

Orr&Reno

September 14, 2017

VIA ELECTRONIC & HAND DELIVERY

Zoning Board of Adjustment
Town of Bradford
134 East Main Street
Bradford, NH 03221
Attn: Molly Hopkins, Clerk

Re: Case 2017-SE-01

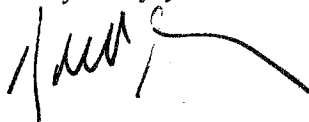
Dear Chairperson McCandlish and Members of the Zoning Board of Adjustment:

I represent Anthony and Robin Rosa. Enclosed is the Rosas' application for rehearing regarding the Board's decision on August 16, 2017. Please note the application has a three-page attachment.

I have enclosed a check for \$80.00, payable to the Town of Bradford.

Please contact me with any questions.

Very truly yours,



Robert S. Carey

RSC:eac
Enclosure

cc: Anthony and Robin Rosa
Amy Manzelli, Esq.

1913002_1

APPLICATION FOR A REHEARING
ZONING BOARD OF ADJUSTMENT | Bradford, NH 03221

DATE FILED: 9/14/17

CASE NO. 2017-SE-01

NAME OF APPLICANT: Anthony Rosa, Jr.

MAILING ADDRESS: 90 Hickory Road
Hampstead, NH 03841

TELEPHONE NUMBER: 781-858-8022

PROPERTY OWNER: Anthony and Robin Rosa
(If same as applicant, enter "same")

LOCATION OF PROPERTY: 647 East Washington Road

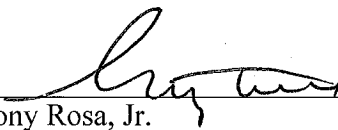
TAX MAP NUMBER: 8, 12 LOT NUMBER: (30, 31) (5, 6)

This form must be completed and received by the Board within thirty (30) days after the date of the decision for which this rehearing is being requested. Within thirty (30) days following the date this application is received, the board will either grant or deny this application or suspend the decision complained of, pending further consideration. Should the motion for rehearing be approved, all fees below must be paid before a public hearing can be noticed.

I/We hereby request the Board to grant a rehearing on the decision of the application for appeal of the above case, numbered 2017-SE-01.

I/We believe a rehearing is necessary because the following (new) evidence demonstrates that the decision is wrong, unlawful, or unreasonable:

Please refer to attachment (3 pages) that describes the four reasons the Board's decision was wrong, unlawful and unreasonable.

APPLICANT SIGNATURE:  DATE: 9/13/17
Anthony Rosa, Jr.

ADMINISTRATIVE & NEWSPAPER NOTICE

Check made out to Town of Bradford/ZBA: **\$80.00**

REQUIRED NOTICES (include Applicant, Abutters, Engineers, Easement Holders, etc.)

Check made out to Postmaster, Bradford, NH: AT \$ EACH SUBTOTAL: \$

TOTAL FEES: \$

ZBA USE ONLY. Comments have been solicited from the Selectmen ☐, Conservation Commission ☐,
Road Agent ☐, Police Chief ☐, Fire Chief ☐, and Planning Board ☐ as appropriate.

REQUEST FOR REHEARING RE: 2017-SE-01

The Board's decision to deny Mr. Rosa's application for a special exception at its August 16, 2017, hearing was wrong, unlawful and unreasonable for the following reasons:

- 1. The Board used subjective reasons to find the proposed use was not "appropriate" for the site.**

Bradford's Zoning Ordinance doesn't define an "appropriate use" in the Rural Residential District. Art. IV.B.3. Nor does it give any guidance for what's an "appropriate use" when deciding whether to grant a special exception. Art. XI.2 (a). As a result, the Board acted unlawfully and unreasonably when it denied Mr. Rosa's application for a special exception to construct and operate a hunting preserve in a Rural Residential Zone because the Board found it was not an "appropriate use."

Vague standards – like whether a use is "appropriate" – give a property owner – like Mr. Rosa – no predictable standard for how to pursue a special exception, and invite Boards to decide cases on the personal opinions of its members. See *Montenegro v. New Hampshire Div. of Motor Vehicles*, 166 N.H. 215, 221-22 (2014). This leads to "ad hoc" rulemaking – a practice New Hampshire's Supreme Court has denounced. See *Ltd. Editions Properties, Inc. v. Town of Hebron*, 162 N.H. 488, 497 (2011). Requirements must be objective and unambiguous. See, e.g., *Derry Sr. Development LLC v. Town of Derry*, 157 N.H. 441, 451 (2008). New Hampshire's Supreme Court has consistently rejected the use of personal, subjective opinions as the basis for land use decisions. *Ltd. Editions Properties, Inc. v. Town of Hebron*, 162 N.H. 488, 497 (2011). Therefore, the Board, in this case, improperly denied the Special Exception based on subjective reasons of whether Mr. Rosa's proposed hunting preserve was "appropriate."

- 2. The Board relied upon the wrong "use" consideration to deny Mr. Rosa's application.**

As noted above, the Ordinance doesn't define an "appropriate" use in a Residential Rural District or for application for a special exception. But when the Board found that Mr. Rosa's proposed use was not "appropriate" because the site "is hilly, with very rocky soils, steep and ledgy sections, and wetlands areas" it improperly used reasons the Ordinance's description of the Conservation District. Art. IV.B.2. The Ordinance states that the "[conservation] district is valuable for its open space, forest resources, recreational opportunities, and scenery. This land is generally not well suited for development due to its slope, soil conditions and inaccessibility."

The Board's written denial acknowledges that Mr. Rosa's application is for a hunting preserve in the "Rural Residential District." See Reason #1. The area of the Rosa site to be "developed" is in the Rural Residential District, where Mr. Rosa plans to build a structure on the existing foundation.

In addition, Mr. Rosa may legally hunt on his land – and invite friends, family, or others – to hunt, as well. Hunting is among the "recreational opportunities" suited to the Conservation District. Mr. Rosa did not plan to build any structures in the part of his land in the Conservation District. As a result, the topography and soils in that area of his land were irrelevant to the Board's consideration of his application for a special exception.

3. There was no factual basis for the Board's finding that the proposal may be detrimental and injurious to neighboring properties because of inadequate buffers and noise pollution.

New Hampshire's Supreme Court will reverse a ZBA's denial of a special exception if the board fails to support its finding that the proposal would have a detrimental impact. See *Cormier v. Town of Danville Zoning Bd. of Adjustment*, 142 N.H. 775, 779 (1998).

Here, there was no evidence that birdshot would be detrimental or injurious to neighboring properties. In fact, the Board ignored evidence from New Hampshire Fish and Game, which on July 25, 2017, wrote that no hunting preserve without target practice had reports of errant shot. Notably, target practice was not part of Mr. Rosa's proposal.

Also, it appears that the Board erroneously relied on Department of Army regulations requiring a 300 yard buffer for shotgun ranges – a use Mr. Rosa had not proposed. In fact, the only applicable standards are in RSA 207 and in Fish and Game's regulations. None of these standards require a 300 yard buffer. As a result, there was no evidence that the buffers were inadequate.

Similarly, there was no evidence to support the Board's finding about "noise pollution." No sound tests were conducted. Moreover, Bradford has no noise ordinance. As a result, even if the Board had wanted to evaluate the noise level from the proposed hunting preserve, there was no ordinance to determine thresholds for noise pollution or nuisance levels. With no evidence of projected noise impacts or a noise ordinance threshold, the Board again improperly relied upon unfounded, subjective opinion for its decision.

4. **There was no factual basis for the Board's finding that the buffers were inadequate to prevent shot from falling on the public roads.**

The Board also denied the Special Exception because it found that the buffers were inadequate to prevent shot from causing "undue hazard to pedestrian and vehicular traffic."

Mr. Rosa's proposal complied with New Hampshire law. Under the law, Mr. Rosa is allowed to hunt up to 300 feet away from an occupied dwelling. *See* RSA 207:3-a. He is allowed to fire a gun up to 15 feet from the travelled portion of East Washington Rd. *See* RSA 207:3-c. Under Mr. Rosa's proposal, he agreed that hunting would not occur within 300 feet of the property lines.

Additionally, only shotguns with steel shot would be used. Rifles and pistols, which have substantially longer ammunition travel distances, would be voluntarily restricted.

Mr. Rosa proposed a hunting preserve on his 158 acres. The Board's finding that the proposed buffers were inadequate is at odds with the current New Hampshire law. Mr. Rosa can already hunt on his lands. He can also invite family, friends, even strangers, to hunt on his land. But if he wishes to charge people to hunt on his land as hunting preserve, the Board would impose more stringent requirements than the law imposes.

In making this contradictory finding, the Board received no evidence that Bradford pedestrians and drivers are currently at risk from current hunting practices in Bradford. And the Board ignored the Fish & Game's report that of the 12 licensed shooting areas in New Hampshire, they'd received only one report of shot falling on abutting land - a report that upon investigation revealed no violation of the law. Thus, it appears that the Board succumbed to the unsubstantiated fears from opponents of Mr. Rosa's proposal.