

VILLAGE OF WESLEY CHAPEL
BOARD OF ADJUSTMENT

December 12, 2008

**DECISION LETTER OF THE BOARD OF ADJUSTMENT
OF THE VILLAGE OF WESLEY CHAPEL,
UNION COUNTY, NORTH CAROLINA**

**APPEAL OF DR. MICHAEL LAND
CASE NO. A-08-01**

**VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND VIA U.S. FIRST CLASS MAIL**

Dr. Michael Land
c/o Mr. Kenneth W. Honeycutt
Attorney at Law
P.O. Box 1157
Monroe, North Carolina 28111

**Re: Appeal of Dr. Michael Land concerning a violation of Zoning Code
for use of property as firing/shooting range**

Dear Dr. Land and Mr. Honeycutt:

This letter will serve as the written decision letter of the Board of Adjustment for the Village of Wesley Chapel (“BOA”). The matter was heard before the BOA on an Appeal of Dr. Michael Land, dated September 25, 2008. The Appeal related to a Notice of Violation issued by Mr. Langen, the Zoning Administrator, dated September 10, 2008, that Dr. Land’s use of the property for an outdoor private shooting range is a violation of The Village of Wesley Chapel’s Zoning Ordinance (“Village Ordinance”). A Public Hearing was conducted in response to the Appeal on October 30, 2008. Thereafter, the BOA met a second time for deliberations on November 12, 2008. Based upon the evidence presented at the Hearing, the BOA upholds the Zoning Administrator’s Notice of Violation.

The BOA bases its Decision on the following Findings of Facts:

1. Dr. Land purchased the approximately 5.86 acre property at 1402 Bloomsberry Lane in or about July, 1991. He purchased the property with the intention to establish an outdoor private shooting range.

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2. In 1991, Dr. Land spent approximately \$2,000.00 to construct a safety berm as part of the outdoor private shooting range.
3. The outdoor private shooting range occupies approximately two-thirds of Dr. Land's property. Dr. Land has made improvements to the outdoor private shooting range at various times.
4. In 1999, he rotated the line of fire 90 degrees and spent approximately \$1,000.00.
5. In November, 2007, through March, 2008, he spent about \$15,000.00 improving the outdoor private shooting range.
6. Dr. Land's primary use of the property is an outdoor private shooting range.
7. At the time Dr. Land purchased the property, it was located in Union County and was zoned RA-40.
8. At the time Dr. Land purchased the property, he did not inquire from the Union County Zoning Administrator whether any permits were needed in order to operate an outdoor private shooting range.
9. The Village of Wesley Chapel was incorporated on or about July 15, 1998.
10. Dr. Land's property was annexed into The Village of Wesley Chapel on or about June 23, 1999.
11. The Village of Wesley Chapel adopted its first Land Use Ordinance effective August 22, 2000.
12. Dr. Land's outdoor private shooting range was subject to the Union County Land Use Ordinance of 1988 ("County Ordinance") when he purchased the property.
13. Section 149, titled "Permissible Uses and Specific Exclusions", of the County Ordinance provides as follows:

Section 149 Permissible Uses and Specific Exclusions.

- a. The presumption established by this ordinance is that all legitimate uses of land are permissible within at least one zoning district within the county. Therefore, because the list of permissible uses set forth in Section 146 (Table of Permissible Uses) cannot be all-inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.

- b. All uses that are not listed in Section 146 and that do not have impacts that are similar to those of the listed uses are prohibited. Nor shall Section 146 be interpreted to allow a use in zoning district when the use in question is more closely related to another specified use that is permissible only in other zoning districts.
- c. Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts:
 - (1) Any use that involves the manufacture, handling, sale, distribution, or storage of any highly combustible or explosive materials in violation of a fire prevention code adopted by any incorporated municipality within the county.
 - (2) Use of a travel trailer as a temporary or permanent residence outside of a campground, and use of a travel trailer as a permanent residence within a campground.
 - (3) Use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored for commercial purposes, any commercial services are performed, or other business is conducted. (Situations that do not comply with this subdivision on the effective date of this ordinance are required to confirm within thirty days. See Section 19.)
- 14. The County Ordinance in effect in 1991 did not have a specific use concerning outdoor private shooting ranges.
- 15. Since the County Ordinance did not have a specific use listed as outdoor private shooting range, the BOA must determine which of the available listed uses is the most similar in impact to an outdoor private shooting range.
- 16. Mr. Langen testified that based upon his experience in zoning that the use set forth in Section 6.210 of the 1988 County Ordinance is the most similar use. The description of this use is "Privately Owned Outdoor Recreational Facilities Such as Golf and Country Clubs, etc. (but not including Camp Grounds), not constructed pursuant to a permit authorizing the construction of some residential development." This Section is a subsection of Section 6.200, which is titled "Activity conducted primarily outside enclosed buildings or structures."
- 17. This use (Section 6.210 use) only allows such activities with a Special Use Permit in a RA-40 District.

18. Dr. Land did not obtain a Special Use Permit for his outdoor private shooting range at any time his property was in Union County.
19. An outdoor private shooting range is not permitted in the Village of Wesley Chapel under the Village Ordinance, in residential zoned property unless it is grandfathered.
20. Dr. Land's outdoor private shooting range was not grandfathered, because it was not permitted under the County Ordinance unless it had a Special Use Permit.
21. Dr. Land contends that the Village of Wesley Chapel cannot regulate his outdoor private shooting range because of the Sport Shooting Range Protection Act of 1997; N.C. Gen. Stat. § 14-409.45 through § 14-409.47. However, the Sport Shooting Range Protection Act of 1997 only provides protection if the shooting range was not in violation of the ordinances at the time of enactment in 1997, or three years prior thereto.
22. In regard to Dr. Land's case, his outdoor private shooting range was in violation, since Dr. Land had not obtained a Special Use Permit from Union County.
23. Dr. Land contends that the Village of Wesley Chapel cannot enforce the alleged violation due to laches.
24. In order for laches to apply, Dr. Land must have relied upon some representation by Union County or Wesley Chapel that an outdoor private shooting range was permitted.
25. Dr. Land did not inquire of Union County or the Village of Wesley Chapel whether his outdoor private shooting range needed any permits.
26. Dr. Land did not rely upon any representations by any government entity in establishing and using his outdoor private shooting range.
27. The delay by the Village of Wesley Chapel in enforcing the Village Ordinance did not create a disadvantage or prejudice to Dr. Land.

Based upon the foregoing Findings of Fact, the BOA makes the following conclusions of law:

1. Dr. Land was required to obtain a Special Use Permit from Union County to operate an outdoor private shooting range on his property during the period of time before his property was annexed into the Village of Wesley Chapel.

2. As a result of Dr. Land's failure to obtain a Special Use Permit from Union County, his outdoor private shooting range was not grandfathered under the Village Ordinance.
3. An outdoor private shooting range on Dr. Land's property is not permitted under the Village Ordinance.
4. The Sport Shooting Range Protection Act of 1997 is not applicable because Dr. Land was not in compliance with the County Ordinance in 1997 or three years prior thereto.
5. Laches does not bar the enforcement of the Village Ordinance.

Based upon the foregoing Findings of Fact and Conclusions of Law, the BOA affirms the Zoning Administrator's decision. It further states that Dr. Land's use of this property as an outdoor private shooting range is in violation of the Village Ordinance.

The BOA Decision on this matter may be appealed to the Superior Court within thirty (30) days from the date set forth below, which is when the Decision of the BOA was filed at the Village of Wesley Chapel or thirty (30) days after a written copy is delivered to Dr. Land's attorney, who made a written request for a copy of the Decision of the BOA.

This the 12th day of December, 2008.

Henry Byrum, Jr.
Chairman

Decision filed with The Village of Wesley Chapel:

Date

Joshua Langen
Planning and Zoning Administrator