

**Town of Milford
Zoning Board of Adjustment
January 18, 2018
Gary Birkett
Special Exception**

Present: Steven Bonczar, Chair
J. Plourde, Vice Chair
Joan Dargie
Rob Costantino
Wade Scott Campbell, Alternate
Tracy Steel, Alternate
Robin Lunn, Zoning Administrator

Absent: Michael Thornton
Karin Lagro, Alternate
Laura Dudziak, Board of Selectmen Representative

Secretary: Peg Ouellette

Case #2018-03

Gary Birkett, for property located at 155 Foster Road, Milford, NH, Tax Map 56, Lot 44-3, in the Residential R district, is seeking a Special Exception of the Milford Zoning Ordinances per Article X, Section 10.02.3 to allow a Home Occupation for the sale of firearms in a single family residence.

APPROVED March 1, 2018

Steve Bonczar, Chair, opened the meeting and introduced the Board members. He informed all of the procedures of the Board. Since there was a full agenda, he stated the Board's rules allowed for adjournment at 10 p.m. Any cases not completed or heard would be continued or tabled to the next regularly scheduled meeting with no additional notice to applicants or abutters. One regular Board member being absent, it was moved by S. Bonczar to seat Tracy Steel as a voting alternate for this case, seconded by J. Plourde. Wade Scott Campbell was present as a non-voting alternate; he could participate in the deliberation but not vote.

S. Bonczar read the notice of hearing and invited the applicant to come forward and explain what he wanted to do.

G. Birkett said he was retired – this was more of a hobby. He applied for federal firearms license about month before end of the year with ATF (Bureau of Alcohol, Tobacco, Firearms and Explosives). They will recommend him for approval but he was told to go to town for approval first. Has stuff before the

52 police chief. Business would be at residence at 155 Foster Rd. Out in the country. Driveway is long,
53 very private. Had hoped this whole thing would be more private. Ultimate goal was to sell to individuals
54 who wanted some kind of privacy, rather than a big box store. He could recommend things, go to firing
55 range with them, give guidance. Desk in the house for paperwork. A computer. Other than that it was
56 storage of firearms. If he was to purchase ahead of time. Didn't want to consign or inventory guns.
57 Does have to post specific hours for the ATF in case they want to check his paperwork. Biggest thing for
58 FFL was restriction on paperwork on his end. Nothing to do with town – all about accuracy of the records
59 and traceability of guns. In order to purchase, must fill out 4473 form, sign and complete it correctly.
60 Then they allow him to go to NH for handguns or federal for long guns for background. If that fails, they
61 are done. If they pass, good to go. After three day delay they can come pick up firearm if they don't
62 come back. You don't have to sell anybody a firearm. Wouldn't have to give a reason. He can tell them
63 to go elsewhere. Trying to keep it to people he knew. And teach people about firearms. Not a big
64 commercial effort. If it were to take off, but he didn't see that happening. Anybody can go to Bass or
65 another big box store and buy it at better price than he can meet. People don't want everybody to know
66 they have a firearm. He can't tell anyone. May have deliveries once a week or maybe a month. Not like
67 picking things up somewhere. No ammunition. This was a Type I license only. No ammunition or black
68 powder due to storage problems.
69 S. Bonczar asked how many guns on premises except for his own personal.
70 G. Birkett said one likely at most at any time. Not trying to put his money forward for inventory. It was
71 hard to be competitive. Didn't want to do public. His name would be public as FFL (Federal Firearms
72 License) licensee. No sign.
73 W. Campbell asked if he would be doing transfers.
74 G. Birkett said he could. They buy firearm in Maine and they send to him. They must pass background
75 check. If they fail, he would send gun back to that FFL and they would have to get money from that
76 dealer. Can import guns under certain restrictions. Say a relative dies in Ireland. Rules allow them to sell
77 to him and he could clear through Customs and to him. But must pass background check. If not, it goes
78 back to Ireland. He can answer questions and guide them to fill in a 4473. If they lie, they are subject to
79 \$10,000 fine. That could come back on him. No line on the form asking if they have a protective order
80 against them; but as a citizen you must know you have one against you. If you get caught, \$10,000 fine.
81 S. Bonczar said it sounded like he had done his homework. He asked if applicant would be the only one
82 selling firearms from his home.
83 G. Birkett said no one else could do his paperwork or transfer firearms because it is his license.
84 J. Plourde asked how people would know about him.
85 G. Birkett said the FFL site or by word of mouth. Trying to keep it exclusive, by appointment.
86 J. Plourde had found there were already four dealers in Milford. Two businesses and two individuals.
87 W. Campbell said that didn't cover FFL 3.
88 J. Plourde said none listed in Milford for collectors of curios and relics. At least as of Oct. 2017.
89 G. Birkett said there were quite a few. A lot inactive.
90 J. Plourde asked, no ammunition?
91 G. Birkett said absolutely not.
92 J. Plourde asked about black powder, and a safe for the inventory.
93 G. Birkett said black power required special license. Did have small safe in for inventory. No long gun
94 one. Had locking safe – never felt the need. Not required by state law or by federal law. In NH, a whole
95 set of rules if you have a loaded handgun in the house where a child comes in. You can keep it loaded but
96 subject to a whole set of things. Trigger guards not required. He has them on his handgun. Has to have
97 trigger guards for sale. You might want buy trigger guards on line. New guns have them. Used will not.
98 Has to give one to new guns.
99 W. Campbell asked about security measures.
100 G. Birkett said no. Hoped not to have a lot of people coming.
101 S. Bonczar asked for questions about the home occupation.
102 R. Costantino asked about the property.

103 G. Birkett said driving down Foster Rd there were two houses on the left and Mrs. Ferguson's on the
104 right. His sits on top. He can see his neighbors. It is 9 acres, so pretty private.
105 R. Costantino asked if he spoke to neighbors. Any issues?
106 G. Birkett said yes, to both of them. No issues. He also talked to someone not on the list who he thought
107 might be interested in coming to him after.
108 S. Bonczar – any other questions?
109 J. Plourde asked if applicant would be only employee. Reading through an e-mail to Robin (Lunn).
110 G. Birkett said yes. Wife can legally if he is out of town and all paperwork filled in and they were
111 approved; but in talking to Terry, they don't recommend. Should refer them to another gun dealer in town
112 for that paperwork. He was at Bass at counter when someone came in, had a firearm shipped from
113 Wisconsin to Bass. Man going to fill out the 4473. He stopped and said he didn't want to and asked the
114 young woman with him to. She was about 25; he was about 55. He was trying to tell this young lady
115 how to fill it out. He knew this was a straw man purchase. The man found her to buy it for him so he'd
116 take the gun and she'd have legal paperwork. The store caught on and shipped the firearm back to
117 Wisconsin. The two buyers had figured a big box store would be easier to make that straw man purchase.
118 S. Bonczar opened public comment. None. He closed public comment. They would go over special
119 exception criteria to get findings of fact on that.

120
121 **A. Is the proposed use similar to those permitted in the district?**

122 R. Costantino – everything in order.

123 J. Plourde – agreed. Looking at the case on paper he was initially hesitant, but through ATF
124 research found other dealers in residence areas. All about safety. Felt this applicant came in
125 prepared and provided him with comfort level. Firearms are scary if you didn't know what you
126 were doing. Applicant had shown with application and testimony that he was prepared and knew
127 what he was doing. With FFL guidelines and requirements especially selling of firearms; would
128 be hesitant if he had ammunition on property for sale. Applicant said he won't.

129 J. Dargie said if there were 10 or 15 neighbors, or even 2, she would feel differently about it.
130 Personally, wouldn't want it next door. Doesn't like guns. He had done his homework to meet
131 criteria. Far enough from neighbors. She wouldn't even think about it if it was in a dense area.
132 In this circumstance it seemed to work.

133 J. Plourde – it will be by applicant only.

134 J. Dargie – no sign, no advertising.
135

136 **B. Is the specific site an appropriate location for the proposed use?**

137 J. Dargie – it is far enough away, very private

138 S. Bonczar – using small portion of the house for a desk

139 J. Plourde – satisfies 25% criteria
140

141 **C. Will the proposed use adversely affect the adjoining area?**

142 S. Bonczar – no one in and out. No sign

143 J. Dargie – specific hours seemed very limited
144

145 **D. Will there be no nuisance or hazard to vehicles or pedestrian?**

146 J. Dargie – same

147 J. Plourde – talking about 1 or 2 for sale by appointment only. One or two cars at most, and not
148 at the same time.

149 S. Bonczar – low intensity
150

151 **E. Will adequate appropriate facilities be provided for the proper operation of the**
152 **proposed use?**

153 J. Dargie – AFT will make sure that is met – there was other oversight beyond the Board.

154 S. Bonczar agreed.
155 J. Dargie said he had to post hours, for ATF.
156 W. Campbell – he could be audited at any moment
157 J. Plourde – he notified chief of police
158 J. Plourde – he was going through proper channels
159 J. Dargie – agreed.
160

161 S. Bonczar moved on to vote on the Special Exception
162

163 **VOTE: On Special Exception:**
164

165 **1. Is the Special Exception allowed by the ordinance?**

166 **J. Dargie – yes**

167 **R. Costantino – yes**

168 **J. Plourde – yes**

169 **T. Steel - yes**

170 **S. Bonczar - yes**
171

172 **2. Are all the specified conditions present under which the Special Exception may be**
173 **granted?**

174 **R. Costantino – yes**

175 **J. Dargie – yes**

176 **T. Steel – yes**

177 **J. Plourde – yes**

178 **S. Bonczar - yes**
179

180 S. Bonczar said the application was unanimously approved and reminded applicant of the 30-day appeal
181 period.