

THE COMMONWEALTH OF MASSACHUSETTS

TOWN OF WILLIAMSBURG

ZONING BOARD OF APPEALS

DECISION

The applicants, Keith Harmon Snow, James A Snow and Dawn L. White, appeal the Building Inspector's "failure to enforce Section 4.0 of the Williamsburg Zoning Bylaw, and his failure to enforce the ZBA decision (Verillo) of February 7, 2011."

The subject of this appeal is the property known as 74 Village Hill Road in the Town of Williamsburg, owned by Thomas C. Hodgkins, Williamsburg, Mass., Robert C. Hodgkins III, Chesterfield, N.H., Merry Hodgkins Beval, Jacksonville, Vt., Knowlton James Hodgkins, Deerfield, Mass.

Date of Application: August 15, 2010

Date of Hearing: November 5, 2015

Date of Decision: November 19, 2015

Vote by members of the Board:

Osa Flory: In favor

Marcianna Caplis: In favor

Gerald Mann: In favor

Findings:

a. Background:

74 Village Hill Road is a 100+ acre tract of undeveloped land. The parcel is in the Village Residential Zone and extends into the rural zone. The tract is surrounded by residential homes.

The property has been used for target shooting by the owners and friends for many years, predating the existing Zoning Bylaw. An appeal to the ZBA, similar to the present appeal, was filed on September 8, 2011, by Erica Verillo. That appeal was based upon the Building Inspector's refusal to enforce a complaint that there was an increase in the shooting activity on the property, both in the frequency of the firing and the sound level, which included explosions. The Inspector concluded that non-commercial, recreational use did not violate the Zoning Bylaw.

Following a public hearing during which many nearby residents testified that there was a dramatic increase in the frequency and intensity of noise from the property, the Board found that one of the property owners was in the business of assembling and selling

automatic weapons, and training persons in their use. His business website indicated that the company had the use of a parcel in western Massachusetts for those purposes.

The appeal was granted and the Board's written decision, annexed hereto, directed the Building Inspector to issue a cease and desist order directed to the owners of 74 Village Hill Road mandating:

1. The shooting must return to the pre-2003 patterns of usage (prior to the enactment of the Zoning Bylaw).
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.
5. Commercial activity, and activity related to commercial interests, such as weapon dealers, is prohibited.

b. This Appeal:

In the instant matter, the Building Inspector received numerous complaints regarding increased shooting on the subject property from nearby residents. The complaints allege automatic weapon fire as well as explosions. Residents state that this activity occurs nearly every day and lasts for several hours, denying them enjoyment of their own homes and creating a dangerous condition. It was alleged that the Building Inspector has not enforced section 4 of the Zoning Bylaw, as there exists a danger to public safety. People use this property for recreation and travel alongside the shooting area on a dirt road unaware that shooting may be occurring. In a letter to Keith Harmon Snow dated July 15, 2015, the Building Inspector stated that he visited the property at least 10 times to investigate complaints that the 2011 decision had been violated. He spoke to one of the owners as well as the police chief and long-time neighbors. The Building Inspector concluded "the level of activity seems to be in keeping with the 2003 levels as required by the Zoning Board." This response is the basis of the current appeal. In responding to this appeal, the Building Inspector commented that the 2011 ruling lacked specificity, making it difficult to enforce. The intermittent nature of alleged violations added to the difficulty of enforcement.

c. The Site Visit:

Tom Hodgkins, the major property owner, accompanied Osa Flory and Gerald Mann on a visit to the site. The main entrance to the site, from Village Hill Road, is marked by the parcel number and a "For Sale" sign. There is no indication that shooting might occur on the site. The area where shooting takes place is several hundred feet from the entrance. Two signs in the immediate vicinity of the shooting area state that permission of the owner is required and that shooting can only take place in the presence of an owner or the police. Mr. Hodgkins acknowledged that there are no warning signs on either of the other two entrances to the parcel. No barrier separates the shooting area from the trail passing through the property.

The property is enrolled in Chapter 61B MGL, which provides a lower tax rate in exchange for permitting public access for recreational purposes. The permitted purposes include hiking and target shooting. A town-owned conservation parcel and hiking trail, known as the Breckenridge trail, is nearby and connects to the Hodgkins parcel.

d. The Hearing:

The hearing was continued from the original date due to the request of attorney Jesse Adams, representing the landowners. However, Mr. Adams did not appear at the hearing nor did he notify the Board of his intention not to appear. Two attorneys

representing nearby residents did appear: Alan Seewald for Henrietta Wallace and Charles J. DiMare for the appellants. The hearing was well attended and did not conclude until everyone who asked to speak was permitted to address the Board.

Louis Hasbrouck, the Building Inspector, stated that he has received 247 complaints since the 2011 decision, many from the same people. He states that he has investigated each complaint, visiting the premises on numerous occasions, and has not encountered any shooters in recent years. There were some violations in early years, which were dealt with. There was conflicting testimony regarding the current level of shooting. Two nearby residents stated that there was another nearby source of explosions this summer that may have been wrongly attributed to the subject parcel. Others testified that there has been a significant decrease in shooting since the 2011 decision, and a person who uses the property for dog walking stated it was much cleaner than in the early years. Several longtime residents complained of automatic weapons being fired for extended periods by multiple shooters, in contrast to earlier years when firing at targets generally occurred only on weekends with less intense sounds.

In testimony, owner Tom Hodgkins stated that antique military automatic weapons, dating back to WW2 and the Korean conflict, were fired on rare occasions. He also stated that some persons did call in advance for permission to use the property for shooting, while others did not seek advance approval. He stated that he knew most of those who use the property and has no objections. He also acknowledged that hikers often use the trail.

The attorneys for the applicants submitted a recent decision of the Superior Court, Worcester County, David Brown et al. v. Mark K Leahy, Individually and as Chief of Police of Northborough December 3, 2013, in support of their position that the subject premises is not a shooting range entitled to the protection of MGL 214, which grants some immunity to range owners. That case implies that merely calling property a shooting range does not qualify it for the protection afforded by MGL 214. The court noted that no definition of a range is found in Massachusetts statutes and therefore looked to compliance with safety standards established by the NRA. These standards include a backstop, baffles to ensure rounds do not stray from the intended path, warning signs, and a flag indicating firing is in progress. It is noted that none of these safety precautions were found during the site visit.

Applicable Law and Decision Criteria:

Town of Williamsburg Zoning Bylaw Section 4 Restrictions

4.0 No building or structure or parcel, tract or lot of land shall be used for any purposes harmful to public health, safety or comfort by reason of the emission of odors, fumes, dust, gas, chemicals, poisonous fluids or substance, vibration, noise or other cause of danger.

Decision of the Board:

As a preliminary matter, the Board reaffirms its 2011 decision, which was not appealed to a court, and is annexed and incorporated herein. The Board understands the Building Inspector's difficulty in interpreting and enforcing that part of the 2011 decision calling for a return to pre-2003 levels of use. We agree that, given the circumstances, he has been diligent in pursuing complaints and attempting to enforce the bylaw and the 2011 decision.

The 2011 decision assumed that the property owners were entitled to the protections of MGL 214.

However, based upon the decision in *Brown v. Lahey*, we now conclude that the current property and its use do not qualify for those protections and that MGL 214 is inapplicable to this appeal. Specifically, the Board finds that the property is not a range as that term is commonly used and understood in light of the analysis in *Brown v. Lahey*. The use of this property lacks nearly all the strictures of the use found to be a range in *Brown v. Lahey*. Furthermore, the sporadic, intermittent use coupled with the lack of these formalities strongly suggests to this Board that the use of the property for shooting is more akin to an occasional, incidental use. In other words, the fact that a property owner uses or allows his or her property to be used for shooting for time to time does not, in the Board's opinion, rise to the level of a grandfathered range subject to the protections of MGL 214.

Notwithstanding the above, MGL 214, if applicable, would only insulate the use of the property as to noise complaints. Here the complaints and alleged violations go far beyond noise. The Zoning Bylaw protects the public safety, safety and comfort as to noise and sources of danger. Accordingly, to give the Zoning Bylaw meaning and substance, this Board finds that uses which are harmful to public safety and comfort by reason of either noise or danger are prohibited.

Furthermore, the Board may consider the permissibility of extensions and changes of nonconforming uses. The Board finds that the current use of the property for shooting differs in frequency of use and intensity of sounds than the pre-2003 use. Although there have been no injuries reported from the shooting to date, we believe that a potential danger to the public exists and the appellants' appeal of the Building Inspector's failure to address safety issues is granted. We are required by section 4.0 of the Zoning Bylaw to address those dangers.

The Board finds that the owners of 74 Village Hill Road have not exercised control over the use of the property and often do not know who may be using the property for shooting at any given time.

The Zoning Board of Appeals has voted unanimously to grant the appeal of the Building Inspector's failure to enforce the terms of the 2011 decision of the Zoning Board of Appeals and section 4 of the Zoning Bylaw of the Town of Williamsburg. Accordingly and based upon the above findings, the Board finds that violations of the 2011 decision and the Zoning Bylaw exist. The Board, therefore, orders that the owners must undertake and maintain the following remedial action to address noise and safety so that such qualities of its use are not harmful or less harmful and so as to better harmonize its use of the property with the Zoning Bylaw.

Special Conditions:

1. Use of the property for shooting shall only take place during daylight hours, but not before 9:00 a.m. and not after 6:00 p.m. Duration of shooting is limited to 4 hours total on any given day.

2. An owner shall be present during any shooting, as defined above.

3. A red flag and visible red sign indicating shooting is currently occurring shall be posted at 100 feet from each end of the shooting area whenever shooters are present.

4. Permanent, highly visible signs indicating that shooting may be taking place shall be posted at each entrance to the parcel.

5. Use of military style weapons, semi-automatic weapons, or assault weapons capable of rapid firing is prohibited unless said weapons were manufactured prior to 1953.

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 9th day of December, 2015.

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

Received and recorded this day of , 2015.

Brenda Lessard, Williamsburg Town Clerk

