

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 26, 2022

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 26, 2022 at 6:30 PM in the 3rd floor auditorium in City Hall AND via Zoom virtual meeting.

Members Present:

Steve Lionel, Acting Chair
Jack Currier, Clerk
JP Boucher

Also Present: Matt Sullivan, Community Development
Director

Kate Poirier, Zoning Coordinator

ALL VOTES ARE TAKEN BY ROLL CALL

PROCEDURES OF THE MEETING

Mr. Lionel explained the Board's procedures, saying that real-time public comment can be addressed using Zoom, or by telephone, or in person. Mr. Lionel said that real-time comments via audio will be addressed at the conclusion of the public hearing, and the public is encouraged to submit their comments for future meetings via email to the Planning Department, which is Planningdepartment@nashuanh.gov, or by mail, at P.O. Box 2019, Nashua, NH, 03061. Mr. Lionel identified the points of law required for applicants to address relative to variances and special exceptions. Mr. Lionel explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws.

1. Caro Properties, Inc. (Owner) Edgar Sherman, Edgar Sherman Design, LLC (Applicant) 141 Canal Street, Unit 0 (Sheet 41 Lot 58) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#74) to allow applicant's business to obtain a Federal Firearms License to design products to protect law enforcement officers and military personnel. GI Zone, Ward 3.

Voting on this case:

Steve Lionel
Jack Currier
JP Boucher

Mr. Lionel said that before the case is heard, Ald. Klee has requested to speak about this case.

Ald. Patricia Klee, Ward 3, 9 Maywood Drive, Nashua NH

Ald. Klee said she has a Board of Alderman meeting soon, and wants to give the applicants the opportunity to dispel her concerns. she is not here to speak for or against. But she did want to speak to unintended consequences. When we approve something, what could possibly happen in the future? Would this approval also give the applicant the ability to not only design but possibly manufacture firearms? This is a small space, but with 3D printers there is the possibility of ghost firearms.

Ald. Klee said she believes this property owner is a good person and good company, and does not believe they would do anything to harm the city. She doesn't know the person leasing the space. If they give this approval and someone else comes in, would the next person be able to manufacture firearms? As a state representative she has gone to places where they are manufactured, in rooms no bigger than this one. That concerns her. This is her ward, and she loves every part of it. She believes that this company would do all the right things if given approval and would vet anyone who goes in there, but she doesn't know ten years from now who would own the property and who would be coming in.

Edgar Sherman, 4 Cadogan Way, Nashua NH

Mr. Sherman said he is the owner of Edgar Sherman Design. He said they have been in business for about five years developing life saving military and law enforcement equipment. He started his career working for a company in Boston, Ops-core, designing helmets. His company was founded from the success of a rifle sling design that has outfitted local law enforcement and special operations throughout the US. He designed that sling from observation of military and law enforcement, and personal testing at shooting competitions. From those experiences, he was able to create a product that helped thousands of people.

Mr. Sherman said the reason they are looking to get their federal firearms license is so they can continue to develop solutions to problems that end users face while abiding by the established laws. By having an FFL they will be able to legally

possess the firearms our servicemen use to be able to develop equipment for their needs. This variance will allow them to expand their company further and bring more jobs to the area. They looked into more locations with the appropriate zoning, but the cost to uplift their equipment and staff, along with the pricing of other rental properties, were just too significant. Their location is great for clients that fly into Boston.

Mr. Sherman said there are no downsides to the variance being approved, because they are not changing the foot traffic in the area. They aren't going to become a public firearms dealer, they will not be a gunstore that people can go to. It's primarily for them to design and develop equipment and do so legally. All of the uses will be internal. They have been in Nashua for two years and have a good relationship with the neighbors. This approval will allow them to grow further.

Mr. Currier asked if they have been in operation at this location for two years.

Mr. Sherman said yes. Before that he was working out of his home.

Mr. Currier asked if he prototypes his products.

Mr. Sherman said yes, all the prototyping is done in house, and all testing in-house. Once they get through testing they send it out to their members in special operations and the army and get feedback from them. That way, whenever they pass off or sell equipment they know it is something people can trust with their lives.

Mr. Currier asked if they contract the manufacturing.

Mr. Sherman said they do some of the manufacturing in-house and support another company in the building that does the sewing for them. They are primarily a design firm, and keep the production with companies that specialize in production stateside.

Mr. Boucher asked what part of the business is with firearms.

Mr. Sherman said that is with the testing and development side. If they work with any of the Tier I units in the military, they want to be able to purchase or borrow the firearms that are being used and have that legally on their books and transferred.

They have a different area they do to, a firearms range, and that's where they go for testing. And then there is in-house, where they do fitment, accessories, and touchment.

Mr. Boucher asked if they aren't looking to manufacture firearms.

Mr. Sherman said correct. The reason that they are applying for this license is so that if they were to assemble firearms in-house, not for commercial sales, just for development, it's a lot cheaper to buy components and then assemble it and have all the paperwork. Either that, or they work with Sig Sauer and can transfer the weapons systems being tested and they can provide feedback.

Mr. Boucher asked if this is just for the possession of the firearms, not manufacture.

Mr. Sherman said correct. This is so that if they want to assemble a firearm or technically manufacture one by serializing it and putting all the parts together, that they're doing so legally.

SPEAKINGG IN FAVOR

Kurt Thompson, 11 West Hill Road, Brookline NH

Mr. Thompson said he is a client of Mr. Sherman. He was introduced to Mr. Sherman in 2020, and has come to know him as a savvy business man and a man of impeccable moral character. Security is very important for Mr. Sherman, so he is not concerned with theft. His claims are true, and this is important for his business. What he is asking for will allow Mr. Sherman to conduct his business in a way that complies with federal law. He said that Ald. Klee's concerns were baseless and has no relevance to Mr. Sherman's business. He is in full support.

SPEAKING IN OPPOSITION OR CONCERN OR WITH QUESTIONS:

Testimony from Ald. Klee, Ward 3, as stated above

SPEAKING IN FAVOR - APPLICANT REBUTTAL

Edgar Sherman, 4 Cadogan Way, Nashua NH

Mr. Sherman said ghost guns are where you manufacture a firearm and don't serialize it, which is illegal. What they are trying to do is have the legal system so that if they need to create a firearm, they can do so legally.

Mr. Sherman said in regards to this zoning being applied to a future tenant, you still have to apply to become a FFL with the ATF and get your licensing for this. It wouldn't transfer over. Whoever the next tenant is, they would have to go through all of the application process to get their Federal Firearms License, which includes federal background checks, communication with the ATF, and all sorts of paperwork. Having the zoning doesn't make it any easier to get firearms.

Mr. Lionel said they might be assembling or manufacturing parts for guns as part of their design process, but they are not going to be creating guns for sale?

Mr. Sherman said no. This is for internal testing. They are not trying to become a gun store, they want to be in possession of the things they use to design things.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Boucher said after hearing testimony, he believes that the criteria are met. It's clear to him what the applicant is looking to do. The applicant has been in this location for years, and this is the natural progression for that business. It doesn't mean anyone can walk in and there is some rigorous vetting. They have BAE next door, so it is in the right place in the city.

Mr. Currier said he is in favor for the reasons that Mr. Boucher spoke to. This is a similar business to BAE, just small scale. The expense of moving the business does not fall in the criteria, but this business has been in operation for two years and is using resources in the building. He thinks it would be a hardship to force them to move in order to grow. He thinks it meets the criteria.

Mr. Lionel said he is in support of the application, and is convinced that they are not opening a Pandora's box of possible future problems. He asked staff what they are asking the use variance for.

Ms. Poirier said as this use was described to staff during the application process, we felt it qualified under the gun smithing requirements. This is a General Industrial zone. Research and Development is a permitted use in this zone by right. However, gun smithing is not a permitted use and requires a variance.

Mr. Currier said he appreciates Ald. Klee's testimony, but he feels that this potential growth of the business does not bring a concern to the neighborhood. It's well organized and well protected, and he doesn't see it as a threat to the local community.

MOTION by Mr. Boucher to approve the use variance application on behalf of the applicant as advertised, as per the Table of Uses, Section 190-15, Table 15-1 #74.

Mr. Boucher stated that the variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than the variance; the Board noted that the applicant has been onsite for several years, it is next to BAE, and would be a hardship to relocate.

Mr. Boucher said that the request is within the spirit and intent of the ordinance.

Mr. Boucher stated that the request will not adversely affect the property values of surrounding parcels.

Mr. Boucher said that it is not contrary to the public interest, and substantial justice will be served.

SECONDED by Mr. Currier

MOTION CARRIED 3-0

2. John J. Flatley Company (Owner) "L" Daniel Webster Highway and "L" Dozer Road, (a.k.a. Innovative Way Extension) (Sheet A Lots 44 & 172) requesting special exception from Land Use Code Section 190-115 (A) to permanently impact 725 sq.ft of wetland impact associated with upgrading existing twin 36- inch CPP to box culvert, and 7,825 sq.ft of wetland buffer impacts associated with site grading. PI Zone, Ward 8.

Voting on this case:

Steve Lionel
Jack Currier
JP Boucher

Atty. Gerry Repucci, Prunier & Prolman, 20 Trafalgar Sq, Nashua
NH

Atty. Prunier introduced himself as the representative for the owner. With him is Wetland Scientist Chad Branon.

Atty. Prunier said he would like to make his objection known that they are proceeding with a three member board versus his right to have a five member board. He wants to protect his right, but they will proceed with a three member board.

Mr. Lionel said there is no such right, but his comment is noted.

Atty. Prunier said the location of this building is in SW Nashua at the end of Innovative Way. The project is for the construction of a 48,000-sqft light industrial R&D facility. The special exception is because they are impacting 725-sqft of wetland to construct a culvert across Innovative Way, and 7,825-sqft of wetland impact for site grading. They have received a favorable recommendation from the Conservation Commission with five stipulations, which they agree to. This is listed in the table of uses. They have completed traffic reports, and this will not impair traffic or impede pedestrian access. The project will not overload public utilities. There are nine special regulations, which they agree to.

Atty. Prunier said the last special condition is that the use will not impair the integrity or be out of character for the district, or be detrimental to the health, morals, or welfare of residents. This is an area which has many similar type buildings, and would not be out of character.

Mr. Currier asked if the proposed culvert is larger than what is there now.

Chris Guida, Wetland & Soil Scientist, Fieldstone Land
Consultants, 206 Elm St, Milford NH

Mr. Guida said they are proposing to construct a box culvert. They would be removing the two culverts and upgrading that crossing to an open bottom box culvert, which is the current state standard. It will be an upgrade.

Mr. Currier asked if that would also be for critter crossing.

Mr. Guida said it is more favorable for wildlife in the area. They would maintain the natural substrate on the invert of that crossing. It would be a benefit. He believes the Conservation Commission viewed that crossing favorably.

Mr. Lionel clarified that before they receive public comment, the case before the ZBA is for wetlands work. This is not approval for building anything in particular, which goes before the Planning Board. Any comments should be restricted to discussion of the wetlands before them.

SPEAKING IN FAVOR:

None

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Lionel read multiple letters from:

Jean Deacon, 20 Clearview Drive

Ald. Derek Thibeault, Ward 8

Kevin Tiller, Tara Heights, Bldg 35, Unit 412

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier, Prunier & Prolman

Atty. Prunier said the comments have to do with the building itself, not the wetlands. The zone permits R&D uses. As far as the construction, that is before the Planning Board, which the abutters can attend and make their views known.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Currier said he is in favor. He thinks the application meets all the criteria. In regards to the abutter letters, what is before them is not building the building, it's improving a wetland crossing for a road to access. He feels that this is a

reasonable upgrade of the crossing. In regards to construction noise, that does not apply to what they are doing. It is an improvement to the crossing.

Mr. Boucher agreed with Mr. Currier's statements, and will support the application.

Mr. Lionel agreed. Generally if the Conservation Commission approves something, they would have to find something very unusual to deny the application. He doesn't see anything out of line. It looks like an improvement to the area.

MOTION by Mr. Boucher to approve the special exception application on behalf of the applicant as advertised. He said that it is listed in the Land Use Code, Section 190-115(A).

Mr. Boucher stated that it will not create undue traffic congestion or unduly impair pedestrian safety.

Mr. Boucher stated that it will not overload public water, drainage, sewer or other municipal systems.

Mr. Boucher said that the special regulations have been fulfilled, per testimony of the applicant.

Mr. Boucher stated that it will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents.

Mr. Boucher said they will be adding the five stipulations of approval from the Conservation Commission.

SECONDED by Mr. Currier

MOTION CARRIED UNANIMOUSLY 3-0

3. CMI Leasing Corp (Owner) Brothers of the Sacred Heart of Bishop Guertin High School, Inc. (Applicant) 40 Groton Road (Sheet D Lot 7) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#224) to permit a private outdoor recreation facility, including three athletic fields, an eight-lane running track, four tennis courts, a maintenance/locker room building, parking lot, along with associated site improvements. R40 Zone, Ward 5.

Voting on this case:

Steve Lionel
Jack Currier
JP Boucher

Atty. Gerry Prunier, Prunier & Prolman, 20 Trafalgar Sq, Nashua
NH

Atty. Prunier introduced himself as the representative for the owner. With him is civil engineer Tom Zajac, Rob Prunier from Harvey Construction, and Bishop Guertin principal Jason Strniste.

Atty. Prunier said this property is located on 40 Groton Rd, also known as the Brox land. It is currently being used for storing of material and construction equipment. It is approximately 40 acres in size, with 15+ acres being wetland. The proposed project is to construct three athletic fields, four tennis courts, a running track, a maintenance and locker room building, parking, and a secondary parking lot proposed to connect to the Dunstable Land Trust to the south. Most days you will see cars parked along the road to walk to this property in Dunstable, which is conserved. This will be fenced, except for the wetlands, and will be lighted.

Atty. Prunier said they have included three letters. There is a letter from Dana Georges Jr. of 67 Groton Rd, an appraisal from Randy Turmel, and a letter from the Dunstable Rural Land Trust.

Atty. Prunier said they are here before the board because this is a private recreational use. If this was public, it would be permitted within all districts. Even though this will be used by all students they have to get a variance to allow them to use the property that all other public schools could use without a variance. They feel there is a hardship on this property because of the number of wetlands. A third of this property is covered with wetlands, and they have to maintain the protection of those wetlands. It's also a hardship because of the use.

Atty. Prunier said this will be within the spirit and intent of the ordinance. The ordinance says you can have recreational uses in this district. The fields would mostly not be used between Thanksgiving between March, and mostly used during spring and

summer. Substantial justice will be done to approve this. Given the nature, location and configuration of the proposal, it will not be a burden to the surrounding properties. The area is so far out of the city, it's almost in Massachusetts.

Atty. Prunier said that most of the lot is being maintained, but it is natural buffer. They want to maintain as much of the natural buffer as possible to avoid being a burden on the abutters. They are maintaining distances and trying to stay away from abutters and wetlands.

Atty. Prunier said there is no fair and substantial relationship between the purpose of the land use code and prohibition of private recreational facilities in the R40 zone. This frustrates the implementation of the land use code, which allows this area to be used for recreational purposes. It just can't be used by a public school. Bishop Guertin has a significant number of students from Nashua, and Nashua suffers from a lack of recreational facilities. This will help alleviate stress on athletic and recreational facilities in the city. This will be to the public benefit, will improve the minds and bodies of students, and will reduce Bishop Guertin's need to use public facilities.

Atty. Prunier said they have not mentioned anything about football or baseball. Those will remain at the Lund Road Bishop Guertin facilities.

Mr. Boucher asked if the four tennis courts proposed are replacing the ones on the main campus.

Atty. Prunier said they will. Right now those are basketball courts.

Mr. Currier asked if the field locations are in the flat part and not wet.

Atty. Prunier said they are flat and out of the wetlands. That was the main purpose. That is why this particular use is a good use for this piece of property.

Mr. Currier asked if there was a similar request in the northwest, a long time ago.

Atty. Prunier said yes.

Mr. Currier asked if that came to fruition.

Atty. Prunier said no. It was dropped. He said there will be a gate and fencing around the parking area, which is separated from the parking area for the Dunstable Land Trust. There will also be security. They want to keep the use of this property to Bishop Guertin.

Mr. Currier asked if this application were approved, would the intent be for Bishop Guertin to own the property.

Atty. Prunier said yes.

SPEAKING IN FAVOR:

David Tully, 1070 Main St, Dunstable MA

Mr. Tully said he is representing the Dunstable Rural Land Trust. They have 420 acres abutting this, which is used for walking and fishing. Many people access it from Groton Road, and this would be a great addition. This would almost be 500 acres and they are in favor of this request.

Mr. Currier said there are often cars parked on Groton Road. Is it trespassing to walk onto the Land Trust?

Mr. Tully said their land is open to the public.

Jim Naro, 6 Mystic Court, Nashua NH

Mr. Naro said he thinks this will be a great use of the property. That property was going to be developed, and there was going to be a sidewalk. Now they will have no sidewalk, and there is a crossing from the Terrell Farm conservation area. These other developments nearby have had sidewalk waivers with the understanding that when this was developed into housing there would be, and now there is no sidewalk connecting the developments. He can't walk down to the Land Trust. He abuts on the west side of the property.

Mr. Lionel read multiple letters from:

Dana Georges, 67 Groton Rd, Nashua NH

Randy Turmel, 20 Trafalgar Square, Nashua NH

Dunstable Land Trust, Dunstable MA

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

None

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier, Prunier & Prolman

Atty. Prunier said there is no sidewalk. Sidewalks is a concern of the Planning Board, and are typically with subdivisions where there are houses and the developer is making money. This is not making money. This is a conservational use. They are will be discussing it with the Planning Board, and he hopes to make it fair and equitable to all parties involved.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Boucher said he is in favor of the application. It fits in. This high school has been around since the early sixties, and has developed over the years. This is way overdue, and will be a great benefit to the city and recreation that can be accessed through that property.

Mr. Currier said he was concerned there would be opposition, and they are hearing a lot of support. It's a big boost that the Dunstable Rural Land Trust is supporting this. They have a lot of public land, and having this as open fields is in kind. Nearby they have the Nature of Things Learning Center, the dog park, the Terrell property; there is an enormous amount of public open land with fields right up the road. There are a lot of uses that are similar in the area that match the R40 zoning. He thinks it meets the criteria and is in favor.

Mr. Lionel agreed, and said he is in favor.

MOTION by Mr. Boucher to approve the use variance application on behalf of the applicant as advertised, as per the Table of Uses, Section 190-15, Table 15-1 #224.

Mr. Boucher stated that the variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably

feasible for the applicant to pursue other than the variance; the Board finds that there are similar public recreation uses nearby, and the benefit of having this development will be for all involved.

Mr. Boucher said that the request is within the spirit and intent of the ordinance.

Mr. Boucher stated that the request will not adversely affect the property values of surrounding parcels.

Mr. Boucher said that it is not contrary to the public interest, and substantial justice will be served.

Mr. Currier said he agrees with Atty. Prunier on the sidewalk, that is not the Board's purview to deal with that issue.

SECONDED by Mr. Currier

MOTION CARRIED 3-0

REHEARING REQUESTS:

None

REGIONAL IMPACT:

The Board stated that there are no cases of regional impact.

MINUTES:

April 12, 2022

MOTION by Mr. Lionel to approve the minutes, as written

SECONDED by Mr. Boucher

MOTION CARRIED UNANIMOUSLY 3-0

ADJOURNMENT:

MOTION by Mr. Lionel to adjourn the meeting at 7:40PM

Submitted by: Mr. Currier, Clerk.

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KP - Taped Hearing