

**AGENDA  
FOR  
Zoning Board of Adjustment  
EARLY CHILDHOOD LEARNING CENTER  
IN PERSON LOCATION  
77 RAMSDELL LANE  
Barrington, NH 03825  
OR**

**You are invited to appear by audio phone or computer see below:**

**The public has access to contemporaneously listen and, if necessary, participate in the meeting through dialing the following phone #1-603-664-0240 and Conference ID: 874 769 462# OR link [barrington.nh.gov/zbmeeting](http://barrington.nh.gov/zbmeeting)**

(Approved March 16, 2022)

**February 16, 2022**

**7:00 p.m.**

**Please note that all votes that are taken during this meeting shall be done by Roll Call vote.**

**ROLL CALL**

**Members Present**

Cheryl Huckins  
Raymond Desmarais, Vice Chair-Remotely  
George Bailey  
Dave Whitten  
Paul Thibodeau-Remotely

**Action Items:**

**1. Board to vote for Chair and Vice Chair**

*A motion was made by R. Desmarias and seconded by G. Bailey to continue until all Board members are present. A motion carried unanimously.*

**2. At the December 15, 2021, the Board voted to rehear the following case:**

**220-54.16-GR-21-ZBAVar**

Request by applicant for a variance from Article 7.3 Home Occupation to continue running a Home Occupation that is non-compliance in the General Residential Zoning District. BY: Brendan A. O'Donnell, Esq., DTC Lawyers; 164 NH Rte 125, Unit 2, Merrimack, NH 03253.

C. Huckins gave a brief description of the application.

R. Desmarias explained to the Board that the person that requested the re-hearing has rescinded their request so no reason to rehear this case.

*A motion was made by R. Desmarias and seconded by D. Whitten to rescind the Board's or revoke the December vote to not rehear this case now and let the October decision stand.*

P. Thibodeau stated that he would not second that.

R. Desmarais explained that he felt the October decision was the best the Board could do with a significantly quad ordinance and know matter how you look at the ordinance it's flawed in any decision.

R. Desmarais explained that the decision that the Board came up with follows the ordinance as it's written. R. Desmarais explained that 2A Tactical got the benefit of the poor writing because of the Board's vote the Town was going to change the ordinance in the March ballot. R. Desmarais explained that the Town was going to work with 2A Tactical. R. Desmarais explained that from a legal perspective he felt that the Board made the right decision and politically was the right decision.

John Huckins explained that it's a legally existing grandfathered use so even if the zoning changed, they'll be allowed to continue to status quote or what the Board said they could.

G. Bailey explained to the Board that they received conditional approval at the Planning Board meeting last night and 2A Tactical was showing that they want to move forward. G. Bailey explained that 2A Tactical want to comply, so he agrees with R. Desmarais motion.

John Huckins explained that they would still be able to continue operating at both locations there's nothing says that he must leave if the Board determines that he's in compliance.

R. Desmarais expressed to John Huckins that they are not going to stay there.

C. Huckins explained that she disagrees with R. Desmarais she believes that sometimes Zoning Boards do make mistakes and she think that the Board made a mistake. C. Huckins explained that the Board overlooked was the retail sales are not allowed in a business or a home occupation. They would need to go for site review through the Planning Board which was not done. C. Huckins explained that this was a violation of the zoning rules and thinks a reasonable person reading the home occupation regulations would know that it's unreasonable to believe that something left out of an ordinance would automatically Allow for flagrant violation. C. Huckins explained that in this point where it surpasses even the next level up which was a home business and asked if the attorney was available.

John Huckins explained that if most of the Board decide that you would like to have a discussion with the attorney.

C. Huckins explained that she felt that the attorney wasn't allowed to speak, and she also felt she was not allowed to speak either.

R. Desmarais expressed that the attorney was not there to speak.

Attorney Mark Puffer explained that he was there remotely. Attorney Puffer explained to the Board that this was a public hearing and attorney-client communications are privileged. Attorney Puffer explained that they could remain outside the public, but the Board can vote to have him speak in public. Attorney Puffer explained that the Board would need to waive the attorney-client privilege then he could speak. Attorney Puffer explained that the other option was go to into non-public session.

*A motion was made by P. Thibodeau and seconded by G. Bailey to allow Attorney Puffer to speak in public. A motion carried unanimously.*

Attorney Puffer explained that the motion standing was not to rehear the case because of the withdrawal by the abutter original party. Attorney Puffer explained the following reasons:

**#1 That he would like to recommend that they do because a Zoning Board of Adjustment has the authority on its own to re-hear a matter even if someone does not apply for a re-hearing.**

**#2 The Board voted to re-heart it on December 15, 2021, and felt because of that they should re-hear the case.**

**#3 That the October decision was clearly an error, and the Board had an opportunity to correct that decision. Attorney Puffer explained that's what the re-hearing process was for that's the way why it's setup that way. This was so that the Zoning Board before the matter goes to court if it was going to go to court. Before any of this happens, the Zoning Board was given the opportunity to correct decisions that are erroneous. So, for these reasons Attorney Puffer thinks that the Board should rehear the case.**

D. Whitten asked that Attorney Puffer said that the Board could re-hear a case at any time was that correct.

Attorney Puffer explained not at any time if the period for filing a re-hearing has gone by and no one has filed an application then the Board doesn't have the authority to heat the case.

P. Thibodeau expressed that he wants the case reheard because the Board has received several letters from abutters that felt that they didn't have the opportunity to speak at the last meeting. P. Thibodeau explained that they have some opinions here valid in his point. P. Thibodeau expressed that they should be heard by reading the letters or if they're present, they can speak if they want to during the public session. P. Thibodeau explained that there are enough opinions from abutters that did not get a chance to speak that there should be a rehearing.

The Board vote was 3/2 to not rehear the case. The Board voted to rehear the case.

John Huckins suggested to give the public the right to speak that were supposed and opposed.

R. Desmarais explained to the Board where they voted to rehear the case, they need to start the case all over. R. Desmarais explained that the applicant needs to present their case and then the Board can ask them questions and then you can ask the public to speak then the Board deliberates.

C. Huckins asked Attorney O'Donnell if he presents the entire case again.

Attorney O'Donnell explained to C. Huckins that he was going to ask the Board to bring everything forward.

R. Desmarais asked Attorney Puffer where these are recording meetings does the Board accept all the previous meetings as evidence and start from there.

Attorney Puffer explained to R. Desmarais that he was correct that on a rehearing you start all over again But the Board in its discretion can decide to accept the evidence that was presented. Attorney Puffer explained that this was back in October and allow others to speak this was particularly so where you have the same Board members as they were in October.

*A motion was made by R. Desmarais and seconded by D. Whitten that the October meeting be added as evidence to this case and start with new information received with the applicant having a small summary on the case. A motion carried unanimously.*

Attorney O' Donnell expressed to the Board that its fundamentally unfair that this Board has taken five to six months. At this point and was restarting the entire case based on one alleged procedural violation even when acting chair Desmarais made it clear multiple times during the last hearing that they were open for public comment on the issue of whether the business followed the ordinance not on variance. Attorney

O'Donnell explained that all the public had an opportunity to speak Mr. Bianchi was present at the meeting and in fact people did speak against it. Attorney O'Donnell expressed that all the time and money that has gone into this hearing previously was now gone to waste because this continues to be dragged on for what was a procedural violation. Attorney O'Donnell that this was particularly frustrating and wanted this noted in the record. Attorney O'Donnell explained to the Board noted that member Bailey explained that the Planning Board did issue a Draft notice of conditional approval yesterday for the new facility. Attorney O'Donnell explained that process took many months and was the product of a lot of time effort and work on the part of Rob and contractors. Secondly, Mr. Russell requested from the police department information regarding any parking citation or traffic complaints as of yesterday still no citations related to the business. Attorney O'Donnell explained that request of the fire department Mr. Russell had an independent person contractor come in to do a fire and life safety code inspection. This came back that the inspections revealed that in general there were no major violations of fire and life safety code regarding the business. The only thing found was that there were 32 fire extinguishers that was out of date and there were some extension cords that need to be replaced with permanent wiring. Attorney O'Donnell explained that the Zoning Board should find that this business followed the ordinance for the same reasons stated at the October hearing.

Attorney O'Donnell explained to the Board that fundamental thing that the Board should consider when interpreting ordinances that ordinances need to be sufficiently clear that the person knows whether they have violated the ordinance. Attorney O'Donnell explained that this was a principle that was repeated multiple times by the New Hampshire Supreme Court. Attorney O'Donnell explained that if an ordinance was sufficiently vague that a person doesn't know may have violated it and reinforced to that assumption that some abutters are saying or in their letters that there should be no employees even though that requirement wasn't stated anywhere in the home occupation ordinance. Attorney O'Donnell explained that there was no way to be known that requirement was suddenly there when it was not stated in that ordinance same with commercial vehicles. Attorney O'Donnell explained that home Business be more substantial than home occupation but that's not stated in the ordinance.

Attorney O'Donnell explained the following:

- \* It's conducted within a detached single-family dwelling**

- \* It's in a portion of the basement in the garage**

- \* It's the only home occupation in the dwelling**

- \* No more than 30% of the net living area used**

**COMMENTS IN THE ABUTTER LETTERS:**

- \*There were only 4,441 of the total property (this was not correct he supplied a copy of the Tax card at the previous meeting.**

- \*The 4,441 was the adjusted square footage for taxation purposes because there's a sensation factor applied for different types of use the total square footage was 8,056.**

C. Huckins explained that they are taxed on living space and the assessor explained to her that they are taxed on 3,800 square feet.

Attorney O'Donnell explained that if that was correct, she was referring to be the first floor finished and the upper floor finished. Attorney O'Donnell explained that she was not referring to the basement and the garage because they are not living space.

C. Huckins explained that was because they were never inspected and there were no permits.

Attorney O'Donnell explained that under the ordinance and under this tax card first under the ordinance it says 30% of the net living space. Attorney O'Donnell explained that if the basement and garage even if the total of those and at most it was a portion of the garage less than half and most of the basement.

Attorney O'Donnell explained the following areas are finished:

- **First Floor**

- **Upper floor finished**
- **Attic finished**
- **Half story finished**

This totals 5,016 square feet. Attorney O'Donnell explained that even if you round up the entire portion was 2,120 square feet which comes out to 29.7%. Attorney O'Donnell explained that the basement and garage are not living space and don't factor into that calculation.

Attorney O'Donnell explained that there was no display of goods and where's visible from the street. They supplied pictures at the last hearing that showed the property setback with forested all around and no commercial vehicles on the premises.

\*Factors that would render the property objectionable or detrimental to the residential character of the neighborhood.

\*Chief Walker confirmed there's no hazardous material.

\*John Huckins Code Enforcement confirmed that he didn't identify any loud sounds, dust, smoke, or odor.

\*No evidence of parking violations or citations to date.

\* Sale of Bianchi property further demonstrates that this property was not rendering the neighborhood or rendering the property objectionable or detrimental to residential care to the neighborhood. The Bianchi's property sold in six days for 175% of what they paid for it less or a little over six years ago for about hundred thousand dollars more it's about 120,000 more than it was assessed. There's no evidence that in any way this business somehow impacted property values to stop that property from selling in a quick time or for over assessed value.

\*Abutter letter from Mr. Imbrie during the public hearing on this matter Mr. Imbrie had said private covenants prohibiting Mr. Russell. Attorney O'Donnell explained that MR. Imbrie however has subsequently contradicted himself in emails to Mr. Russell acknowledging that the Homeowners Association was not active and demonstrates a lack of affordability.

G. Bailey asked what this have to do with the Board to hearing the case? G. Bailey explained that the Homeowners Association has nothing to do with the Board.

Attorney O'Donnell explained that even if there were covenants there beyond the scope of the Town's review, but he felt that it was important to know that someone who has submitted evidence to this Board has made contradictory statements. Attorney O'Donnell explained that they rest on the full hearing from the October hearing.

C. Huckins asked Mr. Russell when the Bianchi's sold their property was, he asked to remove your sign your 2A Tactical sign did the realtor ask to take the down when the property was being sold.

Mr. Russell expressed that Ryan Bianchi asked if he would take down his sign to which he responded no.

C. Huckins asked if he left it up.

Mr. Russell stated that the sign did come down not based on Ryan Bianchi (she is the wife of Tory Bianchi).

D. Whitten asked if he said the sign did come down.

Mr. Russell stated that the sign did come down the sign was dirty and needed to clean it.

Attorney O'Donnell explained that the new owners are customers of Mr. Russell's.

G. Bailey asked if the new homeowner was there to tell them.

Mr. Russell stated doesn't make and added was the realtor there to tell C. Huckins that the sign was taken down so that's hear say as well.

P. Thibodeau explained that he had a comment about the Bianchi sale. P. Thibodeau explained that in Bianchi's seller disclosure document which was a 5-page document they did not disclose that 2A Tactical was next door. P. Thibodeau explained that there was no way for this buyer to know that 2A Tactical existed with the sign down and Bianchi's not disclosing that they were there.

R. Desmarais asked if any of this evidence been submitted to this Board?

P. Thibodeau explained that he's telling the Board the evidence.

R. Desmarais expressed that's hear say.

P. Thibodeau explained that it was not hear say he just looked at the seller disclosure in MLS which I have access to and read it with no disclosure did not disclose that 2A Tactical was there. P. Thibodeau expressed that the attorney stated that the new homeowner was a customer to 2A Tactical so apparently they don't object to it. P. Thibodeau expressed that its not on the disclosure form that 2A Tactical exists next door Bianchi did not disclose that.

G. Bailey asked Attorney O'Donnell that in his presentation that individuals were given the opportunity to speak they were told they could speak later but later never came to them to allow them to speak.

Attorney O'Donnell explained that Acting Chair Desmarais stated that the issue before the Board was if the applicant was whether or not if they were in compliance with the ordinance. Attorney O'Donnell explained that it was not for meeting the standards for a variance and the issue for a variance would come later then they could speak.

G. Bailey explained that his presentation notes didn't state that. G. Bailey asked about some of the issues when R. Desmarais, himself and the client went through and looked at some of the accessory storage that were out there and just note that they were there.

Attorney O'Donnell explained that they discussed the accessory storage bins in detail at the October hearing and he asked the Board to carry forward that description if you need the addressed specifically.

G. Bailey stated that it wasn't in the notes and wanted to make sure they were there as the other add-ons were part of.

Attorney O'Donnell explained that the overhead photos that they provided and the statement regarding which ones were still there.

Mr. Russell stated that there are three units remaining and two have been removed.

G. Bailey explained that there were two containing to the business and the others were for lawn equipment and a shed with paint cabinets in it.

C. Huckins asked when he applied for the home occupation what was he doing at that time and what was the business then.

Mr. Russell explained that when he applied for the home occupation, he was unemployed.



C. Huckins asked Mr. Russell if his business was 2A Tactical at that time and was it this big.

Mr. Russell explained that it was not what the business was today and asked C. Huckins that he wasn't sure what she was asking.

C. Huckins asked Mr. Russell if he was doing retail sales from the beginning or was it part of the initial business.

Mr. Russell stated that retail sales was part of the initial business.

C. Huckins explained that the Board made a mistake because retail sales was not allowed in a home occupation this should have gone through the Planning Board.

Mr. Russell explained that he was doing gunsmithing and that involves the sale of parts and services.

John Huckins explained that the application had gunsmithing but not about bringing in or selling parts.

Mr. Russell asked if this was in writing or a discussion that they had?

John Huckins explained that he was going by the application and what was approved.

Mr. Russell explained that the writing on the application does not state what John Huckins stated.

Attorney O'Donnell stated to C. Huckins that she said retail business was not allowed under home occupation and home business he didn't see that.

C. Huckins explained that they could have retail if they went before the Planning Board for Site Review.

R. Desmarais explained that it does not say under home occupation that you cannot have retail.

Attorney O'Donnell explained to the Board that the issue was whether the existing use complies with the home occupation such that a variance would be required or not required for the existing use. Attorney O'Donnell explained that the original application clearly said gunsmithing to some extent was going to involve selling their services to members of the public. Attorney O'Donnell explained that in 2015 there was an application for expanded use and change the description from gunsmithing-to-gunsmithing manufacturing.

C. Huckins explained that the difference was that retail sales was a store where customers come in off the street buying and buying gunsmithing manufacturing. C. Huckins explained that you can do it but it would need site review.

Attorney O'Donnell explained that was a different issue whether they are a home occupation and Mr. Russell's home occupation followed the zoning ordinance with respect to the home occupation criteria. Attorney O'Donnell explained the area was a 6 x 6 area where that could buy of the total business and primarily the business was gunsmithing of making the parts.

G. Bailey explained that under home occupation 7.3 under 7.3 (2) no more than one home occupation maybe carried on in a dwelling and that doesn't backup what you are saying. G. Bailey explained that in the pictures from August 2021 it clearly shows ammunition for sale and educational opportunities that are there. G. Bailey expressed that he was trying to show that there was more than one occupation there.

Attorney O'Donnell explained that this is a home occupation which was 2A Tactical which has different services. Attorney O'Donnell explained that the 2018 request was to amend the certificate of occupancy related to the home occupation to expand from solely gunsmithing to gunsmithing and manufacturing.

C. Huckins explained that retail sales would be allow if they went through Site Review.

P. Thibodeau asked Attorney Puffer to comment on retail sales that C. Huckins talked about.

Attorney Puffer explained that what C. Huckins stated was true and retail sales was a non-residential use and would require site review approval from the Planning Board. Attorney Puffer explained that home business does need site review approval from the Planning Board and home occupation does not.

G. Bailey explained that last night 2A Tactical was given conditional approval by the Planning Board to construct their new business. G. Bailey asked if the Zoning Board was allowed to continue the case monthly so they can have the opportunity to finish the new building then turn around and closing out the business in the home occupation in the house. G. Bailey asked what the legal ramifications to this Board for that to be happening.

Attorney Puffer explained that any Planning Board decision must assume that the use was allowed and the Zoning Board's needs to decide if the use was allowed or not as a home occupation. Attorney Puffer explained that the Board needs to decide if this was a home occupation first and if it was not then the Board needs to decide whether they're entitled to get a variance based upon the criteria and the statute. Attorney Puffer expressed that he wouldn't put much weight on what the Planning Board wither way.

P. Thibodeau asked Attorney Puffer if the Board could table this matter to a later date.

Attorney Puffer stated that the Board could table this matter.

P. Thibodeau asked if the Board could be specific on their date.

Attorney Puffer stated that the Board could.

Attorney O'Donnell explained that there's a big impediment to that decision that he would like to briefly address.

**\*\*Boards needs to have decision in 60 days which was never enforced because it would require an applicant to demand that they issue a decision.**

**\*\*Not in a position to allow or not allow the Board to not make that request to continue indefinitely Because there was a pending lawsuit from the Town.**

**\*\*The Town said once the re-hearing period had ended if there was no rehearing it was going to withdraw its lawsuit was pending.**

**\*\*Mr. Russell can't get financing to finish the project that he was working so hard and has paid so much money already to fund.**

**\*\*Mr. Russell needs the decision like the decision in October because as a result the Town would withdraw the lawsuit.**

**\*\*Mr. Russell could get funding and he could finish and get out of this location.**

D. Whitten asked if the decision made in October was invalid and the Board overrules it how does that affect 2A Tactical.



Attorney O'Donnell explained that this came about from the Town a notice of violation. Attorney O'Donnell explained that the Town has the lawsuit and they have asked previously for the Select Board to meet to discuss extra time. Attorney O'Donnell explained some of the steps that could have happened at the other end. The reason this was brought up was because there was no indication from the Select Board that they would even talk to us to reach a compromise settlement rather than litigation. Attorney O'Donnell explained that if the Board denies this now and the Town wants to keep pushing the forward the lawsuit even though it seems so overblown, and they won't talk to them this could leave to the end of this business.

Attorney Puffer explained that the Board unfortunately here the zoning ordinance has been them in a difficult position that was it's not a home occupation he doesn't feel that they're entitled to a variance. And a mistake was made in October. Attorney Puffer explained that it should be a matter of when they stop working there or when they move was really should be a matter between the applicant and the Board of Selectmen. Attorney Puffer explained that they are the enforcement body of the Town and felt the Board shouldn't be in a situation where the Board decide delaying for a while. Attorney Puffer explained that the Board should only be deciding if this was a home occupation and if they are entitled to a variance.

C. Huckins asked Attorney Puffer if the Board granted that this was a home occupation and that rides with this property can this continue with others that would move in.

Attorney Puffer explained that granting a variance or a special exception or an approval it does run with the land it becomes a pertinent to the property. Another owner could engage in the same business there.

R. Desmarais explained that if the new zoning passes that would not be true, but variance was correct.

Attorney Puffer stated the same business they could.

Attorney O'Donnell explained that the current use was not under a variance that was previously granted. It's under a certificate of occupancy that was granted to 2A Tactical regarding a particular home occupation. Attorney O'Donnell explained that even if this moved forward, and Mr. Russell relocated if he stopped operating and relinquished the certificate of occupancy or didn't continue that pre-existing non-conforming use it would be extinguished by abandonment.

Attorney Puffer explained that it isn't just a variance that runs with the land it could be the granting of a special exception there could be a ruling by the Board as to whether it's a home occupation or not.

D. Whitten asked if the home occupation was only to 2A Tactical.

R. Desmarais explained that it's not applicable to the property.

Attorney Puffer explained that the Board shouldn't be deciding based on 2A Tactical specific financial or personal situation should be on zoning concerns then it runs with the land.

R. Desmarais expressed that he disagreed with Attorney Puffer once they move out of that property and someone else moves in, they are going to apply for a new home occupation.

P. Thibodeau expressed that he needs answers on whether this home occupation carries to another owner in the same property or not was Attorney O'Donnell right or Attorney Puffer right they differ. P. Thibodeau that the Board needs to understand because that's what's holding him back from voting.

D. Whitten expressed that a home occupation goes with all the properties that are in residential properties

in this Town based on the Zoning Ordinance.

C. Huckins expressed that does 2A Tactical meet the criteria for a home occupation. C. Huckins explained that the Board needs to look at the retail sales and the amount the of business taken up in the home.

D. Whitten explained that the Board needs to look at section 7.3.

R. Desmarais explained to C. Huckins that she keeps commenting on retail sales and there wasn't anything in the home occupation that says anything about retail sales.

C. Huckins explained that you need to have site review to have retail sales.

R. Desmarais expressed not in home occupation that the Board was discussing.

G. Bailey explained that under 7.3.(2) only one business. G. Bailey read from the filing on August 9, 2021, Mr. Russell operates a business from the basement of his residence which includes gunsmithing and retail sales. G. Bailey continued read that Mr. Russell also has some temporary structures towards the rear of his property where products are stored. G. Bailey explained that he has two businesses going gunsmithing with retail sales and a teaching educational safety course.

Attorney O'Donnell explained that he believes that was from the Town Attorney Laura Spector Morgan not from the applicant with the attachments. Attorney O'Donnell explained that Mr. Russell operates a business which includes those activities it was one business that does more than one thing.

G. Bailey read from the client narrative for application for temporary variance for 99 Tolend Road, Barrington, NH. Introduction summaries on page one.

Mr. Russell stated that he didn't believe that he submitted that document and it was submitted by the Town attorney.

G. Bailey explained that it says Robert and Allison Russell for a special exception before the Board.

Attorney O'Donnell showed the documents were from the Town attorney.

Attorney Puffer explained that he would urge the Board to decide the case that was before them. Attorney Puffer explained that he knows that some of the Board members are concerned about whether what the Board decision runs with the land or not. Attorney Puffer explained that really beside the point the Board should be looking at the ordinance interpreting as a whole and decide. Attorney Puffer explained that the Select Board and applicant would need to deal with the Board's decision.

R. Desmarais expressed that nothing has changed from the October decision in his opinion.

C. Huckins opened public comment for anyone to speak in favor of this the application as a home occupation.

Dennis Pereira from 54 Dominic Drive explained that he has been at all the meetings and when the decision was made. Dennis explained that when there's a benefit of doubt it should go to the person applying for the application. Dennis explained that if the Board stays with their decision in October, then the lawsuit would be dropped, and they can get a loan to be able to move their business out of 99 Tolend Road.

Randal Heller 113 Tolend Road explained that his wife and him are abutters to 2A Tactical and made their opinion known at the last meeting it's on the record. Randal read the following letter in the neighborhood I think it's of interest and it's brief:

**As I see it the issue is not a variance the issue is giving 2A Tactical a reasonable time frame in which to move the business. It was clear to me and several others that the Zoning Board say for one member approved to the current 2A Tactical business operation as it stands at their last meeting. In effect they shot themselves in the foot now they want to revisit that decision and perhaps change their minds. I personally find that to be disingenuous in the least. In any event the entire discussion should be changed to granting 2A Tactical a continuance until such time which can be designated when they can move to their new location. BY: Randal Heller (COPY ATTACHED)**

Frank Natale from 115 Tolend Road explained that he has been at every meeting in favor of Rob Russell and 2A Tactical. Frank explained that he hasn't heard anything tonight that goes against what was talked about at the last meeting. Frank explained that retail was brought up several times and noted that it was not in that ordinance. Frank explained that as far as his business he has never heard any gunshots there's been no issues.

Dale Warren from 555 Berry River Road explained that he works for Mr. Russell and the job means everything to him. Dale explained that the right decision was made at the October meeting.

C. Huckins explained that the Board makes the decisions to uphold the Town ordinances.

C. Huckins read the following letter from Linda & Chester Cole:

Dec. 16, 2022

#4

Linda & Chester Cole  
support

Dear Zoning Board Of Adjustment,

My husband and I were present at the last two meetings in support of 2A Tactical and owners Robert and Allison Russell. Due to the high transmission of the latest Covid 19 Variant and our high risk factor we will not be able to be at the latest hearing. We do however continue to support this business and Robert and Allison Russell. We have lived at 98 Tolend Road for over three years now. We are directly across from the Russell's. In all the time we have lived here we have never had a problem with the owners, the business itself, the customers, the deliveries, or the employees. We have had no parking issues, and no loud noise issues. The Russell's are great neighbors and we are so happy to live in such a nice neighborhood. My husband is a retired disabled Veteran and we both support businesses that are run by Veterans and employ Veterans. We hope that there is a positive outcome for 2A Tactical to be able to continue to stay open until they are able to complete their future building plans. The town of Barrington would then continue to benefits tax wise and also as part of the community show support for local Veteran run businesses and its employees. J--not applicable

Linda Cole and Chester Cole  
98 Tolend Rd.  
Barrington, NH.

Linda Cole  
Chester Cole

C. Huckins opened public comment for anyone that would like to speak against 2A Tactical application.

Gary Imbrie from 20 Mill Falls Road explained that I know a lot of letters were received including his letter that brought up a lot of the points including the number of employees. Gary explained in 7.3 defines Home Occupation was ambiguous it doesn't really say anything that would be meaningful in his estimation. Gary explained that if you go to the definition section of the Zoning Ordinance, he read the definition as it reads:

**Home Occupation** Any use that is conducted entirely within a dwelling that is clearly incidental and secondary to the use as a dwelling, which does not change the character of said dwelling in its neighboring environment.

Gary explained that a full-blown retail establishment that advertises on the radio that was bringing in customers from three surrounding states for various products. Gary explained that they have 12 employees plus all the cars on one residential lot of 12 to 15 cars commercial. Gary explained that 7.4 states that you can only have two employees. Gary expressed that these two ordinances were written at the same time in terms of limiting the home occupation. Gary expressed that if the Board doesn't read 7.3 and 7.4 than he felt that the Board was not protecting the citizens in the neighborhood. Gary explained that he was a customer of Rob's and that he was not there to talk about Rob its about 2A Tactical. Gary explained that he came to the meeting hoping for a solution and understands that this puts the Board in a difficult situation. Gary explained that there was a building for rent 200' from where his new property will be.

Julianne Estes from 49 Tolend Road explained that she was friend with the prior owner that abuts 2A Tactical and has a lot of knowledge of the back and forth that's gone on over the years. Julianne explained that the problem was with the business was a different entity and a different person. Julianne explained the growth overtime that they could have moved previously. Julianne explained that the business was growing and very big and it just doesn't fit in a home. Julianne explained that as Gary said maybe a temporary move until the full facility can be built. Julianne expressed that it's really upsetting to force people to move from their home.

Tori Bianchi the former owner of 93 Tolend Road.

C. Huckins explained not a resident can't take his testimony.

Tori explained that if people are taking the opportunity to speak out against, he thinks that they would have the opportunity to speak clearly so that they could clear the air for the Board.

C. Huckins asked Attorney Puffer if they can take testimony from someone that was no longer a Barrington resident.

Attorney Puffer stated that the Board could.

R. Desmarais stated not to take recommendations from a non-resident.

G. Bailey stated that they have not done in the past.

Julianne Estes explained that the Bianchi's have been reference have been referenced in this discussion multiple times and she stated that it's hearsay but there's some negative things about them.

P. Thibodeau expressed that Mr. Bianchi said they had to move and now he's saying that he was in favor of it and he would like to hear what he has to say.

D. Whitten stated residents only.

C. Huckins read the following letters:

Barrington Meeting #1  
42 Mills Falls

October 17, 2021

Town Planner

Barrington Town Hall  
333 Calef Highway  
Barrington, New Hampshire 03825

RE: VARIANCE REQUESTED FOR 99 TOLEND ROAD (File #22-54.16-GR-21-AMENDZBA Var

I am a resident of Barrington, residing at 42 Mills Falls Road. My home is within a relatively short distance of 99 Tolend Road. I am submitting this comment for consideration regarding the matter that is scheduled for hearing before the Board on October 20, 2021 at 7:30 PM.

I wish to make the Board aware of my objection to the granting of a variance in furtherance of allowing the continuation of a commercial enterprise at 99 Tolend Road. My objection is based upon the following:

- 1- This is a residential area and is zoned accordingly. People who purchased property in this area are entitled to expect that the residential nature of the area will be maintained.
- \*2- The continuation or expansion of a business in this area does not conform to the character of the area and undermines the spirit of the Barrington zoning ordinance.
- 3- The proposed variance would be contrary to the public interest in maintaining the zoning scheme previously adopted by the Town of Barrington and thereby ensure that growth is allowed to progress in an orderly fashion.
- \*4- In my opinion, the continuation or expansion of a commercial enterprise at 99 Tolend Road will diminish the value of my property and other properties in the area. This would be a gross injustice to all property owners impacted by the business conducted at 99 Tolend Rd.

rather  
fairness  
to neighbors

This is not a 2<sup>nd</sup> Amendment issue. It is a matter of fairness to all of the homeowners who purchased property in the area with the expectation that the quiet enjoyment of their residences would be respected. Accordingly, I would ask the Board to rule against the requested variance.

Kathleen Murray



Noel Carneiro  
38 Mills Falls

#2

October 18, 2021

Town Planner

Barrington Town Hall  
333 Calef Highway  
Barrington, New Hampshire 03825

**RE: VARIANCE REQUESTED FOR 99 TOLAND ROAD (File #22-54.16-GR-21-AMENDZBA Var**

I live at 38 Mills Falls Road, Barrington, NH, very close to 99 Toland, site of 2Atactical.

I would like this mail to be presented to the Board so it can be recorded at the October 20, 2021 meeting.

I have a very serious concern regarding the occupation of 99 Tolend Rd. I have 2 kids and, although Mills Falls is a very nice area, my kids are afraid of being outdoors and going around the neighborhood due the daily shooting practice (single and automatic firearms) and to the presence of 2Atactical attracting unnecessary traffic, causing parking mess and storing hazardous material, which is not coherent with Barrington's Zoning Ordinances. It also should be noted that the corner of Tolend Road and Mills Falls Road is the location of 6 school bus stops (Elementary, Middle and High Schools) and also 2 special-need bus stops.

Having such a supporting team and loyal clientele, Mr. Russel should not hesitate to relocate his not anymore small business to a commercial area, enjoying and embracing the success he has achieved and, at the same time, honor and appreciate all the time his neighbors allowed him to operate from his home.

I know that Rob Russell was granted a Certificate of Occupation in 2015 for Home Occupation, as defined by Section 7.3 of the Ordinances but I believe Mr. Russell is in violation of substantially all of section 7.3, and must be given a demand that his business can no longer be at 99 Toland Rd. He was notified on November 17, 2020 by John Huckins, Barrington's Code Enforcement Officer, that he was in violation of the above mentioned Section 7.3 and was given 6 month to move his business, which means he needed to close on June 16, 2021. By its own news release of March 17, 2021, attached, 2Atactical has experienced growth beyond the limits of a Home Occupation and it purchased a 4-acre of land on Route 125, which very clearly shows that it is not a "residential" nor a "small" business any more and consequently, **SHOULD NOT** be allowed to continue its business at 99 Tolend road, a **RESIDENTIAL** area. However, Mr. Russel has been receiving large shipments of materials which tells me he has no intention of stopping what he's doing. If the Board really cares about Barrington, they need to tell Mr. Russell to relocate his business.

Sincerely and best regards,  
*Noel Carlos F. Carneiro*  
Noel Carlos F. Carneiro

RECEIVED

OCT 19 2021

LAND USE OFFICE

- Daily shooting practice  
- storage haz materials  
- 18 shipments delivered  
- noticed in violation 11/17/20  
- given 6 mos to move  
- expired 6/16/21

February 2, 2022

Town of Barrington  
Zoning Board of Adjustment (ZBA)  
Land Use Department  
Barrington Town Hall  
PO Box 660  
333 Calef Highway  
Barrington, NH 03825

RE: 99 Toland, Rob Russell and 2A Tactical LLC  
February 16 ZBA Meeting at 7:00 PM

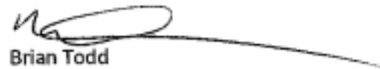
Dear Sirs:

I have reviewed the letter sent to you on Jan. 12, 2022 by my neighbors, Gary & Kris Imbrie. I agree with the arguments presented by them, and encourage the ZBA to consider their arguments and recommendations as a solution to this problem. The simple fact is that no neighborhood should have a residence that houses a business that employs 8-10 people, is a full-time retail/production operation, and has 4 to 15 cars parked on the property during most business hours. 2A Tactical LLC has changed the nature of the neighborhood and has recently caused the Bianchi family, the immediate abutter to the west of 99 Toland, to sell their house and leave Barrington.

Rob Russell is a good neighbor and he is not the issue. The issue is the business 2A Tactical LLC which has simply outgrown its current location and cannot possibly be considered appropriate for our residential neighborhood. The job of the ZBA is to enforce all the appropriate zoning laws and protect the citizens of Barrington. Allowing 2A Tactical LLC a permanent variance to occupy this site in perpetuity is not protecting our neighborhood.

We hope that a compromise can be reached that would entail 2A Tactical to come into compliance with Barrington's Zoning Ordinances and give 2A Tactical time to build their new location. I think this may require 2A Tactical to temporarily occupy some rented space which would be the easiest solution.

Sincerely,



Brian Todd  
23 Mills Falls Road  
Barrington, NH 03825

February 14, 2022

Town of Barrington  
Zoning Board of Adjustment (ZBA)  
Land Use Department  
Barrington Town Hall  
PO Box 608  
388 Cook Highway  
Barrington, NH 03825

Erin A. Allen Williams  
4 Mills Falls Rd

Dear Sirs:

Reference - 99 Toland Rd, Barrington - Mr. Rob Russell owner of 2A Tactical

I am writing to you with reference to the above property and business operations being run out of 99 Toland Road.

We are residents and owners of 4 Mills Falls Rd., Barrington, NH 03825. We live a few doors up from 99 Toland.

From the minutes of the Oct. 20 meeting of the ZBA it is our understanding that by a 4 to 1 vote it was decided that Mr. Russell and 2A Tactical were compliant with Article 7.3 (Home Occupancy). I would like to highlight the following, which I feel demonstrates that the decision made may not have been correct:

It is reasonable to assume that Article 7.3 (Home Occupancy) was written in conjunction with Article 7.4 (Home Business). The other issue with Article 7.4 (Home Business) would be a "small business" and not a "home business". The limits that 7.4 places on 7.3 are very specific, for example Article 7.4(b) limits the number of commercial vehicles stored on the property to 2. Article 7.3(c) limits the number of commercial vehicles stored on the property to 1. Therefore, my interpretation is that these two Articles determine that the business operations conducted in 7.3 must be smaller than the business conducted in 7.4. We would request that the ZBA kindly review their decision based on the combined intent of both 7.3 and 7.4 for the purpose of making their decision in this case.

Also, Article 7.4(d) states that no more than two non-residents of the property may be employed within a home business. How could it be that Article 7.4(d) limits employees to a maximum of 2, but that Article 7.3 allows an unlimited number of employees? It would appear to me that the Articles are in conflict of each other. However, Mr. Russell has already advised that 2A Tactical has 18 employees, which is over and above the guidelines set.

Other99TolandRoad.net

\* Article 7.3 makes no reference to the number of employees; however, it states "home occupancy" therefore merely having any employees would supersede the home occupancy permit.

\* I would strongly request that the ZBA review their decision made, this is setting a very worrying precedent for the Town of Barrington, not least, as it would suggest all existing Home Occupancy permit holders could now employ up to 18 or more employees.

2. Article 7.3(c) states that there shall be no more than one (1) commercial vehicle related to said home occupation stored on the premises. The word "stored" is not limited as to time and therefore could mean 8 hours, 8 days or parked for 2 hours. The word "commercial vehicle" is precise. However, it has been noted previously that the rules and concerns from residents as to the number of vehicles on the property and on the verge of the property.

The language in Article 7.3(c) is all conceived as surely "home occupancy" would not allow for more than 4 and up to 15 automobiles.

3. Article 7.3 and 7.4 were both clearly written to describe a "small business"; neither of the two Articles refer to retail trade, where customers come and go to buy merchandise. However, 2A Tactical does retail trade business and many customers come and go daily. How can the ZBA not recognize that 2A Tactical is an active retail business.

Transactional retail trade at 99 Toland is a clear violation of the intent of both Articles. Again, the fact that both 7.3 and 7.4 are silent as to retail business is a testament as to the author's inability to even conceive that a retail trade business would be conducted under the guise of a "home occupied" business.

\* The fact is that a retail business of this size should not be in a residential neighborhood.

4. Article 7.3(d) states that not more than one home occupancy can be carried on in the dwelling. It appears to us that 2A Tactical does in fact operate more than one occupancy, though they are all under the business name 2A Tactical. The following is directly from their website:

\* New England's Premier Gunsmith and Air / Pistol Custom Shop / Comprehensive Gunsmithing / Full Cartridge Services / Customizations / Restoration / Repairs / Silencers / Servicing / Optics / Deep Cleaning / Lubrication / the list of services is very extensive.

Mr. Russell approached the neighbors in 2017 looking to obtain support for his business to open in a residential area. He advised all the neighbors that this would be a small operation doing gunsmithing.

I am delighted that Mr. Russell's business has been so successful and that his operations have grown; however, the operation of the business now violates Article 7.3(c).

5. Mr. Russell is asking the ZBA to grant a variance from Article 7.3 (Home Occupancy). Per our reading of the UN Planning and Zoning section 174(2), we believe that for a variance to be granted the applicant must establish that an unnecessary hardship exists which prevents him from complying with the ordinance. We believe that an unnecessary hardship does not exist because there is nothing at 99 Toland distinguishes it from any of the other properties in the neighborhood. There are no special conditions of

Other99TolandRoad.net

the property that distinguish it from other properties in the area." Decision 174(2) b (3).

6. I would be grateful if ZBA explain how a house with the effective living space of 1487 sq. feet per the property tax records can support a business of over 2000 sq. ft. We read Mr. Russell's attorney's correspondence about this, I would appreciate some clarification on this matter?

As noted earlier in my correspondence, our request is that the ZBA continue to work with Mr. Russell to give him time to move his retail business to another temporary location. We are of the belief that Mr. Russell's entrepreneurship has resulted in such a successful business over a relatively short space of time.

Our concern is the interpretation of the Articles, which will set a very damaging precedent for all residents of The Town of Barrington.

We sincerely hope and trust that the ZBA will now review their earlier decisions to ensure that "home occupancy" and "small businesses" are supported as we feel are clearly set out in the abovementioned Articles.

Your faithfully

Erin A. Allen Williams  
4 Mills Falls Road  
Barrington  
NH 03825

C. Huckins explained that she read the current letters other letters are on file at the Town of Barrington Land Use Department.

C. Huckins closed all public comment.

G. Bailey explained that there has been no evidence by the police and the fire to warrant the complaint. G. Bailey explained the next letter the resident sold there home because of Mr. Russell and the last letter have the gentleman check his facts because so many misgivings.

D. Whitten asked why was there still a lawsuit?

G. Bailey explained that the Board was only there to consider their application.

John Huckins explained that the Select Board still feel that they are still in validation of the home occupation.

Attorney Puffer explained that the lawsuit was still open because a motion was file to rehear the case and the Board granted a rehearing.

P. Thibodeau expressed that 7.3 needs some common sense applied to it. P. Thibodeau explained that there are letter complaining about traffic and disruption that does not follow 7.3. P. Thibodeau explained that if you look at 7.4 and its less restricted than 7.3 it makes no sense the Board needs to apply some common sense and Mr. Imbrie's testified that within 200' of the new location 4,800 s.f. available to rent for nine bucks a foot. P. Thibodeau explained that its not like the Board was going to put him out of business and relocate his business they are not killing his business.

C. Huckins agrees with P. Thibodeau and explained that the Zoning Ordinance needs to be looked at. As a whole.

*A motion was made by R. Desmarais and seconded by G. Bailey grant the preview decision made on October 2021. Vote 3/2*

Roll Call:

G. Bailey-Aye  
R. Desmarais-Aye  
C. Huckins-Nay  
D. Whitten-Aye  
P. Thibodeau-Nay

### **MINUTES REVIEW AND APPROVAL**

3. Approval of December 15, 2021, meeting minutes.

*A motion was made by G. Bailey and seconded by C. Huckins to approve the meeting minutes of December 15, 2021.*

Roll Call:

C. Huckins-Aye  
D. Whitten-Aye  
G. Bailey-Aye  
P. Thibodeau-Aye  
R. Desmarais-Aye

## **ADJOURNMENT**

The next meeting will be held on March 16, 2022, at 7:00 p.m. at the ECLC 77 Ramsdell Lane.

The meeting adjourned at 9:00 p.m.

*A motion was made by G. Bailey and seconded by D. Whitten to adjourn the meeting at 9:00 p.m.*

Roll Call:

C. Huckins-Aye

D. Whitten-Aye

G. Bailey-Aye

P. Thibodeau-Aye

R. Desmarais-Aye