

**Town of Ontario
Planning Board Minutes**

December 12, 2017

Present: Planning Board Members – Chairman Stephen Leaty, Tab Orbaker, Michelle Wright, Jason Coleman, Gerald Smith, Planning Board Secretary Beth Hart, Town Attorney Richard Williams, Town Engineer Shaun Logue, Town Supervisor John Smith, and 21 members of the public.

Chairman Leaty called the meeting to order at 7:00pm, led the Pledge of Allegiance.

A motion was made by Tab Orbaker to approve the minutes November 21, 2017 and seconded by Jason Coleman.
Vote:

- Gerald Smith - Aye
- Stephen Leaty - Aye
- Jason Coleman - Aye
- Michelle Wright - Aye
- Tab Orbaker - Aye

Public Hearings

819 Ridge Road – Preliminary/Final Sub Division and Preliminary/Final Site Plan

The application of Mary D’Angelo requesting Preliminary/Final Site Plan to change single family dwelling to a two family dwelling. The property is owned by the applicant and zoned UR.

Nick D’Angelo explained the would like to change a single family home to a two family home and owning the property directly behind the residence would like to sub divide the land at the same time. Due to the condition of the garage, the garage will be removed and no change to the blueprint of the house.

Chairman Leaty asked for public comment.

Kim Wolanski, resident, stated she is worried her property value will go down if the garage is being taken down and a parking lot being placed on the property. She asked what are the plans for the other property, facing Route 104, and could they please divide the lots a little closer to the back of her property line (towards Route 104).

Chairman Leaty asked for screening to be added to the site plan to replace where the garage was located.

Chairman Leaty closed the public hearing. He also stated no action will be taken tonight until the Wayne County Planning Board meets.

6240 Slocum Road – Preliminary/Final Site Plan and Special Use Permit

The application of Bruce Carey requesting Preliminary/Final Site Plan and Special Use Permit for commercial purposes for an Indoor Gun Range, Gun Shop and Pawn Shop. The property is owned by the applicant and zoned B.

Al LaRue, McMahan LaRue Associates PC, stated they have addressed all the PRC comments were submitted to MRB yesterday and have no problem meeting all the storm water management regulations.

Seth Waltz, AVI Designs Inc., performed an acoustic noise study on the property. Seth has done many environmental studies around the area and NY State. We can determine the amount of noise coming out of the building by using the background noise around the property and factoring into consideration the construction of the building and the noise emitted from the guns. Sound travels in a controlled pattern. Using a software program to determine the amount of noise that can be emitted out of the building, we feel that the only time you can perceive to hear gun fire from the range would

be if there was no outside (background) noise or if you stepped behind the building on the property, behind the building, and get close to the ventilation intakes. There are aspects to the building or trees on the property that we did not even consider that will help to lower the sound even further.

Chairman Leaty asked for public comment.

Mark Mendola, owner of Tot Spot, said the sound study sounds credible but is there any further consideration to moving the building further to the east. Also, do you need a Special permit for the gun and pawn shop like you do for a gun range?

Chairman Leaty stated no Special Permit is needed for a gun and pawn shop. The location for the building will be remaining where it is on the site plan because of the flood zone.

Staci Giambrone, resident and parent of a child at Tot Spot, is opposed to the location of the gun range. Guns and children should not be together.

Chairman Leaty closed the public hearing.

Chairman Leaty commented that Craig Welch's letter, from Lacy Katzen representing Mark Mendolla, suggested there may be a violations of provisions to the NY Conservation Law. The letter was reviewed by the Town Attorney, who in turn submitted a letter back to the Planning Board advising the board that the applicability of that law to this application is by no means clear and it is not the function of a municipal Planning Board to make an interpretation decision on a state law.

**SEQRA RESOLUTION
PRELIMINARY & FINAL SITE PLAN
SPECIAL PERMIT
PLANNING BOARD
TOWN OF ONTARIO
RE: 6240 Slocum Road
Tax Parcel Number: 62117-10-320605**

WHEREAS, Bruce H. Carey has submitted an application for Preliminary/Final Site Plan and Special Permit approval for a firing range, gun sales store and pawn shop to be located at 6240 Slocum Road in the Town of Ontario; and

WHEREAS, this application is an unlisted action and has been subject to single agency review pursuant to SEQRA; and

WHEREAS, a short form Part 1 EAF was submitted by the applicant, dated September 13, 2017 as part of the application materials; and

WHEREAS, a short form Part 2 EAF has been completed and attached hereto;

NOW, THEREFORE, upon consideration by the Planning Board, of all written and oral submissions and testimony by the Applicant and following a public hearing on this matter, opened on October 11, 2017 and continued to December 12, 2017, and the Planning Board having given this matter due deliberation and consideration; it is

RESOLVED that the Planning Board finds that the proposed action will not have any significant adverse impact on the environment, and accordingly, hereby grants a negative declaration pursuant the State Environmental Quality Review Act; based upon the following findings of fact:

FINDINGS OF FACT

1. This Resolution is based upon the materials submitted by the applicant, including the Site Plan prepared by McMahon LaRue associates, P.C., dated September 8, 2017; the Site Plan Application of the applicant, dated September 13, 2017; the Special Permit Application of the applicant, dated October 10, 2017; together with all other written materials and oral testimony submitted by or on behalf of the applicant.

2. The SEQRA Short Form did not identify any significant potential adverse impacts associated with the proposed action.

3. Any and all small to moderate impacts associated with the proposed action may be adequately mitigated through conditions of approval imposed by the Planning Board.

The within Resolution was moved by Planning Board Member Jason Coleman, seconded by Planning Board Member Tab Orbacker, and voted upon by members of the Planning Board as follows.

Gerald Smith voted Aye

Stephen Leaty voted Aye

Jason Coleman voted Aye
 Michelle Wright voted Aye
 Tab Orbaker voted Aye
 Adopted by the Planning Board on December 12, 2017.

**APPROVAL RESOLUTION
 PRELIMINARY & FINAL SITE PLAN
 SPECIAL PERMIT
 PLANNING BOARD
 TOWN OF ONTARIO
 RE: 6240 Slocum Road
 Tax Parcel Number: 62117-10-320605**

WHEREAS, Bruce H. Carey has submitted an application for Preliminary/Final site Plan and Special Permit approval for a firing range, gun sales store and pawn shop to be located at 6240 Slocum Road in the Town of Ontario; and

WHEREAS, the Planning Board issued a negative declaration, pursuant to SEQRA, on December 12, 2017;

NOW, THEREFORE, upon consideration by the Planning Board, of all written and oral submissions and testimony by the Applicant and following a public hearing on this matter, opened on October 11, 2017 and continued to December 12, 2017, and the Planning Board having given this matter due deliberation and consideration; it is

RESOLVED that the Planning Board hereby grants to Preliminary and Final Site Plan approval and special Permit for the application, based upon the following Findings and subject to the following Conditions:

GENERAL FINDINGS

1. This Resolution is based upon the materials submitted by the applicant, including the Site Plan prepared by McMahan LaRue associates, P.C., dated September 8, 2017; the Site Plan Application of the applicant, dated September 13, 2017; the Special Permit application of the applicant, dated October 10, 2017; together with all other written materials and oral testimony submitted by or on behalf of the applicant.
2. The subject property is located in the "Business Transitional" Zoning District and, as determined by the Code Enforcement Officer, the uses proposed are allowable within such District, as retail and Indoor Recreation, subject to the granting of Site Plan approval by this Board as well as a Special Permit, with respect to the Indoor Recreation use as a gun firing range.

FINDINGS AS TO THE SITE PLAN APPLICATION

1. The materials submitted by the applicant, particularly with respect to the site Plan materials prepared by McMahan Larue, P.C., adequately and fully comply with the requirements of Town Code §150-38(B).
2. The Planning Board's review of such Site Plan materials, as well as the review and comments of the Site Plan materials by the Town's Engineer, satisfy the Board that the Site Plan adequately addresses all requirements of Town Code §150-38(D) as to the movement of people and vehicles within the Site, the adequacy of public utilities to serve the Site, ingress and egress to the site as well as adequacy of vehicle parking on the site, compliance with required lot size, density, setbacks and other bulk requirements, site drainage, landscaping and other physical characteristics of the Site development, building construction and design features of the proposed building and the compatibility of the site development with the general character and existing site developments in the area.
3. The Board also carefully and fully examined issues related to sound involved with this application, recognizing that not only the volume of sound, but its recognizability as gunfire is an important consideration with regard to the safety of the area as well as the compatibility of the proposed use with surrounding existing and potential future business establishments.
4. Specifically, the Board received written materials as well as heard testimony from Seth E. Waltz, an acoustical expert, on behalf of the applicant, as an expert on the issue of gunfire noise and the potential for excessive noise and/or recognizable gunfire sounds at or on properties adjoining or near the applicant's property, taking into consideration the design and construction elements of the applicant's proposed building.
5. The Report and testimony of Mr. Waltz indicated that the construction of the building, the location of venting for the building and the ambient noise in the area mitigate against noise issues. Such analysis, by Mr. Waltz, did not take into consideration the 2" rubber walls, ridged and building insulation, air space, siding and adjoining foliage, which should further reduce any potential for gunfire noise emanating from the building and being audible and/or recognizable.
6. Based upon the foregoing, the Board is satisfied that not only will there be no significant noise, of any type, emanating from the firing range, there will be no noise recognizable as gunfire discernible by any persons at or on any property located adjoining or near the applicant's property.

7. Accordingly, and based on the applicant adequately addressing any and all safety and noise concerns of this Board, the Board finds that the proposed use will not cause any substantial injury to the value of land in the neighborhood where it is to be located and such use will be reasonably compatible with adjoining development and the character of the BT Zoning District.
8. The applicant submitted to the Board full Site Plan materials, together with architectural drawings related to the building construction and general appearance. All such materials have been carefully reviewed by the Board and by the Town's Engineer. Such materials have satisfied the Board that the Site design and layout and proposed building, together with the existing site conditions, adequately address any and all issues with regard to traffic and parking, utility and drainage requirements and landscaping/screening.
9. As to the issue of the proposed firing range complying with all applicable laws and regulations, the applicant has assured the Board that there will be full compliance and this Board will impose a Condition in this Resolution in that regard.
10. Further, the Board has received a letter and memorandum from Craig R. Welch, Esq., dated November 30, 2017, which, in part, questions the legality of the proposed firing range, suggesting that it is in violation of provisions of the New York Environmental Conservation Law. Such letter and memorandum have been reviewed by the Town Attorney, who has submitted a letter to this Board, dated December 11, 2017. The Town Attorney's letter advises this Board that the applicability of the New York Environmental Conservation Law to this application is by no means clear and straight-forward and also advises this Board that such law's applicability to the proposed firing range is a matter that could be raised in the context of a separate, private, legal challenge to the proposed firing range.
11. Based upon the foregoing, this Board finds that it would be inappropriate and outside the jurisdiction of this Board, as a local municipal Planning Board, to effectively take a legal position on a state law by denying the applicant's Application based on the position taken by counsel for nearby property owners.

CONDITIONS OF APPROVAL

1. The indoor firing range shall fully comply with all state and federal rules and regulations pertaining to the discharge of firearms within an enclosed structure.
2. Adequate signage shall be maintained advising patrons of the firing range as to the rules and regulations of the range, such as the requirement that all firearms are to be properly enclosed in gun cases at all times, except within the firing range, itself.
3. Any and all infractions of any and all rules and regulations of the firing range are to be immediately reported to local police authorities.
4. The perimeter of the building and parking lot area are to be monitored by adequate video surveillance, which shall include network video recording.
5. There shall be no significant noise, of any type, emanating from the firing range, there shall be no noise recognizable as gunfire discernible by any persons at or on any property located adjoining or near the applicant's property.
6. The applicant shall submit to the Town's Code Enforcement Office, within 6 months of the opening of the firing range, a sound analysis to determine if the firing range is in compliance with the foregoing condition.
7. The hours of operation of the firing range are limited to 9:00 a.m. to 9:00 p.m., 7 days a week.
8. A letter of credit is required for all project components related to the project's compliance with SPEDES General Permit GP-0-15-002 and all relevant costs associated with the Town's Land Development Regulations. An Engineer's Estimate shall be prepared and submitted to the Town Engineer, for review and approval.
9. The Special Permit granted herein is subject to the provisions of Town Code §150-43(C), which provide for revocation of a Special Permit by the Planning Board if it determines that any requirement or condition has not been fulfilled or has been violated.
10. The applicant shall execute a Stormwater Management Easement Agreement, in a form acceptable to the Town Attorney and related to the stormwater management facilities on the site.
11. Resolution of all technical comments set forth in the Planning Review Committee Memorandum dated November 14, 2017.

The within Resolution was moved by Planning Board Member Jason Coleman, seconded by Planning Board Member Michelle Wright, and voted upon by members of the Planning Board as follows.

Gerald Smith voted Aye
 Stephen Leaty voted Aye
 Jason Coleman voted Aye
 Michelle Wright voted Aye
 Tab Orbaker voted Aye
 Adopted by the Planning Board on December 12, 2017.

**East side traders
6240 Slocum Road
Ontario, New York**

**Mr. Bruce Carey
Acoustical analysis**

11/19/17



GENERAL

In the absence of a specific noise ordinance we base our analysis criteria on New York State DEC policy recommendations and accepted the acoustical principles. DEC guidelines indicate a sound level increase of 5dB or more is considered intrusive by most people. This is assuming the noise is similar in character. An example of this would be traffic noise and air conditioning noise.

When a new noise source is different in character from existing background noise a more stringent standard needs to be used. In the case of impulse noises such as gunfire standard practice calls for the noises to be at least 10 dB below background noise. We recommend 20 dB.

- Reference : to the ear a 10 dB reduction is perceived as half as loud.
 - Even when a noise is 10 dB below background noise levels if it's different in character it is still noticed. An example of this is a barking dog at a distance from your house. Using test equipment the barking dog may not register above traffic noise but is clearly audible.

This is why our recommendation for dissimilar noise sources such as gunfire is that the noise emission be 20 dB below background noise. Accomplishing this requires a number of conditions to be met. The first is sound isolation of the source.

BUILDING DESIGN

- STC is the sound transmission class of a material.

The firing range at Eastside is a building within a building design. The firing range is a completely concrete encased area. The minimum STC rating we would apply to this structure is STC 50. There is additional construction both in the roof and in the walls. We did not add a value for this additional construction even though it does provide additional isolation.

An airlock door is included to prevent sound from escaping into the building frontage.

LOCATION

The second factor that is the most critical is where the noise source is relative to any adjacencies. The closest adjacencies to the firing range of the back of the building is approximately 300 feet away and consist of commercial properties. The distance to residential even further.

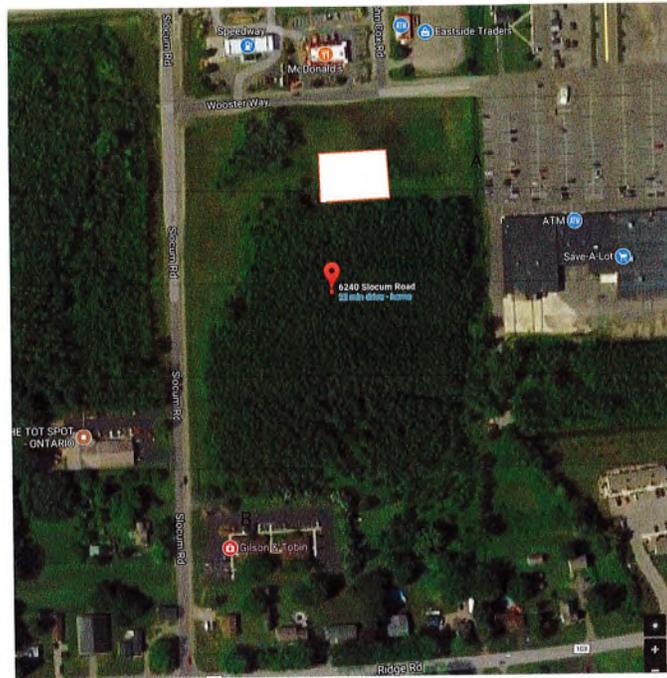
There are also significant wooded areas between the site and residential areas. To keep our calculations as worst-case we did not apply any values for sound reduction from foliage. We are treating our worst-case scenario a clear line of sight at 300 feet. (dense foliage does reduce sound levels)

The final factor to is ventilation. Ventilation systems at a firing range need to connect to outdoors. Systems of this type we basically calculate as a hole in the building even though they do attenuate noise to a degree.

We also make assumptions of the sound source being very close to the outside walls. This is worst-case as well. We have many firing range Studies and have noise data from a variety of firearms. We have testing up to 50 caliber and shotguns. This range will not likely have any of that. We have chosen a high side of handgun and rifle noise as the highest expected noise on the range.

PRESENCE OF BACKGROUND NOISE

To verify expected background noise we have taken noise readings. The locations of the tests show on the map as A and B.



- o Site A is the closest adjacency with a clear field of view to the firing range side of the site. This would be the most likely location to hear the range,
- o Site B is an average far field position and was tested to determine a noise level at this distance from the primary route 104 Noise.

Tests are noted on the attached chart. During each test sequence we noted local versus distant traffic. The lowest readings were taken with no traffic visible on 104, no excessive noise at McDonald's or the gas station. Highest readings were taken with visible traffic on 104 or at site B on Slocum Road. After lengthy testing the readings indicated on the charts are representative of expected low and high background noise conditions.

DISTANCE ATTENUATION

Sound drops off at a rate of 6 dB for every doubling of distance once it gets outside structure. Our calculations for noise emissions are based on this typical behavior and are related to site A which is the closest adjacency of concern. The McDonald's at the front of the site is almost the same distance but the firing range noise is additionally reduced by the store front section of the building. The noise of the McDonald's is also significantly higher due to its proximity to the road. This is why we did not consider it important as a test site.

The most likely sound leakage from the building will be the ventilation fans. We have asked that the contractor install these on the side walls no higher than 4 feet off the ground. They also will have weather hoods which helps to attenuate sound. The low elevation helps prevent sound travel.

SUMMARY

The building is well-designed for its purpose and sits on a site in a location that should not be problematic to adjacencies. Based on local noise present the emission of the range meets our 20 dB criteria.

We do not expect any sound leakage to be noticeable at adjacencies. We do expect anyone on the property walking near the exhaust fans to hear muted low level noise. Any low level noise that does escape the building should only be noticed by persons actually on the property of Eastside near the ventilation fans.

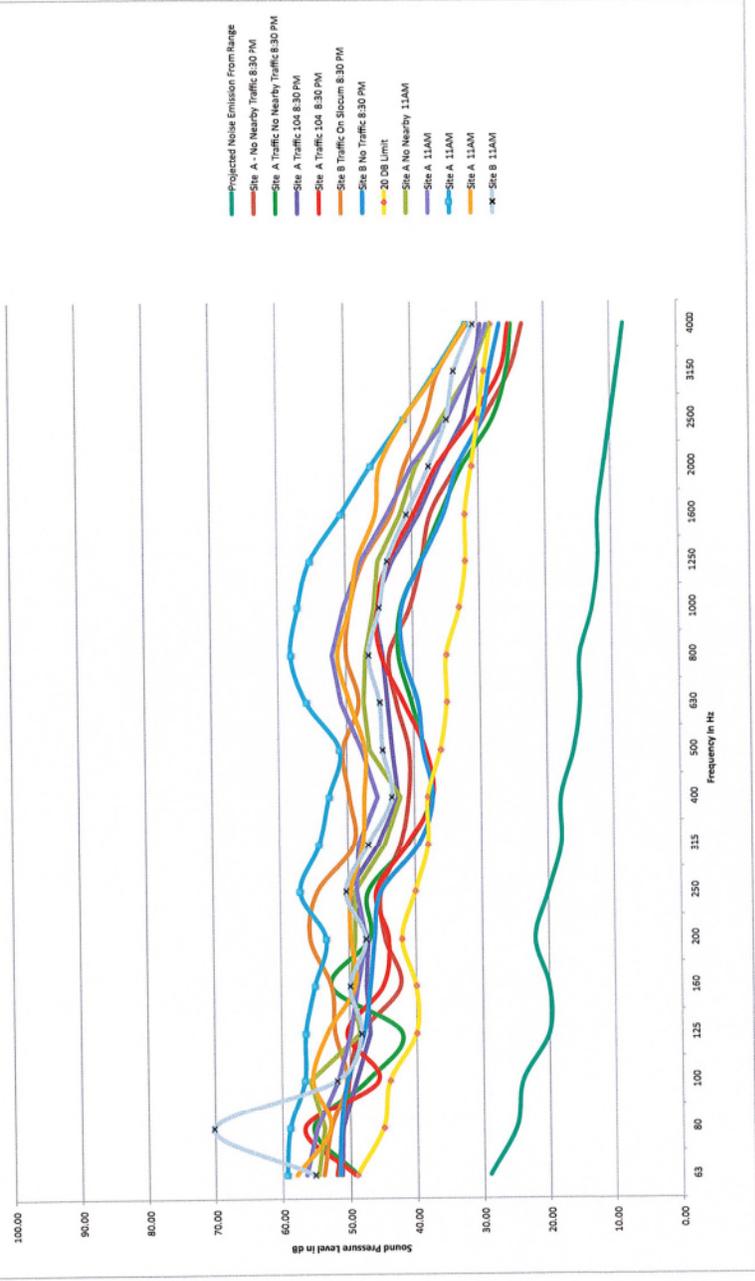
Sincerely,



Seth E. Waltz
President
AVL Designs Incorporated

Att; Site Data Eastside

Eastside Traders Noise Study



Tab Orbaker moved to adjourn the meeting, Jason Coleman seconded. Meeting adjourned at 9:05pm.

Gerald Smith voted	Aye
Stephen Leaty voted	Aye
Michelle Wright voted	Aye
Jason Coleman voted	Aye
Tab Orbaker voted	Aye

Adopted by the Planning Board on December 12, 2017.

Beth Hart
Planning Board Secretary