

<b>IN RE: PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
W side of Crossroad Circle, 2270 feet S		
of the c/l of MD Route 43	*	DEPUTY ZONING
15 <sup>th</sup> Election District		
6 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(11500 Crossroads Circle)		
	*	FOR BALTIMORE COUNTY
<b>FRP Bird River, LLC</b>		
<i>Legal Owner</i>	*	
<b>Freestate Gun Range</b>		<b>CASE NO. 2011-0109-SPH</b>
<i>Contract Lessee</i>	*	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by David DeVilliers on behalf of the legal property owner, FRP Bird River, LLC, and Randy Farmer on behalf of the contract lessee, FreeState Gun Range. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an indoor firearm practice and training facility pursuant to Section 253.1.A.42 of the B.C.Z.R. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief were David H. DeVilliers, III, President of FRP Development Corp. on behalf of FRP Bird River, LLC, Randy Farmer and Mark Burger, co-owners of Petitioner FreeState Gun Range, and G. Scott Barhight, Esquire and Adam D. Baker, Esquire, both with Whiteford, Taylor & Preston, LLP as attorneys for Petitioner. Also appearing in support of the requested relief were Mike Stilwell with Action Target Academy, who has been hired for the design and construction of the proposed facility, David Eggleton with Viper Air, Inc., who is designing the air filtration system

in the facility, and Iwona Zarska with Baltimore Land Design Group, Inc., the firm that prepared the site plan. There were no Protestants in attendance at the hearing.

Testimony and evidence proceeded by way of a modified proffer from Mr. Barhight, Mr. Farmer, and Mr. Stilwell and revealed that the subject property is rectangular shaped and consists of approximately 4.16 acres located in the Windlass Run Business Park at 11500 Crossroads Circle, on the west side of White Marsh Boulevard (MD Rt. 43) in the White Marsh/Chase area of Baltimore County. The property is currently improved with a 69,474 square foot commercial building and is zoned ML-IM M-43. Petitioner seeks approval of the use of a portion of the property as an indoor firearm practice and training facility. A smaller portion of the leased property will be used for accessory offices, a small refreshment/snack area, a retail area for the sale of goods customarily accessory to the sport, and a simunitions range.<sup>1</sup> In this respect, Petitioner relies on Section 253.1.A.42 of the B.C.Z.R., which lists the uses permitted as of right in the M.L. Zone. Among those uses allowed are “[p]ractice or training physical conditioning facilities and fields for amateur or professional sports organizations provided that there shall not be any accommodations for public spectators, no more than one sports organization uses such a facility at one time, and no such facility includes any lighting that would produce substantial off-site illumination, nor any provisions for selling public admissions to sports events to be conducted thereon.” The Regulation also allows offices to be included at the facility as are necessary for the administration of the organization.

Mr. Barhight indicated that prior to filing the Petition for Special Hearing in this matter, he discussed the proposed facility with Timothy Kotroco, Director of Permits and Development Management for Baltimore County. Mr. Kotroco agreed that the use falls within the definition

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<sup>1</sup> Simunitions is a technology that simulates realistic close quarters shooting situations using non-toxic, non-lethal cartridges.

of a “practice and training facility,” as set forth in Section 253.1.A.42 of the B.C.Z.R., and counter-signed a Zoning Verification letter indicating his position on the matter. Prior to signing the letter, however, Mr. Barhight filed the Petition for Special Hearing on behalf of Petitioner FreeState Gun Range and FRP Bird River LLC. As a result of the filing, Mr. Kotroco indicated that his consent was subject to the Special Hearing. The Zoning Verification letter counter-signed by Mr. Kotroco was marked and accepted into evidence as Petitioner’s Exhibit 2.

Mr. Barhight also explained that in Baltimore County, there is precedent for zoning approval of the type of use proposed in the instant matter. In 1993, the Deerco Limited Partnership filed a Petition for Special Hearing (Case No. 93-220-SPH) seeking approval of a practice facility for the sport of conventional/international pistol competition, including Olympic style pistol competition, pistol practice and/or silhouette pistol practice (the case is also known as the “Continental Arms” case). Similar to the FreeState property, the location of the proposed use in the Continental Arms case was within an office/warehouse corridor zoned ML-IM. In addition, the petitioner, Deerco Limited Partnership, relied on Section 253.A.42 of the B.C.Z.R. to support the permissibility of the use. After receiving testimony and evidence on this matter, the Zoning Commissioner found that the use fell within the description of Section 253.A.42 and approved the proposed practice facility. The Continental Arms facility is still in operation today.

Extensive testimony regarding the nature of the proposed use was received from Randy Farmer. As noted above, Mr. Farmer is the owner of FreeState Gun Range and with his partner, Mark Burger, is the driving force behind the proposed practice and training facility in this matter. Mr. Farmer indicated that the facility will include a variety of safety features and practices in its operation including the following: the facility will be locked at all times; members of the public seeking to use the facility will be “buzzed” in by an employee; all employees will have a law enforcement and/or military background; upon entry, all guns must be in a case with their

magazines unloaded; all guns will be inspected to ensure safety and proper functioning; all members of the public seeking to use the facility (1) must read and agree to abide by the range rules, (2) must demonstrate, to the satisfaction of the range employees, satisfactory knowledge and experience in using firearms, and (3) must pass a Maryland gun safety course. Mr. Farmer indicated that the practice facility would use a computer registration system that would keep a record of information for each patron of the facility, including a photocopy of a driver's license (or other identification), a signed waiver, a consent to the rules of the range, and verification of passage of the Maryland gun safety course. Mr. Farmer added that there would be a range safety officer on duty at all times during operating hours to ensure the safety of the range patrons.

Mr. Farmer also testified that the proposed range will serve the practice needs of sport shooting enthusiast as well as the training needs of law enforcement officers and other individuals whose profession involves shooting a firearm. Although the facility may host shooting competitions, there are no accommodations for spectators nor would there be any provision for public paid admission to events conducted on the site.

Adding to Mr. Barhight's proffer, Mike Stilwell with Action Target Academy offered testimony regarding the design of the facility. Mr. Stilwell has extensive experience in the development and design of firearm practice ranges and, in fact, owns a range of his own that he has operated for over ten years. Mr. Barhight proffered that Mr. Stilwell would have been qualified as an expert in the field of firearm practice range design and offered testimony in his capacity as such an expert. Mr. Stilwell described in detail many of the safety features incorporated into the design of the range. In addition, he indicated that the use of the site as a firearm range would be compatible with future tenants in the building and would be an appropriate use of the space.

Discussing the air ventilation system to be installed at the facility, Mr. Barhight proffered the testimony of David Eggleton with Viper Air, Inc. Mr. Barhight indicated that Mr. Eggleton would have been qualified as an expert in the field of mechanical engineering and offered testimony in his capacity as such an expert. Through his proffer, Mr. Barhight stated that Mr. Eggleton would testify that the air ventilation system would be designed and installed to ensure that airflow is controlled within the space and that lead from the firing range would be removed and dispersed in a safe manner according to environmental requirements.

Next, Mr. Barhight proffered the testimony of David DeVilliers with FRP Bird River LLC, the owner of the subject property. The testimony indicated that the owner/landlord is aware of the proposed use and is comfortable with the use and the tenant. In addition, the owner is satisfied that the use will have adequate parking without taking away parking from other tenants within the building.

Finally, Mr. Barhight proffered the testimony of Iwona Zarska, a professional engineer with Baltimore Land Design Group, Inc. Ms. Zarska prepared the site plan which accompanied the Petition for Special Hearing and which was accepted into evidence as Petitioner's Exhibit 1. Mr. Barhight proffered that Ms. Zarska would testify that the proposed use fits within the criteria of the use permitted by right in Section 253.1.A.42 of the B.C.Z.R. and that there is adequate parking for the use. Mr. Barhight submitted a Spirit and Intent letter signed by Mr. Kotroco that was marked and accepted into evidence as Petitioner's Exhibit 3, indicating the proposed parking for the facility is acceptable. Mr. Barhight concluded his proffer of Ms. Zarska's testimony by indicating that the use does not pose a threat to the health, safety and general welfare of the surrounding community.

Through the testimony provided, the Petitioner contends, and I agree, that the proposed facility meets each of the six requirements in the definition set forth in Section 253.1.A.42. First,

the Petitioner alleges that the proposed facility is a practice and training facility for shooting enthusiasts and professionals. This assertion is correct. The entire purpose of the use is to provide shooting enthusiasts and professionals the opportunity to practice and train through the use of the firing range. Petitioner clearly complies with this requirement.

Second, Petitioner must demonstrate that the facility is used by an amateur or professional sports organization. As to this requirement, a determination must be made as to whether the proposed activity is indeed a sport. The Zoning Commissioner in the Continental Arms case, when faced with the same question, concluded that shooting is indeed a sport and I concur with his conclusion and his analysis in this regard. Shooting has long been considered a sport. It is recognized as an inter-collegiate sport competition by the National Collegiate Athletic Association and is part of the international Olympic Games competition. With respect to the organization component, the organization is the FreeState Gun Range. As testified by Randy Farmer, FreeState Gun Range is dedicated to promoting this particular sport by providing a safe location for enthusiasts to practice and train. Thus, Petitioner has satisfied this portion of the definition.

The remaining four considerations provided by the definition relating to the requirements that there be no accommodation for spectators, that use of the facility is limited to one organization, that there be no off-site lighting and that selling public admissions to sports events are not permitted, were all addressed affirmatively by Mr. Farmer in his testimony and demonstrate compliance with those elements.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Revised comments were received from the Office of Planning dated November 10, 2010 which indicates that they do not oppose the subject use provided the

following aspects of the operation are fully explained and documented as part of the Zoning Commissioner's Order:

1. Description of how sound will be mitigated to ensure that there will be no adverse impacts on neighboring properties.
2. Means and methods of lead disposal.
3. Description of how the building will be retrofitted (interior and exterior) for the proposed use.

Comments were also received from the Fire Department dated October 4, 2010 which indicates that the site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation. A Use and Occupancy inspection and approval is required prior to occupancy.

After consideration of the uncontroverted testimony and evidence offered, it is clear that the proposed use is permitted as of right pursuant to Section 253.1.A.42 of the B.C.Z.R. Thus, the Petition for Special Hearing shall be granted. Moreover, I am also persuaded that this use will not be detrimental to the health, safety or general welfare of the surrounding community. It is clear that practice facilities such as the one proposed are highly regulated and thoughtfully constructed so as to provide the maximum safety to firearm sports enthusiasts and to prevent any adverse impact to the surrounding community. There was extensive testimony presented as to the safety features incorporated into the facility which will eliminate sound outside of the building, provide lead abatement or similar obnoxious affects, and generally eliminate any adverse impact to the range's neighbors. It is clear that, if properly maintained, the use will not be detrimental to either the participants, co-tenants of the building and surrounding commercial property owners.

