

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TOWN OF BETHANY BEACH

(Case No. 11720)

A hearing was held after due notice on February 29, 2016. The Board Members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to operate a target / shooting range.

Findings of Fact

The Board found that the Applicant is requesting a special use exception to operate a target / shooting range. This application pertains to certain real property located on the west side of Blackwater Road approximately 1,230 feet north of Burbage Road (911 Address: 32492 Blackwater Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-54.01. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, range design criteria literature from the U.S. Department of Energy, a site plan of the Property dated July 9, 2015, a portion of the tax map of the area with Google Earth imagery, proposed conditions for approval, an email of support from Adrian Mobilia supporting the Application, and an email from Durwood Bennett regarding the impact of the proposed shooting range on property values.
2. The Board found that the Office of Planning and Zoning received two (2) letters in support of the Application and two (2) letters in opposition to the Application.
3. The Board found that John Murray and Captain Darin Cathell were sworn in and testified regarding the Application. Richard Berl, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Berl stated that the Property consists of approximately seven (7) acres.
5. The Board found that Mr. Berl stated that the proposed range will be used as a police training facility and will only be used by the Bethany Beach Police Department to gain and maintain firearm certifications. The police department has ten (10) active members and two (2) retired members – one of whom is the City Manager. The range will not be open to the public or other police departments. Bethany Beach officers currently travel to Bridgeville for training.
6. The Board found that Mr. Berl stated that the Property is located in an AR-1 zoning district and the area is not highly populated but there are homes nearby.
7. The Board found that Mr. Berl stated that the proposed range will be approximately 1,200 feet from the road.
8. The Board found that Mr. Berl stated that the adjacent property owners most affected by the range (including the owner of the vineyard) have no objection to the Application.
9. The Board found that Mr. Berl stated that a local realtor opined that the proposed use will not adversely affect the surrounding property values.
10. The Board found that Mr. Berl stated that the Applicant has improved the appearance of the Property.
11. The Board found that Mr. Berl stated that the Applicant intends to be a good neighbor and is open to conditions being placed on the special use exception such as limiting the use to active and retired members of the Bethany Beach

Police Department within limited days and times. The range is proposed to be used on Tuesday, Wednesday, and Thursdays from 10:00 a.m. to 2:00 p.m. A couple of times per year the range would be used more intensely for the required training the officers must complete. The range will not be used on the weekends.

12. The Board found that Mr. Murray testified that he is the project engineer.
13. The Board found that Mr. Murray testified that the proposed range will be protected by an earthen berm which will be designed to meet the U.S. Department of Energy regulations. The berm will have three (3) sides and will be quite substantial in size to prevent ricocheting bullets and projectiles.
14. The Board found that Mr. Murray testified that the Property was historically used for agricultural purposes with a dwelling and a poultry house. The Applicant has removed the dwelling and several outbuildings.
15. The Board found that Mr. Murray testified that the existing poultry house will be used as storage for the Town of Bethany Beach.
16. The Board found that Mr. Murray testified that the closest residential structure is approximately 932 feet from the proposed range. Other residential structures are over 1,200 feet away. The closest property on the other side of Blackwater Road is 1,240 feet away from the proposed range.
17. The Board found that Mr. Murray testified that the range is to be situated on the rear of the Property and the shots fired at the range will be directed away from any residential structures. Property to the rear of the proposed range is wooded and any residential structures in that direction are over 5,000 feet away.
18. The Board found that Capt. Cathell testified that he is a captain for the Bethany Beach Police Department. He has been a certified firearms instructor for 19 years. Two (2) other officers are also certified firearms instructors.
19. The Board found that Capt. Cathell testified that the Applicant is governed by the Council on Police Training which sets forth the type of training required by the Applicant and that each officer must be certified annually. The annual training requires each officer to participate in two (2) daylight shootings and one (1) low light shooting. The Applicant may combine a daylight and low light training into one day. The Applicant estimates the range will be used 2 or 3 days a year to complete the training for the entire force and that the rest of the year the range will only be used by officers on their days off for practice. The range will likely not be used much during the summer.
20. The Board found that Capt. Cathell testified that the officers must be given permission to use the range and the range will only be used between the hours of 10:00 a.m. and 2:00 p.m. on a Tuesday, Wednesday, or Thursday. The proposed hours of operation are designed to minimize the impact on neighbors.
21. The Board found that Capt. Cathell testified that the Applicant currently uses a shooting range in Bridgeville. The other ranges available are too far away and leave the Town of Bethany unattended when the Department goes for recertification. The proposed location will allow the officers to remain close to the Town of Bethany.
22. The Board found that Capt. Cathell testified that the range will be self-contained and will face away from dwellings.
23. The Board found that Capt. Cathell testified that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
24. The Board found that Capt. Cathell testified that the Town of Bethany had a decibel reader. A decibel test was performed at the site and the reading was 83 decibels at the front of the Property near Blackwater Road. The noise is comparable to the sound from a lawn mower, which is 85 decibels.
25. The Board found that Capt. Cathell testified that the noise from the range will be similar to the noise generated by hunters in the area.

26. The Board found that Capt. Cathell testified that the Department has had ten (10) officers since he has been with the Department.
27. The Board found that Capt. Cathell testified that the guns used at the range will be a .357 patrol gun and a 223 round rifle. There will be no shotguns used at the range.
28. The Board found that Capt. Cathell testified that maintenance employees will be at the site daily and the Property will be posted to let the public know they cannot enter. Security cameras may be installed in the future.
29. The Board found that Capt. Cathell testified that the low light training is scheduled in late February – early March so there is no shooting done late at night.
30. The Board found that Capt. Cathell testified that he is not sure if the area will be gated.
31. The Board found that Capt. Cathell testified that the berm is 30 yards wide and 75 feet deep. All shooting will be conducted within the berm.
32. The Board found that Capt. Cathell testified that the Applicant has no objection to planting Leland Cypress to serve as an additional buffer and to baffle the noise from the range.
33. The Board found that Capt. Cathell testified that the Applicant will maintain the Property and clean up the debris from the range.
34. The Board found that Capt. Cathell testified that the Applicant is requesting the use for a period of five (5) years.
35. The Board found that Capt. Cathell testified that he affirmed the statements made by Mr. Berl.
36. The Board found that Kirk Owen Phillips, Lou Csoky, Deborah Salins, Scott Smith, Owen Smith, Willa Peoples, Bryan Marvel, Ernest Marvel, Nancy Potts, Charles Kaiser, Ronald Buggenhagen, Patrick Marino, Martha Holland, Zachary Chew, Paul Copeland, Marianne Phillips, and Argetta Shupe were sworn in and testified in opposition to the Application.
37. The Board found that Mr. Phillips testified that he lives approximately ¼ mile from the Property and is concerned about the effect of lead from bullets shot at the range. Hunters use steel bullets due to the lead pollution issues.
38. The Board found that Mr. Phillips testified that the area is a high traffic area and has concerns for others safety. The lack of a gate is also a concern and feels trespassers could be an issue. He believes that the range should be contained in a building.
39. The Board found that Mr. Csoky testified that he lives approximately 200 yards from the Property and he is representing the Hidden Acres community. There are many retirees living in the area.
40. The Board found that Mr. Csoky testified that there are other ranges in Bridgeville, Dover, Millsboro, Seaford, and the National Guard properties and he does not feel there is a need for the Bethany Beach Police Department to have their own range.
41. The Board found that Mr. Csoky testified that there is great concern for the safety of the neighborhood as there is a nearby daycare center and school busses in the area. He also expressed concerns about the effect of the range on property values in the neighborhood.
42. The Board found that Mr. Csoky testified that he heard the decibel test from a property on the other side of Blackwater Road and it was very loud.
43. The Board found that Mr. Csoky submitted exhibits to the Board to review.
44. The Board found that Ms. Salins submitted a letter from a neighbor in opposition to the Application. Ms. Salins testified that her neighbor has a deaf child and other children that play outside and she is concerned for their safety. Due to her own health issues, the shooting noise from the range bothers her as well.

45. The Board found that Scott Smith testified that he lives approximately 1/8 to 1/4 mile from the Property.
46. The Board found that Scott Smith testified that he is concerned with lead pollution and that outdoor firearms put lead into the environment. He works with lead hazard control and he would support it if the officers use green bullets and noise suppression at the proposed range.
47. The Board found that Owen Smith testified that he lives approximately 1/4 mile from the Property and the proposed range will alter his quality of life.
48. The Board found that Owen Smith testified that noise travels easily in open space – particularly in this area.
49. The Board found that Owen Smith testified that the proposed range will compromise property values because no one wants to live near a firing range.
50. The Board found that Ms. Peoples testified that she owns property to the south from the Property approximately 1,240 feet from the proposed range. She purchased the 11 acre parcel in October 2015 and she uses the property for her pet training business. She specializes in working with rescue animals and works with dogs that have fear issues.
51. The Board found that Ms. Peoples testified that the proposed times the range will be used are when she would be utilizing her property for training and that the use will not have a positive effect to her property and her business. She believes that the use will substantially adversely affect the uses of her property.
52. The Board found that Bryan Marvel testified that he lives 2 lots down from the proposed range and he has lived in the area for thirty-eight (38) years.
53. The Board found that Bryan Marvel testified that he feels the Applicant is still unsure how often the range will be used and who else may use the range in the future as there is no detailed plan. He believes that an indoor range would be more acceptable.
54. The Board found that Ernest Marvel testified that he is a World War II veteran. He is concerned about the effect of stray bullets as he has seen the dangers of stray bullets.
55. The Board found that Ms. Potts testified that she also lives across the street from the Property and she moved to her property two (2) years ago. She is very concerned about the noise. Her pets will be adversely affected because they have troubles when around fireworks. She believes that the Applicant should continue to use the Bridgeville range.
56. The Board found that Mr. Kaiser testified that he lives less than a tenth of a mile from the Property and that the range will affect the tranquility of the neighborhood and property values will be adversely affected.
57. The Board found that Mr. Kaiser testified that there are adequate facilities elsewhere for the Applicant to conduct its training and he feels over time the range will be open to other police departments or the public.
58. The Board found that Mr. Kaiser testified that the Property was purchased for storage and communications for the Town of Bethany Beach.
59. The Board found that Mr. Buggenhagen testified that he lives approximately 300 yards from the Property. There are agriculture fields surrounding the proposed range and he is concerned for the farmers working in those fields.
60. The Board found that Mr. Buggenhagen testified that he hunts and photographs in the area behind the proposed range. There are seven (7) bald eagles living in the area. His deer stand is 15 feet high and is located in the woods.
61. The Board found that Mr. Buggenhagen testified that the pristine area will be substantially adversely affected by the use. The nearby woods behind the proposed range are called the "Swamp Woods". He believes that lead from the bullets fired at the range will run off into a nearby ditch which drains the woods.

62. The Board found that Mr. Buggenhagen testified that the range will be a total disruption to the neighborhood.
63. The Board found that Mr. Buggenhagen testified that neighborhood children play in the wooded area and Blackwater Road is often used by bikers.
64. The Board found that Mr. Marino testified that he lives approximately 600 feet from the Property and has lived in the area for three (3) years. He enjoys the quiet neighborhood.
65. The Board found that Mr. Marino testified that the proposed range is not safe and that he is not comfortable with guns being fired outside.
66. The Board found that Ms. Holland testified that she lives across the street. A shot was fired into her house last year and the Delaware State Police still have no idea where it came from.
67. The Board found that Ms. Holland testified that children in the area wait for the school bus and she is concerned for their safety.
68. The Board found that Ms. Holland testified that neighbors cut grass during the proposed time of operation for the range.
69. The Board found that Ms. Holland testified that she feels the range should be in a more secluded area.
70. The Board found that Mr. Chew testified that he lives in Hidden Acres approximately 1,500 to 2,000 feet away.
71. The Board found that Mr. Chew testified that the use seems to accommodate a small amount of people but will disrupt twice as many people. The safety concerns and property values of the neighborhood will be negatively affected. He believes that there are existing facilities the Applicant can use without disrupting an entire neighborhood.
72. The Board found that Mr. Copeland testified that he lives approximately a ¼ mile from the Property and noise and safety are a huge factor.
73. The Board found that Mr. Copeland testified that he has experience as a competition shooter for the Delaware State Police and that stray bullets are dangerous.
74. The Board found that Mr. Copeland testified that numerous bikers and walkers use the area and the range would disrupt this use.
75. The Board found that Ms. Phillips testified that she lives ¼ mile from the Property and that she moved to the area four (4) years ago seeking the quiet. She believes that the use would adversely affect the wildlife in the area.
76. The Board found that Ms. Shupe testified that she owns two (2) houses in the area and she enjoys sitting on her front porch and watching the wildlife. She is concerned for the safety of the children in the area.
77. The Board found that Capt. Cathell testified that the officers will be shooting 75 feet away from the berm and that they conducted the decibel testing today.
78. The Board found that Mr. Berl stated that the opposition has not provided any evidence to support their concerns of property values and there was no evidence to dispute the decibel test.
79. The Board found that Mr. Berl stated that the use will not substantially adversely affect the uses of the neighboring and adjacent properties. The use is a minimal intrusion to the area.
80. The Board found that Mr. Berl stated that only four (4) shooters at a time could regularly use the range.
81. The Board found that Mr. Berl stated that the location is five to six miles from town because there is no property within the town limits that could accommodate the proposed range.
82. The Board found that Ms. Peoples testified that the range will affect the use of her property and her business and that she would still have concerns if the Property was fenced in. She has concerns with the Applicant's ability to monitor

the use of the range and trespassers thereon. She would rather see the range contained in a building.

83. The Board found that Ms. Holland testified that she heard the test shots today for the decibel test and the noise was loud.
84. The Board found that Ms. Holland testified that a stray bullet is still dangerous even when police fire the gun.
85. The Board found that Ms. Potts testified that noise is an issue and that she hears bullets fired from hunting nearby.
86. The Board found that Mr. Berl stated that the Applicant has not started any work on the berm.
87. The Board found that Mr. Berl stated that three (3) shots were fired today to conduct the decibel test.
88. The Board found that no parties appeared in support of the Application.
89. The Board found that thirty-four (34) parties appeared in opposition to the Application.
90. The Board tabled the Application until March 21, 2016, at which time it discussed the Application.
91. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application failed to meet the standards for granting a special use exception because the shooting range will substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. Applicant proposes to place an outdoor shooting / target range on a site formerly used as a residence and poultry farm.
 - b. The Board has reviewed and weighed the testimony and evidence presented by both the Applicant and the opposition.
 - c. The record is quite clear that the area near the shooting range is an area of agricultural and residential uses and that the area is quiet. Neighbors have enjoyed the general peacefulness related to the tranquil atmosphere of the neighborhood and have demonstrated that the shooting range will be an unnecessary intrusion into the area.
 - d. The largest concern raised by the opposition relates to the noise generated from the range. The range will be located outdoors where the sounds of repeated shots fired will reverberate throughout the area. The neighborhood is quite flat and open and the noise will likely travel a great distance. Neighbors testified that noises from nearby trains and hunting activities can be heard from a great distance. Neighbors also testified that a recent decibel test performed by the Applicant was clearly heard. The Board finds that additional noise from the outdoor shooting range will likely increase the noise pollution in this quiet neighborhood and unnecessarily disturb neighbors. Even if the use of the range is limited, as proposed by the Applicant, the noise from the range will have a substantial adverse effect on the tranquil nearby properties.
 - e. The testimony of a neighbor who owns an animal training facility also proved compelling as the neighbor testified that she trains dogs and has horses on her property. She specializes in working with rescue animals and dogs that have fear issues. The times the Applicant intends to use the range coincide with the times when she typically trains those animals. The existence of the shooting range will likely have a substantial adverse and chilling effect on the operation of her business and the Applicant did not convince the Board otherwise.
 - f. Neighbors also expressed concerns about the safety effect of the range on the neighborhood. There are children in the area; some of whom play

in woods near the range. One member of the opposition who is a former competition shooter testified that stray bullets are not uncommon; even for experienced and well-trained shooters. He expressed concerns about the effect of stray bullets in the area; particularly with the number of children and residences nearby. The Board finds this concern to be reasonable.

- g. The Applicant also failed to demonstrate how the range will not lead to a substantial adverse effect on the environment of neighboring and adjacent properties. It is undisputed that bullets will be fired at the site and the opposition has expressed concern about the effect of the emissions from fired rounds into the ground and nearby waterways. The testimony indicates that the Property drains to a nearby ditch thereby potentially exposing the ditch to pollution. The Applicant testified that it would maintain the Property but did not present a convincing plan as to how it will limit the exposure of neighboring and adjacent properties (particularly the waterways) to pollution due to emissions from fired rounds at the range.
- h. The proposed use is out of character for the neighborhood as there are residential properties nearby.
- i. The proposed shooting range will substantially affect adversely the uses of neighboring and adjacent properties.

The Board denied the special use exception application finding that it failed to meet the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was denied. The Board Members voting to deny the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman. Mr. John Mills voted against the Motion to deny the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date May 17, 2016