

**TOWN OF PLYMPTON ZONING BOARD OF APPEALS
CERTIFICATE OF DECISION ON
APPEAL OF CEASE AND DESIST ORDER
OUTDOOR SHOOTING RANGE**

RECEIVED

To: Plympton Town Clerk
Plympton Town Hall
Five Palmer Road
Plympton, MA 02367

SEP 11 2017
TOWN CLERK'S OFFICE
PLYMPTON

Re: APPELLANT: Gene Beliveau
APPEAL: May 4, 2017 Cease and Desist Order, Outdoor Shooting Range
PROPERTY: 0 Winnetuxet Road, Map 21, Lot 1-24
ZONING: Agricultural-Residential, Business

This matter concerns a parcel of land located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24). By Cease and Desist Order dated May 4, 2017, the Zoning Enforcement Officer determined that the property was being used as an Outdoor Shooting Range and ordered the Appellant and all persons acting on his behalf or in concert with him to immediately cease and desist all use of the property for shooting range purposes and to remove all materials and equipment associated with such use.

On May 30, 2017, the Appellant filed an appeal with the Zoning Board of Appeals (the "Board"). The completed application was received by the Town Clerk on July 6, 2017. The Board advertised and noticed a public hearing regarding the application and the public hearing opened on August 15, 2017 and was continued to August 24, 2017 and September 7, 2017. During the public hearing, the Appellant, through its authorized representatives presented evidence and testimony, and the Board took additional evidence and testimony from members of the public and the Zoning Enforcement Officer. The Board conducted a site visit on August 23, 2017 at 10:00 a.m.

The following Board members were present at the public hearings at which substantive testimony and other evidence was presented and then deliberated toward a decision in this matter: Kenneth A. Thompson, Arthur B. Morin, Jr. and David F. Alberti.

FINDINGS OF FACT

1. The public hearing for the Appeal was duly noticed and advertised and duly mailed to the Appellant and Abutters.
2. The Appellant was represented at the hearing by himself and Attorney Kathleen A. Reagan, Esq.
3. The property is located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24) (hereinafter referred to as the "Property"), and is located partially within the Business Zoning District and partially within the Agricultural-Residential Zoning District.

4. The Property is comprised of a total of 27.2 acres of land. The Business Zoning District extends to a point 400 feet from the center of Main Street. The remainder of the Property is located in the Agricultural-Residential Zoning District.
5. The Property abuts property located at 376 Main Street, which is the principal place of business for Outback Arms, LLC. The Appellant is the owner of Outback Arms.
6. Outback Arms is a retail establishment that sells firearms, ammunition and related supplies.
7. At the hearing, the Zoning Enforcement Officer presented and described an aerial photograph of the Property. The photograph depicted a large cleared-out area within the Agricultural-Residential District portion of the Property. The photograph depicted a long, narrow clearing with a large berm on one end. It appears that the berm is located on a neighboring property not owned by the Appellant. The photograph also depicted a large berm in an area adjacent to the narrow clearing.
8. According to the Appellant's testimony during the hearing, the larger berm adjacent to the long, narrow clearing is used as a backstop for small firearms/pistol target shooting. The Appellant claimed that the long, narrow clearing was used as an access road to support forestry activities on other portions of the Property.
9. At the hearing, the Appellant acknowledged that he uses portions of the property for discharging firearms for target shooting, but that the activity was limited to use by himself, his family and his invited guests. The Appellant denied that he allowed use of the Property for target shooting for a fee or that he allowed target shooting by customers of Outback Arms.
10. The Board conducted a site visit on August 23, 2017. During the site visit, the Board observed targets on the berm at the end of the narrow clearing and evidence that the narrow clearing was used for shooting long-range rifles. Consistent with the Appellant's testimony, the other berm was apparently used as a backstop for small firearms/pistol target shooting.
11. During the hearing, Lisa Manifoli of 11 Heathers Path, testified that gunfire can be heard from her residence on a frequent basis. The sounds are very loud and can be heard seven days a week, primarily between the hours of 8:00 am and 7:00 pm. Ms. Manifoli testified that the berm at the end of the narrow clearing is approximately 1,000 feet from her property and the backyard playground used by her young children. Guns are fired in the direction of the playground and she expressed concern that the berm was not sufficient to prevent stray bullets from entering her yard.
12. Emily Monroe of 15 Heathers Path also testified to hearing loud guns firing on a frequent basis, particularly on weekends.

13. Michelle Yarnst of 392 Main Street owns the neighboring property and testified that she was not notified of the berm at the end of the narrow clearing and that she did not consent to its construction on her land. Ms. Yarnst also testified that when she discovered it, the berm was lined with Plexiglas doors that had been shot at.

DETERMINATIONS

On September 7, 2017, following all of the testimony and evidence presented during the public hearing, the Board voted 3-0 to make the following determinations:

1. The property is located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24) (hereinafter referred to as the "Property"), and is located partially within the Business Zoning District and partially within the Agricultural-Residential Zoning District.
2. The Zoning Enforcement Officer found that the Property is being used as a commercial outdoor shooting range.
3. The Board finds, however, that there was insufficient evidence presented at the hearing to support that finding. There was no evidence that the property was used as a commercial shooting range, insofar as there was no evidence of use by paying customers of Outback Arms or that target shooting was allowed in exchange for a fee. The evidence presented at the hearing is that the Appellant uses the property for discharging firearms for target shooting, but that the activity was limited to use by himself, his family and his invited guests. The Board finds that such informal activity does not constitute a land use subject to regulation under the Zoning Bylaw.
4. Pursuant to Section 4.1.1 of the Town's Zoning Bylaw, "In the Agricultural-Residential, Business, and Light Manufacturing districts no building, premises, or land shall be used for any purpose detrimental, injurious, or offensive to the neighborhood, whether in the same or adjoining districts."
5. There was evidence at the hearing that the noise from the Appellant's firearms activity on the property was disturbing area residents and causing them to fear for the safety of their children. This testimony establishes that the noise occurs frequently and is very loud.
6. The Board finds that if this activity were to continue in the manner described at the hearing, that it would be detrimental, injurious, and offensive to the neighborhood.
7. The Board, however, finds that the Appellant's activity on the Property would not be detrimental, injurious, or offensive to the neighborhood if it is conducted in accordance with certain conditions to ensure the protection of public safety and the prevention of excessive noise.
8. Specifically, the Board finds that, if the following conditions are observed, the activity shall not be considered detrimental, injurious, or offensive to the neighborhood:

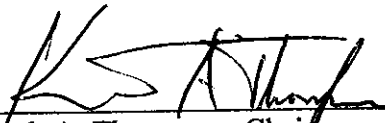
- a. There shall be no commercial shooting range use on the Property;
- b. Firearms use shall be limited to use by the Appellant, his family members and invited guests only. Anyone using firearms under the age of 18 years old shall be closely supervised by a responsible adult at all times.
- c. No customers of Outback Arms shall be permitted to use the property for firearms use and there shall be no firearms use in exchange for a fee, directly or indirectly.
- d. The long narrow clearing shall not be used as a shooting range or for any target shooting use, and the berm at the end of said clearing shall be removed in accordance with applicable laws, including but not limited to laws and regulations enforced by the Conservation Commission.
- e. The area used for small firearms/pistol shooting shall not be expanded or made larger than it is presently constituted. This area shall be the only area in which target shooting will occur on the Property. This section shall not apply to lawful hunting in accordance with State law.
- f. A baffle will be installed at the small firearms/pistol shooting area prior to any target shooting use and within thirty days of the date of this decision. The baffle shall be installed in accordance with outdoor shooting range best practices for blue-sky elimination techniques.
- g. There shall be no discharge of firearms on the Property before 9:00 a.m. or after 5:00 p.m., Monday through Saturday, and no discharge of firearms on the property before 10:00 a.m. and after 5:00 p.m. on Sundays. This section shall not apply to lawful hunting in accordance with State law.
- h. The following calibers of weapon will not be used at the Property at any time: 405; .338 Lapua; 20MM; 270 H&H; 303 British; 327 Fed Mag; 35 Whelen; 350 Marlin; 375 H&H; 44-40; 444 Marlin; 45-120; 450 Bushmaster; 450 Marlin; 480 Ruger; 5.7 x 28mm; 500 S&W; 50BMG; 577-450; 6.5 Jap; 7 Rem Mag; 7 x 57; 7.62 x 54R; 7MM 06; 8 x 57; 8mm Mauser; 9.3 x 74R; Barrett 50.
- i. Notwithstanding this list of conditions and the Board's findings set forth herein, the Board reserves to the Zoning Enforcement Officer the authority to issue additional cease and desist orders if there is any change in circumstance or evidence that these conditions are not sufficiently protective of the interests set forth in Section 4.1.1 of the Zoning Bylaw.

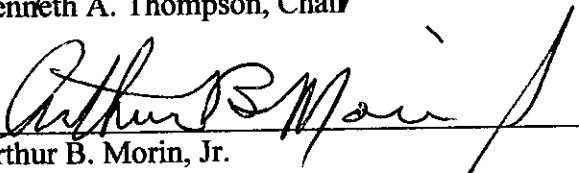
DECISION

On motion made and seconded, the Board voted 3-0, based upon the Findings and Determinations made above, to reverse the Zoning Enforcement Officer's May 4, 2017 Cease and Desist Order regarding the use of the property located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24), for Shooting Range purposes, provided, however, that the Appellant must engage in the use of firearms on the Property in a manner that is not detrimental, injurious, or offensive to the neighborhood, subject to the conditions set forth in Paragraph 8 of the Board's Determinations.

The following Board members certify the above decision is a true record of the actions and votes of the Board.

TOWN OF PLYMPTON ZONING BOARD OF APPEALS


Kenneth A. Thompson, Chair


Arthur B. Morin, Jr.


David F. Alberti.

DATED: September 7, 2017

FILED:

October 2, 2017

Any person aggrieved by this decision may appeal to a court of competent jurisdiction pursuant to M.G.L. Chapter 40A, Section 17 and shall be filed within twenty days after the date of filing of such notice in the office of the Town Clerk.