

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

**MINUTES
July 8, 2008**

Present: Vice Chairman Andy Cay, John Perkowski, Harriet Davenport, Renee Fales and Alternates Lucky Evans and Tony Souza and Select Board representative Bob Brockmann.

The Zoning Board of Adjustment met at the new Chesterfield Town Office on July 8, 2008 at 7:30 pm. The following agenda items were heard.

1. Robert C Hodgkins III requests renewal of the Special Exception under Article 204.3 Section A, Home Industry Article 402.4 to permit a Security Consulting business and Firearms Manufacturing granted by the ZBA 6/12/07. The property is located at 1041 Route 63, Spofford (Map 3 Lot B8.1) Rural/Agricultural Zone

Souza stepped down from the table.

Hodgkins requests that the Special Exception be allowed to continue. He asks if the fence in the parking area could be removed and in its stead a 6 ft fence or arborvitae trees be planted along his southern border for screening next to the Bialowski property. This would give 360° coverage and would provide the required screening.

Perkowski asked if there had been any complaints made to the Police Dept. Ross stated that she called Fairbank's secretary and was advised that there were no complaints. Bialowski stated that she had called the Police Dept. and complained about the rapid fire and this can be verified by Chief Fairbanks.

Cay read the conditions placed on the original special exception. Retail sales are by appointment only. There is no storage bunker in place now but when it is installed it would remain in the planned location. The fence along Route 63 would remain.

Hodgkins requests that the shooting restriction be removed to allow him to install an indoor bullet trap. It would be a composite rubber block which is environmentally safe. The block could be sent to remove all lead. He stated this would be done indoors only and would be sound proof. He uses a suppresser when shooting anyway. This would be to test assembled arms only.

Hodgkins asked to place a small sign at the entrance to his driveway. The Board noted that this would be allowed under the Home Occupation ordinance.

Mike Bentley, representing the Bialowskis asked several questions of Hodgkins.

1. What is the number of firearms assembled in the past year?
2. Since the storage container was approved with their objection and has never been installed, it seems to suggest that it would not be needed.

3. Regarding the discharge of firearms. Darlene Bialowski had called the Police to report rapid discharge, 180 shots in one hour. A log was presented to the Board that was kept by Bialowski noting the days and times of firearm discharge.
4. The original approval did not allow an indoor trap. The Massachusetts facility was to be used for testing. There was to be no other firing as a part of his business.
5. What type of security is there when he is gone?
6. The RSA's note that any fence over 5 ft would be considered a spite fence. If Hodgkins puts up a 6 ft fence, they would address it.

Hodgkins stated the number of weapons sold is in the 100's and within ATF standards. His business does buy and sell through the internet and this is regulated by Federal Firearms laws.

Hodgkins advised he has never been contacted by the Police with regard to firearms. The container has not been installed but they would like it to remain as part of their future planning. He stated he hopes as the business grows to move the operation to another site.

It was noted that the log that states the Police made a visit it was to the Bialowski's house and not to Hodgkins.

The property is secured by a full ATD system with cameras inside and out all wired for security. This is connected to the internet and can be monitored from where ever he is in the world. ATF requires security and they have inspected the site.

The log of firearms discharge was given to Hodgkins. He stated that some of those dates he was deployed to Iraq. He stated it could have been his brother or wife however, he has heard shooting coming from Pinnacle Springs, North Shore Rd and north of Mill Pond.

Bentley stated that the previous meetings security counseling was noted and discussion on manufacturing vs. assembly. There was nothing in the application dealing with internet sales. Bentley asked how many of the hundreds sold were assembled on the site. The application should be amended to include internet sale and whether it fits within the Board's approval.

Bentley stated that if there had been a container installed it would show a need but since there is no container yet and no documented need, it should not be allowed until such time it is needed and again requested.

Bentley stated that the Board should require the ATF books for review to see what is being assembled and to give a clear idea of what is going on. Without looking at the records, it is pure speculation. Hodgkins stated that ATF records are not a matter of public record but are only available to the Police Chief and ATF.

Cay asked the nature of internet sales. Hodgkins stated it is weapons and parts and all within ATF standards. He has sold to Law Enforcement agencies, Federal agencies and private individuals.

The Special Occupational Tax (SOT) allows not more than \$500,000 in sales. This is for firearms needing a tax stamp i.e. machine guns and suppressors. The general public cannot buy a fully automatic firearm.

The cost of small arms is between \$500 and \$1,000. 60 to 70% of his business is consulting.

Bentley stated that if it is true that the ATF books are not a matter of public record he would like the Board to ask Fairbanks to look at the books to see what the number is of assembled arms on site have been sold and the number that were purchased and resold on the internet. Hodgkins has an obligation to prove this information.

Cay stated that the Board had debated assembly vs. manufactured arms and Hodgkins had stated internet sales during the original application approval. Bentley stated he does not recall internet sales.

Cay asked Hodgkins if it were likely that the bunker would be installed in the next year. Hodgkins stated they would like to move offsite but the bunker may be necessary.

Hodgkins stated that in regard to test firing it would only be done by his brother or himself and no customers would be allowed to test fire on the property but only at the offsite range. The lead is shot into a composite rubber to capture the bullets. Any test firing would be done on firearms assembled on site only and not purchased firearms.

Darren Gerber, abutter, stated he would like to go on the record that he agrees with the issues brought up by Bentley.

Bentley stated that the March minutes, page 2, was the only note regarding sales on the internet and not purchases. Cay stated he does recall discussion on internet during the earlier meetings. A copy of the June 12th minutes was given to Bentley.

Perkowski moved to close the public portion. Davenport seconded the motion which carried unanimously. The voting members are Davenport, Perkowski, Fales, Evans and Cay.

Perkowski stated that the main concern with the original application was shooting in the backyard and stray bullets and that is why we gave one year. ATF controls this business and not the State. Selling by appointment or on the internet is a moot point in his opinion. Have there been any problems? Have the police been there or bullets hit houses? Without any police reports or the Feds pulling his license it seems he is doing the right thing and complying with the approval. As far as the bunker goes, if there is a lot of ammo there he would rather see it in a bunker.

Perkowski stated that firing into a rubber block to collect lead is environmentally safe. As far as assembly vs. manufactured it is a moot point.

Davenport stated that the year was given to see if there were any issues that arose. Perkowski asked if a 6 ft fence was against the ordinances. Ross didn't think so but could check with the Code Enforcement Officer.

Screening is required for the parking and bunker. Fales remembers the discussion regarding selling on the internet.

Perkowski moved to permanently grant the Special Exception to continue. The number of sales purchased and resold vs. assembled arms sold falls within the original guidelines of the Special Exception granted and is regulated by ATF. The fence by the parking area may be replaced by a fence or arborvitae plantings along the southern border of the property as screening.

Further, the Board amends its original approval to grant firing of assembled arms to be test fired indoors using the composite rubber block capture system in an approved manner with no dust, smoke or noise to be heard outside the building. This test firing is to be done by employees only of the business and not the general public and the tests are to be for only those arms assembled on the site.

Point of order was requested by Mike Bentley for the record. He noted that this hearing was to permanently grant what was granted last year and not to modify the application. If modifications are to be made then a new application should be submitted.

Fales seconded the motion.

Cay stated for clarity, it is Perkowski's intent to grant the request for this home occupation by special exception and to amend it to allow the discharge of firearms inside. A fence is allowed and signage is allowed. Perkowski stated yes, specifically for the purpose of test firing weapons that have been assembled on site and only by people who are employed by this business. This is the only change to the approval granted last year except that it now becomes permanent. He stated that the Board granted it for one year to make sure that there weren't issues with the Police. Cay asked if firing 40 rounds in succession or 140 rounds fired in an hour was not disruptive to the neighborhood. Perkowski stated that it is no more disruptive than his neighbors' firing. He would like it if he never heard firing but he has neighbors that do fire on their property and it is legal to do so. If the firing is done at a decent hour and it is done safely it is alright and he thinks that is the way the entire town operates. Perkowski stated that this is not the issue. Even if the Board denied this application, Hodgkins would still have the right to fire his arms as a hobby. Davenport stated that she agrees.

A vote was called. 4-Yes: Davenport, Fales, Evans, Perkowski. 1-No: Cay. The motion carried by majority vote.

2. Mark Lathrop requests a Variance from Article 204.4 B, Lot Frontage to permit one lot to be subdivided from Map 2 Lot D17.7 allowing 150 ft road frontage. The property is located at 44 Chamberlain Way, W Chesterfield (Map 2 Lot D17.7) Rural Agricultural district.

Lathrop advised there are 6 homes on Chamberlain Way. He would like to subdivide one lot from his 58 acres. To keep the 400 ft frontage requirement for his lot he would need to have the proposed lot with 150 ft frontage. He stated there is 578 ft of frontage existing. The

proposed lot would be in keeping with the frontage of the other lots on the street. The 150 ft would bring the property line within 25 to 30 ft of his sugar house.

It was noted that the other lots are building lots of record. The Board reviewed the original subdivision done in 1987 for Ranger Curran.

Lathrop stated he is not interested in more subdivision at this point and he wouldn't have frontage anyway.

The Board asks what the terrain is like. Lathrop advised it is flat by the house and slopes down away from the road. Cay stated that it is possible to put in a stub of a road to give the required frontage. Lathrop stated it is not economically feasible to put in a road. He had thought to put in a cul-de-sac with 3 lots but it was too expensive.

Cay stated that he needs to demonstrate hardship and good reason why he can't meet the ordinance. Lathrop stated there is not enough frontage to leave the 400ft for his lot. The Board reviewed the subdivision plan. There is 771 ft of frontage. Lathrop stated he had measured 200 ft just short of his sugar house. He stated he never put it in Current Use to take that lot off his and to make full use of the property.

The Board discussed corner lots and required frontage. Zoning Ordinance Article 207.3 states that a corner lot the frontage requirement shall apply to the heavier traveled street. Frontage on the lesser traveled street shall be no less than ½ the required frontage.

Lathrop stated he wants to meet what is in the neighborhood. It was noted by the Board that the existing lots on the road have between 200 and 330 ft of frontage. The acreage would comply and exceed the other lots on the road.

Cay stated that the 58 acre lot could be split up under the current ordinance and it could be a cluster development. Lathrop stated it is not financially feasible and would mess with the integrity of the property. Cay stated that by law there are other options.

Lathrop stated he wanted to put a house in that looks into the future with regard to energy efficiency.

Wayne Winn, abutter, stated there was a road that went up from Chamberlain Way to his lot and he had a verbal ROW. Removing the ROW would land-lock his lot. The cows use to be driven up to pasture. He is concerned with losing his ROW. He stated that when Curran owned the property and wanted to add onto the house he contacted Winn to get his permission because it would encroach into the ROW.

There were no other abutters present.

Fales moved to close the public portion. Davenport seconded and the motion carried.

Perkowski stated there are no terrain issues. The other lots on the road have frontages ranging from 200 – 330 ft. Cay stated that a cluster could be done. It would tie up 30 acres

but if there is no intention to subdivide further it wouldn't be a problem. He could do a cluster plan and put other lots into current use.

Fales moved to deny the application. Using the Boccia analysis we do not find hardship. The proposal can be achieved in another manner and there are no special conditions on the property.

Criteria for approval:

- A. Denial of the variance would result in unnecessary hardship for the property owner seeking it. Boccia analysis for hardship:

 - *The special conditions of the property make an area variance necessary in order to allow the development as designed. No**
- And;*
- B. The same benefit cannot be achieved by some other reasonable feasible method that would not impose an undue financial burden. No*
- C. The granting of the variance would not be contrary to the spirit and intent of the ordinance. Yes*
- D. The variance is in the public interest. No*
- E. Denial of the variance would result in injustice. No*
- E. The variance will not diminish the values of surrounding properties. No*

Davenport seconded the motion, which carried unanimously.

3. Review 6/10/08 and 6/12/08 Meeting Minutes

Perkowski moved to approve the meeting minutes. Davenport seconded the motion, which carried.

4. Adjournment: The Board adjourned at 9:28 pm.

Respectfully submitted,

Carol Ross
Secretary

Approved:

Andy Cay
Vice Chairman, Zoning Board of Adjustment

Date:_____