

Organizational Meeting and Meeting of the Town of Pawlet Development Review Board

April 25th, 2018

Members in Attendance:

Keith Mason, Brian Rawls, Gary Baierlein, Jonathan Weiss
Sarah Ludlam (Alternate)

Others in Attendance:

John Thrasher, attorney for the Town of Pawlet
Daniel S. Banyai, applicant
David Cooper, attorney for the applicant
Eric Mach, Zoning Administrator for the Town of Pawlet

Dolores Luebke
Jay Luebke
Raymond Duquette
John Davis (Sr.)
Valerie Davis
Bruce Hulett
Rebecca Hulett
Ashley D. Waite
Charles L. Weeden Sr.
Paul Tilander
Michelle Tilander
Lowell Ferguson
Ed Vallerie
Jackie Vallerie
Karla Crossman
Seth Butler
Diane Butler
Michael Mullen
Melissa Mullen
Ken Norman
Eli-Anita Norman
Rita Robson
Gardiner Charlton
Linda Charlton
Rhonda Schlangen
Amy C. Murphy
Virginia Hulett
Richard J. Hulett
Ken Major
David P. Ricard Sr.
Richard B. Marantz
Fred Stone

Darren Godette
Barbara O'Connor
Steve Williams
Lisa Roberts
Jason Lavocque
Chad Paustian
Cori Rail
John Davis (Jr.)
Harry Van Meter
Katrina Tyler
Edgar Cleveland
Sally Cleveland
Frank Nelson
Joni Lee
Melissa L. LaCount
Joe Clark
Deb Clark
Mark Frost
Anne Hadeka
Gary Hadeka
Cintia Morrissey
Bob Falvo
Sonja Falvo
Lenny Gibson

The organizational meeting was brought to order by Mr. Mason at 6:40pm. Mr. Weiss moved to maintain the existing officers of the board: Mr. Mason as Chair and Mr. Glick as Vice Chair. Seconded by Mr. Rawls. All were in favor, none opposed. The motion so carried.

Mr. Rawls moved to maintain the existing Development Review Board Rules of Procedure and Conflict of Interest Policy, seconded by Mr. Baierlein. All members being in favor, the motion carried.

Seeing no further business, the organizational meeting adjourned at 6:45pm.

Mr. Mason called to order at 7:00pm the meeting to review the application for a variance, submitted by Daniel S. Banyai for relief from the 50' right of way requirement to access his 31 acre property at 541 Briar Hill Road in West Pawlet. Mr. Mason proceeded to provide the audience with an overview of how the proceedings would be conducted, and to administer an oath to all parties who wished to speak.

Dave Cooper, attorney for the applicant, presented his client's case to the Board. Mr. Cooper indicated that Mr. Banyai had applied for a zoning permit for proposed use of his land as a school. The permit was denied by the zoning administrator Eric Mach on the basis that the Town of Pawlet Unified Bylaws require a 50' wide road access. Mr. Cooper argued that the Board should consider the site an existing non-conforming lot, so that his client may re-apply for a

zoning permit for his school. Mr. Cooper explained that the existing 30' access was deeded as a right of way through an adjacent property, and that his client has not been able to purchase abutting land to expand it.

Eric Mach, the Zoning Administrator, informed the Board that an application for a wastewater permit was given to a Michael Dunbar in 2012 for this site and that this permit expired without any work occurring. Upon later inspection of the lot, Mr. Mach found an un-permitted classroom building and shooting range. Mr. Mach expressed that this commercial enterprise constituted a change of use.

Mr. Thrasher told the Board that they may request that the Board be provided evidence as to whether or not the lot boundaries pre-date the 50' right of way requirement.

Mr. Banyai described the nature of the school as a training facility for guns and shooting which will not be open to the public. He stated that he is a veteran who is passionate about guns and does not intend to charge a fee initially, though he may in the future. Small groups will come to learn gun safety and shooting.

Joni Lee stated that on applicant's website he was charging \$100 for a shooting course. Ms. Lee asked what the liability and tax implications were to the applicant.

Mr. Banyai replied that he invited people to come speak to him about this school.

Ray Duquette addressed the Board on behalf of a group of 46 signatories of a petition to the Board. Mr. Duquette expressed that their concerns include noise pollution from semiautomatic weapons, the health and well-being of neighboring domestic animals, wildlife, and the natural serene character of the neighborhood. Mr. Duquette expressed grave concern for the impact this development would have on existing horse training and dog kenneling businesses neighboring the property. Mr. Duquette expressed concern that the appellant's zoning applications describe a "school" but make no mention of tactical arms or shooting. He stated that in April of this year, an event was posted to applicant's Facebook page and many vehicles were observed entering the property. Neighbors reported hearing much shooting as well as shooting at 12:30 at night. Mr. Duquette asked if the Board had performed a site visit. Mr. Weiss answered that the Board had not. Mr. Duquette provided the Board with a copy of the warranty deed and printouts from the applicant's Facebook page, including images of the current structure built on the property, a map of the site depicting the radius at which various calibers of weapons fire would be heard from, information about a recent course offered at the site, and an image of a military-style light machine gun with a caption claiming that such a weapon existed on the site in question.

Mr. Banyai denied shooting occurred at 12:30am, stated that the machine gun was photographed in Las Vegas, and asked Mr. Duquette how many times he had heard shooting. Mr. Duquette responded that he had heard shooting many times.

Mr. Mason explained that the Board's role is to interpret the zoning bylaws, and some of the testimony provided by interested parties may not be pertinent at this time.

Mr. Thrasher asked when the 50' right of way was created and when the client's 30' deeded right of way was created. He noted that the right of way must be a written agreement. Mr. Weiss asked Mr. Thrasher to confirm that revisiting the Zoning Administrator's position on a nonconformity is within the power of the Board. Mr. Thrasher affirmed that it was. Mr. Thrasher stated that as a matter of general zoning principal a properly created lot cannot be zoned out of existence of any use at all by imposing stricter zoning requirements. Mr. Thrasher asked hypothetically if a new applicant put a camp on the site, would the 30' right of way impede that degree of development?

Gary Hadeka addressed the Board as an abutting landowner and interested party. Mr. Hadeka explained that as an owner of a horse stable they have a lot to lose, that they do not want to live through a war, and that they were there first. He expressed that he wishes to stay on their property and is entitled to peace and quiet.

Jay Luebke inquired as to if the 50' requirement is for a commercial use only, or also a requirement for residential use.

Mr. Thrasher clarified party status according to state law.

Ken Major addressed the Board as a resident of Buttons Falls Road and someone who recreates on Briar Hill Road in the vicinity of the property in question. He expressed that it felt clandestine and manipulative for the applicant to present this development as a school. Mr. Major expressed concern that this dramatically changes the quality of life in the neighborhood, and does not conform with the stated intention of the zoning bylaws.

Mr. Banyai replied that when he bought the property he reached out to the abutting landowners.

Anne Hadeka, abutting land owner and interested party, stated that they were not told about a gun range. She expressed that her family is now scared to use the trails for their horses or have their grandchildren over to visit. She asked about how the recent zoning change from agricultural to industrial impacts this property. Mr. Mason explained that a portion of the property in question was located in the Industrial zone and a portion in the Agricultural and Rural Residential zone, but that this fact had no bearing on the question before the board.

Mr. Thrasher clarified that what is before the Board is whether to determine if the 30' setback is pre-existing and nonconforming. He also recommends the town follow up on the current development of the property and whether there is an existing zoning violation.

Harry Van Meter asked whether Mr. Banyai is licensed to operate a school.

Mr. Banyai replied that he is not and is not aware that there is such a license.

Fred Stone expressed that he served on the Planning Commission for many years, and that when adding school as a permitted use, the intent of the Commission was to permit a school for children, not a shooting range.

Mr. Van Meter spoke as a current member of the Planning Commission, confirming Mr. Stone's intended definition of a school.

Paul Tilander addressed the Board to ask about Honvend Security, a business entity registered to this property.

Mr. Banyai replied that it is his federal firearms license.

Barbara O'Conner asked what kind of guns the applicant has located on the property and for more information on what kind of school it is. She suggested that most Vermonters are already taught from an early age how to use guns.

Frank Nelson addressed the audience to invite them to attend Planning Commission meetings which are held the 4th Monday of every month at 7:30 at the Town Hall.

Mr. Cooper asked when the 50' right of way requirement was enacted.

Mr. Thrasher stated it was March 8, 2011 and the Board would need evidence of the actual deed as to when the applicant's right of way was created.

Dick Hulett expressed displeasure with the development occurring, and indicated that he had had conflicts with Mr. Banyai.

Edgar Cleveland asked whether Mr. Banyai would cease and desist operations until permits are in place.

Mr. Cooper responded that that is an enforcement issue.

John Davis asked if it is the applicant's responsibility to determine if his use is legal, and inquired as to how the town announces permits. Mr. Mason explained that permits issued are posted in the town office windows.

Mr. Cooper provided a survey map from 1978 indicating the 30' right of way, and requesting the Board consider the property to be a non-confirming lot. Alternatively, he would ask the Board for a variance for this use.

Mr. Thrasher suggests that following an existing non-confirming lot decision, the applicant must re-submit a zoning application for the shooting school to the zoning administrator, and if approved, that decision could be appealed by any interested person to the Development Review Board in a 15 day window following that approval. If the Board were to deny the appeal, the Board's decision could be appealed to the state environment court.

At this time, Mr. Mason closed the hearing to enter into deliberative session. The Board decided to proceed with their deliberative session in open meeting for the benefit of transparency.

Mr. Baierlein expressed that he has a problem with the fact that the applicant never requested a permit for the existing building on the site and is in violation of zoning laws, as well as the vagueness of his description of a school. He suggested that under Act 250 the state will be obliged to weigh in, because this development is larger than 10 acres.

Mr. Thrasher indicated to the Board that there were three options: a variance, a waiver of the dimensional requirement, or a ruling that the property is a pre-existing nonconforming lot.

Mr. Weiss read the definition of an existing non-conforming lot from Article V Section 7 of the Pawlet Unified Bylaws, which addresses lots that do not meet the standards of the current zoning bylaws. It was noted that Article V Section 7 clearly allows for pre-existing non-conforming lots to be developed.

Mr. Weiss noted that the Board lacks the authority to consider the impact on the character of the area in the case of an existing nonconformity, as the Board would in deciding a variance, waiver, or conditional use.

Mr. Thrasher noted that the applicant would still need a permit for the existing building which is in violation, and evaluation for the change of use to a school would be based on a new zoning application.

Mr. Baierlein moved that based on the evidence provided by the applicant of a deed reciting a property description and a survey showing the 30 foot right of way, both of which were created and dated prior to March 8, 2011, establishes this lot as a pre-existing non-confirming lot. Seconded by Mr. Rawls. All were in favor, none opposed. The motion so carried.

Seeing no further business, the meeting adjourned at 8:50pm.

Respectfully Submitted,

Sarah Ludlam