

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – AUGUST 16, 2011

The regular meeting of the Zoning Hearing Board of the Township of lower Makefield was held in the Municipal Building on August 16, 2011. Chairman Bamburak called the meeting to order at 7:15 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman  
Gregory J. Smith, Vice Chairman  
Jerry Gruen, Secretary (left meeting in progress)  
Anthony Zamparelli, Member  
James McCartney, Alternate Member  
Mark Moffa, Alternate Member (joined meeting in progress)

Others: Robert Habgood, Code Enforcement Officer  
David Truelove, Township Solicitor  
Barbara Kirk, Zoning Hearing Board Solicitor

Absent: Keith DosSantos, Zoning Hearing Board Member  
Dan McLaughlin, Supervisor Liaison

APPEAL #11-1590 – DARIUSZ CZERNIAK

Mr. Bamburak stated this matter was continued from August 2, 2011.

Ms. Kirk stated on August 10, the Township received a letter from one of the property owners with calculations attached indicating the lot size and calculations as to the square footage for the house, driveway, and other areas covered by impervious surface. The letter with the calculations was marked as Exhibit A-8.

Ms. Kirk stated because the Applicants were not present at the last Hearing on August 2, and the Board was concerned that they may not have realized that the Hearing was scheduled, the Township's Zoning secretary sent a letter dated 8/3/11 to inform

Mr. Czerniak that the Hearing was scheduled for this evening. A copy of that letter was marked as Exhibit B-4. Ms. Kirk stated she herself sent the Applicant a letter dated August 10, 2011 explaining that the Hearing was scheduled for this evening, and a copy of this letter was marked as Exhibit B-5.

Ms. Kirk stated despite the notices from the Township and herself, the Applicants are not present this evening; and she has not received any notification from the Applicants that they do not intend to be present. She stated that the Board is in a position to render a Decision based on the documentation that they have received to date, and the fact that the Applicants are not present despite the matter being continued several times.

Mr. and Mrs. Czerniak came into the meeting at this time and were sworn in.

Ms. Kirk advised Mr. and Mrs. Czerniak that the Township received the letter from Mrs. Czerniak with the calculations attached and this had been marked as Exhibit A-8. She stated they also marked as Exhibits B-4 and B-5 copies of two letters that were mailed to them at the property one on August 3 and one on August 10 advising them of this evening's Hearing. Mrs. Czerniak stated she did receive one of the papers.

Mr. Bamburak stated the Board has received copies of the calculations provided. He stated previously the Applicants had supplied them with a map that was not very well drawn, and the Board was unable to understand it. He stated they wanted to have a map that was drawn better with dimensions on the map as well.

Mr. Czerniak stated he felt they only needed square footage of the driveway, shed, and the patios. Mr. Bamburak stated they need to have the dimensions on the map along with the calculations so that the Township professionals have the opportunity to verify those. He stated when the Zoning Officer performs the inspection, he will need to make a comparison with the drawing. Mr. Bamburak stated they need the map drawn better. Mr. Bamburak stated he feels they probably need to hire a professional surveyor as they have tried this a few times, and it is not working out. Mr. Bamburak stated the Board cannot make a decision until they see a map that they can understand.

Ms. Kirk stated they could also talk to an attorney and explain what they are trying to do, and the attorney could help guide them on what documents they need to supply in order for the Board to make a decision. Ms. Kirk stated based on her review of the numbers that were provided, even without the additional 300 square feet on the driveway, they are far above what is allowed under the Zoning Ordinance.

Mr. Bamburak stated if they have a map with the details, the Board may be able to make some suggestions on what they could change that would make the Application easier for the Board to vote on.

Mr. Czerniak stated some of the things such as the patio were existing when they house was bought. Mr. Bamburak stated it does not matter how it got there; and until they can verify what is there and know the dimensions, the Board cannot make a decision.

Ms. Kirk asked if there is an As-Built Plan on file with the Township for this property; and Mr. Habgood stated there is not because of the age of the property, it was not required.

Mr. Bamburak stated the Board is trying to work with the Applicant, but at this point they feel it would be advisable for the Applicant to have an attorney come in with them and help them communicate better. Mr. Bamburak stated they could continue this for another month to give them time to bring in a professional with them and supply all the information needed. He stated they need a map with all the dimensions on the map in a form that the Board can read.

Ms. Kirk stated she will not be present at the meeting on September 20, but could send one of her associates. She stated she does not feel there is anything else scheduled for that evening. It was noted the Peter Orloff/Joy Grace matter was scheduled for that meeting, but Mr. Habgood stated they were looking into have that matter continued until the first meeting in October. Mr. Bamburak stated it would give Mr. Czerniak more time if they continued it until October 4.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to October 4, 2011.

Mr. Gruen left the meeting at this time and was replaced by alternate, Mark Moffa.

#### APPEAL #11-1600 – JOSEPH PRYOR

Mr. Joseph Pryor and Ms. Lesia Pryor were sworn in.

Ms. Dorothy Young, 17 Glen Drive, Yardley, Pennsylvania asked for Party Status.

Ms. Kirk stated at the last Hearing the Application was marked as an Exhibit as well as a copy of the letter from the Director of Zoning to the property owner. Ms. Kirk stated additional paperwork has been provided, and this was marked as Exhibit A-3 which is a summary statement from the Applicant.

Mr. Bamburak asked Mr. Truelove about the Township's participation. Mr. Truelove stated it was requested that the Township participate; and while it appears that some of the information in the most recent submission from Mr. and Mrs. Pryor may not require them to participate, they would like to have further review. He stated the rationale for the Township's participation had nothing to do with the gun sales per se, and they understand that they intend to sell on the Internet only. He stated he believes that in the original Application there was indication that they were going to request some Variance for allowing traffic to and from the property to sell or retrieve some of the firearms.

He stated this is a Variance request for the Home Occupation, and the Township wanted to explore whether this Variance was necessary. He stated from a quick review of the recently-submitted paperwork, it seems that this may not be an issue as it appears that their business plan is to sell only on the Internet and sanctioned gun shows.

Mr. Pryor stated he has lived in the neighborhood since 1985. He stated he and his wife previously had a corporation dealing with pet products, and all orders were drop shipped directly to customers. However, they felt that this line of products was getting too competitive, and they wanted to find something with a much higher hurdle for entry.

He stated they closed out their business in the fourth quarter of 2010.

Mr. Pryor stated they evaluated various options and started to seriously consider selling competition pistols. He stated he has had competition experience, and his wife took a gun-handling course and has general range experience as well. He stated they are both knowledgeable and feel comfortable with this. He stated they have recently formed a new company, an LLC, which would enable them to do this. He stated their proposed business plan is to sell only on the Internet and at sanctioned gun shows.

Mr. Pryor stated they are required to have a specific Federal Firearms License (FFL) from the Bureau of Alcohol, Tobacco, and Firearms (ATF). He stated the ATF requires background checks and strict requirements. He stated since their business model is to sell via the Internet and at sanctioned gun shows, there would be no storefront, no local advertising, no retail sales at the home to total strangers, no additional traffic into the neighborhood, and no stock inventory as typically home-based FFLs do not carry inventory.

Mr. Pryor stated an FFL licensee must meet strict ATF logistical specifications. He stated if they would ever have a customer's item at the home, shipment is done directly from the manufacturer via FedEx Express, and a signature is required by either himself or his wife. He stated the item would come with the trigger lock, no ammunition, and would immediately be put in a secured, locked area per ATF specifications. Mr. Pryor also noted that their home has a state-of-the-art security system.

Mr. Pryor stated as they assessed the FFL opportunity, they researched what would be required. He stated they were not concerned about the background check but understood that local Zoning could be pivotal. He stated before they applied for the FFL, he discussed this business idea with LMT Police Chief Coluzzi who had no reason for concern.

Mr. Pryor stated they put in the first Zoning request on January 4 for the proposed business model and received the first Zoning letter approving the request on January 6. He stated both the request and approval letter are included in the Board's packet. Mr. Pryor stated they then submitted their official ATF Application on March 25 which included fingerprinting and background check information. He stated they were scheduled for an interview May 18 with the local ATF inspector. They were advised that they needed more Zoning clarity.

Mr. Pryor stated they submitted a second Zoning letter request on May 20. He stated their proposed business plan was still the same; but the ATF inspector mentioned that although it may never happen, there is the possibility that on occasion a customer would have to come to the residence to sign documentation or drop off a return. A second Zoning letter approving their request was provided on May 25. He stated it said in part: "With respect to any and/or all required paperwork associated with same, the Township has no restrictions in this regard." Mr. Pryor stated both of these items were included in the Board's packet.

Mr. Pryor stated at the final ATF review involving the local inspector supervisor, they were advised that there was still not enough Zoning specificity. He stated the recommended wording that the ATF wanted was some form of "limited, by-appointment only visit from customers for required documentation, transfers, returns"

Mr. Pryor stated they submitted their third Zoning letter request on June 3 asking for the above statement. He stated he then received a phone call from the Township Zoning Officer who explained that she did not have the authority to deviate from the Township Zoning Ordinance, and that only the Zoning Hearing Board could grant a Use Variance. She mailed out the Denial letter plus Variance Application instructions on June 6, and both of these have been provided in the Board's packet.

Mr. Pryor stated they applied for the Use Variance shortly thereafter and were scheduled for August 2 which was postponed to this evening because of Board circumstances beyond the Applicants' control.

Mr. McCarthy asked if they are selling competition pistols only, and Mr. Pryor stated this is primarily what they want to sell although when you get the License, you can legally sell any kind of pistol, although they want to sell competition pistols.

Mr. Bamburak stated it appears that according to the business model, if everything went properly, the Pryors would never take possession of the firearms as they would go from a warehouse to a customer; and Mr. Pryor stated it would go from the manufacturer to another FFL for Internet sales. Mr. Bamburak stated in that kind of transaction the Pryors would not take possession of the firearm; and Mr. Pryor agreed. Mr. Bamburak stated it appears that the only time the Pryors would take possession would be if there

was a return; and Mr. Pryor agreed. Mr. Pryor stated they would try to avoid that at all costs. He stated their goal is not to have anyone at the residence. He stated they do not want to bring anyone into the neighborhood, and this was never their intention.

Mr. Bamburak asked what type of conditions would warrant a return and how frequently do they feel this could occur. Mr. Pryor stated he feels it would be very infrequently. He stated the ATF State supervisor had indicated that this may never happen. Mr. Bamburak asked if he estimates there could be 100 pieces returned, and Mr. Pryor stated no one would purchase more than one at a time since they are too expensive. He stated this is also another reason why people to do not stock them.

Mr. Smith asked if they feel it would be less than twenty-five people per week, and Mr. Pryor stated there would be nowhere near this number. Mr. Smith stated at the last meeting the Board approved an acupuncture business where there were twenty to twenty-five visitors per week so the Board would be consistent with that Decision. Mr. Pryor stated they do not want to bring customers to the house for any reason unless it is absolutely unavoidable.

Mr. Moffa stated in the material provided there was reference to two existing FFLs in Lower Makefield, and at the end of the literature, there was reference to a third. Mr. Pryor stated he did a quick glance at the data base, and did not realize until they researched more for the final package that there was a third FFL. He stated he did think there was four, but one had a Morrisville Borough address even though it was 19067 so he did not include that. He stated the three that are listed are definitely in Lower Makefield. Mr. Moffa asked if the three listed have been granted the same Variance that Mr. Pryor is seeking. Mr. Truelove stated Mr. Habgood had information about the Nelson FFL, and they will provide testimony on this.

Mr. Zamparelli stated it appears that there are some instances when the firearms would come to the house since there are requirements about the shipping, signatures, etc. Mr. Pryor stated there could be a unique situation such as his cousin wanting to make a purchase, and they would be able to order one for him. Mrs. Pryor stated they would not have to go FFL to FFL for that type of purchase. Mr. Pryor stated this would be far safer than any resident who just has a particular handgun that they keep at the house for self protection, etc. which may be loaded. He noted in the statement they have provided, the firearm comes with a trigger lock and there is no ammunition. He stated they would also be required to put that in an ATF-approved, lockable storage facility. Mr. Pryor stated if this ever happened, it would be one, isolated piece.

Mr. Zamparelli asked who checks to see if they have the ATF-approved storage facility, and Mr. Pryor stated ATF checks this. Mrs. Pryor also stated that ATF has the right to periodically inspect any time that they choose.

Mr. Bamburak stated they indicated that they would have no retail sales at the home to total strangers so he assumes they could make retail sales to people they know; and Mr. Pryor stated they could although this is not their goal. He stated he is not aware of any of his relatives or close friends that would be interested in a competition pistol; but if they were interested, he could technically sell to them. Mrs. Pryor stated they would still have to follow all of the same background checks. Mr. Bamburak asked if the Pryors would institute the background check. Mr. Pryor stated the procedure is called the PICS system (Pennsylvania Instant Check System) which is run by the State Police and is interwoven with the ATF requirements. Mr. Pryor stated ATF is very strict and does not allow any deviation whatsoever. He stated if they do not do what they are required, they will pull your license. Mrs. Pryor stated every time you make a sale, everything must be documented; and if anything is out of order, they could pull your license.

Mr. Bamburak noted the other three sellers included in Mr. Pryor's information which indicates they have a Type 01FFL, and Mr. Bamburak asked for an explanation. Mr. Pryor stated there are different variations including manufacturers which are Type 7, explosive devices, etc. Mr. Pryor stated the basic is a Type 1, and this is what they have applied for which is the same as the individuals noted also possess.

Mr. Zamparelli asked if there is a rule as to how long a firearm can stay in their home if it does get sent to the house. Mr. Pryor stated there is not. He stated a legal citizen can purchase a firearm and have it at their home as long as they want. Mr. Zamparelli stated Mr. Pryor indicated he could sell a firearm to his cousin, and he asked what would happen if his cousin decides he does not want it. Mr. Pryor stated in that case, it would be returned because they are too expensive to keep. Mrs. Pryor stated it would get returned the same way it was delivered which would be through Federal Express with signature, and would never be left out.

Mr. Bamburak asked if Federal Express knows that it is a firearm when it is being shipped, and Mr. Pryor stated they do. He stated it is done under FedEx Express and everyone of the drivers is certified, and the package is clearly marked. He stated if they were to get the Federal Firearms License, he and his wife would be licensed; and they would have to show identification and sign for the package. Under no condition can they just leave it at the house or with another neighbor.

Mr. Zamparelli stated Mr. Pryor had indicated that the gun comes with a trigger lock, and he assumes that a key opens this. Mr. Zamparelli asked who has the key, and Mr. Pryor stated you set this up with the vendor you are working with. He stated before you order any firearms, you get the key for the particular trigger locks that will be on your firearm. Mr. Zamparelli stated he assumes that there is no way the Federal Express driver could unlock the firearm, and Mr. Pryor stated they could not as they come separately.

Mr. Moffa stated since this is all Web-based, he asked the volume anticipated; and Mr. Pryor stated he does not know although it would probably be minimal at first. Mr. Pryor stated aside from the Internet, it would also be through sanctioned gun shows. He stated you can only sell handguns within your own State even though they are selling over the Internet.

Mr. Moffa asked if they are allowed to sell ammunition, and Mr. Pryor stated anyone can sell ammunition as there is no license required. He stated you can buy ammunition at Wal-Mart. Mr. Moffa stated he understands that the pistols are locked away and not loaded, but they could have ammunition for the pistols that they could sell with the pistols. Mr. Pryor stated they are not considering selling ammunition. Mrs. Pryor stated there would not be inventory. Mr. Pryor stated ammunition is very competitive and most people purchase it at Wal-Mart because of their lower prices.

Mr. Moffa asked the approximate cost of the pistols, and Mr. Pryor stated they are approximately \$1,100 to \$1,200. Mr. Moffa asked what makes this pistol so expensive, and Mr. Pryor many of them are custom designed so they are super accurate.

Mr. Moffa stated they indicated they would not be able to afford to keep many on hand and that people would probably not be buying more than one at a time; and he asked how many they anticipate having on hand; and Mrs. Pryor stated they would have none since they all would be made to order. She stated someone would buy it, and they would order it for them. She stated they would not keep any inventory at all.

Mr. Smith asked if this because a private citizen could not call up the manufacture and ask that the firearm be shipped to their home, and by law the manufacture would have to ship it to someone with an FFL who would then go through the background check for that individual, and Mrs. Pryor agreed.

Mr. Bamburak asked if they have discussed this with their neighbors. Mr. Pryor stated two weeks ago after leaving the initial Zoning Hearing Board meeting on August 2, they had a chance to speak to some of their neighbors who were in attendance; and they had a lengthy opportunity to explain what they were trying to accomplish, how the various safeguards would come into play, and to address their concerns. Mr. Pryor stated the way the letter was worded that was sent out by the Township was not friendly to them as it made it sound like they were going to open up a major gun store.

Mr. McCartney asked of the three FFLs in Lower Makefield currently, do they specialize in competition guns or general; and Mr. McCartney stated he believes they are general. He stated he tried to contact all three, and the first two would not return his calls. He stated he did speak to Mr. Ricardo who advised him to be persistent with the Township. Mr. McCartney asked if he gave any indication as to volume, and Mr. Pryor

stated he did not. Mr. McCartney stated it appears that two of the FFLs are sporting good shops, and Mr. Pryor stated this is just their name. Mr. Smith stated it appears that the third is a gunsmith, and he would be receiving firearms at his residence to work on them. Mr. McCartney stated it appears that the first two are general sporting goods; and Mr. Pryor stated you can call your business anything you want and rather than calling it a gun shop, they may call it sporting goods.

Ms. Kirk stated she understands that they will order from the manufacture, and the manufacturer will ship directly to the customer; and Mr. Pryor stated this is incorrect as this is not legal. He stated it has to be to an FFL. Mr. Pryor stated they can only sell within the State of Pennsylvania, and if they get an order from a resident from Pittsburgh, they would find a local dealer who is willing to do a transfer and most will do this for a \$10 to \$20 charge. He stated they then deal, dealer to dealer. The manufacture would then ship directly to that dealer, which is the customer's chosen dealer, after all has been verified that it is a legitimate dealer. Ms. Kirk stated they have indicated that no customers would be coming to the home, and she asked what would happen if there is a dealer in Pittsburgh that has a customer that lives in this area; and Mr. Pryor stated he would find a dealer in this area who would be willing to do that, but Mrs. Pryor stated they would not do that. Ms. Kirk stated as an FFL are they not considered dealers, and Mrs. Pryor stated while they are, they are not obliged to take those sales. Ms. Kirk stated there is a possibility that guns could be shipped to their home for a customer to come pick up, and Mr. Pryor stated that is not their plan. Ms. Kirk stated she assumes they would be willing to agree to a Condition, if the Variance were approved, that there will be no customer traffic; and Mr. Pryor stated they are not asking for this, but the ATF is requiring this statement. He stated if the Board wanted to limit it to "no more than," they would be agreeable to that. He stated if they do not have the statement required by the ATF, they cannot get the license. He stated all they want to do is Internet sales and gun shows; but if they do not have the statement the ATF wants, they cannot get approved. Mr. Pryor stated there are many shops that will do the transfers who already have relationships established.

Mr. Bamburak stated they have shown in the wording "limited by appointment-only," and he asked if they put a number in there such as four per month, would this be acceptable to the Pryors. Mr. Pryor stated they would be willing to accept what the Board would be willing to grant, but they are not sure that ATF would agree with that.

Ms. Kirk asked what hours they are suggesting when they indicated "by appointment only;" and Mrs. Pryor stated they would be flexible and would agree to whatever the Board feels is reasonable.

Mr. Truelove stated Mr. Pryor indicated that he has lived in River Glen since 1985, and Mr. Truelove asked if he would agree that it is a quiet neighborhood with no through traffic; and Mr. Pryor agreed. Mr. Truelove stated the streets are narrow and there is not a lot of on-street parking. Mr. Pryor stated the streets are not that narrow and people do park on the street. Mr. Truelove stated the residents do not conduct businesses out of their home that would require traffic, and Mr. Pryor agreed.

Mr. Truelove stated based on the Application, the Township did research themselves; and their research differs on the ATF requirements. He stated Title 18 of the U.S. Code, Section 923 sub-section D1Fi states, “In licensing Applicants for an FFL, Applicants must certify that 1) the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located; 2) within thirty days after the Application is approved, the business will comply with the requirements of State and local law applicable to the conduct of the business; and 3) the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met.” Mr. Pryor stated he is aware of this language.

Mr. Truelove stated he sees nothing else in that statute or any regulations that say the ATF requires an exception to local law to allow for periodic visits. He asked if there is anything in a written regulation or statute for FFL that requires that. Mr. Pryor stated he is only aware of what the ATF has explained to them. Mr. Truelove asked if they have given them anything that is written indicating what they must do based upon the applicable law. Mr. Pryor stated they do have the official ATF book at home.

Mr. Truelove stated they indicated they would be going to gun show so they would be doing some of their work away from the home, so there is an opportunity to meet people in the trade to conduct business away from the home; and Mr. Pryor stated this is true, and the ATF considers a sanctioned gun show as an extension of your license.

Mr. Truelove stated if they had to meet someone at a neutral location, this could be done as well if there was to be an exchange, and Mr. Pryor stated this is incorrect, and they cannot do that.

Mr. Truelove asked how often gun shows occur, and Mrs. Pryor stated they are a few times a quarter although some of them are in Western Pennsylvania. Mr. Truelove stated he assumes they could be held at the Fort Washington Expo, and Mrs. Pryor agreed there is also the Armory. Mr. Truelove stated those would be locations within twenty-five to thirty miles of their residence, and Mr. Pryor agreed.

Ms. Dorothy Young was sworn in. Ms. Young presented a two-page document this evening, and it was marked as Exhibit Y-1. Ms. Young stated she lives two doors away from the Pryors and is thoroughly opposed to the Variance requested in the Appeal that would permit any kind of gun sale activity in the neighborhood. She stated she does not

believe a residential neighborhood is a proper place to sell firearms, and overwhelmingly her neighbors agree. She stated she has submitted a Petition signed by the neighbors who all live on Glen Drive stating that they are also in opposition to this Zoning change.

Ms. Young stated one neighbor, James and Christine Walsh were unable to attend the meeting this evening, and have written a letter which they asked her to read and submit to the Board. Ms. Kirk noted that they have also signed the Petition which was presented by Ms. Young.

Ms Young stated the letter is from James and Christine Walsh, 18 Glen Drive and reads as follows:

“We support the Zoning Hearing Board’s initial decision with respect to the Variance at issue in Appeal #11-1600. We are not opposed to all Zoning Variances and our opposition to Appeal #11-1600 is despite our opinion of our Pryors not because of it. In fact we count ourselves fortunate to live across the street from Joe and Lesia Pryor. The Pryors are great neighbors, friendly, considerate, their property is well-maintained, and very attractive. Unfortunately, granting the requested Variance, we believe, would adversely impact the residential nature of the neighborhood. We attended the August 2, 2011 Hearing in order to note our concern. Because we are unable to attend the August 16 Hearing, we respectfully submit this letter.”

Mr. Truelove stated he would like to have Mr. Habgood testify as to information on the third individual who was named as an FFL dealer. Mr. Truelove stated after the last Hearing, he had asked Mr. Habgood to do some research on this; and there was no information on two of the individuals so either Variances were granted or the Township knows nothing about businesses being conducted in violation of the Zoning Ordinance. However, Mr. Habgood can testify as to the Nelson matter based upon his review of the records of the Township.

Mr. Habgood was sworn in and stated he is the Township Code Enforcement Officer. Mr. Truelove stated in that capacity, he asked him to review records available in the Township to determine whether any other FFL dealers named in any of the paperwork had previously sought any Zoning relief from the Township. Mr. Truelove asked Mr. Habgood if he reviewed the archives of the Township and records kept in the ordinary course of business in the Township, and Mr. Habgood agreed he did. Mr. Truelove asked if this included records related to Gary Nelson, 1217 Shetland Court, Yardley, PA 19067, and Mr. Habgood agreed. Mr. Truelove stated Mr. Nelson at that address is apparently the same individual referenced in Mr. Pryor’s Application as being another FFL dealer, and Mr. Habgood agreed. Mr. Truelove asked Mr. Habgood if based upon his review of the records, did he determine that there was correspondence

exchanged between Mr. Nelson and the then Code Enforcement Officer, Thomas Scott, dated March 1, 1999; and Mr. Habgood agreed. Mr. Truelove stated this had to do with the issue of selling firearms in a manner similar to the Pryor's which did not require traffic at the residence, and Mr. Habgood agreed.

Exhibit T-1 was marked which is three pages, including a letter dated March 1, 1999 from Mr. Scott to Mr. Nelson which was in response to a letter sent to Mr. Scott by Mr. Nelson. Ms. Kirk stated this is all correspondence between the Township and Mr. Nelson, and Mr. Truelove agreed.

Mr. Truelove stated based on these documents, Mr. Nelson had sent a letter to Mr. Scott requesting information about Permits; and the response was issued to Mr. Nelson on March 1. Mr. Habgood, at Mr. Truelove's request, read the fourth paragraph of that letter from Mr. Scott to Mr. Nelson as follows: "Please note that this includes refraining from having customers or clients visiting the site." Mr. Truelove stated the site referenced is 1217 Shetland Court, and Mr. Habgood agreed. Mr. Truelove stated the Ordinance referenced is Section 200-69A Sub-Section 7, and Mr. Habgood agreed. Mr. Truelove stated this is the same Ordinance Section that is invoked in the Application, and Mr. Habgood agreed.

Mr. Smith asked Mr. Habgood if he is familiar with the Bureau of Alcohol, Tobacco, and Firearms rules regarding General Counsel decisions concerning requirements to hold and maintain a Class I Federal Firearms License, and Mr. Habgood stated he is not. Mr. Smith stated Mr. Habgood is not sure whether those requirement may have changed between 1999 and the date of the letter marked as T-1 and today in 2011, and Mr. Habgood stated he is not aware of this.

Ms. Kirk stated she understands that there were no other Township records concerning the other two properties, and Mr. Habgood stated he looked specifically for the one on Pickering and did not find anything; but he was not aware of the one on Big Oak Road until the Exhibit was passed out this evening by the Applicant.

Mr. Moffa asked if the fact that he did not find anything mean that there is no Variance on file for that address, and Mr. Habgood agreed. Ms. Kirk stated it also means that they did not apply to the Township for a home-based occupation Permit. Mr. Habgood stated normally a home-based occupation Class 1 does not require any approval from the Township. Mr. Moffa stated it would indicate that they do not have the type of Variance that is being sought this evening, and Mr. Habgood agreed. Mr. Smith stated it may also indicate that they received their approval for their Class I Federal Firearms License at a time prior to changes in the regulations or in the General Counsel's Decisions/Opinions that would place certain requirements on FFL holders as far as Zoning and other requirements in holding that License.

Mr. Moffa asked if the Board has any documentation from ATF indicating that such rules exist aside from the testimony of the Applicant as to what he was told by the particular agent, and it was noted that the Board does not. Mr. Pryor stated he had asked ATF about this, and they indicated that the rules and regulations from ATF have been consistent according to the ATF Supervisor who also indicated that unless there were Township changes such that you did not need a Variance in the Township to have customer visitations, that would be the only other thing that they could think of and the Township may have indicated that from a certain point forward, they would need a Variance if they wanted to have Township visitations.

Ms. Kirk stated Mr. Pryor indicated he had a Handbook at home with ATF rules and regulations, and she asked if there is anything in the Handbook that indicates that a FFL dealer must be permitted to have customers come to the property; and Mr. Pryor stated he believes that there is, although he could not quote it. He stated they did leave the manual when they came for the interview.

Mr. Smith asked if they would be willing as a Condition of any Variance granted to limit hours of any visitation between 9 a.m. and 8 p.m.; and Mr. and Mrs. Pryor stated they would. Mr. Smith asked if they would be willing to agree to a limitation, in consideration of the quiet nature of the neighborhood, to have no more than one individual visiting at a time; and Mr. and Mrs. Pryor agreed.

Mr. Bamburak asked Mr. Truelove if he feels that a Variance is not needed, and Mr. Truelove stated he feels it is needed; and their position would be that because Mr. Nelson had, according to the letter from Mr. Scott, agreed that he would not have customers visiting the site, that he is not subject to a Variance requirement. Mr. Truelove stated their information is that the ATF does not require home visits, but he does not have access to the handbook. Mr. Truelove stated the statue he cited seems to say that the local regulations will govern, so they are unsure as to what the ATF requirement is.

Ms. Kirk stated there is an issue as to what the Township solicitor has researched and Mr. Pryor's testimony as to what the ATF agent has explained. Ms. Kirk asked Mr. Pryor if he would like the opportunity to make photocopies of the Section of the handbook and bring it to the Board to show that the ATF regulations are such that he needs to be allowed to have customers come to the property; and Mr. Pryor stated he could do this. He stated the only thing he can verify is the Township approval letter that was dated in January accompanying the Application to the ATF headquarters in West Virginia who made the determination. He stated they specifically told them that they would have to have at least the minimal language in there in order to get the approval. Ms. Kirk stated they are not arguing the point that this is what they were told, but the position of the Township is that other persons have received FFL dealer licenses

with no requirement of customers coming to the property. Ms. Kirk stated the Township is indicating they can have a home-based occupation doing Internet sales but they should eliminate the request for the Variance. She stated the Board is now between the Applicant's testimony and what the Township has presented. She asked Mr. Pryor if he would like to have the opportunity to either present a letter from the ATF agent stating that this is a specific requirement that ATF is demanding of him in order to get the license or bring in the handbook with photocopies of that except; and Mr. Pryor agreed to do this. Mr. Truelove stated they have no objection to this as it is clarification that they are looking for since the Township was operating under the assumption with the prior matters, that this was not required.

Ms. Kirk stated while she understands the Pryors do not want to delay this any further, in order to make sure that the record is clear that the Pryors had a specific Federal regulation or policy that indicates they need to do this in order to get their license, she would suggest that the Board grant a continuance until the next meeting which would be September 6 which will afford the Pryors the opportunity to go through the handbook. She suggested that they bring the whole handbook to the meeting but photocopy the section that requires this language.

Mr. McCartney stated it does not seem that Mr. Pryor is looking for a Variance, but Ms. Kirk stated he is because under the Zoning Ordinance a home occupation is automatically permitted so long as there are no customers coming to the residence. She stated had there not been a requirement that they be allowed customers limited times to the residence, they would not be before the Board. Mr. Pryor stated they would have the license right now were it not for this issue. Mrs. Pryor stated in addition to the hour limits, they would also be willing to limit the frequency as well that the Board would be comfortable with.

Mr. McCartney stated it seems that the reason ATF wants this is because they want the Pryors to be the point person for any returns, and Mr. Pryor stated this is possible. Mr. Pryor stated there are three levels of ATF involved in this. He stated their initial Zoning letter accompanied their letter to West Virginia to the main office, it then came back to the IOI (the Industry Operations Investigator) who came out and did the interview, and she was the one who informed them of the issue. Mr. Pryor stated he then spoke to her supervisor out of Lansdale which is the office which covers the entire area; and he verified that unless they get the Variance, they cannot get the license.

Mr. Moffa asked if these indications were verbal, and Mr. Pryor agreed that everything was verbal.

Ms. Kirk stated if the Board is agreeable to granting the continuance, Mr. Pryor should get the specific language out of the handbook. She stated if the Board is going to grant the request, they would want to include the exact language needed. Mr. Bamburak stated they could also present a letter from the ATF field inspectors.

Mr. Smith moved, Mr. McCartney seconded and it was unanimously carried to continue the matter to September 6 to give the Applicants the opportunity to gather all the information that shows that the ATF requires that they have to have this language in the Variance.

#### OTHER BUSINESS

Ms. Kirk stated at the last hearing they discussed having Aria Hospital's Hearing postponed to September 27. She stated she contacted the various attorneys, and Mr. VanLuvanee advised that he was unavailable that date. She stated in the meantime due to attorney scheduled, the Hearing before the Judge on the issue of the subpoenas will not be scheduled until the week of October 2.

Mr. McCartney moved, Mr. Zamparelli seconded and it was unanimously carried to cancel the meeting of September 28 and continue the Aria matter to October 18, 2011.

There being no further business, Mr. Smith moved, Mr. Zamparelli seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary