

Frederick County Board of Zoning Appeals

Meeting Minutes

August 26, 2021

Chairman Kenneth Farrell called to order the regular hearing of the Frederick County Board of Zoning Appeals on Thursday, August 26, 2021, at 7:00 pm. This was a virtual meeting using WebEx and Public input via telephone. Board members Mr. Andrew Brown, Mr. John Greenwell, Mr. Dan Lawton, and Mr. Shannon Bohrer were present.

The county staff members present were Mr. Tom Sinton, Assistant County Attorney, Mr. Tolson DeSa, Zoning Administrator, Ms. Kathy Mitchell, Senior Assistant County Attorney, and Mr. Michael Paone, Zoning Planner 1.

Official minutes of the Board of Appeals meetings are kept on file in the Frederick County Planning and Permitting Division, 30 North Market Street, Frederick, Maryland 21701

Approval of Minutes

The minutes for the July 22, 2021, meeting were delivered to the Board members via email.

Motion: Chairman Farrell requested a motion to approve the July 22, 2021, meeting minutes. Mr. Greenwell made the motion to approve, and Mr. Brown seconded the motion. The minutes were approved unanimously, with all members voting.

Chairman Farrell requested nominations for the vacant position of Board Secretary. Mr. Farrell nominated Mr. Bohrer for the position of Secretary. Mr. Lawton seconded the nomination. Mr. Farrell, Mr. Lawton, Mr. Brown, and Mr. Greenwell voted yes. The motion was approved.

Chairman Farrell stated that there was a full agenda, and he wanted to adjust the order presented. Item 5 would be taken first, followed by item 6. Then items 3 and 4 would follow in that order.

Chairman Farrell asked if members have visited the locations under consideration at this meeting. All members answered in the affirmative.

Chairman Farrell read the meeting procedures for giving testimony.

Cases

B-21-12

Colby Shultz (B265279)

The Applicant requested the Board of Appeals grant a variance of 4.5 feet. The Applicant wants to build a second story over the existing structure. The existing structure has a variance of 4.5 feet, and the addition would maintain the same 4.5-foot variance if approved.

Mr. Paone delivered the staff report. The Applicant wants to expand a structure that is non-conforming due to the front setback distance requirements. The required setback for the property is 40 feet to the

front and an additional 25 foot right of way to the center of the road. The home is currently 60.5 feet from the center of the road. The applicant stated that the second story expansion would not increase the non-conformity of the structure. However, staff noted that the proposed construction of a porch deck area that would connect to an existing deck facing the road would increase the non-conformity. While the proposed deck would not be any closer to the road than the existing deck, the new porch deck area would encroach farther into the required setback. There were no comments from other agencies.

The property is identified as 6012 Quinn Road, Frederick, Maryland, 21701. Tax Map 78, Parcel 0294, Tax ID# 09257780, Low Density Residential (R-1), size 1.01 acres.

Applicable Ordinance Sections: Section 1-19-3.220 Variances

Section 1-19-6.100 Design Requirements

Section 1-19-4.220 (C) Nonconforming Structures

Chairman Farrell issued the witness oath to Mr. Erick Shultz, 6012 Quinn Road, Frederick Maryland, 21701.

Speaking

Mr. Shultz said he was proposing to take the roof off and add a second floor. He said they would not be expanding the existing footprint since they would be building up. He responded to Mr. Paone's reference to the proposed deck addition, which would constitute a violation. He said that if he could not add the proposed deck, which was to connect to an existing deck, he would eliminate that part of his proposal.

Chairman Farrell ask if there was any further discussion or questions for the Applicant.

Mr. Lawton questioned parts of the County Code - that seemed to conflict with other parts of the Code.

Ms. Mitchell clarified the new sections of the Code that were in the report, page 3, section F. She explained that the code was recently amended to allow the proposal.

Mr. Greenwell asked the Applicant if he was revising his proposal to eliminate the connecting deck proposal.

Mr. Shultz answered in the affirmative that he was taking the deck off the proposal.

Chairman Farrell asked if there were any further discussions and if someone wanted to make a motion.

Motion: Mr. Bohrer made a motion for approval of B-21-12 without the deck proposal. Mr. Greenwell seconded the motion. The motion was approved unanimously, with all members voting.

The Applicant requests a special exception for approval to establish a Kennel for his business, Canine Obedience Unlimited.

Mr. Paone delivered the staff reports outlining the request and the applicable sections. He received no calls or agency comments on this issue.

The property is identified as 8994 Urbana Church Road, Urbana, Maryland 21701. Tax Map 96, Parcel, 163, Tax ID #07205333. Zoning, Village Center (VC), size 1.82 acres.

Applicable Ordinance Sections: Section 1-19-3.210 Special Exceptions
Section 1-19-8.338 Kennels, Animal Hospitals, or Veterinary Clinics in the
A and VC Districts

Chairman Farrell issued the witness oath to Mr. Andrew Frazier and Mr. Bruce Dean.

Speaking

Mr. Bruce Dean, 31 West Patrick Street, Suite 130, Frederick, Maryland 21701
Mr. Andrew Frazier, 24301 Springtown Road, Clarksburg, Maryland 24301

Mr. Dean is Mr. Frazier's attorney, representing him with this request. He gave an overview of the request. The business would include a dog daycare center, grooming, and a training facility. Additionally, the business would offer a boarding facility and a veterinary clinic. He emphasized that the BOA approval is only the first step in this process. If approved by the BOA, the Planning Commission will include two additional reviews, a requirement for all uses in the VC Zone.

Mr. Frazier gave a brief background of himself, including his dog training profession. His company is doing well, and he is looking to expand his business. He said there is a demand for the services he offers, and he hopes to expand to accommodate the high demand. The business would be very accessible, with the location just off I-270. He also said the business would be compatible with the immediate neighbors since they are business. The outside areas would be used for training only. Any dogs outside will be on a leash and supervised, and all kennels will be indoors.

Mr. Dean closed with a review of the information that was submitted, along with the location, stating that the site was a good location for the special exception use.

Chairman Farrell ask if there was any further discussion and if anyone wanted to make a motion concerning the initial ruling.

Mr. Dan Lawton questioned the photos submitted, which showed an enclosed area outside, and labeled as a training area. The testimony was for an indoor facility.

Mr. Dean answered that the outdoor area was not part of the request for exception. The outdoor area would only be used for training and not used for a kennel boarding area.

Motion: Mr. Andrew Brown moved to approve item B-21-11. Mr. Dan Lawton seconded the motion. The motion was approved unanimously, with all members present voting.

This case is a reconsideration by the Board of Appeals. The original hearing was on March 25, 2021, when the Applicant requested to replace a 130-foot tower with a 180-foot tower. At that hearing, the request was approved, with a vote of 4 for approval and 1 voting against approval.

On April 22, 2021, at the BOA meeting, a motion for reconsideration of this case was made. The motion was made because neighbors that wanted to comment and give public testimony were unable to do so because of a problem with the public input system. The motion was approved.

The case was on the Agenda for the June 24, 2021, meeting. At that meeting, Mr. Rapisarda representing First Energy requested a continuance. He stated that First Energy had met with neighbors to discuss their concerns. Additionally, the Applicant was proposing to move the tower to permit a 113-foot setback from Gambrill Park Road.

A motion to move the hearing to the August meeting was made and approved.

Mr. Paone delivered the staff reports. He reviewed the previous hearings and the motions, including the previous actions by the Board. Staff agencies had no comments.

The property is identified as 9450 Gambrill Park Road, Frederick, Maryland 21702. Tax Map 47, Parcel 0110, Tax ID# 21432997. Zoning is Resource Conservation (RC), size 16.83 acres

Applicable Ordinance Sections: Section 1-19-3.210 Special Exemptions
Section 1-19-8.332 Communications Towers in RC and A Districts
Section 1-19-8.420 Communications Towers

Chairman Farrell asked who would be testifying.

Mr. Rapisarda, outside counsel representing First Energy said that he would be testifying, and three other persons were also online and could testify if needed. The people included Mr. Rick Marquiss, Mr. Robert Heath, and Mr. John Melham. Only Mr. Marquiss took the oath with Mr. Rapisarda.

Chairman Farrell issued the witness oath to Mr. Rapisarda and Mr. Marquiss.

Speaking

Mr. Greg Rapisarda, Outside Counsel for First Energy, Saul Ewing Amstein & Lehr, LLP, 500 E. Pratt Street, Unit 900, Baltimore Maryland 21202

Mr. Richard Marquiss, 10802 Bower Ave., Williamsport Maryland 21795

Mr. Rapisarda testified that while the original proposal was approved, there were issues. One was the setback of only 49 feet from Gambrill Park Road, and neighbors voiced safety concerns. In addressing the concerns, a plan B was developed, and the information was delivered to the Board.

In plan B, the proposed location for the pole was moved to the northeast corner of the property. (This is the northeast corner of the property that is leased by First Energy) This moved the distance from the pole to Gambrill Park Road, from 49 feet to 113 feet. The fall zone (the distance a pole can strike the ground) if the tower would fail was addressed in a letter from Sabre Industries. Sabre will be the contractor manufacturing the pole. In the letter, they explain that with their design, the fall zone would be less than 60 feet at ground level, which is less than the proposed 113 foot setback to Gambrill Park Road. The pole to be manufactured will collapse in sections if a failure does occur.

Chairman Farrell asked if there were any callers.

Mr. DeSa said they had people on the lines wishing to testify.

The first caller was Bill Daniels, 9648 Gambrill Park Road, Frederick, Maryland 21702. He was sworn in by Chairman Farrell.

Mr. Daniels expressed concerns about not examining alternative sites for the tower. He expressed that the location should be moved farther from Gambrill Park Road for safety reasons.

The next caller was Author Cogswell, 9640 Gambrill Park Road, Frederick, Maryland 21702. He was sworn in by Chairman Farrell.

Mr. Cogswell had concerns about the zoning, and he expressed them in a letter to the Board of Appeals. He believed his letter should be made part of the record for the hearing. He also questioned the site plan distances, and he questioned the address as being incorrect.

The next caller was Mrs. Jane Cogswell, 9640 Gambrill Park Road, Frederick, Maryland 21702. She was sworn in by Chairman Farrell.

Mrs. Cogswell had safety concerns because of the possibility of a collapse of the tower. She said the engineer said the tower would **likely** fall within sixty feet of the base. She also expressed concerns about pieces or parts falling from the tower. She expressed concerns about the road (Gambrill Park Road) being closed during construction.

Chairman Farrell allowed the Applicant's representative, Mr. Rapisarda an opportunity to respond to the citizens' concerns.

Mr. Rapisarda said he would address the safety concerns. He began with the fact that there were other towers (10 to 12) in the area, some over 180 feet. The Potomac Edison tower has been in there for over 30 years. He believes this somewhat refutes the generalized complaint of using better locations since the towers have a history in this location. He questioned Mrs. Cogswell's wording that the tower if it failed, would **likely** fall within sixty feet. Mr. Rapisarda refuted the word **likely** and read the wording from the letter from Sabre Industries: *"This would effectively result in a fall zone of less than 60' at ground level."* He said this was a fall zone certification letter and met the requirements.

Chairman Farrell said that the proposal is for a replacement tower, which is relevant in this proposal. He then opened the discussion for comments and questions by board members.

Mr. Brown raised questions about the safety of construction details during the actual construction. The issue of safety during construction was raised by Mrs. Cogswell.

Mr. Rapisarda responded that the construction details, using equipment, cranes for the actual construction is a separate issue and not addressed in the request before the Board.

Mr. Brown, If the project moves forward, will a site plan go before the planning commission?

Mr. Desa, the Zoning Administrator, responded that the project would go to the planning commission

Mr. Brown, In the letter from Sabre Industries, they site wind speeds and ice thickness as thresholds with their proposal. Are these thresholds standard?

Mr. Richard Marquiss, these towers are designed with wind, miles per hour and ice loading. Sabre will examine the location, upslope, etc., to determine the needs.

Mr. Rapisarda added that the code determines the standards. He added that the codes have changed, and the codes for the tower being replaced are not identical to the current codes.

Mr. Greenwell spoke about the proposal going to the planning commission, so the BOA should focus on the use of the facility and not the construction.

Chairman Farrell asked staff about the ordinance which stated 1 foot for every foot of tower height. He said that was for residential, so are residential properties considered with this request?

Mr. Desa, the Zoning Administrator, answered this is not a residential property.

Chairman Farrell questioned staff about the zoning ordinance setback under item R2, which is determined by engineering standards. He asked Mr. Rapisarda if he was referring to those in the code or engineering standards?

Mr. Rapisarda answered, saying he was referring to the ones in the code, but that section of the code refers to residential properties. In this case, because it is not a residential property, it would be determined by the approval body but shall not be less than the fall zone of the tower as defined by engineering standards.

Chairman Farrell ask if the board members had any more questions or comments.

Mr. Lawton asked that since this was a reconsideration, we should ask some basic questions. One being why the tower is in this location, what other sites were looked at, and why were they not chosen? Another question that should be asked is why not just move it farther away. Was there an environmental study, will there be a clear cut, and what will the site look like after the replacement?

Mr. Rapisarda answered. He said the questions were addressed in the file that was submitted in the original packet in March. This is a replacement; there are no alternative sites, except what we already changed, moving the tower farther away from Gambrell Park Road. There was a forest conversation plan completed that is done post zoning process. This was also part of the design process. He then went

through the exhibits originally submitted. Explaining the issue of the tower location, First Energy is operating not within the parcel, but within the area they lease within the parcel.

Chairman Farrell said he was the dissenting vote at the first hearing, and that vote was related to the fall zone. He is comfortable with the testimony of engineering related to the current fall zone of the proposed tower.

Chairman Farrell said if there are no more comments by board member, he would be open for anyone that wanted to make a motion.

Motion: Mr. Bohrer moved to approve case B-20-26. Mr. Greenwell seconded the motion. The motion was approved with a four-to-one vote. Mr. Lawton cast the dissenting vote.

The Board took a brief recess at 8:53 pm.

B-21-10

Brian Barrows (B265287)

Chairman Farrell said this was an appeal case, so the procedures would be slightly different.

The case would be presented by Mr. Tom Sinton, Assistant County Attorney, representing the Zoning Administrator.

Mr. Barrows was appealing a ruling by the Zoning Administrator that determined that "*Gunsmith use is not permitted as a Home Occupation with No Impact*," Case File V265142

The property is identified as 9033 Allington Manor Circle West, Frederick, Maryland 21703. Tax Map 0086 Parcel 229, Tax ID# 28573774. Zoning is Planned Unit Development (PUD) size .19 acre

Chairman Farrell issued the witness oath to Mr. Tom Sinton.

Mr. Tom Sinton testified that the hearing was an appeal. The Zoning Administrator determined that gunsmithing is not a home occupation with no impact.

Mr. Barrows wants to operate a home occupation in a residential property. The business would be gunsmithing, with sales and manufacturing. Gunsmithing, sales, and manufacturing are not in the use table, and if not in the use table, the use is prohibited. This is under section 1-19-5.310.

There are exceptions. One exception is when permitted in any zoning district by state statute, but there are no relevant state statutes. The second exception is when the Zoning Administrator determines that the proposed use is similar to a particular use that is permitted. The Zoning Administrator found that the only comparable uses are sporting goods (sale of guns) or Limited Manufacturing and Assembly .

The Zoning Administrator was not saying the proposed business cannot be allowed in the County; it is allowed in other permitted zoning areas. But neither of the comparable uses are allowed in a residential PUD district.

The Zoning Administrator found that the gunsmith use is not permitted as a Home Occupation with No Impact.

The Zoning Administrators' decision included Section 1-19-8.240, which is related to home occupation. Part of that section states that sales must only be incidental to the home occupation, which does not describe this case.

In the Applicant's application and in his letter to the homeowner's association, he states the business would include online sales, outdoor equipment, gunsmithing, dealing of firearms, and retail sales. He says in-person sales at his property may occur, and inventory would be minimal.

Related to the business of gunsmithing, there was no mention of cleaning products, hazardous materials, and or disposal of used products. What is mentioned is firearms and selling.

Mr. Barrows was not told he could not operate a proposed business of gunsmithing . The business is allowed, but it must be done in an appropriate zone. Mr. Sinton argued that the Zoning Administrator did not make an error in his decision.

Chairman Farrell asked who would be speaking on behalf of the appellant.

Mr. Noel Manalo, Miles and Stockbridge P.C., 30 West Patrick Street, Frederick, Maryland 21701, represented Mr. Barrows. Mr. Manalo said the appellant, Mr. Barrows, was also present and available.

Chairman Farrell issued the witness oath to Mr. Manalo and Mr. Barrows.

Speaking

Mr. Noel Manalo, Miles and Stockbridge P.C., 30 West Patrick Street, Frederick Maryland 21701
Mr. Brian Barrows, 9033 Allington Manor Circle West, Frederick Maryland 21703

Mr. Manalo said he wanted to speak to some procedural items, the notion and the definition of the use that was in front of the Board, and the home occupation concept.

Related to the request, under the County zoning ordinance, all questions of interpretation and enforcement shall be first given to the Zoning Administrator, second to the Board of Appeals, only on an appeal, from a decision of the Zoning Administrator, and recourse from the decision of the Board of Appeals to the courts. This is relevant to the process because this is a formal request.

The proposed use is gunsmithing. He described the use, reading from submitted paperwork, *"The Applicant would take delivery of customer firearms and service them at the property... the Applicant would utilize outside vendors for delivery of parts, materials, cleaning products and other items necessary for firearms repair and assembly. None of the products use on site are hazardous/will not require special environmental permitting."*

"The Applicant would operate the gunsmith use under the laws, rules and regulations governing a Federal Firearms License (FFL) which is required for the proposed use. Before commencing business, the Applicant must obtain the Type 1 FFL by undergoing the comprehensive FFL application, review and approval process."

“As part of the proposed use under an FFL, the Applicant’s business would also involve facilitating the purchase of firearms parts for customers, as well as assembled firearms. Under the FFL regime, such transactions require an FFL. Therefore, if one of Officers Barrows’ existing customers purchases a firearm online from a third party, as the FFL, Officer Barrows would complete the in-person paperwork with the customer at the property; in such transactions, Officer Barrows as the FFL is not the seller, he would only be charging a nominal FFL fee. The function is similar to Public Notary services, whereby Officer Barrows is authorized by applicable law to sign and facilitate documentation required for certain commercial transactions. The FFL transactions are incidental to the gunsmithing business.”

Mr. Manalo said that it is important to understand that to have a gunsmithing business, you need to have an FFL under federal regulations. As a gunsmith, the FFL can also have retail use, but his primary business would be gunsmithing.

Mr. Manalo then talked about a home use, (reading the ordinance), saying this meets the definition of home use. Residential use and home business, like painting and photography, he believes are good examples. He posed the use as similar to other home occupations.

Mr. Manalo said there are probably home occupations that are occurring, with no permitting. He gave examples, like daycare, music lessons, etc., saying these home occupations have probably expanded while people are working from home. However, the FFL requirements require compliance with local rules and regulations. Therefore, Mr. Barrows needs a permit from the County to apply for his FFL license.

He said that gunsmithing is the use, designing, repairing, and making firearms. Office Barrows has that skill set, and he needs the FFL to conduct his business. Yes, there would be incidental sales because the FFL allows that, but gunsmithing would be his primary business.

He said that if a customer comes in with a weapon that cannot be repaired, the FFL will allow Mr. Barrows to purchase a comparable weapon for the customer. Additionally, he can then facilitate the sale/transfer. As a gunsmith, you need an FFL, and the government set it up that way.

The retail sales are incidental; his primary concern is gunsmithing. He addressed the chemicals, saying that the products used are not hazardous, similar to household products.

Mr. Manalo concluded by stated that gunsmithing should be permitted as a home occupation. In order to get the FFL, they need a permit from the County.

Mr. Brian Barrows thanked his attorney and the Board for their time.

Chairman Farrell ask if there were any callers.

Mr. DeSa said they had people in the queue.

The first caller identified herself as Michelle Laskowski (spelling?), her address is 7039 Allington Manor Circle East, Frederick, Maryland 21703. She was sworn in by Chairman Farrell.

Ms. Laskowski said she was a board member of the Kingsbrook Homeowners Association. She said other members of the HOA were also listening. They were concerned with what was going on; they had not received a letter and were unsure of what was going on. She said they had received an email in February that asked if they had any objections to the business license. They repeatedly responded, asking what kind of business. She said she was happy to attend the meeting, and her understanding is that the homeowner wants to have a business of repairing firearms, for which he would need an FFL. The FFL would allow the selling of firearms. She questioned the Board, wanting to know if there is a zoning difference between fixing guns and selling them to people? Or, if he decides he does not want to fix guns anymore and then just becomes a dealer? To her, that is a big difference in how you could use the FFL as a business.

She asked about the possibility of receiving the letters and other information sent to the Board of Appeals. The HOA would like the information, being responsible for the homes in the development, as well as doing their responsibility to other home businesses, meeting the homeowners' needs.

The caller identified himself as David Tucker, 9031 Allington Manor Circle West, Frederick Maryland 21703. He was sworn in by Chairman Farrell.

Mr. Tucker said Brian was a good neighbor, and he is not opposed to what Mr. Barrows is trying to do.

The next caller identified herself as Mary Neubauer (spelling), 6915 Taran Court, Frederick Maryland 21703, which is in the Kingsbrook subdivision. She is also an HOA board member.

She repeated the concerns about the application (that Michelle Laskowski had voiced) and what was being said, and what necessarily could occur. She said they did not want guns going in and out of the home at all hours. Community members that do not attend meetings could be unaware of the Applicant's proposal and his intentions.

The next caller was Mr. Ralph Segares (spelling), 5320 Henden Wood Lane, Frederick, Maryland 21703. The witness was sworn in by Chairman Farrell.

Mr. Segares said he has a home business, real estate investing. He went through his family's military history, including himself and his daughter. He supports Mr. Barrows's business, saying the Board should not make presumptions if he is not doing anything illegally.

Chairman Farrell opened the floor for rebuttal, first to Mr. Sinton, then to Mr. Manalo.

Mr. Sinton stated that Mr. Desa did address the questions posed by the Applicant. Gunsmithing, sales, and manufacturing are not in the use table, and if not in the use table, it is prohibited. This is under Section 1-19-5.310. Mr. Barrows is not being told he cannot have a gunsmithing business, but it cannot be a home occupation in a residential district. Having an FFL does not overrule the local zoning ordinances. It's not an appropriate business in the residential zoning district.

Mr. Manalo first thanked the public speakers and then reiterated that the Board was to determine if the Zoning Administrator made the correct decision about the gunsmithing use permitted as a home occupation. A favorable result at this hearing, at this time, would not allow the Applicant to obtain an FFL. A favorable result at this hearing would still require an application for a home occupation use of

gunsmithing. He believes that gunsmithing should be allowed/permitted as a home occupation. He added that there are no carve-outs, for gunsmithing, in the regulations.

Mr. Farrell asked Ms. Kathy Mitchell, Senior Assistant County Attorney, to review the boards' responsibility and description in this matter.

Ms. Mitchell said the Board's responsibility is to decide if the Zoning Administrator's decision was made in error. Was his decision wrong in saying that gunsmithing is not allowed in Frederick County in a residential district?

Mr. Greenwell asked a question of Ms. Mitchell, stated that if someone purchased a gun in Virginia, the FFL would allow retail sales in firearms. This seems to be where the objections are centered. Can the application be qualified to consider that he won't be involved in retail sales, except for the repair business?

Ms. Mitchell, we do not have the application. That could be done, but that would be a re-application that is not in our purview. The FFL has nothing to do with this process because the feds do not have any zoning authority.

Mr. DeSa said the application was denied because of what was on the application. The applications received include details of sales and manufacturing. Therefore, they were denied. Gunsmithing is the repair or altering of a firearm and then returning the firearm to the owner.

Mr. Greenwell asks Mr. DeSa, if gunsmithing, without sales of guns or manufacturing of guns, would be allowed as a home occupation.

Mr. DeSa, the repair of a trigger, stocks, etc., would be allowed. The applications we received included sales and manufacturing and assembly, which is not allowed.

Chairman Farrell asked to clarify without retail sales, transfer, etc. if Mr. Barrow only wants to repair guns, would that be allowed in the zoning district he is asking for.

Mr. DeSa, purely gunsmithing would be permitted. Transfers are retail sales and are not allowed as part of a home occupation.

Chairman Farrell, you said no transfers. What if he is just facilitating the purchase from someone else.

Mr. DeSa, that is a sale, a retail transaction, which is not permitted.

Mr. Greenwell, if he is facilitating the brokerage, of that sale, from another state, is he the broker?

Chairman Farrell gave an example of himself inheriting firearms located in another state. The firearms are transferred from the state to an FFL holder in Maryland.

Mr. Bohrer, transferring a firearm is the regulation; transfer is like a sale. You don't need an FFL to work or repair guns. Gunsmithing businesses often have FFL only to facilitate the movement of firearms from state to state. You cannot mail a gun without an FFL. You cannot go to Virginia to buy a gun; that is

illegal. If someone leaves you a weapon and they live in another state, they need an FFL to transfer the weapon, which is the language that includes sales. An FFL allows you to sell firearms.

Chairman Farrell addressed the issue that, from what he understands, selling firearms is not allowed, referring to what the Applicant is asking for.

Mr. Bohrer, if a carve-out is requested, the language should include sales and transfers. In the past, most of the gunsmiths worked out of private residences with FFLs. However, they operated in rural areas, not in residential homes.

Mr. Brown, to Mr. Bohrer. Have there been other complaints in Frederick County?

Mr. Bohrer, the Federal Government, cracked down on these several years ago because of the number of FFLs but I am not aware of any current issues in Frederick County.

Mr. DeSa, for the record. The County has been audited by ATF (Alcohol Tobacco and Firearms) where home occupations for gunsmiths exceeded their license, with manufacturing, etc. They had to be brought into compliance. These are home occupations for gunsmithing that have exceeded their authority.

Chairman Farrell asked Ms. Mitchell a question related to the original application about problems that caused the application to be denied. Suppose the permit application was re-submitted in the correct manner, as we have heard during this hearing. Could that be approved?

Ms. Mitchell said that Mr. DeSa would have to answer that question. She said the only decision the Board must make tonight is, did the Zoning Administrator make an error when the application was denied.

Chairman Farrell, our decision tonight is, did the County make an error, with the application they received, at the time of the application? If we were to make a decision based on what we heard testified to, that could that be a separate issue?

Mr. Lawton commented that if the business is allowed, that will open the door to sales. For that reason, the Zoning Administrator made the right decision.

Chairman Farrell opened to any more comments and questions from board members. Can we have a motion?

Mr. Barrows, the Applicant, asked if anyone had any questions for him.

Chairman Farrell said he did not think there were questions. He thanked him for his service.

Chairman Farrell made a motion that the Zoning Administrator did not commit reversible error in this case, and we support the decision made by the Zoning Administrator.

Mr. Lawton said if the motion includes denying the appeal, he will second the motion.

Chairman Farrell said denying the appeal is part of the motion.

Chairman Farrell asked if there were any more discussions or comments.

Mr. Greenwell commented that the Board of appeals did not decide that gunsmithing business is not allowed, but it was not allowed with the application that was submitted.

Chairman Farrell said that was the motion.

Mr. Brown asked that if denied, could the Applicant re-apply with a different language?

Chairman Farrell asked Ms. Mitchell for clarification.

Ms. Mitchell said that could occur; they could re-apply for a home occupation license.

Chairman Farrell asked Mr. Brown if he was in favor of the motion.

Mr. Brown said he wanted to discuss the issue, comparing violin repair, and saying that the word gun seems to be the problem. He said he could see both sides while understanding that the sales are an issue, creating a larger problem. He believes it is a gray area.

Mr. Greenwell said if you take the word gun out of the discussion, you still have the word retail sales. You can repair violins but cannot offer a line of violins. It is the retail sales and manufacturing that is the problem.

Chairman Farrell called for a vote. The motion was approved unanimously, denying the appeal, with all members present voting.

Adjournment

There being no additional business before the Board, the meeting was adjourned by Chairman Farrell at 10:29 pm.

Respectfully Submitted
Michael A. Paone, Planner 1