

Minutes
LITCHFIELD ZONING BOARD OF APPEALS

November 4, 2014, 7:30 p.m.

Town Hall Annex Gymnasium, 80 Doyle Rd., Bantam, CT

Members Present: Chairman Brian Donohue, Brian McKernan, Melinda Mennillo, Virginia Dean
Andrew Ide, Jeff Legendre

Members Absent: None

The Chairman called the meeting to order at 7:30 and explained the format of the hearings.

M. Mennillo moved to change the order of the agenda to consider case 14-11-1 immediately after the close of that public hearing, A. Ide seconded and the motion passed unanimously.

PUBLIC HEARING

Case 14-11-1 – To discuss and possibility act upon a request from Jennifer J. Triscele Martin for a Front yard variance of 33' from Article IV Section 2 and Enlargement variance Article VI, Section 6(7) for a proposed addition for property at 386 East Litchfield Road. Jennifer Martin was present for the application and submitted return receipt mail cards. She explained that she and her husband would like to put a family room addition onto their house. The house was built circa 1800 and currently sits in the required front yard setback. The proposed addition will be 21'x18', the existing house is 1100 square feet. The proposed addition encroaches 1 foot less into the setback than the current house does. The addition cannot be moved further back because it would encroach on the septic setback. No one spoke for or against the application. G. Dean moved to close the hearing at 7:41, J. Legendre seconded and the motion passed unanimously.

Consider Case 14-11-1

Andrew Ide moved to grant the variance based on the hardship that the house was built pre zoning regulations and sits entirely in the required setback area. The proposed addition will not increase the existing non conformity and the addition cannot be located anywhere else on the lot because of septic and well constraints, M. Mennillo seconded and the motion passed unanimously.

Case 14-11-2 – Appeal of Decision made by the Zoning Enforcement Officer dated August 26, 2014 regarding the 58 McBride Road "gun club". The Chair opened the hearing at 7:50 p.m. and explained the format of the hearing. Attorney James Steck was present for the appellants and submitted return receipt mail cards. He explained that the Board can uphold, deny, overturn or modify the order of the Zoning Enforcement Officer.

He believes that there is substantial evidence in the record showing that the pre-existing non-conforming gun club use was abandoned as evidenced in a photograph he submitted for the file showing a sign in the driveway at 58 McBride Rd. reading "Happy Acres Farm". He read from Inland Wetlands minutes from December of 2008 that quote Mr. Stack indicating that he would like to have an arena for horses for his daughter in the rear of the property and his son will be living there raising animals. Mr. Steck noted that the former "club house" has been renovated into a residence for Mr. Stack's son who lives there.

He went through the history of the property as the Northfield Rod and Gun Club. He stated that an application for a 9 lot subdivision in 2005 was submitted to the town but was withdrawn because it did not pass a Phase 1 Environmental Site Assessment due to possible environmental impacts of lead shot as it affects both water quality and residential home development and submitted a letter from Torrington Health District dated November 14, 2005 stating those facts.

In 2007 another application was submitted for a 5 lot subdivision and he submitted a Site Development Plan prepared for S.F. Holdings showing that proposal, which was also withdrawn.

Mr. Steck submitted tax records indicating that Mr. Stack currently holds an open space classification and a tax classification as farm land for the property at 58 McBride Rd. As far as he knows, the property is not currently being run as a "gun club" or "rod and gun club". He stated that it is being leased to a company called King 33 who is holding tactical training classes on the property. He stated that it's a far cry from the skeet shooting that used to be done on the property and cited a letter from Mr. Stack dated April 2, 2012 indicating his desire to "permit change of "Farm Use" from "R-80". He cited, and submitted for the record, a court case entitled Cumberland Farms, Inc. v. ZBA of the Town of Westbrook that shows how one court has ruled on cases involving an intent to abandon a use.

Having no opening remarks from anyone opposing the appeal the Chairman then opened the public hearing up for comments from the public.

A total of 29 people spoke. 7 spoke in favor of the current use and 22 spoke against the current use. Some of the speakers were from other parts of town just supporting their neighbors.

Margaret Deakin, who lives directly across the street is terrified to let her son out in the yard. She stated the last year has been very stressful having to listen to shooting at all hours of the day and night. She claims that the whole neighborhood is being held hostage by the activity on this property and feels intimidated by the Stacks.

Theresa O'Neill lives at 85 McBride Road. She stated that neighbors are nervous because they are not sure who is shooting on the property. King 33, who leases the property for training sessions for SWAT teams also offers classes to the general public. She had complaints of police not acting on complaints from the neighbors. She bought her house in 2003 and knew there was a gun club there, which she didn't have a problem with, they never overstepped their bounds and only used skeet and trap shooting. What goes on there now with SWAT teams shooting and all the explosive targets going off is totally different from what it used to be.

Laurie Battick stated that she has lived on Richards Rd. Ext. for 40 years. She never had a problem with the rod and gun club. They shot on Saturdays or Sundays from 9 to 1, they had turkey shoots there and weddings there, it was a social club, a community gathering place. The current use is not a social club, it's a money making business and doesn't belong there.

Alex Deering showed the Board a video of current activities occurring on the property.

Joseph Birkenberger lives on Richards Rd. Ext. Doesn't have any problems with the gun club, but doesn't want shooting at night. The Board should only consider safety and noise issues and quality of life issues and nothing else. He hopes everyone can come to some agreement.

Chris Fields owns King 33 and has been shooting there for 13 months. He has an agreement with the Stacks. They have mitigated some issues when they realized there were concerns. They are also going to do more safety and noise mitigation and some activities that were performed there before will also be looked at. He stated that he does not want to cause problems with the neighbors and is listening to them and will consider all concerns. He submitted a letter to the board from Frank Stack dated November 4, 2014. He stated that once they learned of the concerns about night shooting it stopped. They only allow 6 shooters at one time. Shooting is done by appointment only when classes are held. His company is a training facility not a gun club.

Ryan Geddes remembers going to the gun club with his grandfather and shot his first AK47 off the porch so the claims that only trap and skeet shooting were done on that property were not correct, he remembers all kinds of guns being shot.

William Deering went through a calendar of shooting events that had occurred during the previous month being done on the McBride Road property.

Clarissa Wiles lives on Newton Road for 36 years and supports the gun club. She feels comfortable that police and swat teams are training there so they can get the proper training to be able to protect us.

Recess: 9:32 p.m.

Reconvene: 9:41 p.m.

During his closing statement Attorney Steck wanted to make the board aware of the tools it has to decide on this case. First consideration must be given to the abandonment of the pre existing non conforming gun club use. The Northfield Rod and Gun Club is no longer in existence therefore, King 33 LLC cannot be a member of that gun club and he believes Mr. Stack has clearly shown his intent to abandon that use in many ways.

First, the testimony of many at the hearing stating that they heard no shooting on the property from the time Mr. Stack purchased the property up until the last year, when it became a tactical firearms training center. So you can look at the time it didn't occur as in the Cumberland Farms case as well as the expressed intent of the owner. He gave up the gun club use when he applied for a farm permit. Mr. Stack's intent was clearly spelled out in the letter he submitted when he applied for the farm permit. The abandonment issue hinges on the intent of the owner. He noted that there doesn't need to be any approvals for permits applied for, just the intent of the owner to use the land for something else.

Attorney Steck stated that if the Board doesn't find on the abandonment issue, they can consider the issue of an expansion of the non conforming use. He explained that the issue of expansion deals with extent to which the new use reflects the nature and purpose of the original non-conforming use. He stated that people testified that have lived in the area for 30 or 40 years that the gun club was a social club with rifles and skeet shooting done on occasion. Today the property is used by a commercial business as a tactical firearms training center with long range firing done using AR14 style weapons which are very different than a shot gun. He submitted copies of a recently decided appeals case in the State of Washington (Kitsap County v. Kitsap Rife and Revolver Club) which deals with the issue of different kinds of guns being shot on a property attributing to an increase in the use. He believes that switching over from rifles, to pistols, to long range shooting and nighttime shooting are all expansions.

Mr. Steck stated that he totally disagrees with Mr. Stack's analysis of Connecticut General Statute section 22a-74a which addresses noise issues on gun clubs. He believes the board is fully capable and fully allowed to regulate the use of a property. While noise is the genesis of this complaint, it's still a complaint about the use of the property. The Washington case deals with the same issue of the noise ordinance it says that the noise ordinance doesn't have anything to do with the health and safety on a piece of land. The board can still rule on health and safety issues.

He urged the Board to issue a cease and desist order for no more shooting on that property or at least restrict the use to skeet shooting as what was done before on that property.

There was no one to speak in opposition to the appeal.

M. Mennillo moved to continue the public hearing to December 2, 2014 at the Town Hall Annex Gymnasium J. Legendre seconded and the motion passed unanimously.

REGULAR MEETING

Consider Case 14-11-2 – Continued

Adopt 2015 Meeting Dates – A. Ide moved to approve the meeting dates, B. Donohue seconded and the motion passed unanimously.

Approval of Minutes October 7, 2014 – M. Mennillo moves to approve the minutes, J. Legendre seconded and the motion passed unanimously.

Possible Executive Session to discuss pending litigation – None

Adjournment – B. McKernan moved to adjourn the meeting at 10:15 p.m. A. Ide seconded and the motion passed unanimously.



12/2/14

Brian Donohue
Chairman

Date