

Tax Map/Block/Parcel
No. 29-3&4-9&465
Case 5971

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Mayberry Game Protective Association, Inc.
2555 Mayberry Road
Westminster, MD 21158

ATTORNEY: David K. Bowersox, Esq.
Hoffman, Comfort, Offutt,
Scott & Halstad, LLP
24 North Court Street
Westminster, MD 21157

REQUEST: A request for a conditional use for “trap, skeet, rifle, or archery ranges, including gun clubs” and variances for the respective parties and property owners adjacent to the site.

LOCATION: The site is located at 2555 Mayberry Road, Westminster, Maryland, on property zoned “A” Agricultural District in Election District 2.

BASIS: Code of Public Local Laws and Ordinances, Sections 158.070(E)(1)(l) and 158.040.

HEARING HELD: September 27, 2016

FINDINGS AND CONCLUSION

On September 27, 2016, the Board of Zoning Appeals (the Board) convened to hear the request for a conditional use for a “trap, skeet, rifle, or archery ranges, including gun clubs” and variances for the respective parties and property owners adjacent to the site. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

Bob Kelly testified on behalf of the applicant, the Mayberry Game Protective Association, Inc. (hereinafter referred to as club or association). He is the current president of the association. He has been a member of the club for six years and is in his first year as serving as the association president. Mayberry Game Protective Association, Inc. was established in 1947. It was incorporated in 1958. It is a private member supported club with a membership restricted to 150 members. Although it is a private club it does hold public events. There is also a designation of life membership for those who meet those requirements. The club owned a 46 acre property in 1962. The property was described as rough terrain in Exhibit 4. There is also a pond, a stream and wooded areas on the property as noted on the last page in Exhibit 4 and Exhibit 2. Since 1962 the club has expanded its acreage owned to more than 90 acres. Mr. Kelly

stated that the association had an unblemished safety record in its history meaning that no one needed medical attention as a result of the shooting. The club has a muzzle down policy meaning that participants are supposed to keep their guns pointed downward.

Mayberry Game Protective Association, Inc. generated the application as a result of a complaint about it. It was determined by the zoning office that the association was conducting activities that were not approved in its initial application approved in 1962. As a result of the hearing request to the Board, the association initiated a coordinated community outreach to address neighbor concerns. An August 23, 2016 letter was provided to neighbors as set forth in Exhibit 1. No one responded to the public outreach. The reason that the association did not come before the Board sooner was because it was believed that the club had merely expanded a prior preapproved use.

The purpose of the club is as follows: protection of game birds and animals; law observation; restocking and reforestation; fire and flood control; farmer relationships; food and shelter for game birds and animals; raising funds for the club; conservation of all natural resources; and to promote youth hunting and fishing.

The current shooting events at the Mayberry club include: sporting clays on the first Sunday from April to September since 1993; 5-stand on Tuesday evenings from 6:00 p.m. until dark since 2009; ground hog shoots the first Saturday from May to October since 2005; precision rifle shoots from two to four times per year since 2008; still target on the fourth Sunday from October to May since 1995; and fund raisers for sporting clays upon requests. The Lions Club and the 4H Hot Shots, as well as other organizations, have been involved in fundraising activities at the club. Members of the club are permitted to shoot at the site from 9:00 a.m. to dusk.

In 1962 Mayberry Game Protective Association, Inc. applied to the County for a target range. The blue area on Exhibit 2 represented the area approved by the Board of Appeals of Carroll County in 1962. That Board put restrictions on the line of fire for the range. On the second page of Exhibit 3, the club included a request to shoot clay birds.

Mr. Kelly testified that the variances requested were with regard to the minimum distance requirements for gun ranges by the County of 1000 feet. He noted that both automatic and semi-automatic guns were allowed to be used at Mayberry Game Protective Association, Inc. He mentioned that he had heard other people shooting at night in the area that were not on club land. He also believed that the current location of shooting activities was appropriate. The shooting activities were safe, in part, based on the topography of the land. There are 13 stations in which to shoot. Typically people would shoot from all 13 of the stations. However, people could not shoot from all 13 stations at the same time. He further noted that the level of people participating in the sporting clay events had decreased in the last few years.

Martin W. Hackett is the president of CLSI. He was accepted as an expert in land use and land planning. His resume is included in Exhibit 6. CLSI prepared a plat in this matter. He stated that no grading or construction would be needed at the site. He stated that station 1 is the highest point of the 13 stations. He also stated that stations 1-5 were more suitable for carrying noise than the other stations. One reason that there would not be an adverse effect in granting the application is that the gun club had been situated at the same location for many years. There was no place on the property where a variance would not be needed if there were changes to the shooting locations. The gun range has hills; it has low points; and it has wooded areas. The property was described as rough terrain in Exhibit 4. The rifle range was confined to the bottom of the hill. In all cases people would be shooting into a hill or a berm or a bunker or embankment area as set forth in the 1962 approval by the County. The shooting areas were

located in safe locations according to Mr. Hackett. There is a roughly fifty yard range for accurately striking the clay targets.

David Straitman testified as a certified real estate appraiser for the applicant. The Board accepted him as an expert in real estate appraisals. His resume is set forth in Exhibit 7. He is a neighbor to the club by living about one half mile away and a member of the club. He stated that the club had added more of a tree buffer to the property. He also heard gun shots on his property that did not come from the Mayberry Game Protective Association, Inc. property at 2555 Mayberry Road. He noted that a neighbor had constructed a gun range too. He mentioned that shooting occurred on neighbors' property, but that there was also shooting on his property. People who shot from station 2 were shooting toward the ground. Skeet shooting created a different sound than a target shoot. He testified that stations 1-5 were at the highest elevations on the property. He also stated that how the sounds of gun shots carry depends on the weather. He conducted an impact study of the location as reflected in Exhibit 8. He was confident that his analysis was correct based on a small sample size. The area was sparsely populated and more reliable data was not available.

He looked at a one mile radius around the gun range. He compared the gun range to the only other such range in an Agricultural district in the county, The Dug Hill Rod and Gun Club. The only potential externality is noise, which is limited to times of day and infrequent with a good buffer surrounding the property and all necessary safety precautions and considerations given. Therefore, the noise of gun shot sounds is not considered to have a detrimental affect on surrounding properties, which is evidenced by the surrounding property sales. It was his conclusion based on his observations and analysis that the proposed conditional approval of a gun range use located at 2555 Mayberry Road, does not, nor will it have a negative influence on property values for adjoining residential properties.

Peggy Dean testified in the matter. She did not like the fact that semi-automatic and automatic weapons could be used at the gun range. She believed that such high powered guns should be restricted to specific gun ranges. She stated that the sound at the gun range went much further than just neighboring houses. She testified that she had heard gun shots at night from the club at 2555 Mayberry Road. She said that there was increased noise with more people shooting at the gun range. There was a portion of her property that someone could be injured if safety precautions were not in place at the gun range. She believed that spectators should be permitted when there were competitions at the gun club.

Jason Green testified in opposition to the application. He stated that he hunted and he shot guns at ranges. He is an NRA member. He took a hunter safety course at the facility in the past. His biggest complaint was noise. The noise affected his enjoyment of his property. The sounds of skeet shooting was different than the sounds of other shootings. There would be two shots and a pause for clay shooting. He recognized that there was a buffer between his property and the gun range. However, he also noted that stations 1-5 were the closest to his property. He noted that there was no control over when club members could utilize the ranges. The only limitation were between 9:00 a.m. and dusk. There could be shooting at the club for seven days a week. There were no restrictions as to when gun shots were limited to. He noted that there was no testimony about the limit of shooters. He recognized that the gun shot noises at different properties was different based on distances and caliber. He did not know whether the EPA had visited the site for lead contamination, although he had a concern with regard to lead and runoff from the hills. He was not aware of any decibel readings at neighboring properties to the gun range. Mr. Green believed that there had been increased activity at the gun range in the last six

or so years. He recognized the possibility that others could be shooting on other properties though.

Tony Chivachi testified in favor of the application. He has belonged to a number of gun clubs in the past. He believed that the club was a quiet family type of club. He wanted the club to stay in existence. He noted that the club had been around for a long time and wanted to see it continue.

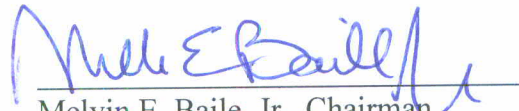
A September 19, 2016 memorandum by Lynda Eisenberg, Chief, and Clare Williams, Planning Technician, stated that the matter had been reviewed for consistency with the policies and recommendations contained in the *Carroll County Master Plan* and other plans. The staff finding was that the applicant's request was consistent with the *2014 Carroll County Master Plan* and would not have an adverse effect on the current use of the property or its environs.

The Board recognized that the use on the property as a gun range preceded the zoning laws. The gun club has been in place since the early 1960s. There was evidence that the County was notified of both a rifle range and trap shooting to strike clay birds since the 1960s. The Board was pleased with the outreach to the community made by the club after a complaint arose. The outreach was proactive and prudent and such outreach had not occurred in many applications in the past. Most of the shooting activities were in a low area on the property. There was a practical difficulty and an unreasonable hardship in placing the ranges elsewhere on the property where a variance would not be needed. There was testimony that the 1000 foot minimum setback requirement would be a violation anywhere on the property. The spotless safety record was an important factor. The denial of the variances would preclude a reasonable use of the property. The use of shooting activities is an appropriate use of the site in this rough terrain. The site with its rough terrain, wooded areas, slopes and a pond is unique. The hills are helpful areas for bullets to land.

The Board was convinced that authorization of the request with regard to a conditional use was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding conditional uses of the zoning ordinance, and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board found that the proposed project would not generate adverse effects (i.e. noise, traffic, dust, water issues, lighting issues, property depreciation, etc.) greater here than elsewhere in the zone. The Board approved the conditional use requested by the applicant. The Board also approved the variances from the neighboring properties as set forth by the CLSI drawings and requested by the applicant.

9-30-2016

Date


Melvin E. Baile, Jr., Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.