

Sangamon County, Illinois
ZONING BOARD OF APPEALS

The Zoning Board of Appeals met on November 20, 2014, at 7:00 P.M. in the County Board Chamber in the County Complex.

ATTENDANCE (X) denotes present

(X) Chairman Chimento	() Committee Member
() Committee Member Wulf	(X) Committee Member Herbert
(X) Committee Member Spiro	(X) Alt. Committee Member Lucchesi
(X) Alt. Committee Member Dobrinsky	

STAFF PRESENT:

Molly Berns, Senior Planner, Spfld-Sang County Regional Planning Commission
Steve Keenan, Associate Planner, Spfld-Sang County Regional Planning Commission
Dwayne Gab, Assistant States Attorney, States Attorneys Office
Cyndi Knowles, Zoning Administrator, Sangamon County Zoning

Chairman Chimento called the meeting to order.

Docket 2014-035 for property located at 5626 North Walnut St. Rd., Springfield, IL. 62707

PETITIONER(S): Doug Schmidgall

OBJECTOR(S): Attorney Jerry Tice

PRESENT ZONING CLASSIFICATION: "A" Agricultural District

REQUESTING: "A" Agricultural District with a variance to allow two (2) principal uses on one (1) parcel, a variance to allow zero (0) feet of road frontage instead of the required one hundred-fifty (150) feet, a variance to allow for an off-premise sign and a Conditional Permitted Use to allow an outdoor gun range in conjunction with firearm safety classes and occasional sales of firearms.

STAFF RECOMMENDATION: Recommend approval of the requested Conditional Permitted Use to allow an outdoor gun range. To the extent that providing a location for gun safety classes is a community benefit, the remote nature of the subject property is suited to the proposed use and protects the health, safety and welfare of area residents. The petition states that there will be one 16-hour class each month which will cover 2-3 days per month. Furthermore, the petition states that students will be shooting to the south into the Sangamon River Valley at designated targets and the bluff the students will be shooting from has a 90 foot

drop. There is a distance of 5,000 feet before the land begins an uphill grade of approximately 90 feet. Recommend approval of the requested variances. The standards for variation are met. The subject property is already a landlocked parcel of record with zero feet of road frontage. The signage is for directional purposes, which is justified given the remote location of the proposed use. If the variance is granted, staff recommends the sign not to exceed the size and height of the current sign.

Staff, Dwayne Gab, stated point of order, this was a remand from the County Board for clarification. At the Zoning Board of Appeals discretion, you can reopen evidence or not but the remand was purely for the purpose of clarifying the order in regards to the terms of what the Board passed. My suggestion and I believe the moving party is aware of the clarification and can present what the Board meant. I believe it would be appropriate for John Lucchesi to qualify what the motion is.

Committee Member Lucchesi stated that the 1st time I wasn't very clear. Let's try this again. I was the member to make the motion to concur, and I want to restate the motion to provide the necessary clarification as to the intent of the motion, as follows:

Approve a variance to allow 2 principal uses on 1 parcel, a variance to allow 0' of road frontage instead of the required 150', a variance to allow for off-premise sign and a CPU to allow an outdoor gun range in conjunction with firearm safety classes and occasional sales of firearms. So to further maybe clarify the occasional sale of firearms, my intent for the vote was to permit the gun range to be able to allow someone to test a gun on the range, if they are wanting to do so, if it's been purchased through the petitioner's gun sales home occupation operation, which I already understand would be permitted. (I make a motion, once again, to allow 2 principal uses on 1 parcel, a variance to allow 0' of road frontage instead of the required 150', a variance to allow for an off-premise sign, and a Conditional Permitted Use (CPU) to allow an outdoor gun range in conjunction with firearm safety classes and the occasional sale of firearms.

Committee Member Lucchesi makes a motion to recommend approval of a variance to allow two (2) principal uses on one (1) parcel, a variance to allow zero (0) feet of road frontage instead of the one hundred-fifty (150) feet; a variance for an off-premise sign (not to exceed the size and height of the current sign) and a Conditional Permitted Use to allow an outdoor gun range, with all shooting to be done to the South, in conjunction with firearm safety classes and the occasional sale of firearms. So to further maybe clarify, by the occasional sale of firearms, my intent was to permit the gun range to be able to allow someone to test a gun on the range, if they are wanting to do so. It's been purchased through the petitioner, gun sale home occupation, which I understood would already be permitted.

Committee Member Spiro seconds the motion.

Motion carries 5/0/0

Mr. Tice speaks up stating he represents the objector's in the case and this was remanded back for a rehearing, is there no opportunity for the objector's to have or make his statement.

Staff, Dwayne Gab, stated, point of order was remanded for clarification. Mr. Tice has the opportunity to make public comment through the open meetings act but, it was not remanded for rehearing. I would suggest that if the Board wishes to reopen for evidence (that is what I stated originally) it could but, there was no obligation for the Zoning Board of Appeals to reopen for evidence, the remand was for clarification of the final board.

Mr. Tice stated that the motion that was made last time by the County Board requires that the Zoning Board of Appeals contained at least 2 conditions upon the operation of the gun range.

Staff, Dwayne Gab, stated, Mr. Chairman, if I can interrupt for a moment. At this point and time, I don't think Mr. Tice has the floor. If the board wishes to reopen evidence or make public comment that would be appropriate. Public comment is generally permissible under the opens meeting act, the Zoning Board of Appeals is an appropriate place to do that. Therefore, people do have the right to make public comment but, it isn't in the nature of the public comment that you normally receive when you open up the meeting for further hearing. I would suggest that the only time that you would allow Mr. Tice to appropriately, given Zoning Board of Appeals stance, in relationship to how you conducted the remand for clarification from the County Board, then Mr. Tice will only appropriately address the Zoning Board of Appeals on a general public comment type of situation, which can be afforded to any member of the public, at the discretion of the chairman of the zoning board of appeals at an appropriate time. That time would be left up to you at your discretion during the course of this meeting.

Mr. Tice, the motion that was made at the County Board meeting did not say for clarification. Secondly, the open meetings act requires all open meetings to allow persons to make public comment.

Staff, Dwayne Gab, stated, exactly, and I said that to the Zoning Board of Appeals. If he wants to have the open comments now, the chairman of the Zoning Board of Appeals can do so but he is under no requirement to have that. I was at the County Board meeting, I believe the purpose behind the County Board meeting was not rehearing but for clarification regarding the issues that you raised Mr. Tice, and I feel very confident, in representing to the Zoning Board of Appeals that, that is the case. As I have said, they have their own discretion whether or not they chose to open the meeting to further evidence. All these members heard the evidence, they do not have a requirement to reopen.

Mr. Tice, and at the time, if you go back and look at your minutes...

Staff, Dwayne Gab, again Mr. Chairman, I would direct, as a point of order, that Mr. Tice, does not have the floor. If you want to open up the floor for public comment from

anybody, pursuant to the open meetings act, at this point and time, that is up to your discretion. I would suggest that you do have to do that at some point during this meeting but, it doesn't have to be right now.

Mr. Tice stated that there is no purpose in having a public comment, this particular case, that is not pending before this Zoning Board of Appeals at a later time, it would not be appropriate to have comment later, but when this case is before you, considering this motion.

Chairman Chimento stated, we have already voted.

Mr. Tice stated, I understand that, but you voted without granting public comment, that you are required by the open meetings act to do.

Staff, Dwayne Gab, stated, it is an open comment for anyone, or they can move on to the next case and open it up for public comment at that zoning case. I have directed you in legal qualifications, you made a choice to not reopen the evidence. There is nothing before this committee right now. If you want to open public comment, you can but, it sounds like Mr. Tice isn't looking for public comment. What he is trying to do is direct you legally as to what your legal obligations are, I don't think that is his proper role.

Mr. Tice, no I am just saying that I have the right to public comment, despite what the Assistant States Attorney is saying, at this meeting, with regard to the issue that is pending before you, which was the remand of this case. I was at that County Board meeting also, and what he is telling you he believes was the motion for remand. The motion to remand says nothing about clarification or anything else, it just says to remand. That is the States Attorneys interpretation of that action. Frankly, the reason it got remanded was because, the motion that was made here and approved at your last Zoning Board of Appeals meeting, was not correctly stated in the recommendation that was presented to the County Board.

Staff, Dwayne Gab, I would not object to this comment, but I would direct this board to either open it up for public comment at this point in time so Mr. Tice can make his comment. You have already had, and the chairman has already voted and passed the recommendation. Apparently, Mr. Tice would like this opportunity, and is taking his opportunity now to make public comment. So, if the committee has to listen to it, you might as well give him the floor for public comment.

Chairman Chimento stated, that he is ready to go onto the next case.

Staff, Dwayne Gab, stated, let me tell this Zoning Board of Appeals, he does have the right to public comment. I don't believe it is an evidentiary hearing in relationship to this particular zoning board of appeals case. At any meeting associated with open meetings act, he does have the right to make public comment, but, when that public comment occurs is based upon the chairman of the boards' decision as to when it will occur.

Mr. Tice stated that he is happy to see that the Assistant States Attorney finally agrees and consents to the fact that I am correct and entitled to comment under the open meetings act..

Staff, Dwayne Gab stated, I said that in the very beginning Sir.

The discussion continues on with much repetition, no further new comments made for a time.

Committee Member Lucchesi stated that he has a question for the Assistant States Attorney. This gentleman would certainly have an opportunity to appear before the County Board because, we have made our recommendation and the County Board will hear this matter again and will he not be afforded a time, at that meeting, an opportunity, to call his witnesses and appoint his objections.

Staff, Dwayne Gab, stated that he is allowed to make comment. There is not a situation where they are allowed to open back up testimony and call witnesses. He is allowed to make, to have your client there, and make a statement. It is not a situation, like the Zoning Board of Appeals, where the chairman swears someone in and they testify. It is a little bit of a different process. Once again, he is allowed a statement; he can have his client there, and make a statement. It is not a situation like at the Zoning Board of Appeals, where you swear someone in and they testify, so it is a little bit of a different process. I am saying he has a right to public comment. I am not suggesting that you deny him the right to make a public comment. What I am suggesting is that the Zoning Board of Appeals does not have the obligation to reopen this case for further testimony but just clarify the order and that the do not have the obligation to immediately give Mr. Tice the right to make a public statement. My suggestion was since Mr. Tice went into arguing his case, even though he wasn't properly on the floor was that you might as well let him do his public comment now rather than waiting until a later time. It is clearly within the discretion of the chairman as to when this public comment, under the open meetings act, is allowed.

Chairman Chimento stated that what I will do, we have 2 other cases, they do not need to sit and listen to this, we will do them and then have your public comment at the end of the meeting.

Docket 2014-045 for property located at 1048 & 1060 N. Bradfordton Road, Springfield, IL 62707

PETITIONER(S): the Estate of Helen A. Nickelson, Paul Nickelson, Executor and Lois Irwin

OBJECTOR(S): None

PRESENT ZONING CLASSIFICATION: "A" Agricultural District

REQUESTING: For Proposed Parcels 1, 2 and 3 “R-1” Single-Family Residence District and for Proposed Parcels 1 and 3, a variance to allow the lot depth to be greater than two and one-half (2 ½) times the lot width

STAFF RECOMMENDATION: Recommend denial of the requested R-1 zoning for Lot 1 and approval of the R-1 zoning for Lots 2 and 3. The subject property has a LESA score of 182. Scores ranging between 150-175 points shall be considered for agricultural use only. It is highly unlikely, and cost prohibitive, that proposed Lots 2 and 3 would be converted to strictly agricultural uses given the existing improvements. However, proposed Lot 1 that is largely unimproved is suited for agricultural uses. Recommend approval of the requested variance to allow the lot depth to be greater than two and one-half (2 ½) times the lot width for proposed Lots 1 and 3. Lot 3 has limited acreage. A minimum of one acre is needed for the parcel due to septic system regulations. Granting the variance would bring the lot into compliance with the regulations and allow the lot to be utilized economically. Lot 1 is the balance of the subject property after the divisions of Lots 3 and 2 and is currently not in compliance with the regulations. Granting a variance to allow the lot depth to be greater than two and one-half (2 ½) times the lot width would bring the proposed parcel into compliance with the regulations.

Ricky Irwin was sworn.

No additional testimony was given.

Committee Member Spiro makes a motion to recommend approval of the staff recommendation.

Committee Member Lucchesi seconds the motion.

Motion carries 5/0/0

Docket 2014-046 for property located at 15495 Old Route 36, Buffalo, IL. 62515

PETITIONER(S): Joseph S. Pickrell

OBJECTOR(S): None

PRESENT ZONING CLASSIFICATION: “A” Agricultural District

REQUESTING: “A” Agricultural District with for proposed Lot 1: a variance to allow one (1) parcel less than forty (40) acres; and, for proposed Lot 2: a variance to allow the lot depth to be greater than two and one-half (2 ½) times the lot width.

STAFF RECOMMENDATION: Recommend approval. When the owner acquired the subject property for purposes of maintaining the cropland, there was a single-

family residence on the property. It is the owner's intent to divide the tillable crop ground from the residence thereby separating the uses. Granting the variance will also facilitate a future sale of the property with the residence to a family member, thus maintaining the agricultural nature of the larger parcel. The standards for variation are met. No negative impact is foreseen in allowing the proposed variances.

Joseph S. Pickrell was sworn.

No additional testimony was given.

Committee Member Herbert makes a motion to recommend approval as staff recommended.

Committee Member Lucchesi seconds the motion.

Motion carries 5/0/0

Chairman Chimento called upon Mr. Tice.

Mr. Tice made statement that he would like to correct the record on this matter. I want to do that by going back and there is a CPU prior before this Zoning Board of Appeals. That was furnished by the office of the Zoning Administrator. The written recommendation that came out of the Zoning Office, the minutes had not been prepared before the last County Board Meeting, when this recommendation was made, sentenced to that for consideration. That written recommendation, that was typed up based on what was understood to be your motion at the time, said...that there be the use for the gun range, with the variances that are asked for under a Conditional Permitted Use. Which requires all shooting to be done to the South, in conjunction with firearm safety classes with no more than 16 hours or 2-3 days per month. That was the motion as I heard it, made by the Chairman last meeting. That was the motion I heard, seconded and passed. That is the motion that is on this cd. When this was prepared, you will remember, the recommendation was prepared to go to the County Board, it had added, 1 line at the end, the occasional sales of firearms at the above described property is hereby approved. This is what caused it to be remanded. It wasn't remanded in that sense; let me read the motion that was made at the County Board meeting. Motion was made by Mr. Goleman, seconded by Mr. Montalbano, to recommit the resolution back to the Zoning Board of Appeals. There was no statement in there as to what you were to do with it. Rather you were simply to reclarify your motion or you were to hear additional evidence or whether or not you were to decide if there were supposed to be occasional gun sales added to your recommendation or not. My clients objected only to the occasional gun sales, provided there were conditions put on the gun range, mainly all shooting to the south, cause they have cattle to the north and that it only be in conjunction with, limited to, the 16 hours – 2-3 days once per month for gun conceal and carry class per month. That is exactly what the petitioner's request stated. That is what the petitioner sat here and testified that he wanted. Our opposition was that we would agree with that, provided it wasn't unlimited

use of the gun range for whatever purpose. We understand your agricultural district permits gun ranges but it can have some conditions imposed on it. As long as those same conditions you had in your earlier motion stay in the recommendation, we have no objection. We think there should be some other conditions but, we are happy with the fact that you put those 2 in there. In fact, there was a question from one of your members before you voted on it. Was there conditions that all shooting be to the south and limited to when they have conceal and carry. That was a question raised before the motion was brought to the table. The one who made the motion said, yes it is. The motion that I hear tonight, does not include that. What you have done is change that without taking any additional evidence what-so-ever. That I think is unfair. With that in mind, I would ask you to reconsider your motion and make it conform to the motion you made the previous time. The reason we objected to the gun sales was simply because, gun sales itself, are not, named as a permitted use in either the agricultural district or any other district. What the Zoning office has told you, and what I suspect you based this upon, is their recommendation that gun sales can be conducted under a home occupation, which is in you agricultural district, your R-1 district, R-2 district and R-3 district. Anyone living in those districts can have a home occupation. The Zoning office has told you, in their opinion, is that gun sales is included within the meaning of home occupation, as defined by your zoning ordinance. I submit to you that it cannot be. The definition of home occupation that you find in your home occupation says, it is an occupation conducted in a dwelling unit, provided that; and then there are 8 conditions that limit its use. 1 of those is very apropos to this very application. It says, there shall not be sales in connection with such home occupation, except those clearly incidental to the home occupation. So you start right off, a home occupation cannot have sales, unless that happen to be incidental to the occupation itself. Incidental is not defined in your ordinance but, I turn to Webster's dictionary to find out what it says happening as a chance or undersigned feature or something casual. With that exception, to a home occupation, you can't have gun sales, which is a retail establishment. If you allow gun sales as a home occupation, then you are allowing any retail sales. You have no authority to authorize gun sales in a home occupation.

Meeting adjourned.

Respectfully submitted,

Recording Secretary

Chairman

Minutes of November 20, 2014

Full record of minutes available upon request in the Zoning Department