

STATE OF INDIANA) IN THE HUNTINGTON SUPERIOR COURT
) SS:
COUNTY OF HUNTINGTON) CAUSE NO. _____

EDWARD R. ROBBINS and MELISSA)
ROBBINS,)
)
Petitioners,)

v.)

HUNTINGTON COUNTY, INDIANA)
ADVISORY BOARD OF ZONING)
APPEALS and JOHN PATRICK)
MICHAELS,)
)
Respondents.)

VERIFIED PETITION FOR JUDICIAL REVIEW OF ZONING DECISION

The Petitioners, Edward R. Robbins and Melissa Robbins, individually and by counsel, set forth their Verified Petition for Judicial Review of Zoning Decision. More specifically, the Petitioners state as follows:

Parties

1. Edward R. Robbins and Melissa Robbins are individuals with a principal place of residence and mailing address at 3621 North Rangeline Road, Huntington, Indiana 46750.

2. The Huntington County, Indiana Advisory Board of Zoning Appeals (“BZA”) is a board of zoning appeals established and authorized to act under I.C. § 36-7-4-901 et seq. with a mailing address of 201 North Jefferson Street, Room 204, Huntington, Indiana 46750. Kim Hostetler is the Interim Executive Director of the Huntington Countywide Department of Community Development, which includes the BZA. Steve Park is the Chairman of the BZA.

3. John Patrick Michaels (“Michaels”) is an individual with a principal place of residence and mailing address at 3833 North Rangeline Road, Huntington, Indiana 46750

(“Michaels Property”).

Factual Background

4. On November 7, 2019, Michaels filed an Application for Special Exception (“Application”) to permit commercial firearms safety instruction on the Michaels Property, which is zoned R-2 (Residential Low Density). The Application was assigned Docket Number BZA-19-030. A copy of the Application is attached as “Exhibit 1.”

5. At the BZA’s November 26, 2019 Meeting, the BZA held a public hearing on the Application (“Public Hearing”). At the Public Hearing the BZA identified the Application as:

Docket BZA-19-030: Application filed by John Patrick Michaels requesting a Special Exception to allow a Commercial Firearm Safety instruction business with a classroom and back stop for shooting located at 3833 North Rangeline Road, Huntington, IN.

6. The following individuals and entities were identified by the BZA staff as interested parties and received notice of the Public Hearing: Parker Brundige; Jason S. Cooper; Natalie Cooper; Justin Davidson; Todd E. Eiler and Annette J. Eiler as General Partners and Limited Partners of the Todd & Annette Eiler Family Limited Partnership; Tammy Selig; Todd O. Hall; Marie A. Hall; Damian P. Mason and Lori N. Mason as Co-Trustees of the Damian P. and Lori N. Mason Joint Trust; Michaels; the Petitioners; Wayne & Ina Moore Farms, LLC; David E. Winkelman; and Joyce C. Winkelman.

7. The following individuals participated in the Public Hearing: Steve Park; Nick Caley, BZA Member; Dale Hawkins, BZA Member; Jim Sprowl, BZA Member; Terry Schoeff, BZA Member; Kim Hostetler; Jessica Campbell, Pro Tempore Secretary for the BZA; Michaels; the Petitioners; Todd Hall; Tom Lund; and Timothy Putt.

8. In addition to the above-mentioned individuals that participated in the Public Hearing, Damian Mason filed with the BZA a written statement setting forth facts and opinions

in opposition to the Application.

9. During the Public Hearing, the BZA members and staff discussed splitting the Application into two parts – with one part being the portion of the special exception seeking a commercial firearm safety instruction business with a classroom and the other part being the construction of a back stop for shooting - which would be used as part of the commercial firearm safety instruction business.

10. Ultimately the BZA voted 5-0 to separate the Application into these two parts.

11. The BZA voted 5-0 to table the part of the Application relating to the construction of a back stop for shooting until the January 28, 2020 BZA meeting.

12. The BZA then voted 5-0 to approve the part of Application for a commercial firearm safety instruction business with a classroom. The BZA made oral findings of fact in support of the approval; however it did not issue written findings of fact at the November 26, 2019 Meeting.

13. On December 5, 2019, Kim Hostetler issued a letter to Michaels informing him of the approval. A copy of this letter is attached as “Exhibit 2.”

14. As of the filing of this Verified Petition for Judicial Review, the BZA has not approved the minutes from the November 26, 2019 Meeting nor has it issued written findings of fact in support of the approval.

Procedural Posture and Standing

15. Under Rule 9.1(B) of the BZA’s Rules of Procedure, the Petitioners were identified as interested parties to the Application because they had a legal interest in property in Huntington County located within two hundred feet (200’) of the Michaels Property. In fact, the Petitioners’ property is adjacent to and directly south of the Michaels Property.

16. The Petitioners have standing under Indiana Code § 36-7-4-1603(a)(2) to challenge the BZA's decisions because they are persons who are aggrieved by the BZA decisions and because they appeared, in person, at the hearing on the Application and presented relevant evidence in opposition to the Application.

17. The Petitioners have experienced a substantial grievance as a result of and are prejudiced by the BZA's decision to divide Michaels' Application into two parts. The Petitioners are being subjected to a special exception on adjacent property that is different from the special exception that was applied for and is different from the special exception advertised in the Public Meeting Notice.

18. The Petitioners have experienced a substantial grievance because of and are prejudiced by the BZA's approval of a special exception on the Michaels Property – which is adjacent the Petitioners' property – that is outside of the allowed special exceptions for a property in a R-2 (Residential Low Density) District.

19. The Petitioners have experienced a substantial grievance, have suffered a pecuniary injury, and are prejudiced because the approval of a commercial firearm safety instruction business with a classroom on the Michaels property will negatively effect the value of the Petitioners' property.

20. The Petitioners have experienced a substantial grievance and are prejudiced because the intended use of the Michaels Property will subject the Petitioners to extra burdens and materially impair and/or unreasonably interfere with the Petitioners' use and enjoyment of their property. The use of the Michaels Property as a commercial firearm safety instruction business with a classroom was not reasonably foreseeable, permissible, or consistent with the historical uses of the Michaels Property or the permitted uses or special exceptions allowed in

the R-2 (Residential Low Density) District.

21. In accordance with Indiana Code § 36-7-4-1604, the Petitioners have exhausted all administrative remedies available to them prior to filing this Petition for Judicial Review. Neither the Huntington County Zoning Ordinance nor the BZA's Rules of Procedure provide for further administrative remedies.

22. The Petitioners' Verified Petition for Judicial Review is timely in that it is being filed within thirty (30) days of the date of the BZA's Decision.

COUNT I – Relief under Indiana Code § 36-7-4-1601 et. seq.

23. The Petitioners repeat and incorporate by reference paragraphs one (1) through twenty-two (22) of their Verified Petition as if fully set forth herein.

24. Dividing an application for a special exception into two separate requests and then approving part of the application while deferring the other part is not specifically allowed or contemplated under the Huntington County Zoning Ordinance or the BZA's Rules of Procedure.

25. As a result, the BZA's decision to divide the Application into two parts at the Public Hearing – resulting in the approval of a special exception for a commercial firearm safety instruction business with a classroom while taking no action on the portion of the Application that would allow the construction of a back stop for shooting – was an ultra vires act and is void.

26. Further, the BZA abused its discretion in dividing the Application into two parts at the Public Hearing, which resulted in the approval of a special exception for a commercial firearm safety instruction business with a classroom while taking no action on the portion of the Application that would allow the construction of a back stop for shooting.

27. In his Application, Michaels was seeking a special exception for commercial firearms safety instruction in a R-2 (Residential Low Density) District.

28. A commercial firearm safety instruction business is not a permitted use nor allowed special exception in a R-2 (Residential Low Density) District.

29. Under Section 501(A) of the Huntington County Zoning Ordinance, “[t]he Board of Zoning Appeals may only consider those applications for Special Exception, Special Use, Contingent Use, or Conditional Use (hereinafter collectively referred to as exceptions and uses) listed in the applicable zoning district for the lot upon which the exception or use is proposed.”

30. The special exceptions for property in a R-2 (Residential Low Density) District are limited to a: house of worship; nursing home; cemetery; funeral home; utility service structure, station or yard; communication tower; group home; commercial recreation area; school; manufactured home type II; home occupation type II; public safety facilities; planned unit development; or child caring institution.

31. A commercial fire arms safety instruction facility is not listed as one of the permissible special exceptions.

32. The Huntington County Zoning Ordinance does not define school or public safety facility. It defines a “commercial recreation area” as “[a]n area designated and used for recreational activities of a commercial nature, including swimming pools, amusement parks, batting cages, miniature golf, go cart racing, and similar activities.”

33. A commercial firearm safety instruction business does not fit within the definition of a commercial recreation area. A commercial firearm safety instruction business does not fit within the general definition of a “public safety facility.” The term “school” is used throughout the Huntington County Zoning Ordinance. Defining a commercial firearm safety instruction business as a school is not consistent with the usage of the term “school” in the Huntington County Zoning Ordinance.

34. Further, a commercial firearm safety instruction business is not consistent with the purpose of the R-2 (Residential Low Density) District or the permitted uses in that District.

35. The BZA's approval of a commercial firearm safety instruction business within an R-2 (Residential Low Density) District when it is not a permitted use or allowed special exception in a R-2 (Residential Low Density) District was an ultra vires act and void.

36. Further, the BZA abused its discretion in approving a commercial firearm safety instruction business in an R-2 (Residential Low Density) District.

37. The BZA's decision to approve the portion of the Application relating to a commercial firearm safety instruction business with a classroom is not supported by substantial evidence.

38. Under Section 5.01(B) of the Huntington County Zoning Ordinance:

A proposed exception or use can only be granted by the Board of Zoning Appeals upon an affirmative finding on the following criteria:

1. The proposed exception or use will not be injurious to, or alter the normal and orderly development of, permitted uses of property within the general vicinity;

2. The proposed exception or use is serviced by adequate access roads, ingress and egress points, and traffic flow and control mechanisms;

3. The establishment, maintenance, or operation of the proposed exception or use will not be injurious to the public health, safety, or general welfare; and

4. The proposed exception or use is not inconsistent with the Comprehensive Plan.

39. There was not substantial evidence presented to the BZA to support a finding that the proposed exception will not be injurious to, or alter the normal and orderly development of, permitted uses of property within the general vicinity.

40. There was not substantial evidence presented to the BZA to support a finding that

the proposed exception is serviced by adequate access roads, ingress and egress points, and traffic flow and control mechanisms.

41. There was not substantial evidence presented to the BZA to support a finding that the establishment, maintenance, or operation of the proposed exception or use will not be injurious to the public health, safety, or general welfare.

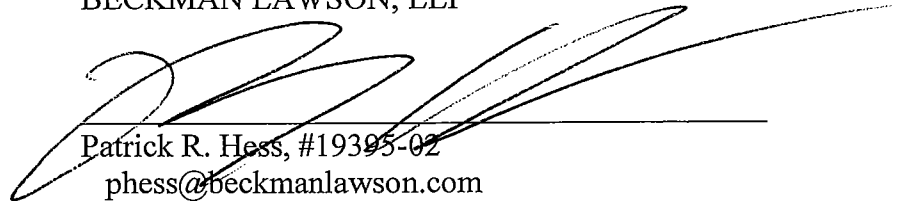
42. There was not substantial evidence presented to the BZA to support a finding that the proposed exception or use is not inconsistent with the Comprehensive Plan.

43. The BZA's decisions to divide the Application into two requests and its decision to approve the portion the Application that sought a special exception for a commercial firearm safety instruction business with a classroom were ultra vires acts, arbitrary and capricious and not supported by substantial evidence. As a result of the BZA's actions the Petitioners are aggrieved and prejudiced and are entitled to relief.

WHEREFORE, the Petitioners, Edward R. Robbins and Melissa Robbins respectfully request that the Court find that the Huntington County Advisory Board of Appeals erred in separating John Patrick Michaels' request for a special exception to allow a commercial firearm safety instruction business with a classroom and a back stop for shooting into two separate requests; find that the Huntington County Advisory Board of Appeals erred in approving a special exception for a commercial firearm safety instruction business with a classroom; order that the Huntington County Advisory Board of Appeals' decision to approve a for a special exception to allow a commercial firearm safety instruction business with a classroom be reversed; and that the Court grant the Petitioners all other relief that is just and proper.

Respectfully submitted,

BECKMAN LAWSON, LLP

A large, stylized handwritten signature in black ink, appearing to read 'P. Hess', is written over a horizontal line.

Patrick R. Hess, #19395-02
phess@beckmanlawson.com

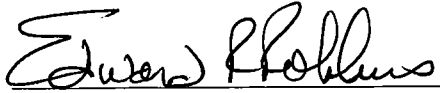
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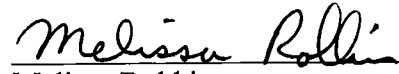
ATTORNEYS FOR PETITIONERS

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I (we) affirm, under the penalties for perjury, that the foregoing representations made in the Verified Petition for Judicial Review of Zoning Decision are true and accurate.


Edward R. Robbins

Dated: 12/19/2019


Melissa Robbins

Dated: 12/19/2019

B2A-19-030

APPLICATION FOR SPECIAL EXCEPTION

Instructions

1. Application must contain the signature of all individuals listed on the deed for the property, and contract buyer.
2. A copy of the deed must be submitted with the application (available in the County Recorder's Office).
3. Submit a site plan of the property upon which the use will be located showing the location of all existing and proposed buildings, parking and open space, landscaping, refuse and service areas, utilities, signs, and such other information as the Board may require to determine if the proposed Special Exception meets the intent and requirements of the Zoning Code.
4. The required filing fee must be submitted with the application.

APPLICANT:

NAME: John Patrick Michaels
 ADDRESS: 3833 N Rangeline Road
 CITY: Huntington, IN 46750
 PHONE: (260) 438-8704

PROPERTY OWNER: (if different from applicant)

NAME: _____
 ADDRESS: _____
 CITY: _____
 PHONE: _____

LOCATION OF PROPERTY TO BE USED FOR SPECIAL EXCEPTION:

ADDRESS: 3833 N Rangeline Road, Huntington, IN 46750

TOWNSHIP: (Circle one)

Clear Creek - Dallas - Huntington - Jackson - Jefferson - Lancaster
 Polk - Rock Creek - Salamonie - Union - Warren - Wayne

CURRENTLY THE PROPERTY IS:

USED AS: Residence

THE PURPOSE OF THIS APPLICATION IS TO PERMIT THE USE OF THE PROPERTY FOR:

Commercial firearms safety instruction

Rev Date: 1/1/2010

[Type here]

Classrooms - back stop to shot into

In order for the Special Exception to be granted, the request must satisfy all of the criteria contained in Section/Chapter of the governing Zoning Ordinance that deals with Special Exceptions and Uses, and other applicable law. As applicant, I submit the following evidence to the Board of Zoning Appeals to support the request:

1. The proposed exception or use will not be injurious to, or alter the normal and orderly development of, permitted uses of property within the general vicinity because:

Live ammunition will not be permitted in the classrooms and exceptional backstops will be erected on the outside range.

2. The proposed exception or use is serviced by adequate access roads, ingress and egress points, and traffic flow and control mechanisms because:

A driveway with parking will be built with adequate room for vehicles to turn around.

3. The establishment, maintenance, or operation of the proposed exception or use will not be injurious to the public health, safety, or general welfare because:

Exceptional backstops will be erected on the range, students will be thoroughly trained on firearm safety, and the range will be ran by certified range safety officers.

4. The proposed exception or use is not inconsistent with the Comprehensive Plan because:

Use will be consistent with nearby properties. There is a shooting range less than a mile away and hunting done on contiguous property.

As the applicant, I understand that this is a request for a Special Exception to the terms of the Zoning Ordinance and that this request can only be granted upon the Board determining in writing that the criteria listed in IC 36-7-4-918.6 have been satisfied. I further understand that it is my responsibility to provide the information and evidence necessary to show that these criteria have been met.

John P. Michaels
APPLICANT SIGNATURE

11/6/19
DATE

John P. Michaels
OWNERS SIGNATURE

11/6/19
DATE

John Patrick Michaels
PRINTED NAME

11/6/19
DATE

TO BE COMPLETED BY THE DEPARTMENT

Date Filed: 11-7-19 Receipt #: 34279 Docket #: BZA-19029 Zoning: R2
Classification of Use: _____ Hearing Date: 11-26-19 Final BZA Decision: _____



**HUNTINGTON COUNTYWIDE
DEPARTMENT OF COMMUNITY DEVELOPMENT**

201 N Jefferson St., Room 204
Huntington, IN 46750
Office: (260) 358-4836
Fax: (260) 355-2313

December 5, 2019

John Patrick Michaels
3833 N. Rangeline Road
Huntington, IN 46750

Re: BZA approval for 3833 N. Rangeline Road, Huntington, Indiana

Dear Mr. Michaels:

The Huntington County Board of Zoning Appeals partially approved your request for a Special Exception by allowing you to proceed with the classroom portion of the request. The portion of your request in regards to the shooting back-stops was tabled to the January 28, 2020 meeting so that you could provide the Board with 1) pictures or conceptual designs of the back-stops, 2) information from a sound expert or studies on sound and 3) information regarding the possibility of partnering with the Izaak Walton.

At this time, you can proceed with the construction of an accessory structure that will house classrooms (which will teach firearms safety). The Board partially approved your request with the conditions that the classroom operations, at this time, will be contained within the proposed building and there shall be no live ammo within the building.

Please let me know if you have any further questions regarding the BZA approval.

Respectfully,

Kim Hostetler, CFM, CBI, RBI
Interim Executive Director