

MACON COUNTY ZONING BOARD OF APPEALS

HEARING MINUTES – JULY 6, 2016

MEMBERS PRESENT

Barb Lamont, Chairman
Bill Koretke, Vice Chair
Donald Wilson
Blake Noland
Ed Leonard, Alternate Member
Dennis Hughes, Alternate Member

COUNTY PERSONNEL PRESENT

Jennifer Hoffman, Planning & Zoning Director
Tracy Sumpter, Planning & Zoning
Michael Baggett, Assistant State's Attorney

MEMBERS ABSENT

Andy Freeland

MINUTES

Donald Wilson made the motion to approve the June 1, 2016 and June 3, 2016 minutes, seconded by Ed Leonard. All members present answering, Aye. Motion Carried (5-0).

OLD BUSINESS:

- 4.1** V-01-06-16 a variance petition filed by Deer Meadow Farms Inc. requesting to change the minimum lot size from 10 acres to 5 acres in (A-1) Agricultural Zoning.

Ms. Hoffman stated this was passed by ZBA on June 1, 2016.

- 4.2** V-01-05-16 a variance petition filed by Topflight Grain Cooperative Inc. requesting for the rear setback to be changed from fifty (50) feet to thirty-one (31) feet in (A-1) Agricultural Zoning. (Special Meeting)

Ms. Hoffman stated this was passed by ZBA on June 3, 2016.

NEW BUSINESS:

- 5.1** S-01-07-16 a special use petition filed by Mark Highcock to allow the operation of the sale and transfer of firearms business in (R-1) Single Family Residential Zoning.

Chair Lamont asked for anyone wishing to speak on this matter to please stand to be sworn in.

Mark Highcock
4666 E Fitzgerald Rd
Decatur, IL 62521

Mr. Highcock stated he is applying for a special use permit for his side business which is

firearms and accessories. He does a lot of online transfers and online gun sales along with some accessories. This requires an FFL which requires a special use permit through Macon County Zoning.

Mr. Koretke asked how long he has been in business.

Mr. Highcock stated since 2009 in Mt Zion.

Mr. Koretke asked at this address?

Mr. Highcock stated no not at this address.

Mr. Koretke asked if this is his father's property.

Mr. Highcock stated yes it is.

Mr. Koretke asked if he is changing his location.

Mr. Highcock stated correct. It was in Mt Zion Township which doesn't require any special use permits, and now that he is moving out of the village, Macon County Zoning requires the permit. He stated he has had his FFL since 2009.

Mr. Wilson asked if the weapons would be locked up.

Mr. Highcock stated yes at all times. Any of the firearms, the ATF requires him to have them in a safe. All of his are in the safe.

Mr. Wilson asked if his business was mostly shipping.

Mr. Highcock stated quite of bit now, it's moved since about 2014 when a lot more wholesale businesses like Palmetto State Warehouse, Grab A Gun, Kentucky Gun Runners, Bucks Gun Shop, a lot of them are selling online so a lot more of his are also online sales. He buys them in as his wholesale and then he will post on websites like Guns America or Gun Broker and then he will ship them out.

Mr. Wilson asked if this was his only business.

Mr. Highcock stated he works at Caterpillar full time.

Mr. Koretke asked how many customers on a daily or weekly basis would be coming to this location.

Mr. Highcock stated as far as customers, he jotted down the week of March 14th he had 11 customers, 2 packages delivered to the house, 3 packages he went and picked up. Anything that has a "signature required," the shipping companies hold for him. He primarily picks up almost all of his packages. On average, he is about 11 customers per week. Some of that skewed up

because from the weeks of March 14th through May 30th, he had 3 customers a week because he was donating his time for the Lake Volunteer Association Army Corps of Engineers gun raffle and then they had a Youth Wildlife gun raffle banquet so he held on to their guns and did those transfers. A few of the packages were for the States Attorney's Office for their detectives and then he had a couple of packages which required 2 customers for the Boy Scouts of America donations for their targets.

Mr. Noland asked if most of it is online, is that 11 customers that are coming or is that 11 transactions?

Mr. Highcock stated it is 11 total. If he buys a gun and ships it online, that's not a customer coming to the residence. He had 11 people the week of March 14th, he had 8 the week of March 21st, 16 for the week of March 28th, 12 for April 4th, the week of April 11th he had 13, April 18th he had 10, April 25th he had 6, the week of May 2nd he had 6...

Mr. Noland asked if it was appointment only.

Mr. Highcock stated yes. He has hours based upon that he has to be there for the ATF if they ever want to come and do an inspection but his are appointment only because he doesn't do this full time.

Mr. Wilson asked if he would be creating any traffic problems.

Mr. Highcock stated to him that isn't a traffic problem if he has that but this is what I have when I showed was I had for the last 3 months.

Mr. Wilson asked so that's drive in and shipping?

Mr. Highcock stated yes. The packages he has delivered on average is less than 1 per week because most of his are signature required so he has to pick them up.

Chair Lamont asked if the customers that are coming, are they just for gun sales or accessories or something else.

Mr. Highcock stated if they order accessories or any ammunition then yes, it may not be just for a gun. Primarily, most of them aren't lately, that's trending with the economy. Once the economy is down or stagnant, that's most of your fun money. A lot of it is some accessories.

Chair Lamont asked who would like to speak at this time.

Kay Patricia
4645 Fitzgerald Rd
Decatur, IL 62521

Ms. Patricia stated she does not believe that Mr. Highcock lives on Fitzgerald. She thinks he lives in Mt. Zion. She stated that sales and distribution of firearms really leaves it open. There

are rumors that there will be a firing range, who knows. She stated this is a residential area; the houses are \$200,000 - \$300,000 range. Nothing against guns, everybody should have one but she thinks there is a place for them and Fitzgerald Rd is not it.

Mr. Koretke asked so if we don't approve a firing range, which we normally don't approve for this kind of an operation.

Ms. Patricia stated she thinks it is too vague.

Mr. Koretke stated a special use permit is fairly defined, what he can and cannot do and we normally don't give firing ranges.

Ms. Patricia stated but if he doesn't live there, and he lives in Mt. Zion, why isn't he selling the guns out of Mt. Zion. This is his father's home.

Mr. Highcock stated yes, he sold his house. He lives at this address.

Ms. Patricia stated she doesn't think so.

Mr. Noland asked if she has noticed any increased traffic since the special use permit was requested?

Ms. Patricia stated no, but does this allow for a sign to be put out?

Mr. Highcock stated there will be no sign.

Ms. Patricia asked if the permit allows for a sign.

Ms. Hoffman stated the restrictions are they can be a 3x3 sign, just like someone who cuts down some trees and puts an advertising sign in the yard. She stated that most of the time they don't have one. She stated this is about the 5th one in the county now. We've had these throughout the county. When she gives her recommendation, there are stipulations on here that he has to abide by. The special use permit has a time limit and restrictions. It's not just a wide open door for them to do this.

Ms. Patricia stated she still is not for it.

Mr. Baggett stated he would like to suggest that before we extend this into additional public comment, there seems to be some confusion with the public, with respect to what the special use permit might allow and would not allow and if Ms. Hoffman would go through the conditions that are going to be proposed to the board today before anyone has to get up there and ask their questions or make their statements, he believes it might be helpful to hear exactly what the conditions of this special use permit would be.

Ms. Hoffman approached to present the finding of facts.

Macon County Finding of Facts/ Recommendation
Mark Highcock
S-01-07-16

Petition: For a Special Use permit to allow the operation of the sale and transfer of firearms business in R-1 Single Family Residential Zoning.

Parcel Number: 09-13-29-276-001

Location: This property is commonly known as 4666 E. Fitzgerald Road in Long Creek Township.

Acreage: 5 Acres

Zoning: R-1 Single Family Residential

Finding of Facts

- The Macon County Zoning Ordinance (Section 155.008) defines a special use as a use, either private or public, which, because of its unique characteristics, cannot be properly classified as a permitted use in any particular district or districts. Therefor the Special Use Permit is needed because this property is zoned R-1 Single Family Residential.
- The special use permit is also required by the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) as a prerequisite for approval of the Federal Firearms License which is federal regulations.
- We have received a signed petition in our office against the petition.

EFFECTS ON GENERAL WELFARE: The establishment, maintenance, or operation of this Special Use will not be detrimental to or endanger the public health, safety, welfare, and morals.

EFFECTS ON NEARBY PROPERTY: The Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or substantially diminish and impair property values with the neighborhood.

EFFECT ON DEVELOPMENT OF SURROUNDING PROPERTY:
The establishment of the Special Use Permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

ADEQUACY OF UTILITIES & FACILITIES: No known problems with required utilities and facilities.

INGRESS & EGRESS: No known problems with ingress and egress.

CONFORMITY TO REGULATIONS: With the passage of the Special Use Permit by the Macon County Board the property will conform.

STAFF RECOMMENDATION: You may vote to approve or deny this petition, or amend as appropriate. Staff has inspected the property and staff recommends approval with the following stipulations:

1. This Special Use Permit constitutes a license issued to the named petitioners only. This special use permit is not property nor does it convey any property right. This special use permit is, therefore, not assignable or transferable.
2. Employees shall be limited to Mr. Highcock only and immediate family on the property.
3. ~~Advertising sign regulations on the subject property shall comply with Macon County Zoning Ordinance.~~
No advertising sign shall be on the property in relation to the business. (Stipulation was changed by the petitioner)
4. No firing of firearms related to the business.
5. Said property and all operations shall be in compliance at all times with all applicable federal, state, and local laws and regulations. Failure to be in compliance may result in the suspension or revocation of this special use permit.
6. The special use permit shall be for a 2 year period beginning August 11, 2016 and ending August 9, 2018.

Merton Ferguson
4620 Fitzgerald Rd
Decatur, IL 62521

Mr. Ferguson stated he thinks they need to know a little more about what we're talking about here. The petitioner is Richard Highcock. This is not Richard Highcock. Does the petitioner need to be here?

Mr. Koretke stated the Mr. Ferguson is in error. The petitioner is Mark Highcock; the owner of the property is Richard Highcock.

Mr. Ferguson asked so is the owner required to fill out the petition.

Mr. Baggett stated no he is not. The owner is required to sign off on the petition, and he has.

Mr. Ferguson stated ok that's fine. He is ignorant about the law. He has an item or 2 he would like to ask about. He thanked Ms. Hoffman for her explanation and stated it was helpful. He

stated that it was mentioned there were five other special use permits in the county, this would make the 6th. Would there be any record as to the property values having been changed, up or down, from those other 5 properties. Have there been any petitions for change in taxing value on those 5 properties.

Ms. Hoffman stated she cannot answer that because she doesn't have anything to do with the taxes. What she does is look at the property and the uses of the property.

Mr. Ferguson stated some of us in that area would be concerned that a commercial operation in this area may reduce the property values for these neighbors on either side of this property.

Ms. Hoffman stated it would not be zoned commercial; it would just be the business there. A lot of it is online. A lot of it you wouldn't even know takes place.

Mr. Ferguson stated that signage is possible so there could be a sign on this building here.\

Ms. Hoffman stated a 3x3 sign.

Mr. Ferguson stated a sign can be in many different forms. He has seen signage on wired political signs. For example the sign from the Planning and Zoning office that is in Mr. Ferguson's yard is lying on its side, it cannot be read, and it is not legible. He has seen zoning signs however that are in a nice heavy frame red and black lettering that are legible. This one is not legible and only 3 property owners were given notice of this meeting. One on either side of this property and one on the other side of the street. He is three doors away, why didn't he receive a notice.

Ms. Hoffman stated that state statute says that we have to notify all the land owners that are touching this property in question. If you are 2 doors down, you wouldn't have gotten a letter. It would just be the ones that we have to notify that are touching it.

Mr. Ferguson stated there was a notification made to one of the residences across the street.

Mr. Baggett stated that is an adjacent property under state law. It is a property that is directly touching the property in question or is across the street. The street is basically kind of taken out of the equation.

Mr. Ferguson stated that those of us that are 2 and 3 doors away are expected to read the sign.

Mr. Baggett stated yes that is correct. As to whether the sign was laying on the ground, the zoning administrator posts the sign. We can't control the weather. If the wind blows a sign down, we can't control God.

Mr. Ferguson stated other than those that have notices in their hand, the rest of us only know of it by their having told us that this was happening.

Mr. Baggett stated that is what the law requires.

Ms. Hoffman stated it's also posted in the newspaper.

Mr. Ferguson stated this building is a detached building. He could understand an attached building, a garage, an individual working out of this garage to do this mail order business as they are doing it. However this building is detached. A detached garage or facility in his mind could pose a problem with safety. He believes Sheriff Schneider would be willing to give an idea to the possibility of this detached facility that sits back from the house 40-50 yards away from the house.

Mr. Highcock stated he would like to point out that when he met with Don, he showed him the front garage is where they are proposing it. He has his stuff in storage in the detached building right now. Where he wants to do his business is the front part of the garage which is attached to the house.

Mr. Ferguson asks so we are not talking about the detached garage?

Mr. Wilson stated no, that's just a temporary thing until he gets it in the attached garage.

Mr. Ferguson asked so this special use petition is not for the detached facility?

Mr. Wilson stated no.

Mr. Ferguson stated normally when a business is started, the plan calls for an increase in business. Currently there are records that have been explained to us this morning regarding traffic, but that is minimal at this point in time. The business is not up and running at this point and he would think that the business would have a plan to increase over a period of years. An increase in business requires an increase in traffic. Fitzgerald Rd as you probably know from 121 to Baltimore can be a speedway. It can be very fast. The limit there is 35 mph, that's the limit. Most traffic goes down that road at a speed beyond 35 mph. All residents on Fitzgerald Rd from 121 to Baltimore egress their driveways forward, by driving forward onto Fitzgerald Rd. because they can't see and it's dangerous east and west to back out of their driveways. We expect increased traffic from this business. It is going to be a dangerous situation for slow entering and exiting traffic onto Fitzgerald Rd. If you think Fitzgerald Rd is safe and it has its 35 mph speed limit, ask Sheriff Schneider why he has to post mobile traffic police officers in their squad cars on private driveways as a deterrent for speeding. Vehicles and motorcycles. They leave 121 and go west on Fitzgerald to Baltimore or another mile west down to Lake Shore Dr. There is going to be more traffic and if his business survives, that traffic is going to only increase. He stated that signage is a possibility for this business. He asked if the restrictions specified the signage of what it has to be and what it cannot be.

Ms. Hoffman stated yes, it is in the zoning ordinance. She stated it could only be like a 3x3 (like political signs).

Mr. Ferguson stated so temporary, not permanent.

Ms. Hoffman stated yes it's not going to be footings, lighted and stuff like that.

Mr. Ferguson stated so as long he's there, his temporary sign can be permanent.

Ms. Hoffman stated yes, because he has two years. He can put that out there for two years, but he has already said that he doesn't want a sign. A lot of these guys that do these types of businesses don't want signs because they don't want to red flag to anybody of what is there. She stated that all of the other firearm businesses do not have signs.

Mr. Ferguson stated but he could.

Ms. Hoffman stated yes, she writes it in there, it is their choice but most of them don't do that. She tries to be fair to everybody to give them the option; most of them do not do the option.

Mr. Ferguson stated if he was a realtor trying to sell this property or all of these properties along Fitzgerald in this area, they are all quarter million dollar properties and higher, that's probably a minimum limit. He wouldn't want to see commercial signs, as a realtor, trying to sell these properties next door. What constitutes a resident for the zoning board? Can you define what a resident is? Evidently the attorney says that the statute allows a son to apply for this permit for the father who owns the property. Is a resident required to be a signee of this application?

Mr. Baggett stated once again, Mr. Highcock who is sitting in the room today is the named petitioner on the petition. The property owner, his father, has signed the petition giving his consent to the board to make a decision on this petition for special use permit. The petitioner is present, the property owner has signed off on it. He isn't sure what the question is as to who is a resident. Both Mr. Highcock's are residents of Macon County.

Mr. Ferguson asks if they have to be residents of what this address is.

Mr. Koretke stated Mr. Highcock has already said he is living there.

Mr. Ferguson stated it's a single family residence.

Mr. Baggett stated he is going to stop this in its tracks. The answer is they don't have to live on the property, they own the property. That's what is required. Mr. Richard Highcock owns the property, he has signed off on the petition, the petitioner is Mark Highcock, he is present and that is all that is necessary. We have the property owners consent; we have a petitioner who is present petitioning this board. That is what is required. If the question is, does the petitioner have to live on the property in order to use it this way, the answer is no. The property owner has to sign off on the special use.

Mr. Ferguson asked the board members if they understood what Mr. Baggett just said.

Mr. Koretke stated they are not trying to give this man permission to open up a Rural King sized operation. An insurance agent could do the same thing, he could sell insurance out of his residence and have customers come in. An accountant could do the same thing. It's not, in his

experience, it's not an impediment to the property values, and it's not going to affect the local residents. That's why we question how much foot traffic, how much business does he do. If he had cars coming in constantly, we would probably vote it down. You have heard his testimony, he is talking about 10 – 15 people a week.

Mr. Ferguson stated today yes, but he would hope to expand that.

Mr. Koretke stated and if in two years he wishes to re-apply again and you are still coming in here complaining that there is 40 people coming down your road, you are welcome to come back, but until you present something that's an honest effort on your part to prevent him from getting this permit, I'm not hearing in anything you are saying that makes any sense.

Mr. Ferguson asked if live testing of firearms allowed.

Mr. Koretke and Chair Lamont both answered no.

Chair Lamont stated there is no firearm discharge on the property.

Ms. Hoffman stated no firearm discharge related to the business. So if someone buys a gun and wants to check it out before they purchase it and fire it, they can't do that. That was one of the stipulations is that they cannot fire in relation to the business.

Chair Lamont asks if anyone else wishes to speak.

Sadie Fox
4655 Fitzgerald Rd
Decatur, IL 62521

Mrs. Fox stated she is the owner of the property directly across from the Highcocks. Their driveways could be continuous. She stated her dwelling sits back probably 100 yards from the street. Her concern is that you are bringing commerce into a residential area and she thinks it just allows....you're bringing commerce into the area that is residential, and an upscale residential area, but you are bringing them in, you're just opening the door for others. The signage is a great concern to her because her driveway is directly across and if there is a sign in the front yard that says "gun sales" she can imagine what that would do to a property value and she doesn't want to say to friends "I live across the street from the gun shop" her biggest concern is that we are opening up the opportunity for others to do the same thing. She doesn't believe for a minute that this won't expand into the testing of firearms and a gun range. She is really fearful of that.

Mr. Highcock stated his parents have some property a couple of miles from there that they usually do most of their shooting at but he isn't doing anything there. If it would appease other neighbors, if you put "no signage" in the stipulations, he is 100% ok with that. He stated he is not putting a sign up but if you want to put that in there so it helps them sleep better at night he is perfectly fine with that.

Mr. Baggett suggested that if that is included in the stipulations, that it indicates specifically no signage related to the business being operated. He doesn't want to get into a situation where you couldn't put a sign up for weed service, or if you decide to sell the property down the road you would want to be able to put "for sale" sign on the property. If we put a condition in here saying no signs at all, it could put them in violation without necessarily being related to the firearms.

Mary Lou Ferguson
4620 E Fitzgerald
Decatur, IL 62521

Ms. Ferguson stated most of the questions she had have been answered. She would like a clarification about the firing of guns because one of the stipulations was that there would be no firing of guns related to the business. How much firing of guns that might not be related to the business could we normally expect in a residential area?

Ms. Hoffman stated she does not regulate shooting in the county, that would be the Sheriff's department. Anybody that lives in the county can shoot. You guys can shoot in your back yards, within reason. You can do that, she doesn't govern that. What she does govern is if there is a shooting range. A gun range is when money gets exchanged. If you have people over on a Friday or Saturday, you pay \$20.00 to shoot all day, that is a gun range, that is a business. That is a totally different thing that requires a special use permit. But if someone wants to just shoot in their back yard within reason. She always suggests checking with Sheriff's department on this kind of stuff. In the County, you can shoot.

Mr. Baggett stated the short answer is that there is nothing in the Macon County Zoning Ordinance or state law which prohibits someone who is living in an unincorporated area from firing a firearm on their property. So long as they aren't doing it in a manner that is unsafe to either themselves or their neighbors, there is nothing illegal about that. This special use permit would not allow Mr. Highcock to allow any of his customers to go outside and practice and it would be a violation of the special use permit for him to invite people over to fire firearms if that is related to the business in any way. He stated he has heard no evidence that Mr. Highcock engages in any type of shooting on the property. That would not necessarily be illegal so long as it's not related to the proposed business.

Ms. Ferguson asked so an increase in noise might indicate related to business?

Mr. Baggett stated related to business would meant if it had something to do with him selling firearms on the property and them going outside and practicing.

Ms. Ferguson stated she understands this. It's what's related to business and what's not related to business. In her feeling, an increased firing of guns contiguous with this special permit would say to me the increase is related to the special permit. She knows it is 2 years and she guesses it is a matter of checking to see if there is an increase in personal firing of guns.

Mr. Baggett stated it would certainly be an argument in theory but at the end of the day he isn't sure it would be sufficient. It is certainly something that could be taken in consideration.

Ms. Ferguson stated Evergreen which is a nursing home/Alzheimer's facility is right behind the property. The property has woods behind. It is ideal for this kind of firing. She is concerned about the noise, the traffic. Thank you.

Chair Lamont asks if anyone else would like to speak.

Mr. Baggett stated before there is a motion to approve, there needs to be an amendment to the proposed stipulations.

Ms. Hoffman stated she changed it to read "no advertising sign shall be on the property in relation to the business"

Bill Koretke made the motion to approve, seconded by Donald Wilson. Mr. Koretke stated with the stipulation that it was requested by the petitioner. All members present voting, Aye. Motion carried (5-0)

Donald Wilson made the motion to approve the petition, seconded by Blake Noland. All members present voting, Aye. Motion carried (5-0).

Chair Lamont handed Mr. Highcock the ZBA Process Letter, which explains the next steps that will be taken on this petition.

Chair Lamont asked if there are any petitions for next month.

Ms. Hoffman stated yes there are 3 for next month.

ADJOURNMENT: Donald Wilson made the motion to adjourn; Bill Koretke seconded. All members present voting, Aye. Motion Carried. (5-0). Meeting adjourned at approximately 9:10 AM.

Minutes submitted by Tracy Sumpter, Macon County Planning and Zoning Dept.