

**TOWN OF CHESTERFIELD, NH
ZONING BOARD OF ADJUSTMENT**

**MINUTES
March 20, 2007**

Present: Chairman Burt Riendeau, Andy Cay, John Perkowski Alternates Tony Souza, Renee Fales and Jim Larkin, Select Board representative Dan Cotter and Code Enforcement Officer Chet Greenwood. Bob Brockmann, Selectman elect was also present.

The Zoning Board of Adjustment met at the Chesterfield Town Office on March 20, 2007 at 7:30 PM. Riendeau introduced the Board and explained the evening's procedures. The voting members would be Riendeau, Cay, Perkowski, Souza and Fales. The following agenda items were heard.

1. Robert C Hodgkins III requests a Special Exception under Article 204.3 Section A, Home Industry Article 402.4 to permit a Security Consulting business and Firearms Manufacturing. The property is located at 1041 Route 63, Spofford (Map 3 Lot B8.1) Rural/Agricultural Zone

Hodgkins stated he thought his neighbors had the wrong idea about what he is proposing. He proposes to manufacture small firearms and to do consultation for businesses. He would have a metal container to store the ammunition. He would have some UPS deliveries and occasional appointments. The manufacturing would be assembling weapons in the barn. There would be no client shooting on the property. He has a large test facility in Massachusetts and all testing would be there. Hodgkins stated he does personal shooting on his property and does it at reasonable hours.

All assembly work would be indoors. He would have customers by appointment only and the hours of operation would be working in the shop. He has a Form 7, manufacturing license. He will not be manufacturing ammunition.

The ammunition would be a bunker type facility approximately 8 x 16 or 20 ft. The weapons would be in a safe in the barn. He will have a modern security system. He would store a maximum of 2,500 rounds of ammunition and would manufacture 50 caliber and under. He has been in the business for 3 years and has been doing consulting for the government.

It was noted that the structure needed to be screened. He advised he has a 6 ft fence along the front of his property. His lot is approximately 10 ½ acres.

Jim Weidenheimer, neighbor, stated that the shooting would start at 6 am. He asked about the hours of operation for shooting. Hodgkins stated that he has contacted the Police Chief regarding times and was told to follow hours of decency. Weidenheimer asked about inspections. Hodgkins advised ATF would inspect in accordance with State compliance.

Bob Brockmann asked what modifications would be made to assure safety. Hodgkins stated they will be replacing the large windows with small ones and they would be barred on the

inside. He would have a motion sensitive security system. Fales asked about motion lights. Hodgkins stated that he already has motion lights on the property. There will be no bathroom facilities in the barn.

It was noted that Hodgkins owns and resides at the property. There would be no more than 3 employees, his wife, himself and his brother. His brother is the only non-resident employee.

The letters from the Jerolds, abutters, were given to the Board to review.

Hodgkins stated they would go to a client's location and consult regarding security systems; they may sell to the client. He would use the Internet for sales and would be assembling components. Most work is out of the country. He advised of the remote location in Mass for testing. He wants to keep the business small and low key. He would buy and sell arms and in some cases may never see the product as it is sent directly to the client. It is a very tightly controlled endeavor. He could sell 100-200 weapons possibly more per year. Hodgkins stated he requests a variance for the container in the yard.

The Board advised that this is a Special Exception to permit operation of a Home Industry on the property. Hodgkins advised there would be no chemicals or hazardous waste, only small amounts of bore cleaner. There would be no test firing for clients.

Riendeau asked what are the safety issues. Hodgkins advised that sale of automatic weapons requires prints and a full background check to ATF. This could take 60 – 90 days. Handguns require State PD check. All equipment would be too heavy to move or would be bolted down. Jerold's letter noted that shots went across the road. Hodgkins advised that he only shoots into a 30-foot embankment behind his house. He is required to be 300 ft from neighboring dwellings.

Lisa Weidenheimer, neighbor, asked about his selling retail. Hodgkins advised that he doesn't want people coming in; it is his family home. He would have appointments only. She asked about testing the guns. Hodgkins stated no, they would use the test facility.

Jim Howard, abutter, stated that firing guns concerns him. They fear walking on their property by Hodgkins' because of the gunfire. They like to bird watch and hike and this is limiting the use of their property. Jacqueline Howard stated Hodgkins shoots 2 – 3 hours a day and she is fearful. She asks that the Board evaluate if this is a good fit for the R/A zone.

Souza stated that shooting is an allowed use on your own property. Riendeau stated that a Special Exception is an allowed use making sure that the applicant adheres to the safety regulations.

Diane Gibbons, neighbor, advised this home business manufactures items that kill. The shooting disrupts the peace of the neighborhood even though it is lawful. She believes this would affect the property values and if you need to sell your property this business would be an issue with regard to storing ammunition and guns.

Jim Bialowski, abutter, asked if the Board had enough information to make this decision. He sees this as totally inappropriate for the neighborhood. He suggests there be a noise ordinance and that decibel readings be made on the property line. He still has not heard of the hours of operation. He stated that even if the client couldn't shoot the firearm, Hodgkins could demonstrate to the prospective buyer. He urges that the ZBA consider the potential harm to the neighborhood. His house is 300 ft from where Hodgkins is shooting and the Howards are 320 ft away.

Bialowski noted the Home Occupation general requirements, 402.1, #3, "The activity must not change the character of the premises or surrounding neighborhood. There should be no features not normally associated with residential use (such as noise, light, dust, fumes and other pollutants or safety and health hazards). He sees both noise and health hazards with this business.

Bialowski advised the property is not screened on the south side, only the east with the fence along the road. He stated it would have an adverse effect on the neighborhood and cautions the ZBA allowing this in the area. He advised that he has heard the 30 odd six rifle for 15 minutes.

Darren Gerber, abutter, asked about the bunker and if the emergency response of the Town could handle this in regard to theft and vandalism. He bought his property for peace and quiet in the R/A zone and believes this is not appropriate in this zone.

Dan Cotter, abutter, stated that as a private citizen you could have just as many guns in the house and ammo in a shed. He doesn't see this as having any more impact than any other business.

It was asked why do we have the R/A zoning. Owning firearms is different than advertising the sale of firearms. Ammo bunkers blowing up are not like a house on fire. Cotter stated that when he was on the Spofford Fire Dept there was a resident fire and there was a keg of gunpowder in the building. This was not discovered until after the fire was controlled.

Fales asked Bevis, Chesterfield Fire Chief, how would the Fire Dept respond to a bunker already threatened with fire. Bevis advised that Thomases have much more explosives than what a home would have and a home with 2,000 rounds is more of a danger than this proposal with proper containment. ATF regulates all containers.

Hodgkins stated that he would have small arms. There would be one door in the steel container with a smoke detector. Some containers come with pre-fitted fire extinguishers.

Cay stated that he is hearing from the neighbors that shooting in the backyard is a concern. Hodgkins stated this is the first time he has heard these complaints. He has had only one complaint in the past. He stated he could use suppressors and it would lessen the noise. He will put this on his guns. Cay asked what could he do to make the neighbors more confident. They need to know that noise and safety won't be a problem.

Perkowski suggested that in consideration for neighbors Hodgkins could restrict shooting to Mass. Souza stated that Hodgkins is within his rights to shoot on his property. The testing of arms is not allowed by ATF and must be done at the test sight in Mass. Hodgkins stated he would try and curb his personal shooting and take the larger arms to the range. He stated they would have a multi layered security system. He is not interested in retail sales at his home.

Fales asked about the security. Hodgkins advised they would have remotely monitored security system and smoke detectors. He stated when they get the container he would check with Fairbanks to see what they would require.

Perkowski move to close the public portion. Fales seconded the motion, which carried unanimously.

The Board reviewed the Special Exception criteria. Perkowski noted under the general requirements the noise and safety issues. He said there could be a blurring between personal use and business use. Cay stated that is goes to good faith. It may be legal but it is controversial. He suggests that Hodgkins do what he could to pacify his neighbors. He should consider conceding something to make it work in the neighborhood. This proposal could affect house values in the absence of an owner who is doing it in a reasonable manner. If it were allowed he would want to hear from the applicant that he would do what it takes to make neighbors comfortable.

Riendeau asked what if a condition was that the range would have a designed catch. Souza advised that a 30 ft bank is a safe condition but stated a condition be that there would be no shooting in reference to the business.

The Board asked Hodgkins to respond to Board comments. He stated that he would curb personal shooting to a reasonable amount but would not stop because it is his right. He would have a test barrel with water in the building for testing the firearms. He advised that they do have bullet traps indoors. He wants a low profile business. He will not have his address posted on the Internet but will use a PO Box.

Souza noted that even if the Board did not permit the business, the shooting would continue, as it is Hodgkins' personal right to do so.

Souza moved to grant the Special Exception for the permitted home industry to allow the Security Consulting business and manufacturing firearms providing that all the ATF requirements are met, the safe storage for the ammunition being monitored by ATF. There will be no firearms shooting that is related to or associated with the business and/or customers unless it is done inside in the water barrel. Perkowski seconded the motion.

Discussion: Perkowski stated that clients not shooting on the site would be impossible to enforce. Larkin stated this must be taken in good faith and believes Hodgkins wants to comply. A condition could be Hodgkins would not demonstrate for a customer. Perkowski stated just don't shoot there. Larkin stated we couldn't regulate that because it is his right. Cay stated that if the Board deprives the right to do the business, Hodgkins would have to

make a choice to move on. The Board should consider Hodgkins is asking permission and there are many neighbors have come to complain.

It was asked how many are permitted to sell guns in Town. The Board looked at the intent of the Occupation ordinance. Its intent was to reign in businesses in Town. The R/A zoning is the place where you would shoot with the 5-acre requirement. The Board discussed revisiting this permit in one year. Perkowski stated with that condition attached he would consider it.

Souza moved to amend the motion to add that the Board would revisit this approval in a year.

Criteria:

- A. The special exception is specifically authorized by Article II of this ordinance. Yes*
- B. The proposed use will not be injurious or detrimental to the neighborhood. Yes*
- C. Any special conditions required by Article II, Article III or Article V will be complied with. Yes*
- D. The proposed use will not make an excessive demand on municipal services. Yes*
- E. The proposed use will not generate traffic volumes that will overburden existing roads and streets. Yes*
- F. The proposed use will not have an adverse impact on the natural environment. Yes*

Fales seconded the motion, which carried by majority vote. (4-Yes: Souza, Perkowski, Fales, Riendeau - No: Cay)

2. Pierre Saba dba Riverside Plaza request a Variance from Building Ordinance Article 13.03, Height of New Buildings, to permit a 10 ft relief to include the stairwell houses, parapets and elevator shaft. The property is located at Riverside Dr, W Chesterfield (Map 14C Lot B1) Commercial/Industrial district.

Michael Bentley, representing Saba, stated that when the site plan was approved it was done by Clough Harbor. There were not specifics for the building plans but only site plan information. Sage Engineering developed the building plans, which were approved by Greenwood on July 19, 2006. Once the permit was issued Saba had the Fire Dept burn down the existing motel. A Cease and Desist order was issued by Greenwood on March 7th to stop construction because the approved site plan differed from what was being constructed.

On March 8th he had requested that the Select Board rescind the Cease and Desist but they did not. The Board asked for more information and on March 14th after conferring with Greenwood and Bevis the Select Board moved to not enforce the Cease and Desist order and allow Saba to continue inside work at his own risk. Bentley advised they had met with the Planning Board last evening informing them of the formal application for the amended site plan that will be before the Planning Board on April 2nd. He also stated that this application should have both the variance request and equitable waiver. All parties have operated in good faith.

Riendeau asked about the Planning Board approved plans. Frank DeMarinis, Sage Engineering, advised that Clough Harbor had done the site plans showing floor plans and elevations. The Planning Board approved this 6 months ago.

The Sage plans were specific for building and had the same intent as the approved plans with minor changes as he saw it at the time. They are going back to the Planning Board with the modified plan. The doghouses and basement windows were not on the plans presented to Greenwood. Bentley stated that the elevation of the finished first floor was noted as 241' above sea level.

The Board questioned how do you design the building, build it and not comply with the building codes. The height of the roof is 29 ft 3 ¾ in from the natural ground in the front with 2 ft parapets to keep water, ice and snow from falling over the edge. The doghouses were designed to allow access to the roof for a deck but that is not happening now. The doghouses would make for easier access to the roof for the Fire Department. The elevator shaft cover is also above the 30 ft height restriction.

The foundation windows on the riverside and the walk out door on the west side require grading. The height from the grading to the parapet is 41 ft 2 in. DeMarinis advised he was not aware of the building ordinance and only used the zoning ordinance.

DeMarinis presented a plot plan with pictures taken from various distant locations. The structure would be 34 rooms with 2 conference rooms on the 1st floor. The Planning Board approved 36 rooms. The total structure is 35,000 sq ft including the basement. There are no kitchen facilities and will be no restaurant. There is a small prep room for a continental breakfast. In the future Saba would like to offer a gym area using the windows in the basement. The former motel was 2,432 sq ft.

Bentley advised the height is the issue. In regard to the fire protection there is an on-site 16,000-gallon water tank, a wet hydrant system and the structure is fully sprinkled.

Bevis advised they had called for a 3rd party inspection and Saba is in the process of arranging this. Bevis is very satisfied with the fire protection and the doghouses would be advantageous to the fire dept to access the roof and he would prefer to see them stay. He stated that accessing the roof through a doorway vs. a hatch is much easier.

Bentley advised that when Sage filed the variance request they should have included asking for the equitable waiver. Saba and DeMarinis should have gone back to the Planning Board before it got as far along as it did. Based on further engineering and necessary changes, it should have gone back. Now construction is started and Saba has over a million dollars into the project. This will be top rate construction and will be a benefit to the Town.

Bentley stated that the equitable waiver makes sense with the reliance on the approved building plans. Saba proceeded in what he thought to be good faith and we are where we are.

Riendeau noted that the application was not submitted with the request for equitable waiver and asked Bentley if it had to be re-noticed. Bentley agreed if there had been any abutters

present with concerns on the project but there were no abutters present. Bentley thinks the lion's share of the application is the equitable waiver.

Greenwood advised that the plan submitted to him were the site, septic and building plans. He presumed that the site plan to be the approved Planning Board plans. The new building elevation is 244 not 241 as approved. The things that were added to the plan should have been included in the plan as reasonable building practice. He had no reason to believe the building plan was not the approved site plan.

Bentley stated that if Saba had tried to pull a fast one on Greenwood he would not be here for an equitable waiver. Bentley quoted from RSA 674:33a (b).

DeMarinis stated he was also at fault in the height. The plan drawn by Clough Harbor engineer noted the height at 30 ft. He stated that a lot of people failed this item.

It was noted that there was to be no mechanical equipment of the roof. There would be roof drains that would require cleaning, low profile fan vents for venting bathroom areas. All are below the parapets.

The doghouses were not on the plan to Greenwood. Larkin noted collapsible stairs that are rated for snow load to access the roof.

Bentley stated to be compliant they would have to take out the doghouses, parapets, elevator and walkout on the riverside and grade to the foundation where the windows exist. All these would take substantial engineering and funds. He stated that it was a good faith error on the part of the owner. Saba stated that he relied on the building permit issued by Greenwood. His intention is to have a beautiful building. Cay stated he does not doubt that Saba would build a nice building.

Cay stated that if you know the rules ahead of time it would have been designed in compliance. It is egregiously beyond zoning. The length of the building is 248' on the front, parking lot side and slightly longer on the riverside.

Bentley stated the applicant did not know that the plans weren't prepared in accordance with the ordinance. Saba stated once the building permit was issued he believed he was in compliance with the ordinance.

Riendeau stated that the Planning Board made it clear there was a 30 ft height limit. Perhaps this wasn't carried over with changing architects. It was also noted that there needed to be 15 ft from the face of the structure and at the ends. The ends are graded down from the face. This would require retaining walls.

Perkowski moved to close the public portion. Fales seconded the motion, which carried.

Cay noted that the elevation on the riverside is 40+ ft and that is without the doghouses, parapets and elevator shaft considered in the calculations. Larkin stated that the elevator shaft and the parapet are necessary but the doghouses could be removed.

Perkowski stated that the designer was responsible for not reading the ordinance. Cay stated that there are big problems and it is not up to the Board to fix them. The Board should deny the application and put it back onto the applicant. A variance and equitable waiver are before the Board.

Perkowski moves to continue the meeting to the site for site visit on Sunday, March 25th at 8:00 am. Fales seconded the motion, which carried unanimously.

3. Review 2/13/07 Meeting Minutes

Cay moves to approve the February 13th meeting minutes. Fales seconded the motion, which carried unanimously. (Voting: Cay, Fales, Riendeau and Ross)

4. Information

- Zoning complaints
- Marry Notice of Violation
- Saba Cease and Desist
- Nine A LLC – The Town of Chesterfield Reply Memorandum
- Planning & Zoning Spring Conference

5. Adjournment: The Board adjourned at 11:30 PM.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Burton Riendeau
Chairman
Zoning Board of Adjustment

Date: _____