YVES STEGER: ...and much more away from residential, so this is really some kind of...

NEIL DUNN: Dwelling, single family...this is Table 2.2, dwelling, single family is permitted in AR-I and R-III and then there's an "S" next to C-III, what's that?

YVES STEGER: Special exception.

JIM SMITH: Special exception, I believe.

YVES STEGER: Yeah.

NEIL DUNN: But C-I/C-II doesn't say anything about it.

YVES STEGER: Yup.

JIM SMITH: Yeah. Yeah, C-III, yeah.

YVES STEGER: I think this a loophole in the description, I mean, nobody thinks about having a residence in a C-II and that's probably, for me, more of a special condition of the property than anything else. And that would disappear, for example, if we make this exception, it goes with the property unless somebody changed the use.

LARRY O'SULLIVAN: Right.

YVES STEGER: Okay?

LARRY O'SULLIVAN: Or they stop the business for more than a year.

YVES STEGER: Correct. Correct. Okay. Any further...?

LARRY O'SULLIVAN: What we need to do is vote first on the variance and then on the special exception.

YVES STEGER: Correct.

LARRY O'SULLIVAN: There's two (2) voting sheets.

YVES STEGER: We're gonna vote for the variance first, so anybody ready to make a motion on the variance?

LARRY O'SULLIVAN: That would be one of these forms, right?

YVES STEGER: It's a use variance.

BARBARA DILORENZO: The individual variance voting sheet.

LARRY O'SULLIVAN: Individual variance voting sheet first. Thank you.

YVES STEGER: Anybody ready to make a motion?

LARRY O'SULLIVAN: Yeah, sure, I was making my marks. On case 9/17/08-1, I make a motion to grant the variance as requested for the home occupation for a hair salon on a part time basis with the requirement that the signage be no larger than what is permitted in a residential zone at three (3) square feet.

BARBARA DILORENZO: I just have a question, Larry. Did you wanna actually say 'part time basis'?

LARRY O'SULLIVAN: Yup. 'Cause that's what was presented.

YVES STEGER: Yup. Anybody ready to second this?

JIM SMITH: I'll second.

YVES STEGER: Jim seconds. Larry has a motion, Jim seconds. Any further discussion?

LARRY O'SULLIVAN: Discussion?

YVES STEGER: No?

JIM SMITH: Well...

YVES STEGER: Go ahead.

JIM SMITH: One of my complaints in the past was to put things in there that are difficult or impossible to enforce so I'm not sure how we would enforce 'part time.'

LARRY O'SULLIVAN: That's what neighbors are for.

VICKI KEENAN: And you define that how? One person's definition of part time is completely different than...

JIM SMITH: Yeah, that's another thing.

LARRY O'SULLIVAN: Okay. I don't mind. I'll withdraw the motion or amend it. Amend the motion to...

VICKI KEENAN: Why don't you limit the business hours as they requested so that they can't, you know, be having people come at nine (9) o'clock at night for...?

YVES STEGER: Well, actually, that's...

LARRY O'SULLIVAN: Part of the presentation was nine (9) to six (6), so...

VICKI KEENAN: Yeah.

JIM SMITH: Yeah.

YVES STEGER: That would be for the special exception.

VICKI KEENAN: That would be for part two (2).

YVES STEGER: Not for this one.

VICKI KEENAN: Gotcha. Okay.

YVES STEGER: This one we don't have to put any restrictions...

BARBARA DILORENZO: Oh, right, yeah.

JIM SMITH: I think what I would rather have you say, grant a special exception with the restriction that they have to follow all the rules of a home occupation for the use.

YVES STEGER: Right. But remember...

NEIL DUNN: This is a use variance.

YVES STEGER: ...this is the use. We are voting on the use...

JIM SMITH: Yeah, but I'm just saying, in the given, the exception...

YVES STEGER: Yes.

JIM SMITH: ...that you put the requirement that they have to follow all the rules of the home occupation for this exception. That would include the sign...

YVES STEGER: Mm-hmm.

JIM SMITH: ...and everything else that would then be taken up by the special exception part.

LARRY O'SULLIVAN: You're a voting member this vote.

BARBARA DILORENZO: Yeah.

LARRY O'SULLIVAN: Make the motion.

JIM SMITH: Okay, I make a motion to approve the variance for a change in use to allow a home occupation with the restriction that all the requirements of the home occupation would be followed.

YVES STEGER: Anybody want to second it?

NEIL DUNN: I'll second it.

YVES STEGER: Okay, we have a motion by Jim, seconded by Neil. All in favor, say 'aye.'

BARBARA DILORENZO: Aye.

NEIL DUNN: Aye.

YVES STEGER: Aye.

LARRY O'SULLIVAN: Aye.

VICKI KEENAN: Aye.

YVES STEGER: All against? Thank you.

The members filled out their voting sheets, the Clerk read the result into the record as follows:

RESULT: CASE NO. 9/17/2008-1: THE MOTION TO GRANT THE USE VARIANCE WITH RESTRICTIONS WAS APPROVED, 5-0-0.

Deliberations continued regarding Case No. 9/17/2008-2 as follows:

LARRY O'SULLIVAN: Okay, now we have the special exception.

YVES STEGER: Okay. Anybody ready...you wanna discuss further or are you ready to make a motion?

LARRY O'SULLIVAN: I think the variance...

BARBARA DILORENZO: Did we need to attach something to it?

JIM SMITH: What?

BARBARA DILORENZO: Did we need to attach something to this, Jim? I just wanna ask or did we do that already?

YVES STEGER: What?

BARBARA DILORENZO: Was this special exception, were we gonna have a comment, some attachment to that or not?

YVES STEGER: Yeah, I think we should apply the same restrictions that it would be based on AR-I zoning. It would be based on home occupation, not on the C-II.

JIM SMITH: Well, that's what we're granting.

VICKI KEENAN: Well, it's already...

YVES STEGER: Sorry?

JIM SMITH: That's what we're granting.

VICKI KEENAN: ...the use variance.

BARBARA DILORENZO: That was granted to the variance.

YVES STEGER: No, I was talking about the signs.

JIM SMITH: That's included.

YVES STEGER: Okay. Then it's not needed.

JIM SMITH: Right. We don't have to...

YVES STEGER: Alright.

BARBARA DILORENZO: Just wanna make sure.

JIM SMITH: I make a motion we grant the home occupation for a hair salon.

BARBARA DILORENZO: Case number...

LARRY O'SULLIVAN: Second.

YVES STEGER: We have a motion by Jim, seconded by Larry. Any further discussion?

LARRY O'SULLIVAN: This is case 2008-2.

YVES STEGER: Dash two (2), correct.

JIM SMITH: Dash two (2), correct.

YVES STEGER: All in favor, say 'aye.'

LARRY O'SULLIVAN: Aye.

BARBARA DILORENZO: Aye.

JIM SMITH: Aye.

NEIL DUNN: Aye.

YVES STEGER: Aye. All against?

[no response in opposition]

RESULT: CASE NO. 9/17/2008-2: THE MOTION TO GRANT THE SPECIAL EXCEPTION 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).