

THE COMMONWEALTH OF MASSACHUSETTS

Town of Williamsburg

Board of Appeals

DECISION

An appeal from a decision of an Official or Board of the Town.

The appellant, Erica Verrillo, represented by her attorney, Richard M Evans, appeals the Building Inspector's failure to enforce Section 4.0 of the Williamsburg Zoning Bylaw, which prohibits use of land for any purposes harmful to public health, safety and comfort by reason of noise and other causes. This is an appeal pursuant to Section 13.3 of the Williamsburg Zoning Bylaw and Sections 8 and 15 of Chapter 40A of the Massachusetts General Laws, from the decision of the Building Inspector not to enforce Section 4.0 of the Bylaw as set forth in his decision dated November 8, 2010, regarding 74 Village Hill Road, Map C, Parcels 89 and 90, owned by Thomas C Hodgkins, Williamsburg, MA, Robert C Hodgkins III, Chesterfield, NH, Knowlton James Hodgkins, Deerfield, MA, Merry Hodgkins Beval, Jacksonville, VT. The appellant does not appeal from the determination that commercial use of the premises would require a special permit. Appellant further states that a change, extension, and enlargement of the non-conforming use has occurred.

Date of Application: December 2, 2010

Date of Hearing: January 31, 2011

Date of Decision: February 7, 2011

Vote by members of the Board: Gerald Mann - In Favor
Lisa Berkman - In Favor
Martin Mahoney - In Favor

Findings:

A. General Findings:

On September 8, 2010, Erica Verillo of 6 Nichols Road, Williamsburg, through her attorney Richard M Evans, submitted a request for enforcement of Section 4.0 of the Williamsburg Bylaws which prohibits use of any parcel, tract or lot *"for any purposes harmful to public health, safety or comfort by reason of the emission of odor, fumes, dust, gas, chemicals, poisonous fluids or substances, vibration, noise or other cause of danger."* The tract of land identified in this request for enforcement is 74 Village Hill Road identified as parcels 89 and 90 on Assessors map C.

On November 8, 2010, the Building Inspector, Louis Hasbrouck in his response to the

requested enforcement of Section 4.0 of the Williamsburg Bylaws, responded in part, “I do not consider non-commercial, recreational use of the land as a shooting range a violation of the Williamsburg Zoning Bylaw and I will take no action regarding that activity at this time.”

B. Specific Findings:

74 Village Hill Road is a 100 acre+ parcel of undeveloped land, 1.3 miles from Williamsburg's village center. The parcel lies within the Village residential Zone and extends into the Rural Zone and is abutted by residential structures. There exists a site specific, purpose built, shooting range under the control of the property owners.

In November of 2003, a Zoning Bylaw replaced the former protective bylaw. The Zoning Bylaw created Zoning Districts (Section 2.0) and a Schedule of Uses (Section 3.0). Section 3.0 states *“Any use not specifically set forth in this Use Table shall be prohibited, unless otherwise exempt from municipal zoning regulations...”* A shooting range is not listed and therefore is prohibited. The use of the property in question is now non-conforming under Section 12.0 of the Zoning Bylaw. Section 12.0,a states *“Any lawful use or structure that does not conform to this Bylaw may be continued, but no such non-conforming use or structure shall be changed, extended, or enlarged in any manner, except as provided in Subsections (e) and (f) below.”*

The public hearing to appeal the Building Inspector's decision was held on January 31,2011, where voluminous testimony was heard about the perceived increase in the number of days a week the shooting range was used(formerly 1-2, now 5-7) and the intensity of gun firings,(“sounds like machine guns”, “automatic weapons”, “some type of cannon”, “explosions”) Abutters testified to being forced to leave their homes on many afternoons to seek peace and quiet elsewhere. Thirty three community members testified about how distressful living near the shooting range had become. Many were long time residents who contrasted current frequency and intensity with historic activity. We received 37 written submissions by abutters and their families complaining about the increased frequency and intensity of use of the shooting range. Of note, consistently across the hearing testimony and the written submissions, those affected by the shooting activity say that the marked increase has only been problematic for the last four or five years. Three community members addressed the Board stating that the shooting range was a long standing recreational resource and should remain so. The owners of 74 Village Hill Road attended the hearing but did not ask to address the Board.

A YouTube video was played at the hearing, showing an organization named Irish Arms, with a Holyoke, Massachusetts address using automatic weapons on what observers could clearly identify as the shooting range at 74 Village Hill Road. The Irish Arms video advertised weapon sales and training instruction

C. Applicable law and decision criteria

It has been determined that the use of the property is non-conforming. As a non-

conforming use, Section 12.0,a, of the Williamsburg Bylaw, which states *“Any lawful use or structure that does not conform to this Bylaw may be continued, but no such non-conforming use or structure shall be changed, extended or enlarged in any manner, except as provided in Subsection (e) and (f) below”* is applicable. The testimony at the public hearing clearly identifies marked changes in the frequency of use and the increased intensity of the shooting sounds issuing from the shooting range. The effects of the increased frequency and intensity have intruded on the ability of the nearby residents to conduct their lives in reasonable tranquility.

In Powers v. Building Inspector of Barnstable (363Mass.648.((1973))), the decision of the court determined that to restrict what is perceived as an increased use, change or extension of a non-conforming parcel, one, of three tests have to be met.

“The first test is whether the present use reflects the nature and use prevailing when the zoning by-law took effect”

It is the Board's opinion that there is a significant change in the nature and use as a 61b recreational area with a shooting range when the zoning by-law took effect in 2003. The frequent use of large caliber automatic weapons did not occur prior to 2003 nor did use by local and regional organized groups.

“The second test is whether there is a difference in the quality or character, as well as the degree, of present use.”

The Board finds that the testimony heard, video evidence presented and written submissions, clearly describes a difference in the quality, character and degree of present use . Testimony indicated that the use of the range from 5 to 7 days per week is significantly different than the occasional weekend use in years prior to 2003.

“The third test is whether the current use is different in kind in its effect on the neighborhood.”

The Board finds that the increased frequency and intensity of sounds generated by the shooting range has made outdoor residential activities stressful for the surrounding residents, frequently driving them indoors or off their property.

Having established that all of the three Powers v. Building Inspector of Barnstable's tests have been met, the Board may impose reasonable restrictions on the current uses of 74 Village Hill Road, namely, to return activity to the pre-2003 level.

Decision of the Board:

The Zoning Board of the Town of Williamsburg directs the Building Inspector in his role as Zoning Enforcement Officer, with the authority granted to him in Section 13.2 of the Williamsburg Bylaw, to issue a cease- and desist order directed to the owners of 74 Village Road, Williamsburg, MA.

The cease-and-desist order shall mandate:

1. The shooting range will return to pre November 2003 patterns of usage and scale.

2. Use of automatic weapons shall return to pre November 2003 levels.
3. No organized shooting groups will have access to the shooting range.
4. Use of the shooting range, to test firearms, to instruct or train in the use of automatic weapons is prohibited.
5. All commercial activity, including activity related to commercial interests, such as gun dealers, is prohibited.

Appeals from this decision, if any, shall be made pursuant to Chapter 40A, Section 17, of the Massachusetts General Laws, and shall be filed within twenty days after the date of filing of the notice of this decision in the Office of the Town Clerk.

Dated this 18th day of February, 2011

Gerald Mann, Chair, on behalf of the Board of Appeals

Received and recorded by the Town Clerk _____
(date)

Town Clerk, Williamsburg, Massachusetts