

Apr 4-8-15

Pemberton Township Municipal Building
500 Pemberton Browns Mills Road, Pemberton, NJ 08068
Regular Meeting Minutes
March 11, 2015
7:37 PM

MEMBERS:

Timothy Haines, Chairman
Albert Hopkins, Vice Chairman
T. Stephan Thompson, Board Member Sec.
Alfred Green
Robert Bailey
Russell McLaughlin, Jr.
Thomas Besselman
Peter Gordon, Alt. 1

CONSULTANTS:

Nancy Abbott, Attorney
David Banisch, Planner
Robert Mannix, Engineer

STAFF

Donna DiPalma, Business Secretary

ANNOUNCEMENT: NOTICE OF THIS MEETING WAS ADVERTISED IN ACCORDANCE WITH THE OPEN PUBLIC MEETINGS ACT. BE ADVISED THAT NO NEW APPLICANTS OR WITNESSES SHALL BE HEARD AFTER 10:30 P.M.

Meeting called to order.

Pledge of Allegiance.

Roll Call: Hopkins, Thompson, Green, Bailey, McLaughlin, Besselman, Gordon and Haines were present.

MATTERS FOR DISCUSSION AND/OR FORMAL ACTION:

- 1.) Public greeting and invitation to comment on matters not on the agenda.
(no public comment)
- 2.) Banisch, Board Planner and Mannix Board Engineer were sworn in by Abbott, Board Attorney.
- 3.) Schneider, Block 277 Lot 1, 3 Pecan Lane for side yard setback, distance between structure and lot coverage variances for an accessory structure in an R-200 zone.

Paul Detrick Esq. represented Mark and Svetlana Schneider, 3 Pecan Lane for an application for bulk variances; the application indicated that property is in the R-80 zone; they were originally advised that was correct but after further study they have been advised that it is the R-200 which changes to some extent the nature of the variances needed; minimum lot size in the R-200 zone is larger than the R-80 zone; they need the same variances with some slight differences; it doesn't change where they would like to put the structure unless they are going to tear down a lot of trees or other existing improvements; Svetlana was sworn in testified that she resides at 3 Pecan Lane; the application is to place an accessory structure 15' x 36' as indicated on the survey submitted; it is to shelter a boat over the winter season; the size is based on the size of the boat that they own already; the currently keep it in the water in the summer and then this past winter they had to pay a marina to keep it indoors; in the summer when they put in fresh water they have to bring the boat home and it's where they store the boat if they are not going to be using it; her husband backs it into that location on a trailer with his truck; they couldn't move it back because there is already a shed there; the area between the existing stone driveway and the proposed area and shed there are 35' evergreen and oak trees; she does not intend on removing trees; the area they want to put it is a naturally cleared area; on the survey on the line where the boat is going to go there are thinner evergreen or arborvitaes and then the very full thick ones are further down the driveway and it naturally fits in there without disturbing any trees or shrubbery; there is also a garage on the lot and

right on the front of the pavement edge there are 30' Leland cypress and someone to the right side of the existing stone driveway she has four of them also; in the area that appears to be open there are three vegetable garden lots that are about 12' x 8'; there is also a play set for her daughter.

Detrick described the photographs that were entered into evidence; photographs were entered into evidence as A-1 through A-7.

Banisch asked what the building that looks like a garage with an apartment above it was.

Schneider stated it was the 497 square foot frame garage at the end of the existing stone driveway; they used it to house cars but now they use it for pool equipment and the second floor is a gym.

Detrick asked Schneider about the survey and the second concrete driveway that leads to the house; Schneider confirmed that it leads to a two car a garage; to the right of the driveway that appears to be an open space is heavily planted area with bushes and specimen plants like hostas and annuals; to the right is a stone driveway where she keeps her car at times; from the right edge down toward the property line it slopes down; they have one neighbor which faces W. Lakeshore Dr.; the house is angled away from her property; the neighbor has some shrubbery, oak trees and a chain link fence, an aluminum fence and there's a stockade fence that it owned by the neighbor further down which all have wild vines or grape leaves growing on them; Schneider stated that if it were approved she would install move arborvitae around the structure.

Detrick described Exhibit A-8 as a rendering of the structure; Schneider confirmed that it was taken off the internet; her structure would be narrower and completely open on all sides; there would not be any walls.

Detrick asked Schneider if she was asking for it to be closer to the property line because there is no place on the property other than that where they could put it without either cutting down trees or ripping up driveway or moving structures; Schneider agreed.

Abbott asked about the type of boat.

Schneider responded that it was a 22 ft. pontoon boat possible 14' wide; the size of the carport was based on the size of the boat and trailer.

Detrick stated that the survey shows that at its closest point the setback for the house is 25.3'; required front yard is even further that the 34.1' they are proposing; Schneider agreed.

Detrick asked if the shed was movable; Schneider responded that it was on a foundation.

Bailey asked about the foundation; Schneider responded that the foundation was for the shed and not the proposed structure which will not have a foundation.

Besselman asked how the new structure would be attached to the ground; Schneider said it had steel or aluminum poles that she thought it would have concrete footings; it would not have a slab.

Besselman asked where the door to the shed was; Schneider responded that it faces the frame 497' garage.

Hopkins asked how it would be anchored and was concerned that it would become a big sail; putting poles in concrete didn't seem to be enough to hold it down.

Detrick stated that it would be professionally installed.

Mannix stated that it didn't appear to be a heavily reinforced structure; the picture showed a bottom rail; Schneider responded that it was aluminum and driving around town they are all over the place.

Mannix stated that the picture shows a bottom rail.

Thompson asked about the picture showing a yellow roof; Schneider responded that theirs would have a green roof.

Banisch reviewed the photographs described the neighbors house; two windows on the first floor and a dormer on the second floor; and that there was some habitable space that enjoys light with a view out of the window; where they back the boat there is a driveway that extends to the garage and with the length of the garage they might be able to cover a portion of the boat and driveway; one benefit of that location would be screening for the neighboring property; reviewed the ordinance; the 25.4' house setback was

non-conforming and in the R-200 zone the setback is 40'; the proposed 34.1' setback is also non-conforming; a variance is needed for the side yard and front yard; in section 190-16C 3 travel trailers are to be parked in the rear or side yards; 190-16C 2 requires that no more than one residential tool shed not to exceed 200' floor area; referencing exhibit A-6 there was some testimony about where the car is parked and that would be an inappropriate location for the boat and it shows why; stated that it was a pretty nice yard and that one tree looks like a dogwood that blooms; he asked the applicant to what extent the easterly side of the neighboring house enjoy a view of the lake from any of those windows discussed earlier; it appeared a difficult visibility given the Leland cypress; asked the applicant where she thought the adjoining neighbor has views of the lake from their dwelling.

Schneider responded that neighbor has a large swimming pool and they can see the lake over the back part of her in ground pool area and straight back; their area of the lake is like a lagoon; the other side of their house is another neighbor; they don't really have a view from the bedrooms on the side of house; they have a view of the lake from the back of the house.

Detrick asked to what extent the structure would block their view; Schneider responded that she didn't think they could see the lake with the trees that are there from the side of the house.

Banisch stated that one of the things to consider was the degree to which this type of storage in close proximity to the property line may not be completely shielded from view and what negative impact having the boat stored on the property line would mean; reviewed where he proposed an alternative location to the right 10' and 6' to the rear.

Detrick responded that it would block access to the garage.

Abbott asked about the frame garage being used for pool storage and a gym; Detrick responded that it does have garage doors and they didn't want to surrender the possibility of keeping the structure as a garage.

Mannix proposed relocating the plantings, shifting them over to the 10' setback but they may have to move the 80 sq. ft. shed and take a row of plantings out.

Schneider responded that she was concerned about the garage from the beginning because she loves her yards she is the one that planted all of those trees and she was not willing to take out anymore of her trees for anything else.

Haines was concerned that if they approve the temporary structure the temporary structure can be moved within a day or torn down and then a permanent structure be build 2' from the property line which would be very different and more imposing; wanted it to limited to this structure but as a condition if it is not this structure they have to come back.

Abbott responded yes; suggested going further and having it limited to boat storage and if the boat is no longer in existing then it is to be removed; avoiding a large truck or lawn equipment being stored there.

Schneider agreed to that.

Detrick commented that they were not aware of the issue of the different zoning; so the front yard setback was not something he looked into; he thought the front yard in the ordinance was defined as the distance from the building to the road and there is an argument that even though the required setback is 40' there is an existing condition and on this lot the existing front yard is 25.3' and not putting an accessory structure in the front yard; they are requesting a 34.4' setback; his client would be accepting of any condition to have additional planting along that side yard; their argument for the variance is that they feel that the proposed location is the only place they can put it; they feel that cutting down or trying to move trees of that size is impractical; locating on top of the driveway is impractical; do not want to damage the trees or render the garage inaccessible; they do not feel that it negatively impacts the zone because it is well screened; does not interrupt his view of the lake; this property is surrounded on three sides by no neighbor; it is a hardship because of the existing improvements and existing location of trees and plantings; there is no other place to put the structure.

Mannix stated that the survey shows that the applicants brick pavers encroach

upon adjoining Lot 1 which is the lake lot owned by Pemberton Township; the survey also shows a wooden walkway on the plan submitted to the Board; Schneider said the wooden walkway was existing when they purchased the property but they did install the brick pavers. Mannix stated that the Board can not approve the encroachment of those brick pavers or wooden walkway by matter of it being on the survey as part of the application and the owner of the property could order you at any time to remove them and the fact that the applicant was before the Board for the accessory structure and that the survey shows the encroachments does not provide them any protection or right to keep those encroachments there. Detrick responded that the fact that it is shown on the survey and any action the Board would take is in no way approving or indicating that they are permitted and a point well made; they are not asking the Board to approve of that encroachment on Township land.

Application was opened to the public
(No public comment)

Hopkins stated that he was concerned about the size of the carport and wanted as a condition that it not be used for any commercial vehicles.

Abbott listed the conditions as no trees to be removed; arborvitaes shall be planted around the structure on the property line; the structure shall be inspected by the construction code official; granting of the variances is limited to the use of the structure for storage for the boat as testified to and the structure as shown in exhibit A-8 shall not be used for storage of anything other than applicant's boat and trailer.

Banisch suggested that it be conditioned that it be painted all green.

Hopkins commented about it being all green.

Haines commented about it flaking.

Hopkins suggested anodized aluminum; wanted the roof is green.

Green asked about the condition that this be the only structure that is allowed there.

Abbott the variance would be limited to what is shown in A-8 which is the rendition of the carport.

Hopkins asked if they got rid of the boat would they be abandoning the variance; to avoid building into a garage in the future.

Abbott stated that it would be limited to use as storage for a boat and trailer.

Haines stated he was ok with that; if someone sold their boat and bought one five years from now he wouldn't expect them to go through it again.

Hopkins doesn't want anything else in there.

Bailey asked about the drainage and water from the roof would it drain on the next property; Schneider said she believed half of it would go on their property and half would go on to other.

Mannix advised that depending on the amount of rain there could be runoff and it depends on which way the land naturally grades; they are not installing a slab but there could be a slight impact of stormwater onto the neighbor's property.

Abbott noted a standard condition that they put in many variance approvals; that all drainage shall be directed away from the adjacent property.

Mannix advised that it protects the adjoining property in the event that there is a complaint and the Township has a way to have the applicant take care of the situation.

Abbott advised that they are looking at three variances; side yard setback variance 10' is required 2' is proposed; front yard setback variance 40' required 34.1' proposed; distance between structure 10' required 2' proposed.

Banisch advised that they are also asking for coverage; they are at 5% for accessory coverage and going to 7.4%.

Hopkins asked if that include the pools.

Banisch advised it is accessory building; doesn't think pool qualifies as a building.

Hopkins asked if they were talking about impervious coverage as opposed to

buildings.

Banisch responded that the ordinance did not have a maximum lot coverage standard for the R-60, R-80, R-96, R-100 and R-200; he was thinking that in the Board's annual report it might be a question worth raising to the governing body as to whether or not they would like to have a total lot coverage standard; right now the ordinance has a principal building coverage standard and an accessory building standard but not a maximum lot coverage standard. Mannix stated that the 7.43% listed in the application includes the fountain and the in ground pool; if the garage, shed and carport only were counted it totals 4.83% accessory structure coverage and does not need a variance. Banisch suggested that for consistency with the table they apply the law as written; advised that the coverage be enumerated in the resolution.

Motion to approve with conditions by Hopkins; seconded by Bailey,

On the question:

Abbott reviewed the conditions; no trees are to be removed, arborvitaes shall be planted along the property line, the structure shall be inspected by the construction code official, variance is limited to use of the structure for boat and trailer as testified to and structure as shown in exhibit A-8, shall not be used for anything else but the applicants boat, the roof and supports of structure shall be painted green and drainage shall be directed away from adjacent property.

Thompson confirmed the roof and the supports to be painted.

Roll call: Hopkins, Bailey, Thompson, Green, McLaughlin, Besselman, Haines voted yes.

- 4.) Saville, Block 606 Lot 13, 23 Chippewa Trail for a use variance for engraving and etching of metal items including firearms in an R-96 zone.

Saville was represented by Mark Rinaldi, Esq.

John Saville was sworn in by Abbott.

Rinaldi recapped the application referencing the prior resolution which resulted in a denial of the application for use variance; the property is located in the R-96 zone; he has a previously constructed 448 sq ft shed/workshop; within the shed are various tools used for the sole purpose of mechanical engraving and etching; no chemical engraving and etching to date and none planned or intended; the last time the Board had expressed significant concerns about the potential level of firearm sales that could be carried out on the property and stored on the property; Saville has been doing is perfecting his art of engraving; as part of his training he is part of FEAGA; which is how he would become known as a master engraver; for any individual to handle anyone else's firearms they are required to have a federal firearms license; in order to get the license he needs approval from the Board; if the Board decides to grant this approval condition number one would be that he get his federal firearms license; the testimony that is different from what the Board originally heard is the steps that he has taken to make that workshop more secure to satisfy the Board's concerns; the insignificant number of times he would etch a firearm and would be the only reason he would have a firearm on the property; he is not a repairman; not a cleaner; not a servicer of revolvers; he is an engraver; in order to engrave even a portion of a firearm that contains a serial number the federal government requires him to have a license; one real issue in dealing with the Board's Council and Judge Bookbinder was the fact that once anyone receives a federal firearms license they are required to act as a facilitator; being a facilitator means that if one person wanted to sell a firearm to another person they would have to go through a process and would have to use a facilitator; the federal firearms license does not give him the option to opt out of being a facilitator; he has to do paperwork and submit it and waits for the background check to come back at no time does he have to take possession of the firearm; he just has to be the facilitator; he is not

interested in doing that; but he can not opt out of it; if someone came to him and wanted to buy a firearm and they were having it shipped from Remington; Remington would have to ship the firearm to Saville; Saville would not be able to release it until a background check was accomplished; he doesn't anticipate that happening but the Board needs to know that as part of the license he can not opt out; the federal government is looking for facilitators; they don't want people swapping title to firearms under the table so when they find someone like Saville that's interested in just engraving they take advantage of that and make him a facilitator; they are back because of a consent order that was entered into by his office and the Board Attorney and was signed by Judge Bookbinder allowing them to reapply; in basic terms is the same as the previous application but significantly differs from the first presentation.

Banisch asked if Rinaldi had given some thought to how the Board would condition the approval.

Rinaldi stated that he had nine conditions that he had written down but did not want to present them until Saville testified.

Banisch stated that one of fundamental concerns was that an establishment that he can conduct firearms purchases and sales in a residential district; questioned how they would overcome that burden of concern.

Haines asked Abbott if Rinaldi had done a complete review of the application. Abbott advised that May 8, 2013 the Board voted to deny the use variance for Saville; the Resolution was memorialized June 12, 2013; an appeal was filed with Superior Court; there were a number of telephone conferences between Rinaldi, Abbott and Judge Bookbinder; September 11, 2013 they had a closed session of the Board and the Board decided to allow Abbott to sign a consent order which would allow the application to be reheard by the Board; in August and September 2013 Rinaldi assured her that the new application coming before the Board would be substantially different from the first application as to the restrictions that he was proposing; one of the items that Rinaldi mentioned was the possibility of having the firearms disassembled except for the parts to be worked on.

Hopkins commented that the application is still a use variance the same type of use variance for the same purpose as the original application.

Mannix asked if it was a new application; Abbott confirmed.

Mannix advised that the Board had to ignore all of the testimony from the original application and the applicant at this time has to present their entire case; they can not rely on the previous minutes.

Hopkins stated that all of the Board members are the same members and the minutes from the previous meeting were certified.

Mannix stated that it is a new application that has to stand on it's own merit; the consent agreement allows the applicant to file a new application for the same proposed use.

Abbott advised that Hopkins was correct and that the minutes are part of the historical record; but would advise them against challenging the applicant with something that was said a year and a half ago.

Hopkins asked why the delay of a year and a half to bring it back.

Rinaldi responded that when he is not on the applicants side of the presentation he usually sits in the chair Abbott sits in and his experience was that it is good to put distance between the applications; the second reason was that Saville had done remarkable, expensive and very time consuming things although money is not a reason to ask for the approval; the third reason in that Rinaldi had lost two family members which took him away from his practice for a good six months; wants the Board to be confident that when Saville had testified he had testified honestly and the Board does not need to forget anything he said and if they want to question something he said back then he encouraged it; nothing that he said before was incorrect or exaggerated or design to mislead but it was inadequate.

Abbott stated that at the hearing in May of 2013 the Board had a number of questions and a number of concerns and reminded the Board that Saville was given the opportunity to continue the application so that he could provide the information and chose to go ahead with the vote.

Hopkins stated that Saville was very open and forthright when he spoke in front of the Board; there were fixed requirements as far as testimony which was not addressed.

Rinaldi reviewed what the applicant would agree to if the Board approved the application; approval would be conditioned upon making his federal firearms application and receiving a license and asked the Board to allow the use variance to stay in place; if he doesn't have a firearms license that the applicant be allowed to continue his non-firearm engraving and etching which would still require a use variance.

Banisch suggested that if he didn't get a firearms license than that would be it; any future etching to engrave firearms is extinguished.

Rinaldi advised that once someone applies for a firearms license if denied are not permitted to apply again.

Rinaldi agreed to whatever language the Board put in the resolution that this would not be a firearms store; there will be no signage indicating it's a firearms store; no inventory, no ammunition, no spare parts; nothing that would reveal that there is a firearm in the shop unless you walked in and caught him engraving a firearm; at the end of the driveway he would like to put a sign with the word engraving with an arrow so people don't knock on his door.

Banisch asked about internet advertising.

Rinaldi responded that there would be no internet advertising for firearm; it would be prohibited.

Rinaldi stated that the license lives with him not at the property; any use variance that is granted to him to engrave firearms would be extinguished when he leaves that property.

Banisch advised that was contrary to land use law; questioned how that would be addressed.

Rinaldi proposed there is nothing in the law to prohibit the applicant to agreeing that it would not run with the land and reasonable for the Board to make that exception; they would agree that it would be extinguished.

Abbott advised that the Board has done that in the past several times with churches and shopping centers where it was limited to the existence of a particular church under the terms of a particular lease.

Hopkins stated that if the person buying the house was a federal firearms dealer the Board would want to make sure that they would have to come back before they would be allowed to do a firearms business out of the property; the Board would be looking for a voluntary condition of abandonment of the property.

Abbott responded that it would be limited to Saville's use of the property.

Saville stated that when the federal investigators came out to look to see what would be his operation they asked him if he needed a variance; the State Police will also send the Township a letter and ask if he has permission.

Rinaldi stated there would never be any employees; it started as a hobby to him; he is working to become a master engraver; there will be no retail at all; he will not be selling ammunition; he will be selling nothing gun related; there will be no cash register; can't visit him and buy something; he could engrave something and pay for it; it would be by appointment only; and he agreed with Banisch that they would designate one parking space; there would not be anyone standing in his driveway; if they don't have an appointment he won't see them; there will not be any hours posted; the directional sign may be 6" x 18" that says engraving with an arrow; there will be no change to the property but he wanted to say that there will never be a complete firearm on the property; there may be some exceptions to that; suggested somehow fashioning a resolution that only under that rarest of circumstances would there be an assembled firearm; if someone showed up and asked him to work on a firearm the first thing he would have to do is see if it's loaded; if its loaded they are out and would not be his customer.

Banisch questioned the contraction that there would never be a complete firearm and only under the rarest circumstances.

Rinaldi stated that it would be a rare circumstance that there would be an assembled firearm.

Saville testified that he lives 23 Chippewa with his wife; he has a truck and a car and his wife a car; the property contains a horseshoe driveway; he has a full time job and the only way he could meet with people would be by appointment only after his job is finished or possibly on a Saturday; any time he is not in the workshop it is locked and the alarm is on; he tries to pull the vehicles over to the left and probably enough for room another two cars; the driveway is about 131'; the workshop is actually a shop not a shed; it's insulated the inside has plasterboard, its heated and air conditioned, has a concrete floor, a good roof, it was an Amish building that was put on a concrete foundation; it used to have doors with windows and replaced them with steel doors that have a highlight up top to let light in; are dead bolted and have a secondary lock on them so there are two locks in place; both entrances are alarmed; there are alarms on the windows, a motion sensor, a fire alarm that goes to a remote center where they call the police etc., it's separate from the alarm on the house so even if the alarm on the house is disabled the alarm out there is fully enabled; the windows are impact resistant, he has spent upwards of \$20,000.00 in upgrades to the building; there is a safe in the shop and the firearm would be stored in the safe any time he is not working on it; it's a combination safe; it's fireproof; no one else knows the combination; he has a lot of tools out there, engraving equipment, system for sandblasting and traditional woodworking tools; the workshop is in the backyard; the backyard is fully fenced in; he does metal engraving both hand and pantographic engraving; he does not do chemical engraving and agreed to make that a condition of approval; he does sand etching; and does laser engraving; he engraves jewelry, plaques, trophies, firearms are small part of what he does; maybe a couple of times a year; if he were to do a derringer which is a two inch barrel gun it would be about 80 hours of engraving; if someone else asked to do another firearm while he was in the middle of one he most likely wouldn't keep it there; it would be very rare that he would have a number of firearms at one time; it would probably be about 10-15% of his business; if he were even to charge someone \$20.00 and it takes him 80 hours it's a considerable amount of money; all the firearms would be hand engraved; he may have the whole firearm if they want the whole firearm done; a shotgun or rifle where it's easily disassembled he would ask to give him just that parts that they want engraved because he wouldn't want to be responsible for the rest of it; when he's doing his design he may need the whole firearm there to do the design; anytime he can he would have them just bring that part; the firearm will be stored in the safe; he does not repair or clean firearms; he would be required to be a facilitator; if he took possession of someone else's firearm it would be considered a transfer; a second type of transfer would be if someone purchases a firearm from a friend and needed the paperwork done or ordered it through an online dealer, it has to be shipped to a federal firearms dealer before they can make a transfer; then the federal firearms dealer has to do the paperwork by checking the permits, firearms ID card, drivers license, phone the instant background check system through NICS then once that approval is given he could allow that person to take possession of that firearm; he has to log the firearm into his book to show it is first transferred into his possession; his books are open for inspection at any time for the State; the highest charge he's seen for that was about \$50.00 most charge \$25.00-\$30.00; he's waited as much as 8 hours for a NICS check to come through for himself.

Abbott asked if she were to buy a gun in Pennsylvania then that gun dealer would ship that gun to him because he is licensed.

Saville responded that if he were the person that they were told to ship it to, then that person would ship it to him; he would have to have something set up where he would pick it up at FedEx or UPS and sign for it.

Abbott asked if she would come to him and he would give her the gun because they can't send the gun directly to her.

Saville stated that the only way that they would ship it to him is if they prearranged it with him; they wouldn't arbitrarily look in the phone book and send it to him.

Abbott asked if he was able to refuse to make the transfer.

Rinaldi responded that he can't; if the federal government says that they are permitted to purchase the firearm and the municipality says they can; he can't say no; he doesn't determine subject's credibility; he doesn't want to be a facilitator and he doesn't make any money as a facilitator.

Banisch asked if any time he takes possession that it's considered a transfer. Saville responded yes; it has to be logged into his bookkeeping system the day it comes into his shop and he has to take it out of the log the day it leaves his shop.

Banisch confirmed that because he wants to do this it is considered a transfer. Saville responded yes; it is the only license available to him; he talked to the ATF agent and asked if the Board could put a restriction on it so he can't become a gun store and they responded that they could.

Banisch asked if he would be authorized to sell a firearm.

Saville responded yes.

Rinaldi stated that he wouldn't be approved in this location and could be a condition of approval that he never privately buys a firearm for the purposes of reselling it; but he is so adamant about not doing that they had no object to it being a restriction as a condition of the approval.

Saville testified that typically they don't grant licenses of that type for residential areas.

Banisch commented that the restriction as part of the Board's approval would be by virtue of local policing of the condition of approval; it's not because the federal government is going to put a restriction on his license.

Rinaldi stated that they will not put a restriction on his license but the distinction was that he must be a facilitator; he is not required to be a licensed sales person of firearms; if the Board put a restriction on the approval that says he can't be a facilitator its over but the Board can put a restriction on the approval that he will not act in any way as a retailer; the federal firearms will allow that restriction and asked Saville if he had heard the restrictions that he had mentioned and if he would agree to them.

Saville responded that he would agree.

Rinaldi described the positive and negative criteria; asked if he knew of anyone in the general area that provided this type of engraving; Saville responded that he didn't know of any and mostly he would rely on word of mouth for business.

Rinaldi asked Saville about any trash that might come out of the shop.

Saville responded that there might some minute shavings.

Banisch asked about the hours.

Saville responded between 6:00PM and 11:00PM but firearms transfers cannot be done after 8:00PM; Saturdays he may work all day or just when he wanted.

Banisch asked about the safe.

Saville responded that the safe is in the shop; it is a liberty gun safe; it's got an hours worth of fireproof rating; it's about 24" x 24" deep by about 60" high; it can fit a shotgun, a long gun or a handgun in it.

Banisch asked about the percentage of business that was given.

Rinaldi responded that his percentage was based on the number of inquiries.

Abbott commented about putting the State Police and others on notice about the restrictions; they have in the past recorded a resolution with the County so that the resolution with the conditions listed in it would show up on any search having to do with the property.

Banisch referenced a case in Cox where the Appellate Division upheld the limit on the duration of a conditional use permit for an industrial operation to be limited to a term of years that coincided with a lease; in that case the Court found that the Board could not fully evaluate in advance whether the operation would be detrimental to the community and that they would be in a better position to do so after some years of experience with it; he suggested that it could be a condition to require the applicant to return to the Board after some period of time to further evaluate the negative criteria.

Rinaldi stated that he didn't think it was unreasonable since the applicant is willing to tie the approval to his ownership of the property but even before that if he loses or gives up his federal firearms license he loses the right to

have firearms on the property and he has no objection to that. Banisch cited a case where the applicant applied for a use variance to permit parking for a seven year period for 40 employee cars on the property of a gas station also operating as a non-conforming use in an office zone; in upholding the reversal of the Board's denial the court commented at the fact that the variance sought for a limited seven year duration provided assurance that the proposed use was not an ever expanding, never ending one; asked if the applicant would agree to a duration of time.

Haines asked about the condition that they not allow any sales of guns on the property and that federal firearms would agree to that.

Rinaldi responded that they would not agree to anything; but selling firearms it is not a condition of the license only being a facilitator of the transfer is something he must do; he is allowed to sell firearms but does not have to sell firearms and he agreed to not sell guns under the license.

Haines asked if they would be approving a firearms dealer in a residential neighborhood.

Rinaldi responded that he is not a firearms dealer; there is a significant difference between a firearms dealer and a facilitator; he has no interest in buying and selling for profit.

Banisch commented that one of the essential points of the concern is that the license is going to give him the right to sell firearms in a residential neighborhood.

Rinaldi responded that the Board could tell him he is not allowed to.

Banisch responded that it would be up to the municipality to police any approval that might be granted.

Rinaldi responded that the Board has someone testifying under oath that he will never act as a retailer; Saville will not buy and sell a gun for profit; he drafts resolutions all the time with specific conditions policing is always an issue; he has it happen to him all the time; he approves a shed no higher than 17' they build it at 18'.

Banisch responded that he isn't concerned if a shed is 6' higher than it should be.

Rinaldi commented he was not trying to compare a shed to a firearm; the punishment to Saville would be that he loses his variance.

Rinaldi stated that he can only become a master engraver if he is certified by FEGA and can't be certified unless he can engrave firearms.

Rinaldi continued to review positive and negative criteria; stated it was difficult for him to see any negative criteria impact upon the community; there will be virtually no change to his property other than a 6" x 18" sign with an arrow; there would be no other evidence looking at his property; from a safety aspect what he described in the workshop was safer than where he lives with the safety glass, steel doors, double dead bolt, motion detector, the alarm system on the doors and windows; no one is getting in and out; on the rare occasion that he even has a firearm there won't be any ammunition in the shed; the only positive affect this could have on the community he is going to be able to stay in a home where he's lived since the 1970's and he will be able to enjoy his property and hone his craft; he's the only game in town providing a unique service; members of the police force have asked him to engrave their firearms; he would provide a service to the community it otherwise does not have; if you took someone else in the community that owned a firearm legally and had it in their home they are not required to put it in a safe; not required to have safety glass, not required to have an alarm system; that house is creating more of a negative affect on the community than the workshop; probably more secure than any home in the community that can have a loaded firearm.

Thompson asked about FEGA and why they required him to engrave firearms. Rinaldi responded that it was Firearms Engraving Guild of America.

Saville responded that they are a firearms engraving guild; they are people who embellish firearms; there is probably one college that has any kind of engraving course that gives certification; he could take the master class but could never get the designation unless he could do firearms as well; they judge the engraving and he would have to carry the firearm with him for them to judge; described the rest of what they would look at on engraving plates

and firearms.

Thompson asked why he would need to be a licensed firearm dealer; he already engraved a gun and had shown the Board pictures of it; asked why he couldn't buy the gun; engrave it and show it to them.

Saville responded that they don't specifically state that but the point of becoming a master engraver is to be able to do it for other people.

Hopkins stated that there was other property available in the GCLI zone which appeared more appropriate for the type of business rather than a residential neighborhood; what makes this property unique.

Rinaldi it's not going to be a full time job; he lives at this property; he is not going to drive to another property in the municipality; it is unique because the workshop is there; all his tools are there; not just for firearms; his property which he has occupied since 1976 is perfectly suited for it; it's right in his back yard.

Banisch advised that if he went out and built something that is not permitted in the zone it does not uniquely qualify that piece of property; the applicant will need five affirmative votes to get a use variance approved; he had summarized what was required for the Board to grant a use variance for a use not permitted in a zone; the special reasons are generally derived from the purposes of zoning; he hadn't heard anything particular about this piece of property being suited for the use that he is seeking; they might want to take some time to think about the enhanced burden of proof where they explain the fundamental inconsistency in that the master plan hasn't recommended this use in the zone; read the home occupations permitted for that zone and that home occupations are services that are not uncommonly needed by residents of high density areas and limited what he described as a quiet class of professional uses; they had some work to do in addressing the enhanced burden of proof and in why the property is particularly suited for the use they are proposing and is not just a negative criteria argument.

Rinaldi responded that if a property owner creates their own hardship they shouldn't come before the Board and not his intention; the property is particularly suited because he made it so; it's not a hardship; even without the firearms he still would have improved this workshop; he disagreed with requiring an enhanced burden; they are requesting a use variance for a none permitted use; they are not asking for the zoning to change and not asking for manufacturing or retail; they asking for an enhanced hobby; there is nothing physical that will change the appearance of the community; no one besides the neighbors would know what he was doing; historically doctors lived upstairs and the practice was downstairs and there would be no physical change of the property by the granting of the use variance; there is nothing about the application to offend the zoning plan.

Hopkins asked about the alarm.

Saville responded there is an audible alarm and one that goes to the call center.

Hopkins asked how far away the alarm could be heard.

Saville responded that it was quite loud; about 1200 decibels.

Hopkins commented that there's a requirement under NJ statues for the alarm to be heard 500' away from the facility; by doing that and being heard on the lake that alarm would have to be heard all over the lake and a significant detriment to the peace and quiet of the residential neighborhood.

Saville responded that it is the same as when his neighbors alarm goes off inadvertently.

Hopkins commented that their alarm is not required to be heard 500' away.

Rinaldi responded that it may happen it may never happen; the good news would be that if someone tried to break in the alarm would go off the bad news that it would be loud.

Hopkins commented about his not have control over the amount of weapons shipped into him; if they decided to ship 100 weapons and took two weeks to clear they would be on the property and a large target; that he said he could not sell guns.

Rinaldi responded that the license would allow him to sell guns; Saville has testified that he won't and the Board could put that restriction on the approval.

Hopkins questioned that he had said he wouldn't advertise but if he was qualified under FECA wouldn't they give that information out. Rinaldi responded that he did not know but that he'd meant there would be no advertisement on the property; no internet advertising, no paper advertising; he would do no advertising; he couldn't control if FECA would refer work to him.

Hopkins asked if he would use business cards.

Saville responded that he would.

Hopkins commented that business cards are advertising.

Saville testified that it's not a money making thing; he is not looking for someone to transfer 100 guns into his shop; he would probably tell them to find someone else.

Hopkins said he used 100 as an example; it could be five or ten it could be one a week or one every day.

Abbott asked if he was able to limit the number of firearms that he would accept.

Saville responded that he could probably say that he wasn't available; he couldn't refuse outright.

Abbott asked if he could make himself not available for every request.

Saville responded that if he made that promise and never made a transfer they might look at it and tell him he wasn't doing what he's supposed to be doing.

Rinaldi responded that if a year went by and no one asked him to facilitate a transfer then he could honestly respond no one asked him; it only stands to reason that if someone wanted to facilitate a transfer of 10, 20 or 100 guns he couldn't imagine that he wouldn't be able to say that he was not qualified and didn't have the physical location or operation to take custody of 100 weapons; if the application is approved it would be conditioned upon a lot of things the least of which any firearms in his possession would be kept in that safe and if he can't put 10 guns in that safe then he can not accommodate that transfer.

Abbott asked about the Board putting a condition of approval limiting the number of guns in his workshop to two.

Rinaldi responded that if the approval limits the number of guns he can have then it limits the number of guns and that he may be unavailable to handle a transaction and that was unacceptable.

Abbott asked if the Board granted the variance with one of the conditions being that he could have no more than two guns in his shop at one time and he submits the resolution and they say that it is unacceptable they would have to come back to the Board.

Haines advised that they were going to stop taking testimony and open the application to the public.

Application was opened for public comment

Ricardo Tejado was sworn in and testified that he lives behind this property; he asked if the Board approved it would his grandkids or any kids be safe with him engraving guns; even though he said there won't be any ammunition his dilemma is that if they bring the gun or rifle complete and do have ammunition he would refuse it but it might fall and fire; he has his grandkids and doesn't want to lose them because somebody forgot to leave their ammunition home; he's been in the service and he knows how a lot of things could happen and engraving is a nice thing when you do something that is not a gun so his question is if it going to be real safe to have his grandkids running around in back; he's heard people get shot for stupid things saying they didn't know it was loaded.

Saville responded that he didn't see that as a problem; he would tell them it has to be unloaded; he didn't see any greater danger than anyone else leaving their home to go hunting; they have to be in a case which has to be locked; he can't accept anything unless it was unloaded; and there was no way kids would get in his shop unless he lets them in.

Tejado commented that he'd been in the service for 15 years has seen people who have weapons; they may say one thing and do something else.

Rinaldi commented that based on his hourly rate and number of hours he

himself couldn't afford to have a weapon engraved; his clientele are going to be more professionals who use weapons every day, law enforcement and avid collectors doesn't expect the casual gun order who want to add bling because its very expensive; he's already been approached by law enforcement, responsible people.

No further public comment

Haines advised Rinaldi that they were past the 10:30 PM time limit for new testimony; asked if he was ready to finish with his presentation and have the Board make a motion or ask for a continuance to come back next month.

Rinaldi responded that he was finished.

Hopkins commented about hearing a lot of information and that he's been told of things the Federal Firearms Administration has said; there's a lot of technical information; in the past where he felt he needed to contact the agency directly to verify information he has; he had some concerns; he didn't think they had heard all of the testimony that needed to be heard.

Motion to continue by Hopkins; seconded by Bailey

On the Question:

Rinaldi asked what the continuance would be for.

Hopkins responded that there were many things that were said and further explanation was given later; he had concerns so he will listen to the recording; there are questions that he would like to ask the agency that issues the license about some of the restrictions that they could put on the license which would prevent some of the concerns that they had.

Abbott asked if there was information that they could give Rinaldi and Saville so that they could address it.

Hopkins responded that under a "d" variance there are very specific criteria that need to be addressed and that they have to hear that; which Banisch also pointed out; it would give them an opportunity to see if they can address that; he understood that he had done a lot of improvements to the property but he is asking for a use variance for a federal firearms license in a residential neighborhood and it raises great concern.

Rinaldi responded that the answers won't change; the testimony won't change; he has addressed why he couldn't do it in another area of the community and his answer and Saville's testimony won't change next month; if the Board is requesting postponement so that the Board can do some independent research under the federal firearms act he has no objection to that; if he was requesting a postponement because he wants to give the applicant more time to develop responses to the burden of proof and the standard he objects to that because he will have nothing further to offer them.

Hopkins responded that he would then withdraw his motion because what he finds out from the agencies won't be relevant.

Rinaldi responded no that he had said he would feel comfortable understanding more about what the agency will or will not restrict and had no objection to an adjournment for that purpose; doesn't want to mislead the Board or professionals that in a month he would have better answers for him; Saville had testified under oath; his answers were not going to change; he would waive the 45 day time period on which the Board has to act.

Hopkins asked Rinaldi about the concerns that the Board had regarding the conditions in order to be able to grant the use variance; he's heard Banisch iterate what was needed to be able to grant an opinion and asked if he felt that he could do anything to address that.

Rinaldi responded no; he believes that under the statute he has met the burden for positive and negative criteria; he can provide a service that this community otherwise doesn't have; the most important part of the application is that it will not create a negative impact on the community.

Banisch stated that was getting late; that Hopkins had opened the door for them to address things that he sees are missing from the presentation; he attached a copy of the purposes of the Municipal Land Use Law to his report and didn't really hear exploration of any of them relative to the proposal and would suggest that they may want to take a step back and think about this; maybe they would have something to say next month.

Rinaldi responded that if Hopkins wanted to proceed with a motion to adjourn so that he could further do the research he had no objection and if he thinks he could add something at the next meeting he will do it; he wanted to be clear that he was not going to ask the Board to give him more time to develop new arguments or new testimony; but would take advantage of the time if the motion is to adjourn for further investigation; and waived the time frame. Haines responded that if Rinaldi felt he was done he would prefer to end it now.

Hopkins responded that he would continue with the motion.
Roll call: Hopkins (yes); Bailey (yes); Thompson (no); Green (no); McLaughlin (yes); Besselman (yes); Haines (no).

Abbott confirmed the vote of four to three to approve to continuation.
Motion was approved to continue the application to the following month.

Rinaldi asked if he could community with Hopkins; Haines responded that all questions should go through Abbott.

5.) Minutes – February 11, 2014

McLaughlin noted that there was a correction; minutes referenced Haines' second on a motion.

DiPalma confirmed it should have reflected Hopkins.

Motion to approve minutes as corrected by Bailey; seconded by Green

All in favor: Aye
None: Opposed

6.) Comments by Board Members and Professionals
(no comments)

7.) Adjournment

Motion to adjourn at Hopkins; seconded by Bailey

All in favor: Aye
Opposed: None
Meeting adjourned 11:00 PM

Respectfully submitted by,



Donna DiPalma, Business Secretary
Planning Board and Zoning Board of Adjustment

Disclaimer: the above minutes are neither a verbatim nor a detailed version of the events of the meeting. Such detail is available on the legal recording of the meeting at the Township office during business hours.