

**TOWN OF EPSOM
ZONING BOARD OF ADJUSTMENT MEETING
Epsom Central School, Epsom, New Hampshire
August 30, 2023, 7:00 PM**

PRESENT

Ryan Kehoe, Vice Chair
Alan Quimby, Member
Lisa Thorne, Member
Prescott Towle, Alternate Member
Andrew Ramsdell, Alternate Member
Jason Johnson, Alternate Member

ALSO PRESENT

Keriann Roman, Esq., Town Counsel	Mike Keeler, resident
Jennifer Riel, Recording Secretary	Chris Pepin, resident
Virginia Drew, Board of Selectman Representative	Shane Bowen, resident
Chery Gilpatrick, resident	Anne Milligan, resident
Steven Rhoades, resident	Bill Achesson, resident
Patricia Rhoades, resident	Lisa Achesson, resident
David Goulet, resident	Karen Keeler, resident
Karen Goulet, resident	Justin Cloutier, resident
John Bisson, Esq.	Leon Cloutier, resident
Rob Topik, resident	Dana Gilbert, resident
Justin Guth, Code Enforcement Officer	Andrew Gilbert, resident
Joe Wysocki, resident	Sean Heichlinger, resident
Meadow Wysocki, resident	Zachary Heichlinger, resident
	David Killian, resident

CALL TO ORDER

Vice Chair Kehoe called the meeting to order at 7:00 PM.

Introductions were made of the Board members present. Vice Chair Kehoe asked Mr. Johnson and Mr. Ramsdell to sit on the Board as full members for this meeting.

APPROVAL OF MINUTES

Meeting of August 16, 2023 – Edits were made.

MOTION: To approve the minutes as amended. Motion by Mr. Towle. Second by Ms. Thorne. Motion passed, 6-0-0.

PUBLIC HEARING – Case 2023-06 Topik – Administrative Appeal Rehearing – Steven and Patricia Rhoades have been granted a rehearing of the Zoning Board's Administrative Appeal decision overturning the Planning Board's May 10, 2023 decision that a proposed Federal Firearms Licensed gun and sporting goods business was permitted as a home occupation in the

61 *Residential/Agricultural Zone in accordance with the Epsom Zoning Ordinances. The subject*
62 *property is located on Lena Lane within the Residential/Agricultural Zone and is identified on*
63 *Epsom Tax Map R01 as Lot 30-26.*
64

65 Vice Chair Kehoe read the public notice into the record. It was confirmed the public notice was
66 published in *The Concord Monitor*, and posted at the Town Offices and the Post Office; certified
67 letters were sent to abutters and all receipts were returned.
68

69 Vice Chair Kehoe explained the issue of standing for this case and stated an abutter needs to
70 present this case, which Mr. Topik is not an abutter by definition contained in the ordinance.
71

72 Town Counsel explained the issue of standing raised by Mr. Bisson as to whether Mr. Topik has
73 standing per the ordinance; she stated the Board can proceed with hearing the appeal David Goulet
74 has standing per the ordinance and could present the appeal. She stated if Mr. Goulet is not
75 comfortable, the Board will need to determine if they want to allow Mr. Topik to present. Mr.
76 Goulet stated he was unaware of this and would like to delay this hearing.
77

78 Mr. Topik requested a point of order. Vice Chair Kehoe granted the request. Mr. Topik questioned
79 if the Board has the appropriate information to make a determination on standing. Vice Chair
80 Kehoe stated evidence has been presented from both sides and there is adequate evidence to vote
81 on whether there is standing. He explained that if standing is not granted, the case is over. Mr.
82 Goulet stated if he is going to have to present the case, he is not prepared to present tonight and
83 requested a delay. Town Counsel suggested having the standing discussion, make a determination,
84 and then a decision can be made whether there will be a continuation.
85

86 Mr. Topik stated numerous people were able to speak at the last public hearing. Town Counsel
87 explained this is different than done previously as the Rhoades raised the issue of standing and it
88 has to be dealt with now because the concern has been raised; she clarified Mr. Topik could speak
89 in the public hearing but officially, the case has to be presented by an individual who meets the
90 criteria of per the ordinance. Town Counsel stated Mr. Topik addressed standing in his filings, so
91 he was aware of this issue. She reiterated her recommendation that the Board vote to determine if
92 Mr. Topik has standing per the ordinance.
93

94 John Bisson, Esq., representative for the Rhoades, stated the only person named in the appeal and
95 who has standing is David Goulet, who indicated he is not prepared to proceed. Vice Chair Kehoe
96 stated relative time for standing was made at the time the application was made and has to be filed
97 within a certain period of time; at the time the application for appeal was filed, the person who
98 filed it must have standing. Mr. Bisson stated Mr. Goulet was added after the time of the appeal.
99

100 Mr. Goulet stated we are here because the Zoning Board of Adjustment made a decision on the
101 case already. Vice Chair Kehoe clarified that the decision is null and void at this point; the purpose
102 of this rehearing is to determine if the home business is permitted. Mr. Goulet asked if there were
103 errors in standing at the previous case. It was clarified it doesn't matter at this point and that case
104 has no bearing on this case.
105

Vice Chair Kehoe read the four items for criteria for standing per the ordinance: *Four factors are considered when determining whether a non-abutter has sufficient interest to confer standing: (1) the proximity of the appealing party's property to the property for which approval is sought; (2) the type of change being proposed; (3) the immediacy of the injury claimed; and (4) the appealing party's participation in the administrative process.*

Vice Chair Kehoe granted Mr. Goulet and Mr. Topik's request to have a recess to discuss their options.

Vice Chair Kehoe swore in all present to speak.

Mr. Topik stated he doesn't want to present the appeal on behalf of Mr. Goulet if it is going to waive his right to contest the standing issue. Town Counsel explained if Mr. Goulet signs over his authorization for Mr. Topik to speak on his behalf, any decision will be made on Mr. Goulet's appeal. Mr. Topik stated he wouldn't present the case as he doesn't want to waive any of his rights; he stated he didn't have any notice this issue of standing is on the table. Vice Chair Kehoe stated a decision on standing is made by the Board based on the evidence presented and Mr. Topik can speak. Town Counsel stated if Mr. Topik is allowed to speak, the Rhoades will also have the opportunity to speak.

Mr. Johnson explained that if the Board does not find Mr. Topik to have standing, Mr. Goulet could still have the option to speak or request to continue. Town Counsel explained the continuance would need to be heard in a timely manner. Vice Chair Kehoe asked Mr. Bisson if the Rhoades wanted to continue. Mr. Bisson stated he doesn't understand why this public hearing is being allowed to go forward at this point. Mr. Bisson stated he doesn't know what he is consenting to. Vice Chair Kehoe explained the Board still needs to determine if Mr. Topik has standing and he is asking Mr. Bisson if they would be willing to continue if standing is not found.

Vice Chair Kehoe clarified that firearms must be treated as any other legal items in the state, per RSA Chapter 159:26, Title XII Public Safety and Welfare: *I. To the extent consistent with federal law, the state of New Hampshire shall have authority and jurisdiction over the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, firearms supplies, or knives in the state. Except as otherwise specifically provided by statute, no ordinance or regulation of a political subdivision may regulate the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state. Nothing in this section shall be construed as affecting a political subdivision's right to adopt zoning ordinances for the purpose of regulating firearms or knives businesses in the same manner as other businesses or to take any action allowed under RSA 207:59. II. Upon the effective date of this section, all municipal ordinances and regulations not authorized under paragraph I relative to the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearm components, ammunition, firearms supplies, or knives shall be null and void.*

The Board reviewed the criteria and discussed whether Mr. Topik would have standing per the ordinance.

- *Proximity of the appealing party's property for which approval is sought:* The Board agreed Mr. Topik's residence property is not in the cul-de-sac but he does own property in the neighborhood so there is some proximity.
- *The type of change being proposed:* The Board agreed that the proposed changes are for an in-home business; there won't be any external impact on the neighborhood.
- *The immediacy of the injury claimed:* The Board agreed there is no personal injury to Mr. Topik as it is a legal home occupation, regardless of the product and the character of the neighborhood is not going to be changed.
- *The appealing party's participation in the administrative process:* The Board agreed Mr. Topik has been involved throughout this process.

Mr. Bisson stated the reason abutters have protected status is because they are right there and could be directly impacted; he stated that is the point of standing. Mr. Bisson stated he doesn't know the exact distance Mr. Topik is from the Rhoades and proximity is not clearly defined in the ordinance. Mr. Bisson stated the standard for standing is not extended to all persons in the community who might feel they are hurt by a Board's decision pertaining to land remote to them; he stated they can come and participate but they cannot appeal and affect the neighbors' rights. Mr. Bisson stated Mr. Topik's statements indicated he is concerned about people with guns, and he is worried about any decision by the Board being de-facto ordinance change and affecting the whole town. Mr. Bisson stated this is about guns and not any other business; he stated it is about property rights for the Rhoades. He stated the Town's ordinance allows home business and reiterated that Mr. Topik does not have standing. Vice Chair Kehoe asked how far Mr. Topik is from the Rhoades property. It was agreed Mr. Topik is in the same neighborhood; the Board agreed it is not "quite remote" as suggested by Mr. Bisson. The Board agreed Mr. Topik's property is more than 200 feet from the Rhoades. Ms. Thorne agreed there is proximity as what would be happening to an abutter would be happening to Mr. Topik. Mr. Ramsdell stated the proximity is close. Mr. Johnson noted Mr. Topik has two properties in the area although one is a vacant lot. The Board agreed a home occupation is allowed but the appeal is on that. Mr. Johnson stated he doesn't see any immediacy of injury claimed as the increase in traffic is speculation.

MOTION: To find that Robert Topik has standing to present the case. Motion by Mr. Ramsdell. Second Mr. Johnson. Motion 4-1-0. Mr. Quimby opposed.

Vice Chair Kehoe opened the public hearing at 8:03 PM.

Robert Topik, stated the Zoning Board is in the administrative position to decide whether the definition of home occupation as proposed for a Federal Firearms Dealer business is permitted in the ordinance. He stated the FFL license the Rhoades obtained, includes gun sales, manufacturing, and gunsmithing; but the occupation does not meet the criteria for a customary home occupation. Mr. Topik stated there are one or two previously approved gun dealers in a residence in Town but doesn't believe that makes it customary and Mr. Rhoades's business is not necessary to protect the Second Amendment. He stated the home occupation has to be an accessory use to a residence. He stated a real estate business is different as sales are not in the home; gun sales are being proposed by Internet sales as well as at trade shows which are outside sales so its not a profession but a business. Mr. Topik stated home businesses have to have a

similar scope and impact as other businesses but that doesn't transform a use that doesn't meet the rest of the definition; he stated the purpose of zoning ordinances is to establish different zones for different uses. He stated the purpose is not to fill up residential zones with home occupations; he stated people buy in to a residential neighborhood with the expectation that the area would remain so; he stated when business use is mixed in it presents the occasion for controversy and development should be harmonious.

Vice Chair Kehoe read the Home Occupation ordinance into the record:

K. Home Occupations.

1. Residences may be used to house home occupations as defined under this Ordinance. It is the purpose and intent of this Ordinance to maintain the non-commercial character of the Residential/Agricultural Zone while permitting secondary business uses by a resident proprietor.

2. Home occupation shall mean such use which is not the primary use, but is secondary, accessory, and incidental to that of a residential dwelling; and

a. No more than two (2) persons may be employed or occupied in furtherance of the occupation or business at any one (1) location at any given time, excluding the one (1) resident proprietor.

b. Reasonably adequate lighting, parking and means of access and egress shall be provided to accommodate the particular type of operation.

c. Hours of operation shall be limited to no earlier than 8:00 a.m. and not later than 8:00 p.m., unless otherwise permitted by the Planning Board; no excessive noise, odors and smoke may be emitted so as to disturb the residential character of the surrounding area.

3. Consistent with this Ordinance, the resident proprietor may park one (1) vehicle and store tools and equipment necessary to perform an off-site service occupation, provided that the resident proprietor is regularly engaged in the occupation and further provided that the tools and equipment are stored indoors or in an operational, registered, and inspected vehicle and such use does not alter the character of the use as that of a residential dwelling.

4. A Non-Residential Site Plan Review shall be required to operate a home occupation. The applicant shall apply to the Planning Board which may grant or deny approval pursuant to the Town of Epsom Site Plan Regulations.

Vice Chair Kehoe opened the hearing to input from Rhoades.

Mr. Bisson stated the Board is quasi-judicial and has an obligation to be impartial and not prejudiced. He stated the main concern by Mr. Topik is about gun sales; he stated the Rhoades previously went through the proper process with the Planning Board to begin a home business. He referenced the Planning Board public hearing minutes of May 10, 2023, and stated the Board felt that with the evidence presented, the Site Plan was appropriate and approved. Mr. Bisson stated per the ordinance, a secondary business is permitted and there can be buyers and sellers going to a home, with delivery trucks coming and going, which would be allowed if it were a real estate, attorney, etc., or other profession. He stated the issue of traffic is a red herring as what Mr. Topik suggested, is not what is happening at this property; he stated the work being proposed is secondary use to the Rhoades living there. He stated the Rhoades will not be selling products at the home; the sale aspect is Internet sales and Mr. Topik is suggesting the customary language somehow prevents what is being proposed. He stated when the ordinance was written, it referenced dressmaking and there was no Internet. Mr. Bisson asked if the ordinance is stuck

with the exact professions originally used or whether Internet sales are not customary. He reiterated there is no retail establishment; there is not going to be a pile of guns for customers to buy.

Vice Chair Kehoe asked Mr. Rhoades to explain the specifics of how the business will operate. Mr. Bisson stated those details were covered in the public hearing with the Planning Board, and the decision was granted with conditions:

- *Customer pickup/delivery of firearms may occur only by appointment, Monday through Friday, 9:00 AM to 3:00 PM.*
- *Only one customer pick-up may be scheduled per week.*
- *Customer Firearms cannot be loaded at any time during the transfer.*
- *No discharging of customers' weapons on the property except in the case of self-defense.*
- *The Epsom Police Department shall perform all necessary inspections.*
- *No business signage is permitted on-site.*
- *No firearms packages may be delivered on-site without the recipient's signature.*
- *The manufacture or sale of ammunition is prohibited.*

Mr. Rhoades stated the nature of the business is to sell firearms via a website; even at a gun show, a sale would go through the business website. He stated for any firearm purchased online, some manufacturers have conditions that the guns must be direct shipped to the selling FFL dealer and then goes to the customer. Mr. Quimby asked which manufacturers have those restrictions. Mr. Rhoades stated he does not know as they have been blocked from any business at this time. He stated they would not be handling private party sales. Vice Chair Kehoe asked how they would limit sales to one per week. Mr. Rhoades stated in most cases, guns will be purchased from the website and a national warehouse will directly ship the item to an assigned FFL dealer of the purchaser's choice; he stated any items which are shipped directly to them as the FFL seller/dealer will be turned over to the purchaser the following day. Mr. Rhoades stated they will explain the conditions to customers which limit how many transfers they can do and then assist the customer with the transfer through another dealer. Ms. Rhoades stated their FFL is only listed through the Alcohol, Tobacco, and Firearms (ATF); if someone purchases a firearm online, they will choose the FFL dealer to handle the transfer, and more than likely they will choose other dealers due to the day and time limitations which were placed on them by the Planning Board.

Mr. Johnson asked if they would be making firearms or customizing firearms. Mr. Rhoades stated if a customer orders something to be customized, they will have the item on the premise for the least amount of time possible to make the modifications such as coating and finishing. He stated they would also be able to change out triggers and do basic gunsmithing on only new items; they will not be accepting any used firearms; he stated this also limits any traffic. Mr. Rhoades stated in the months they have had the FFL, they have not had any requests for transfers; he stated they are not advertising their services. He stated they don't want excessive traffic to their residence and prefers there is none but they are required by ATF to have availability even if it is limited; he stated Fedex and UPS are in their neighborhood daily. Mr. Rhoades suggested that to argue there would be an increase in traffic is baseless.

Mr. Rhoades stated as far as manufacturing is concerned, per the ATF guidelines, if a light is mounted, that falls under that classification and explained any alternation to a firearm is done under the scope of gunsmithing.

Vice Chair Kehoe asked if there was a reason that they would want to do pickups once a week and asked if that could be removed. Mr. Rhoades stated they are required by the ATF to be available for transfers; he explained the procedure of a transfer and stated if he doesn't like someone's demeanor or words, he can stop the transaction immediately and he is not legally obligated to complete a transfer just because someone requests it.

Mr. Ramsdell asked for an explanation of the inventory on the property. Mr. Rhoades stated the inventory will be the actual firearms; there could be multiple lights but that should not be a concern. He stated the firearms would only be on a per-order basis. Mr. Ramsdell summarized the sales process as the customer purchases the item online; the item is directly shipped to the consumer or an FFL dealer. Mr. Rhoades stated a purchaser will complete a form to have the FFL dealer perform the background checks and then proceed with determining if the transfer will be completed. Mr. Ramsdell asked what the outside scope of the business would be; he stated if they were doing trade shows, the inventory would be leaving the property and then returned to the property. Mr. Rhoades confirmed that this is correct, but the inventory is minimal. Ms. Rhoades stated the items may be one or two customized firearms, but they still need to learn the process; she stated any products the customer wants to purchase, will be directed through the Internet website; she explained they will be using dummy guns for the future creation of holsters. Mr. Rhoades confirmed the functional firearms would be stored in a locked and secured safe at all times. Ms. Rhoades stated there will be an alarm system and cameras installed at the property. Mr. Rhoades explained their FFL dealer status is not easily found on the Internet and one needs to know specifically how to search.

Mr. Bisson stated the business is about a home occupation and it is not about firearms; he stated everything said by the Rhoades indicates they are safe gun owners; the occupation is customary, and the case is about real estate rights and home occupation. Mr. Rhoades stated they did a Google Maps search and found home occupations throughout Town; he presented a large list of home occupations which they confirmed are on residential or agricultural zoned properties. Ms. Rhoades stated there are numerous full-blown businesses operating in residential zones; they are being restricted from operating an in-home business which won't affect anyone in their neighborhood. Ms. Rhoades stated two of the businesses are licensed and registered FFL dealers.

Vice Chair Kehoe reiterated this case is not about guns but rather it is about a home occupation. He asked if anyone on the current Board had heard a case for a home occupation. Mr. Johnson noted the only time the ZBA would review a case for home occupation would be on an appeal from the Planning Board.

Vice Chair Kehoe opened the hearing to input from abutters.

David Goulet, abutter, reread the ordinance glossary definition of home occupation. He stated the definition is clear that there is nothing about a home occupation; he stated perhaps the ordinance

needs to be updated to the current times and referenced the retail sales ordinance which indicates retail sales and business are not permitted in the residential zone. Mr. Goulet stated he is concerned the Planning Board had recommendations but how is going to know whether the conditions are going to be followed and confirmed the days and hours will be adhered to. Vice Chair Kehoe stated if there were a violation, a resident would need to raise a concern to the Zoning Compliance Officer.

Mr. Rhoades asked Town Counsel for an explanation regarding the manufacturing and how dressmaking is not considered manufactured as the dress is made on the property and then sold; he stated if any compensation is received, it becomes retail. Ms. Rhoades explained they have to keep logs of all transactions which could show compliance with the conditions.

Vice Chair Kehoe explained the role of the Board at this point is to determine whether this is a home occupation. Ms. Rhoades stated the business is going to be run out of a home office, just as any other home business, and the business is being done on the Internet; she reiterated the business is secondary to living in the residence.

Vice Chair Kehoe opened the hearing to input from the public.

David Killian, resident, resident on Spring Street, which is on the corner of Lena Lane, stated there have not been any definite statements and the only thing that is definitive is the ordinance; he stated if he wanted to open a chip and soda business in his home, he would need a variance. He stated he is retired military and is not opposed to guns, but this is retail sales. Mr. Killian stated the FFL also talks about manufacturing and retail sales, which was not supposed to be granted until there was Town approval.

Mike Keeler, resident of Spring Street, stated this is about whether this use is allowed in the zone; he outlined points made in the appellant's appeal including reference to customers and hours of operation. He outlined the definition of "retail" per the Oxford Dictionary as well as the definition of online retail, which is virtually the same. He stated retail is defined in the ordinance and allowing this business is against the Town ordinance; he also explained the definition of the zones. Mr. Keeler stated if there were ten FFL dealers operating in a neighborhood, it would change the rural character. He stated nowhere in the ordinance is gun sales listed as a permitted use.; if the Town wanted to include other occupations, different language would have be used to indicate such. Mr. Keeler stated there is a huge difference between a dressmaker and a gun dealer; he stated none of the allowed uses in the Residential/Agricultura Zone require a FFL. He stated he did a search of FFL dealers in New Hampshire and the first eleven closest to Epsom, are all located in commercial zones. Mr. Keeler stated Charlie Company Armory on Suncook Valley Highway, is the same business as the Rhoades, and the Planning Board found it to be a retail business at the Planning Board of May 24, 2023, and since it was in a commercial zone, no Site Plan was required. Mr. Keeler stated property values would most certainly be reduced in the neighborhood.

Ms. Rhoades stated Charlie Company Armory is not a fair comparison as it is clearly a retail establishment with a storefront; she stated they will not have a storefront. Mr. Rhoades explained the process of a firearm transfer; he stated it is similar to buying a car at a dealership, but the

validation of the transfer takes place with the Town Clerk. He stated all that they will be doing is verifying the sale and it is a service. The sale takes place online. Mr. Rhoades stated the service fee collected by the Town or State is not a retail sale, but it is for the service of validating the sale. Ms. Rhoades stated the firearm purchase is not taking place during the transfer; it has already taken place. Mr. Rhoades stated anyone here in Epsom can go online to purchase an item and stated it can't be claimed as a local sale.

Vice Chair Kehoe opened the hearing to anyone in favor of the appeal. None were indicated.

Vice Chair Kehoe opened the hearing to anyone opposed to the appeal.

Chris Pepin, resident, stated there was an FFL dealer in his community until he passed away last week and the gentleman was a pillar of the community. He stated he can think of numerous businesses that are in neighborhoods where people are earning an honest living and today, people work from home now. Mr. Pepin stated there is a business in every neighborhood in this community; he stated there are numerous FFL dealers who are operating out of their homes.

Joe Wysocki, resident, stated that post-covid, more people are working from home than ever before and there are going to be problems if they try to follow the exact language of the ordinances. He stated the Rhoades have gone through all the proper processes and should be commended.

Justin Guth, Code Enforcement Officer, stated of all the conditions imposed by the Town, this will not be one that is difficult to enforce; he explained the details records required by ATF and if more than one transaction was done and there was a formal complaint, he would be able to investigate it.

Mr. Topik stated there isn't a dog or toll on Lena Lane to sniff out firearms so how are they going to know if conditions are being violated. He stated this is not a variance or special exception hearing. He asked if the previously supplied written testimony, would remain as part of this record. Vice Chair Kehoe stated anything in the previous case does not transfer and has no bearing in this current hearing. Mr. Topik stated the record is not complete and the documents from Case 2023-06 should still be part of the record. Mr. Ramsdell reiterated any decision tonight is based on information presented tonight.

Mr. Topik stated tonight this hearing is just about guns because that is what is not expressly permitted in the ordinance or allowed as an accessory use. An accessory use must be occasioned by the primary use, and while gun ownership is occasioned by home ownership, gun sales are not. He stated the only reason real estate is allowed a home business is because it is specifically listed. He stated no business permit has been issued as indicated on the FFL application; he stated Dusty Arms is listed on the FFL Scope website and he believes that presents an increased risk with inviting strangers to the neighborhood. He stated the FFL license allows for manufacturing and there has been no indication what types of items they will manufacture which could be high-powered assault rifles and there is no limit from the ATF what they can do with that license.

Town Counsel clarified the application for appeal, which is part of the record, and anything submitted previously is part of the record, but the testimony at a prior hearing, is not.

Ms. Rhoades stated they have a State license issued by Police Chief Michaels. Mr. Rhoads stated the Planning Board approved the business; the ATF could not issue a license until there was verification from the Town for approval, so they did not do anything wrong. He explained the pistol permit was issued only after Chief Michaels verified with the Town that everything was approved. Mr. Rhoades confirmed assault rifles are illegal to process in this country without a special license.

Mr. Guth stated he has confirmed with AFT and State Police that the Rhoades have done everything to follow the proper permitting and license process.

MOTION: To close the public hearing. Mr. Ramsdell. Second by Mr. Quimby. Motion passed 5-0-0.

The Board took a five-minute recess at 9:45 PM.

The Board took a five-minute non-meeting to consult with Town Counsel.

Vice Chair Kehoe called the meeting back to order at 9:56 PM.

Vice Chair Kehoe stated the main focus of this administrative appeal is to determine if this is a home occupation. He stated the ordinance does not provide a definitive list and its unreasonable that it could be exhaustive; he stated they have to look at whether this is a customary occupation similar to those listed. Mr. Ramsdell stated the first part doesn't pertain to the Rhoades business; it is clear the professional scope doesn't fit but wants to focus on customary. He stated the Town Counsel suggested the "stuck in time" piece of it and the word customary can be adapted to today's day and age; he stated that is where the focus of the discussion needs to be. Vice Chair Kehoe stated dressmaking is an older term but there are still current uses, as is hairdressing, and home daycare; with the exception of dressmaking, not much is antiquated. Mr. Quimby stated the key to remember is a home occupation is allowed in any zone. Vice Chair Kehoe stated the main goal is that the business needs to be able to be done in home. Mr. Quimby stated since Covid, many people have started businesses in their homes. Mr. Ramsdell stated the examples in the ordinance and the scope which includes traffic and demand on the neighborhood and pointed out that a daycare is going to have a significantly higher traffic impact on a neighborhood. Ms. Thorne questioned if Internet sales are considered modern-day customary home occupation. Mr. Johnson stated he believes it is considered customary and the way the business is going to be operated is similar to someone selling an Etsy product; he stated if the firearms component is removed, it is very similar to other items sold on the Internet; he stated there isn't going to be storefront and people won't be coming in to shop the items but there can be local pick up of orders. Mr. Ramsdell stated the scope of what is transpiring out of the home for the service is somewhat sporadic and limited. Mr. Quimby stated per the home occupation ordinance, it is the purpose and intention to maintain the residential and agricultural feel without commercial elements and to allow a home business; he stated there won't be signs or a storefront and it sounds like a usual home occupation. Mr. Ramsdell stated there was a reference previously to a

similar home occupation and the testimony indicated there was not an impact on the neighborhood. Vice Chair Kehoe stated using the examples presented, in comparison, an Internet business is open 24/7 and asked if this is something that needs a variance even if it is a home occupation. He questioned if this would set a precedent on the interpretation of the ordinance. Mr. Johnson stated the ordinance calls out home occupations so people can have them; he stated this business seems to have a lot of limits to the impact on the neighborhood due to the conditions by the Planning Board. Mr. Ramsdell stated there would be limited inventory, the sales would be directly shipped from manufacturers and there was testimony to indicate the conditions can be enforced. He stated the business is different from the listed occupations which will have people regularly coming to the residence. Mr. Quimby stated per the ordinance, this business is secondary to residential use. Ms. Thorne stated the permitted professions are also services which is the same as the proposal for the FFL dealer. Mr. Johnson stated there are two service aspects including the gunsmithing and the FFL dealer transfer service. Vice Chair Kehoe stated there is a service but it is finishing a sale transaction. He stated all the permitted businesses are services.

MOTION: To affirm the Planning Board's decision that the Rhoades' business would be a home occupation. Motion by Mr. Johnson. Second by Mr. Ramsdell. Motion 4-1-0. Vice Chair Kehoe opposed.

Ms. Thorne stated the Rhoades have followed the proper business for establishing a business and home occupation; they want to encourage that within the Town.

Findings of fact:

1. The business falls within the scope of what a home occupation is trying to achieve within the spirit of the ordinance.
2. It won't negatively impact the neighborhood in terms of traffic.
3. There is a limit of one customer per week to the property.
4. The majority of the business will take place on the Internet and is reasonable.
5. Based on the testimony of the Zoning Compliance Officer, the conditions of the Planning Board are enforceable.
6. There will be limited inventory stored on the premises.
7. There will be limited sales out of the premises.
8. There will be limited manufacturing on the premises.
9. The business is considered a service.
10. Article K allows residents home occupations where the purpose of the ordinance to maintain non-commercial character is upheld.
11. It is a secondary use to the property as a residence.

Any person affected has the right to appeal this decision and/or conditions of the approval. The first step in the appeal process is to apply to the board of adjustment for a rehearing. The motion for a rehearing must set forth all the grounds on which you will base your appeal. You must apply within a thirty (30) day period beginning with the next working day after the Zoning Board of Adjustment meeting when the decision was made.

520 **ADJOURN: Motion by Mr. Johnson. Second by Mr. Ramsdell. Motion passed, 5-0-0.**

521

522 The meeting was adjourned at 10:22 PM.

523

524 Respectfully Submitted,

525 *Jennifer Riel*

526 Jennifer Riel, Recording Secretary

APPROVED