

## FRANKLIN COUNTY BOARD OF ADJUSTMENT

April 2, 2013

The Franklin County Board of Adjustment held a special called meeting on Tuesday, April 2, 2013 in the Franklin County Administration Building, Commissioners Conference Room, 113 Market Street, Louisburg, North Carolina.

**Present:** Armenta Eaton, Stuart May, Chuck Griffin, Robert Carlson and Shane Brantley.  
**Absent:** Scott Lerew and Cynthia Hayes  
**Staff:** Tammy Davis, Jason Rogers and Scott Hammerbacher.

Chairman Shane Brantley called the meeting to order at 7:00 P.M.; and welcomed everyone in attendance.

### Agenda Items:

- #1. Appeal from Planning Director decision that Byrd and Coombs dba Patriot Shooting Sports would have to have a Special Use Permit to operate a shooting range on their property on Dunn Road.
- #2. Appeal from Notice of Violation to Aaron Byrd & Eric Coombs for operating a shooting range on their property on Dunn Road by Donald Gardner (Code Enforcement Officer).

Darnell Batton explained the Board of Adjustment procedures regarding appeals and that everyone would be sworn in since this would be a very formal judicial hearing. He also explained that the burden of proof falls on the appellants and the voting requirements of 4/5ths majority vote for the appellants to prevail.

Scott Hammerbacher (Director of Franklin County Planning & Inspections) was sworn in and stated that in September 2012 the Planning Office was notified that Patriot Shooting Sports had intentions to open a shooting range which would consist of members who would pay dues. He stated he met with Aaron Byrd and informed him that he would need approval from the Planning Office. He stated initially he informed Mr. Byrd that a UDO text amendment would be needed but after researching further and conferring with the County Attorney, he informed the applicants that a shooting range would fall within the Grounds and Facilities for Open Air Games and Sporting Events category. He stated they have shooting competitions and sporting events in the Olympics. He stated the applicants then submitted a request for a Special Use Permit which was reviewed by the Planning Board and they recommended denial of the request. He explained that the request was then presented to the Board of County Commissioners and they denied the Special Use Permit.

He stated on December 9, 2012 he was notified by Donald Gardner (Code Enforcement Officer) that he had received complaints of shooting sounding like "World War III" being conducted on the proposed shooting range property. He instructed Mr. Gardner to contact the County Attorney, investigate the site with a sheriff deputy and to issue a violation letter stating that a commercial shooting range with paid membership was not allowed on the property without a special use permit. He also stated that a subsequent letter to cease and desist was sent to the applicants notifying them of such. He explained the first letter was to inform the applicants that the activity was not allowed and the second letter

informed them of civil penalties and for them to cease all activities associated with the range in a commercial capacity.

Robin Currin questioned if Mr. Hammerbacher spoke with County Commissioner Don Lancaster regarding this matter. Mr. Hammerbacher stated he did receive a call from Mr. Lancaster asking what would be necessary for a shooting range. He stated he informed Mr. Lancaster that approval wasn't needed if it was just family and friends shooting because planning didn't regulate such recreational activity but if someone charges dues and operates it in a commercial capacity that zoning approval would be required. Mrs. Currin questioned if he told Mr. Byrd that a shooting ranges were not regulated by the UDO and required a text amendment. Mr. Hammerbacher replied yes due to his conversation with the former County Attorney in 2007 that a text amendment was needed since the ordinance states that a use not listed within the ordinance is prohibited. He stated after further research by staff, he determined that there was a category which the proposed use would fall within and he then informed the applicants of the Special Use Permit process for the category of Grounds and Facilities for Open Air Games and Sporting Events and that a text amendment would not be necessary.

Mrs. Currin questioned if Mr. Hammerbacher referred to the North American Industry Classification System (NAICS) since the NAICS category for open air games and sporting events didn't include shooting ranges. Mr. Hammerbacher stated the ICS is for reference purposes only and the ICS makes subsequent changes periodically. She then questioned if he noticed that NAICS 713990 applies specifically to shooting ranges. He stated he determined that charging people to shoot on your property is a commercial activity and his office felt shooting ranges falls within the Grounds and Facilities for Open Air Games and Sporting Events. Mrs. Currin questioned if he was aware of other shooting ranges in Franklin County that charges a fee. Mr. Hammerbacher stated he was aware of SSI and Charlie Brown shooting ranges; however they were in existence prior to the County adoption of the UDO and they are protected by the Shooting Act of 1997. She questioned if he was aware of the Franklin County Rough Riders Association operating a shooting range. He stated he hasn't received any calls regarding this matter. She questioned if the UDO regulates hunting clubs. He stated hunting is regulated by the State by hunting licenses regarding bag limits and season limits. She questioned that since it's not regulated then it's allowed. She questioned if he was aware of Harnett County range permitted under agri-tourism. He stated he was aware of this and agri-tourism is covered in the UDO.

Robin Currin (Attorney for Coombs/Byrd) was sworn in and submitted the Board with an evidence packet containing the following:

1. Franklin County Appeal Application – January 2, 2013
2. Land v. Village of Wesley Chapel, 206 NC App. 123, 697 S.E.2d458 (2010)
3. Affidavit of Aaron Byrd
4. Franklin County Unified Development Ordinance Article 6 – Table of Permitted Uses
5. North American Industry Classification System
  - 713940 Fitness and Recreational Sports Center
  - 713990 All Other Amusement and Recreation Industries
6. Graham v. Town Council of Chapel Hill, 53 NC App. 543, 281 S.E.2d 418 (1981)

Aaron Byrd was sworn in and stated he along with Eric Coombs purchased 171.30 acres located at 24 Dunn Road. He stated they own a gun shop in Youngsville and have plans to build their homes at the proposed location. He stated the proposed shooting range is private recreational shooting club. He stated it wouldn't be open to the public, but only open to members who pay a yearly fee to shoot firearms in a safe environment. He stated when the County cited them for operating a shooting range in

violation of the UDO and the only people shooting were the applicants along with family and friends. He stated the shooting club has never begun operation. He explained that they spoke with Commissioner Don Lancaster prior to purchasing the property and were told that shooting ranges weren't regulated by the County and they could operate without any permits. He stated Mr. Hammerbacher came to their business in Youngsville in September 2012 to discuss the proposed use and stated in order for them to move forward, they needed to request a text amendment to include shooting ranges as a special use.

He stated Mr. Hammerbacher contacted them later stating that a text amendment wasn't needed but they did need a Special Use Permit for Grounds and Facilities for Open Air Games and Sporting Events. He stated their intention was to provide a safe place for people to be able to shoot their firearms. He stated the proposed range would be located on approximately 14.5 acres and would consist of pistol, shotgun and rifle firing ranges.

Mrs. Currin questioned if the day they were cited by the County, was anyone paying to be shooting on the property. Mr. Byrd responded no it was only friends and family. She questioned if after speaking with Mr. Lancaster if it persuaded them to continue with their plans on operating a shooting range. Mr. Byrd responded yes because they would have never purchased the property if they weren't allowed to open the shooting range. Mrs. Currin asked if the property was a tax exempt bona fide farm. Mr. Byrd stated it is since the property has been used for crop production in the past and they plan to continue to use it for crops and livestock.

County Attorney Pete Tomlinson questioned that since the applicants had a request for deferred tax status, that a shooting range is a commercial use and would be a direct violation of the deferment status. He questioned if this application specified 14-15 acres for commercial use. Mr. Tomlinson questioned if Don Lancaster was a customer of theirs. Mr. Byrd stated Mr. Lancaster does come into the gun shop and has made purchases from them. Mr. Tomlinson questioned when the purchase contract was done for the property. Mr. Byrd stated the property went into contract in the summer and they closed in October. Mr. Tomlinson questioned if Mr. Byrd was aware that shooting is part of the Olympics as a sporting event and if he considered shooting a sporting event. Mr. Byrd stated he was aware and shooting is a sporting event. Mr. Tomlinson questioned if they charged a fee for a club membership. Mr. Byrd responded yes. Mr. Tomlinson questioned if they had advertised online and Mr. Byrd responded no. Mr. Tomlinson questioned if they had started accepting applications and Mr. Byrd responded they had started to accept applications.

Mrs. Currin questioned if they had plans to hold Olympic shooting competitions at the proposed range. Mr. Byrd stated no. He stated they are proposing a membership club for individuals to shoot personal guns and learn how to use them. Mrs. Currin questioned if the facility would be locked. Mr. Byrd stated the facility would be secured with a locked gate. Mr. Tomlinson questioned if Mr. Byrd had testified at another public hearing that they were planning on holding organized events. Mr. Byrd stated yes they had discussed holding events with organizations on marksmanship accuracy. Armenta Eaton questioned has any memberships been sold prior to discussion with Mr. Hammerbacher. Mr. Byrd stated they had sold memberships prior to any discussions with Mr. Hammerbacher. Mrs. Currin questioned if any member shoot on the property at any time and Mr. Byrd answered no.

A brief recess was taken at 8:00 P.M. Chairman Brantley called the meeting back to order at 8:18 P.M.

Robin Currin began her summary and argument on behalf of Byrd/Coombs. She stated their purpose for the property was for the shooting range as well as their personal homes. She stated they spoke with

Commissioner Lancaster and were told the County didn't regulate shooting ranges and then 4-5 months later was told by Mr. Hammerbacher that a text amendment was needed (Exhibit A) and then later he came back and changed the interpretation and were told a Special Use Permit was needed. She stated the law is very specific and if an ordinance doesn't list or regulate any use, then you can't prohibit the use. She reminded the Board that NAICS 713940 (listed under Grounds and Facilities for Open Air Games and Sporting Events) doesn't address shooting ranges but NAICS 713990 does address this particular use. She stated she feels the ruling needs to be reversed due to the fact that shooting ranges are not specifically listed in the UDO and if they aren't specifically prohibited then they are permitted. She also stated as in the Harnett County case, it's a legal issue if shooting ranges fall under the agri-tourism rules.

Pete Tomlinson began his summary on behalf of Franklin County. He stated hunting isn't in the same category as shooting ranges. He stated no berms and roads need to be put in for hunting. He stated a shooting range is a fixed commercial property. He stated the Land Case was in a housing district in a town not out in a rural country setting and the Land property was for family and friends and not open to the public. He stated a shooting range is an outdoor use sporting event. He stated that by paying for a membership to shoot makes it a commercial use. He stated the applicants applied for tax deferment as a bona fide farm and want to build their homes but they didn't identify the commercial use on the deferment application. Mr. Tomlinson emphasized that the Franklin County UDO states if a use is not listed then the use is prohibited or outlawed. He stated he feels the UDO does let everyone know what is and isn't allowed because it refers to NAICS for possible uses. He stated the violation letter states a Special Use Permit is needed to operate a shooting range and if this is what was taking place, the applicant must cease and desist. He reminded the Board they were to determine if Mr. Hammerbacher was correct in interpreting that shooting ranges fall within Grounds and Facilities for Open Air Games and Sporting Events. He also stated that new or other uses could be added by amendments.

Mrs. Currin wanted to make a clarification in reference to the Land case. She stated the Court decided that if a use isn't in the list of permitted use, it is allowed and permitted.

Donald Griffin Gardner (Code Enforcement Officer for Franklin County) was sworn in. Robert Carlson questioned if the mud bog operated on the Hugh Williams property was allowed to operate with a Special Use Permit. Mr. Gardner stated a Special Use Permit was issued for a go-cart operation but the applicant violated the Special Use Permit by changing from go-carts to mud sling vehicles. Chairman Brantley questioned if the applicant would be in violation if he had hundreds of family and friends out at the site shooting. Mr. Hammerbacher stated the County doesn't regulate friends and family but if you are charging money, then it makes it a commercial use.

Robert Carlson made a motion, seconded by Chuck Griffin to reverse the zoning administrator actions regarding the case at hand. The motion was denied with Chuck Griffin, Stuart May and Armenta Eaton voting against the motion.

With there being no further business before the Board, Chairman Brantley adjourned the meeting at 9:45 P.M.

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Shane Brantley – Chairman  
Franklin County Board of Adjustment

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Tammy Davis – Clerk  
Franklin County Board of Adjustment