

## MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING

March 14, 2013

7:00 PM

Meeting called to order by Electra Alessio, present Ray Donald, Jay Alberts, Daryl Branch, and Peter Coffin (for the 2<sup>nd</sup> & third hearing). Mr. Donald made a motion to approve the February minutes, Mr. Alberts seconded, all in favor.

### **Barbara, Linda and George Camick Tax Map U-8, Lot 18**

Deborah Brett introduced herself as the potential buyer of 117 Main and her realtor Nancy Kingston. Ms. Brett explained that the in-law apartment exists and she would like for her daughter to live in the family apartment. Ms. Alessio stated Mr. Steward had provided a letter stating the apartment continues to meet the towns Accessory Family Apartment Ordinance requirements. A vote take all five criteria passed. Mr. Donald made a motion to grant the variance. Mr. Alberts seconded all in favor. Ms. Alessio explained the thirty day waiting period.

### **Samantha Mooskian Tax map R-3, Lot 2**

Ms. Mooskian provided additional material. Ms. Mooskian stated she had brought a ventilation expert to answer questions regarding the disposal and dispersion of lead. Mr. Bill Provincher stated his company, Carrier Heating and Air-conditioning, designs and builds range ventilation systems. Mr. Provincher stated his company is very active in the industry and the system proposed for this project is a purge style system. Mr. Provincher stated the air would come into the building for about 85 seconds, go through two filters, and then be put outside. Mr. Provincher stated the heppa filter is 99.97% efficient at .3 microns (it will take virtually all the lead out). Mr. Provincher stated there are 3 standards that ranges are designed, according to OSHA, EPA and NIOSH. Mr. Provincher explained the regulations for each, how the ventilation system will meet the requirements. Ms. Alessio asked about the average number of shooters a day. Mr. Provincher stated from the size of the proposed facility he would estimate 70 but used 100 for the calculations. Mr. Provincher stated the range ventilation system would be safe for the occupants and the community. Mr. Provincher stated they weren't required to use Heppa filters but had chosen to do the maximum filtration possible. A discussion followed regarding the ZBA's and Planning Boards purvue. Clarification was made regarding air exchange, employees being on the range and the size of microns. Ms. Mooskian explained the statistics provided regarding MSL listings and sales. Ms. Alessio read a portion of a letter from Grubb and Ellis into the record. Ms. Mooskian stated she is purposing a state of the art facility. Ms. Alessio read a letter from Maria Leighton into the record. Ms. Alessio stated she had also received a letter from Mr. Orio which she distributed. Attorney Brian Kenyon stated he works for Marshall Law and represents Pauline and Martin Short, Natasha and Russell Little, and Martin and Andrea Orio and Timothy and Jean Shea. Attorney Kenyon provided a letter and submitted documents.

Attorney Kenyon asked Paul Brown, a real estate appraiser, to explain his memorandum. Mr. Brown spoke about the stigma of a gun range. Attorney Kenyon provided a collection of studies regarding noise and lead. Attorney Kenyon questioned the levels of lead inside from spent ammunition. Attorney Kenyon spoke about the five criteria and how a gun range would affect the abutters and neighbors that he represents. Mr. Alberts asked about the Stone v. Cray case. Attorney Kenyon stated it stands for the required conditions that must be met and the ZBA's function. Ms. Alessio clarified that the ZBA's job was to determine by the five criteria whether the request meets the intent of a commercial C3 zone. Attorney Kenyon rebutted that there has never been a gun range. Ms. Alessio countered that there has been an outdoor gun range for the police department for a number of years, and there has never been a question of disposal of lead by the neighbors. Ms. Alessio stated a lot of the information presented would be more germane to the Planning Board. Attorney Kenyon asked that the board would give what he presented the weight it deserves. Ms. Nicole Nickerson stated she runs a dance studio and has been at this location since 2007. Ms. Nickerson stated the range could negatively affect her business and provided a copy of a prepared statement.

Mr. Orio spoke about perception. Mr. Orio read a letter from Rand Hall Sr. Mr. Orio thanked the board for its service. Mr. Orio stated all of the residents and business owners that are opposed to this are "really freaked out" because we are talking about where they live and the applicant nor her expert witness live there. Mr. Orio stated it wasn't about gun rights but the rights of current property owners who stand to lose the value of their largest investment. Mr. Orio asked why the town penalizes current taxpayers in order to appease a controversial exception that is certain to have a negative effect on the neighborhood. Mr. Orio stated Manchester is the only public gun range in New Hampshire. Mr. Orio talked about what Mr. Brinkerhoff stated at the Planning Board meeting, and asked about Mr. Stanley and Mr. Harris comments at previous ZBA meetings. Mr. Orio spoke about the gun range in Manchester. Mr. Orio asked to remain in a safe peaceful place to raise their families. Mr. Timothy Shea provided a visual aid and focused on criteria #2. Mr. Shea stated the current facility had 18 parking spaces and deliveries block the entrance and Route 125 in both directions. Mr. Shea provided information on the Manchester facility. Mr. Shea spoke about property values.

Mr. Coffin stated the parking would be and traffic congestion would be addressed by a site review at the Planning Board level. Mr. Coffin stated property values are more subjective. Mr. Alberts stated not letting the opposition present their case would be denying them due process even if there are many Planning Board issues. Mr. Shea reminded the board that C3 should deny if it doesn't meet the criteria and argued that it doesn't meet 3 of the standards. Mr. Shea provided a document regarding sale of property and noise pollution. Ms. Alessio asked if she sat in the parking lot would she be able to hear the guns. Ms. Mooskian stated when she sat outside the Manchester range she couldn't hear anything. Ms. Alessio asked about Ms. Mooskian's proposal; Ms. Mooskian replied no. Ms. Alessio stated she had also sat in the Manchester parking lot on three different occasions and could not hear anything. Mr. Alberts stated the town has a noise ordinance. Mr. Shea reminded the board that at the October 16<sup>th</sup> Planning Board meeting the applicant's expert witness stated that type of facility will emit 50 decimal gunfire measured outside the building. Mr. Shea stated the Manchester facility is in an industrial zone, and can't be compared to his neighborhood. Mr. Shea provided a

Kingston zoning map stating the proposed facility would be in the wet land protection area. Mr. Shea stated the wetland protection ordinance would apply. A discussion followed regarding the boards responsibility. *(portion of the tape inaudible)*.

A statement was read by Martin Short regarding his objections to the proposal, discharge of gunfire, and his flashbacks to combat. Mr. Alberts stated the 300 ft limitation is in regards to shooting outdoors. Mr. Coffin stated read the criminal code regarding discharge of guns. *(portion of tape inaudible)* Mrs. Short spoke about the property value of her condo, and a gun range not being healthy for her husband's health. *(portion of tape inaudible)* Ms. Mooskian stated she understands the opposition's fear. Ms. Mooskian stated there is a metal fabrication business on property and tractor trailer trucks back in without any issues with the traffic. Ms. Mooskian there is a lot of speculation and she is not aware of any issues at other gun ranges. Ms. Mooskian stated she has stood in the Manchester facility and could not hear any shots. Mrs. Natasha Little spoke about suicides, accidents and accidental discharges at gun ranges. Mrs. Little stated she is heavily invested in Kingston and spoke about how a gun range would lower property values *(portion of tape inaudible)*. Mr. Orio spoke about lead finding its way into the aquifer and strongly urged the board to protect them. Ms. Mooskian spoke about property values and the information she had provided from a realtor. Ms. Mooskian stated there will be no issues with traffic or any excess demand on municipal services, and no hazard to adjacent properties. A discussion followed regarding information provided regarding property values. *(portion of tape inaudible)*

Ms. Alessio spoke about the role of the ZBA. Ms. Alessio spoke about the criteria and stated she would support the applicant. Ms. Alessio stated the applicant had a right to locate a business on Route 125 but that didn't mean it would be approved, a grocery store was not approved. Mr. Alberts stated the commercial zone was adopted in 2005 the purpose was to encourages business development and increase employment opportunities and broaden the tax base. Mr. Alberts stated permitted uses were medical offices, dental clinics, drug stores, dry goods, florists, gift shop, antiques shops, banks, financial institutions, funeral homes, Laundromats, restaurants, cafes, taverns to name a few, also included commercial recreational establishments is the verbiage "such as" but not limited to indoor theaters, bowling alleys, golf courses and super markets. Mr. Alberts stated when considering the criteria to judge a business that is neither allowed nor dis-allowed ...the board needs to ask if the business would generate the same amount of traffic, safety issues, impact on real estate etc. as other approved uses would. Mr. Alberts stated the board has to consider the spirit of the law since not every type of business can be included or not include on the list. Mr. Alberts stated the board had to ask if the traffic, noise, safety and impact on real estate values would change any more or less that with a grocery store, theater, restaurant, etc. which are allowable uses. Mr. Alberts stated he had not seen any evidence to the contrary regarding the gun range. Mr. Alberts stated the issues such as noise; safety, aquifer, and ventilation are issues that pertain to site plan approval of the Planning Board along with fire and law enforcement. Mr. Donald concurred. Mr. Orio stated Ms. Alessio and Mr. Donald's comments clearly colored the opinion beyond the stated facts in his view. Mr. Orio stated it was the applicant's responsibility to prove that it isn't one of the five statues not their responsibility to prove it is despite the fact that they had given specific and clear and factual evidence not opinion. Mr. Branch stated he's an engineer and deals with hazardous materials and

understands what is being said regarding emissions and you can never say nothing is emitted and he understands the fear. Mr. Branch stated that is why we had laws that govern us on what businesses can and can't and is looking at this proposal as a neighbor and citizen. A vote was taken on the five criteria for a special exception. All five criteria passed; a motion was made by Mr. Donald to approve, seconded by Mr. Alberts, all in favor. Ms. Alessio explained the thirty day waiting period.

### **Tru Form Industries Tax Map R-3, Lots 4, 4B, 4C, and 13**

Mrs. Lynn Merrill gave an overview of the mixed use property. Mrs. Merrill used Pease as an example of a successful mixed use property. A discussion followed regarding how the applicant came before the ZBA. Mrs. Merrill gave a synopsis on the business and other small manufacturing in Kingston. Mr. Bezanson stated 80% of his employees live within five miles. Mr. Bezanson stated they are a very light non invasive manufacturer. Mrs. Merrill spoke about the C3 zoning and unintended consequences. A plan was provided and discussed. Mr. Coffin asked about external changes to the building. A discussion followed regarding Planning Board issues. Mrs. Merrill stated they would need a change of use that would require different permits. A vote was taken and all five criteria passed. Mr. Donald made a motion to approve a use variance Mr. Alberts seconded, all in favor. Ms. Alessio explained the thirty day waiting period.

Ms. Alessio adjourned the meeting at ?

Respectfully submitted,

Tammy L. Bakie  
Secretary  
Zoning Board of Adjustment