

TOWN OF EDEN
ZONING BOARD OF APPEALS
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: June 21, 2017

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Drew Reidel
Curtis Neureuter
Joseph Winiecki
Douglas Scheu

BOARD MEMBERS ABSENT: Phil Muck

APPLICANT PRESENT: Mr. & Mrs. Michael Waring

OTHERS PRESENT: Kenneth Swallow
Richard Achrafara

RE: **Appeal No. 2017-1 (Waring)**
4259 Mary Drive, Eden, NY

Ms. Kent called the hearing to order at 7:03 p.m.

Ms. Kent made a motion to approve the minutes from the second hearing for St. Paul's Lutheran Church on September 15, 2016. This was seconded by Mr. Neureuter. All members voted "Aye." The minutes were approved.

Mr. Winiecki made a motion to approve the minutes from Mr. Sautter's hearing, also on September 15, 2016. This was seconded by Mr. Reidel. All members voted "Aye." The minutes were approved.

Ms. Kent introduced the board to those present and read the following Legal Notice published in the "Sun":

Waring: Application for a Special Use Permit for a home occupation under Code sections 225-44 C and 225-10 C (5) and 225-32 O to allow firearms transactions to be conducted from the residence at 4259 Mary Drive.

ZBA secretary Ms. Diane Herzog reviewed the Affidavit of personal delivery of legal notice from the applicant, and noted it is in substantial compliance with our Code requirements. Ms. Kent explained the order of hearing and appeal process.

Ms. Kent asked the applicant to explain to the board the reasons he requests a permit for a home occupation.

Mr. Waring said he's on the board of the Eden/North Collins Gun Club and intends to replace Don Summers, who has supplied firearms for the Club's gun raffles. Mr. Summers is retiring and Mr. Waring has assisted him for several years. He already has been finger printed as an employee of Mr. Summers, which permits him to do firearms background checks under Mr. Summers' FFL (Federal Firearms License). The only way Mr. Waring will do this is from his home - - and a "business address" is needed to obtain the FFL in his own name. That's why he's asking for a home office. Mr. Waring will limit the business to gun raffles, with most of the work conducted at the Gun Club or other raffle sites. He will not advertise or solicit business at his home, except for possibly listing his address on raffle tickets.

Ms. Kent then reviewed the requirements for a Home Occupation under Code 225-32 O and 225-44 C, and Mr. Waring addressed them, as follows:

- Only residents of the home can engage in the business – yes, he would be a sole proprietor
- No more than 15% of the home can be used for business – yes, per ATF requirements, he will only have a small secure storage area for the guns
- The outside appearance of the home can't change; there can't be signage – he would do neither
- Will there be parking issues – the ATF background checks will be performed at the Gun Club or other qualifying gun shows only
- Is the house readily accessible to emergency vehicles – yes.

Mr. Neureuter asked Mr. Waring if there was a separate entrance for the people to pick up their guns. Mr. Waring said he has three entrances, including one to the basement where the guns will be stored.

Mr. Winiecki discussed the background check process with Mr. Waring, including that the check takes approximately 3-4 minutes and that a "good" gun raffle would be a total of 20 to 25 guns. Sometimes there are crossbows and muzzle loaders for door prizes, which don't need background checks. Most checks occur at the Gun Club on the day of the raffle; he would meet any others at the Gun Club at a later time. Picking a gun up at the house will happen rarely, if at all; the raffle winners will have to work around his schedule.

Mr. Neureuter stated that this board is charged under Code 225-46 with understanding that the residential structure will not be altered to change the character of the neighborhood, and that no excessive traffic will result from this home occupation. Mr. Waring indicated there would not be excessive traffic, and the house would not be altered except for a security system as required by ATF.

Mr. Waring said the process for getting the FFL could take maybe 4-6 weeks.

Ms. Kent noted that the Eden Police Department has agreed to confirm the FFL license, if granted. Mr. Waring said he's fine with that, and he also would notify Ms. Herzog. Ms. Kent also noted that no neighbors appeared to comment on this proposed home office.

Mr. Winiecki then asked Mr. Waring about the process and time frames for gun raffles and Mr. Waring explained how the budget is set and how the firearms are chosen and obtained; that the firearms are delivered by Fed Ex or UPS; and that they are stored securely at the home until the day of the raffle.

Mr. Scheu asked if there would be ammunition shipped to the house. Mr. Waring replied that he doesn't need or want to store a lot of ammunition at his house but the ATF does not mind if the distributor works with the FFL holder. Generally ammunition would be shipped directly to the Gun Club.

Mr. Reidel stated that although Mr. Waring would not be actively advertising, but as his name gets out there, four to five years from now he will be well known – what about the safety of neighbors once people know you are a gun dealer from your home? Mr. Waring replied that his name would be on raffle tickets and if he becomes successful in this business it would give him an opportunity to get out of the plumbing business, and obtain an away-from-home office for gun transactions. But he doesn't plan on doing any active gun business at the house.

Mr. Scheu stated he is a member of the Gun Club and considered whether he should recuse himself from the vote. He noted he has dealt with other individuals that do this sort of thing, and doesn't see it presenting safety issues or any character issues for the neighborhood. He agrees with Mr. Waring that a whole lot of people showing up for background checks likely won't happen - the worst-case scenario would be 2 to 3 people the day after the raffle.

The board then discussed that this board has the option to limit this Special Permit to a finite time period, say for 1 or 2 years, to allow neighbors an opportunity to react to the home office as Mr. Waring conducts the gun raffle business.

Mr. Winiecki made a motion to approve Mr. Waring's application for a Special Use Permit for a home occupation, to allow firearms transactions to be conducted at 4259 Mary Drive, Eden, New York pursuant to a Federal Firearms License, subject to the following conditions:

- 1. the Special Use Permit will take effect only when Mr. Waring receives a Federal Firearms License, and**
- 2. the Special Use permit will expire immediately if the Federal Firearms License is no longer in effect.**

The motion was seconded by Ms. Kent. The vote was taken and all board members (Kent, Neureuter, Winiecki, Reidel and Scheu) voted "Aye." The motion was approved.

The hearing was adjourned at 8:05 p.m.

Respectfully submitted,
Diane Herzog
Secretary
July 5, 2017

NOTE: Due to Mr. Waring's untimely death shortly after the above decision, this Special Permit for a home occupation will not take effect.

The above minutes were reviewed and approved on _____, 2017 by
