

TOWN OF WILLIAMSBURG
ZONING BOARD OF APPEALS

DECISION ON REMAND FROM HAMPSHIRE SUPERIOR COURT

The applicants, Keith Harmon Snow, James A. Snow and Dawn L. White (the “Applicants”), owners of property located at 6 Hyde Hill Road and 84 Goshen Road in Williamsburg, MA, appealed the Building Inspector’s failure to enforce Section 4.0 of the Williamsburg Zoning Bylaw and his failure to enforce the decision of the Zoning Board of Appeals dated February 7, 2011 (“2011 Decision”) concerning property known as 74 Village Hill Road in the Town of Williamsburg owned by Thomas C. Hodgkins, Robert C. Hodgkins III, Merry Hodgkins and Knowlton Hodgkins. On November 19, 2015, the Zoning Board of Appeals (“Board”) issued a decision on the Applicants’ appeal (“2015 Decision”).

The owners of the property known as 74 Village Hill Road (the “Property”) appealed the Board's 2015 decision to Hampshire Superior Court pursuant to G.L. c. 40A, §§ 8, 15 and 17. By order dated August 17, 2017, the Court remanded the matter back to the Board for further reconsidering its grant of an appeal of the Williamsburg zoning enforcement officer's response to a request for zoning enforcement related to shooting activity on Plaintiffs' Property. The Court's Order Of Remand further stated that the Board’s decision on remand would supersede and replace the original decision.

At a properly noticed public hearing held on October 3, 2017, the Board heard additional testimony and reviewed evidence related to Applicants' appeal and matters to assist in the clarification of the Board's 2015 Decision. The Board closed the public hearing on October 3, 2017 and deliberated at a public meeting held on October 11, 2017. The Board's 2011 Decision was not appealed and therefore remains in effect except to the extent that this Decision on remand alters any conditions contained in the Board's 2011 Decision

Date of Application: August 15, 2015
Date of Original Hearing: November 5, 2015
Date of Original Decision: November 19, 2015

Date of Remand: August 17, 2017
Date of Remand Hearing: October 3, 2017
Date of Decision Meeting: October 27, 2017

Votes by members of the Board:

Gerald Mann: Aye
Osa Flory: Aye
Marcianna Caplis: Aye

FINDINGS:

Background

As set forth in the 2015 Decision, 74 Village Hill Road is a 100+ acre tract of land located in the Village Residential Zone, extending into the rural zone. The tract is surrounded by residential homes and Town-owned property which is open to the public. The Property has been used for target shooting by the owners and their friends for many years pre-dating the existing Zoning Bylaw. All or much of the Property is registered under G.L. Chapter 61B, which permits the Property to be open to the public for recreational purposes. There is no physical delineation between the portion of the Property where shooting occurs and the remaining portion of the Property. The Property and adjacent Town Property is open to and used by the public for open space, walking paths, trails and similar recreational purposes.

On September 8, 2011 an appeal was filed with the Board from the Building Inspector's refusal to enforce a complaint that there was an increase in the shooting activity on the property; in terms of frequency, the nature of the shooting, and the sound level which included explosions. The Building Inspector concluded that non-commercial recreational use, did not violate the Zoning Bylaw. Following a public hearing, the Board issued its 2011 Decision, granted the appeal and directed the Building Inspector to issue a cease and desist order to the owners of 74 Village Hill Road mandating that: 1) the shooting return to pre-2003 usage, 2) use of automatic weapons shall return to pre-2003 levels, 3) no organized shooting groups will have access to the property, 4) testing of firearms and instructing or training in the use of automatic weapons is prohibited, and 5) commercial activity and activity related to commercial interests, such as weapon dealers is prohibited. The Board's 2011 Decision was not appealed.

Subsequently, in 2015, another appeal was filed with the Board seeking to overturn the Building Inspector's failure to enforce the 2011 Decision and conditions contained therein. In his denial of zoning enforcement, the Building Inspector stated that the Board did not provide an objective way for evaluating pre-2003 levels of shooting on the Property. In their 2015 Decision the Board attempted to clarify the 2011 Decision, specifically that portion of the 2011 Decision that mandated that shooting return to pre-2003 levels. After an appeal of the 2015 Decision by the property owners to the Superior Court, the Court remanded the matter to the Board for further clarification.

The Hearing

The public hearing was opened and closed on October 3, 2017. At a public meeting held on October 11, 2017, the Board deliberated and considered further conditions to be imposed upon this Property. In addition to the testimony summarized below, applicant Keith Harmon Snow submitted a narrative that was reviewed by the Board.

As set forth in the 2011 Decision, at the public hearing to appeal the Building Inspector's decision held on January 31, 2011, there was testimony heard about the perceived increase in the number of days of shooting on the Property (described as occurring 1-2 days per week prior to 2003 but subsequently occurring 5-7 days per week) and the intensity of the shooting (described as "sounds like machine guns", "automatic weapons", "some type of cannon", "explosions".) At the public hearing held on October 3, 2017, the amount of shooting that occurred on the subject property prior to November 2003, was clarified. There was testimony that the shooting on the

property prior to November 2003 occurred only one afternoon per week and occurred on Sundays after Church for several hours and on the July 4th holiday.

In addition, there was testimony at the October 3, 2017 public hearing that prior to November 2003, there was no automatic gun fire on the property and there was no rapid firing of weapons that sounded as if the guns being fired were automatic weapons. In addition, there was testimony that prior to November 2003, there were no explosions emanating from the Property.

There was testimony at the January 31, 2011 hearing that the Property was being used for activity related to commercial interests which was not the case prior to November 2003.

Concerns were raised at the October 3, 2017 public hearing and prior public hearings before the Board about the safety of residents using the property for recreational purposes at the same time that there was shooting on the property. It was also noted at the hearing that the property owners do not reside on the Property, therefore raising concerns as to whether those using the Property for shooting had the permission of the owners and whether the owners had control over the use of the Property so as to ensure public safety to all using the Property.

Testimony at the prior hearing indicated that persons shooting on the property did not always seek permission, nor did the owners know who was using the property.

A property owner and his attorney were present at the hearing but did not offer any suggestions to resolve the issues presented. It was noted that the property owners did not comply with the special condition requiring a warning sign to be posted at the entrance to the property.

DECISION OF THE BOARD:

The Board votes to grant the appeal of the Building Inspector's failure to enforce the terms of the 2011 decision of the Board and section 4 of the Zoning Bylaw of the Town of Williamsburg. The Board's 2011 and 2015 Decisions remain in effect with the exception of the conditions contained in those prior Decisions, which are modified as noted below. The Board further orders that the owners undertake and maintain the following remedial action to address the noise and safety concerns on the Property, with such conditions replacing those contained in the Board's 2011 and 2015 Decisions:

Special Conditions:

1. Shooting on the property will return to pre-November 2003 patterns of usage and scale which limit the shooting on the Property to the following:
 - a. Shooting may occur only one afternoon per week, on Wednesday, between the hours of 11:00 AM and 4:00 PM.
 - b. Shooting may occur only on Sundays between the hours of 11:00 a.m. – 4:00 p.m.
 - c. Shooting may occur on the property on July 4th.
2. No organized shooting groups of a commercial nature.
3. No automatic weapons or weapons that sound like the rapid fire of automatic weapons. No semi-automatic weapons that have been modified to resemble an automatic weapon

shall be used. Any device which attaches to a firearm designed to increase the rate of discharge or any modification of a firearm intended to increase its rate of discharge is prohibited

4. Magazines with a capacity in excess of 10 rounds shall not be used.
5. No testing or instruction of firearms.
6. No commercial activity is allowed.
7. No use of Tannerite or other forms of explosive targets.

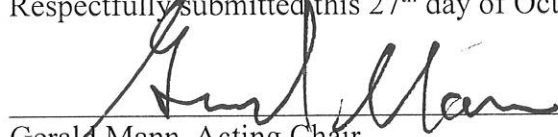
Due to safety concerns raised by the shooting on property the surrounding area of which is open to and used by citizens for recreational use, the following conditions are imposed:

8. Individuals shooting on the property must be in the presence of either a property owner or a designee of the property owners who shall have the responsibility of insuring safe use of the property.
9. The name of said designee shall be transmitted to the Chief of Police and the Building Inspector at least 24 hours before shooting takes place. The transmittal may be in electronic form.
10. Post permanent signs at all entrances to the property of potential shooting including entrances from the street and from Town-owned land and entrances to the shooting area from the walking trails. Signs shall be maintained and replaced as wear and tear may require.
11. Post red warning flags and signs within 200 feet of the shooting area to notify the public that they are approaching the area of potential shooting. The posting would be required to be on all four sides of the delineated area of shooting near the points of entry to the shooting area. In addition, red flags shall be posted at these same locations when active shooting is occurring on the Property.
12. Raise the height of the earthen berm backstop behind the shooting target to 20 feet above the range surface.
13. Construct a shed from which those firing guns shoot, or construct a baffle at least 6 feet in height between the shooting area and the path capable of stopping any misdirected bullet.
14. Post sign with safety rules at entrance to shooting area.

This decision is not effective until recorded at the Registry of Deeds of the County of Hampshire and shall be filed within twenty days after the filing of the notice of this decision in the Office of the Town Clerk.

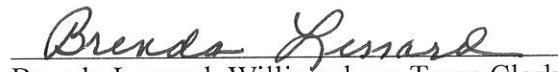
Appeals from this finding, if any, shall be made pursuant to Chapter 40A, Section 17 of the Massachusetts General Laws.

Respectfully submitted this 27th day of October 2017,

A handwritten signature in dark ink, appearing to read "Gerald Mann", written over a horizontal line.

Gerald Mann, Acting Chair,
On behalf of the Zoning Board of Appeals

Received and recorded this 27th day of October 2017,

A handwritten signature in dark ink, appearing to read "Brenda Lessard", written over a horizontal line.

Brenda Lessard, Williamsburg Town Clerk