

**Town of Hopedale
Decision of the Hopedale Zoning Board of Appeals
July 27, 2022**

Case: 6-2022

Applicant(s): Mike Follo and Arms Group LLC

Property Owner: Joseph Menfi
Property: 2 Evergreen Lane, Unit 12, Hopedale, MA 01747

Application Filed: June 16, 2022

Hearing Dates: July 27, 2022

Relief Sought: Applicants are seeking a special permit allowing for the retail sales of firearms and allowing for the manufacturing of firearms other than destructive devices.

Decision: Following the closing of the public hearing on July 27, 2022, the Zoning Board of Appeals voted unanimously to issue a special permit for the retail sales of firearms and allowing for the manufacturing of firearms other than destructive devices with the following conditions:

1. Compliance with all state and federal law.
2. Hours of operation daily from 10 a.m. to 8 p.m.
3. Retail sales area limited to 700 square feet.
4. Compliance with any conditions imposed by Hopedale Chief of Police.
5. Signage will be limited to existing signs at the property (allowing for appropriate name changes).

Certification

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of General Laws, and that copies of this decision and plans referred to in this decision, if any, were filed with the Town Clerk on _____, 2022.

Special Permit or Variance is not in effect until the decision is recorded with the Worcester County Registry of Deeds and the building permit will not be issued until proof of recording is presented.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PERSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING THIS DECISION IN THE OFFICE OF THE TOWN CLERK.



Christopher P. Hodgins, Chairman

**Record of Proceedings and Summary of Findings and Decision
Hopedale Zoning Board of Appeals**

Case: 6-2022

Applicant(s): Mike Follo and Arms Group LLC

Property Owner: Joseph Menfi

Property: 2 Evergreen Lane, Unit 12
Hopedale, MA 01747

Hearing Proceedings

On June 16, 2022, Mike Follo and Arms Group LLC filed an application for a special permit allowing for the retail sales of firearms and allowing for the manufacturing of firearms other than destructive devices. The Zoning Board of Appeals (ZBA) scheduled a public hearing for July 27, 2022, and notified the Town Clerk, abutters and other interested parties, and requested publication of the notice in the Milford Daily News.

The Town Clerk posted the hearing notice on July 11, 2022. The Milford Daily News published the first notice on July 8, 2022, and published the second notice on July 14, 2022.

Public Hearing July 27, 2022

On July 27, 2022, the ZBA opened a public hearing on the application. All members of the ZBA were present. Chairman Christopher Hodgens opened the public hearing, explained the process, and outlined the procedural posture of the application. Mr. Hodgens said the zone is General Business A where retail sales of many products are allowed. Retail sales and manufacture of firearms are not expressly allowed under the Hopedale Zoning By-Laws. The catchall category for other poroducts requires a special permit. Mr. Hodgens invited Mike Follo to present the application.

According to Mr. Follo, the retail sales is part of “one-stop shopping” in connection with his firearms training school in Shrewsbury. He explained the manufacturing aspect is actually modifying firearms. Firearms are heavily regulated. Manufacturing is the word that federal regulations use to describe modifications.

Mr. Hodgens asked about the hours of operation. Mr. Follo said that he would be looking for 10 a.m. to 8 p.m. daily.

Mr. Hodgens invited ZBA members to comment. Sandra Biagetti asked if there would be a shooting range in connection with the business. Mr. Follo said there would not be a range. Nicholas Alexander asked about the number of customers. Mr. Follo said that it would not be a high-intensity business. The primary focus is to be a “one-stop shop” for students at the firearms school. Ms. Biagetti asked again about the volume of business. Mr. Follo does not anticipate a lot of traffic from walk-in customers.

Mr. Hodgens made reference to the Hopedale Assessors field card. The property is part of a plaza with other businesses and contains ample parking. The lot is 1.26 acres.

Ms. Biagetti asked about security. Mr. Follo said that firearms will be stored in a safe. There is an alarm system in the building. Mr. Hodgens asked if he spoke with the police chief. Mr. Follo said that one of the instructors had done so.

Scott Savage asked about the process of ATF inspection. Mr. Follo explained the process of obtaining ATF approval. ZBA approval and a lease are required to complete the approval process. Part of the process involves consultation with the Chief of Police to determine what additional conditions will be required for operation of the business. Louis Costanza confirmed that the police chief had been notified and was not opposed to the proposal.

Mr. Hodgens asked if any members of the public who were present would like to be heard. Charles Lee, who lives across the street from the property, raised concerns about the nature of the business and asked why Hopedale would be selected as the location rather than Shrewsbury. A lengthy discussion followed, and Belinda Charles joined the discussion. She expressed concern about the location and the intensity of business along route 140, the proximity to 495, and the overall security as it impacts residents nearby. Mr. Follo said that the business is heavily regulated. He is not required to sell firearms to anyone. He has the discretion to decline if he believes there is an issue. Following up on the concerns expressed by the Lees, Mr. Hodgens asked if Mr. Follo had been turned down by another community. Mr. Follo said that he had not been turned down. He selected Hopedale after meeting the owner of the property and believing that the location would be a good fit for the business. He said Hopedale is a “happy place” and appears very family friendly.

Mr. Hodgens asked about the square footage of the proposed business. Mr. Follo said there is 700 square feet available on the ground floor and an additional 700 square feet for storage. Retail sales will be limited to the 700 square feet.

Mr. Lee asked again about sales of firearms and the ability of people to modify weapons. Legal firearms may be rendered illegal by modifications. Mr. Follo said that all modifications have to be legal and that modifications are for the comfort and convenience of the owner – not to make the weapon more lethal. Mr. Hodgens asked about adding large capacity feeding devices. Mr. Follo explained the detailed regulations limiting such devices.

Ms. Biagetti added that media accounts of shootings have left the impression that modifications are for the purpose of creating assault weapons. She said that it is her experience that modifications are simply for the purpose of enabling the owner to be comfortable with the use of the firearm. Modifications can be a good thing and can render the weapon safer. Mr. Follo agreed. Mr. Costanza emphasized that modifications are not for the purpose of creating a sawed-off shotgun.

Mr. Hodgens asked for comments from people on zoom. Michaela Kellogg, of Green Street, said that she appreciated the great questions asked by the ZBA and wanted to follow up. She said that the fact that the questions had to be asked at all demonstrates that these weapons are inherently dangerous, and we should not be considering this type of business at all in Hopedale. Mr. Follo emphasized that there is a rigorous process for acquiring firearms. Only the local police can authorize people to purchase firearms. His business will not make the community less safe.

Heather Lewis, of 17 Bens Way, asked about the security measures. Mr. Follo said there will not be a large inventory, and a safe will contain all the firearms. The building is equipped with an alarm. Cameras will likely be added as well. Rolling steel or bars will be added to glass windows. There are also storage regulations that have to be followed. He wants to exceed the security required.

Belinda Lee emphasized the changes in Hopedale over the past 20 years. There is more truck traffic, police activity, and development. She said there are activities going on that she believes are not legal in her neighborhood. As a nurse, she is concerned about the proliferation of pot shops around town. She is concerned about the future of Hopedale and the location of the business. Mr. Costanza added that it is easier to buy marijuana than firearms.

Mr. Hodgins said that if there are any illegal activities going on, residents should not hesitate to call the police. If there is a suspected zoning violation, then there is a process to address that as well. He invited residents to review the ZBA website for an explanation of the process for zoning complaints. The complaints will be reviewed and addressed. That is what the ZBA and Building Commissioner are here to do.

Mr. Hodgins then explained the process of obtaining a special permit. He said the ZBA has broad discretion, but that discretion is not unbridled. The ZBA is bound to follow the General Laws and the Hopedale Zoning By-Laws. He then read each of the requirements for obtaining a special permit. He said the ZBA does not act as a five-headed Caesar, giving thumbs up or thumbs down to whatever proposal that comes before the board. Instead, the board is bound to apply the law. The personal feelings of ZBA members should not come into play. He gave the example of the marijuana sales. Mr. Hodgins voted against the issue at Town Meeting, but once a member of the ZBA, he had to put his personal views aside and apply the law and ultimately approve the projects. Mr. Hodgins then walked through all the standards for issuing a special permit. The checklist does not allow for personal likes and dislikes.

Mr. Hodgins asked if there were any conditions that could be imposed to address some of the concerns of residents. Ms. Lee said that as a nurse she is pleased with firearms training, but she is still concerned about why Hopedale. She said that Milford is at the bottom of the list for firearm licenses in the state, and Hopedale does not even rate on the list. Mr. Follo said that he has two young children. He appreciates the concerns about children. He said that he is subject to criminal penalties if he fails to follow regulations.

Mr. Lee asked why are we here if there is so little discretion to issuing the special permit. Mr. Hodgins said the ZBA actually has "wide discretion," but it is not unbridled discretion. The ZBA cannot "run roughshod" over applicants who have property rights that are protected. The ZBA cannot refuse to issue a special permit for a retailer who wants to sell cigarettes just because there is a personal dislike of cigarettes. The ZBA has to follow the law as given to us by the elected Legislature and as approved by Town Meeting. There is wide discretion, but it is not unlimited. If a special permit is denied, there must be a rational basis for doing so. It is not enough to say, "I have a gut feeling" or "I don't like firearms." Also, the ZBA does not have the final say. There is a right of appeal if people are not satisfied with ZBA action. Courts have the final say and can review the work of the ZBA. Mr. Hodgins emphasized that his remarks are not intended to steer members to vote one way or the other. He said each member of the ZBA has an equal vote, and 4 of 5 votes are needed to issue a special permit. The "super majority" is

needed because the very fact that a special permit is needed suggests that there is something unusual about the proposed use of the property. It is entirely appropriate for residents to say “we have to take a closer look at this.”

Ms. Lee said there is a daycare in the neighborhood. Mr. Follo said there are limitations on locations based on schools. Mr. Alexander asked about the 700 square feet. Mr. Hodgens said that the limitation could be a condition. Mr. Alexander said that was his intention in asking. Mr. Alexander believed the limitation requirement may address some concerns of residents about the unknown scale of the business. Mr. Hodgens said that makes sense to insure a Cabella-type business doesn't spring up in in the plaza. Mr. Follo said that if the business grows to such a scale, he will be finding a larger location. Mr. Follo also said that he would not oppose such a condition and wants residents to feel comfortable.

Mr. Hodgens said that this hearing shows two things. First, it shows how much people care about this town. He was not expecting anyone to be in attendance. Second, it shows the wisdom in the judgment that a special permit was in fact required under the Hopedale Zoning By-Laws. We are not dealing with mere sporting goods. Clearly, the proposed use is not one contemplated without hearing input from residents and giving everyone an opportunity to be heard. At the request of Ms. Lee, Mr. Hodgens reread the pertinent section of the Hopedale Zoning By-Laws.

Mr. Costanza moved to approve the application.

Mr. Hodgens said that he will address the motion in one moment, but first he wanted to close the public hearing after everyone had a chance to be heard.

Mr. Hodgens addressed the Lees because they are the residents most impacted by this proposed use. He asked if there were any conditions that would be helpful in addressing the concerns they raised. He asked about the hours. Ms. Lee said it is a retail space. She was concerned about the manufacturing. She is not a fan of the sport. Mr. Lee said that he is a little less optimistic. He has seen the traffic and many incidents in the area that give him reservations about the location. He understands the right and need for commerce but wonders if the revenue from commerce is offset by negative impacts. Mr. Lee said that he worries about what happens with firearms. He said that firearms fall into the wrong hands with frequency.

Mr. Hodgens said that perhaps a condition that the applicant comply with all state and federal law would help. Mr. Hodgens emphasized that because we are not writing the law, there is only so much that the ZBA can do to address all of the concerns raised. Mr. Alexander asked about someone presenting a fake identification. Mr. Follo explained the process of acquiring a firearm including instant background checks by the Federal Bureau of Investigation.

Ms. Lee asked about meetings of students. Mr. Follo said that he holds training classes, not meetings. Mr. Follo said that people often have reservations about firearms, but they take classes on safety and have a better understanding.

Tim Watson, of 120 Mill Street, offered an observation that Hopedale has an existing firearms retailer in town. He believes the Hopedale Police buy firearms from the local

company. Members all agreed there is a retailer that operates unobtrusively. Firearms are already being sold in town.

Mr. Alexander raised the issue of signage. Mr. Follo said that he will use existing signage. Arms Group LLC is the intended name (rather than something more provocative). Mr. Hodgens read from the sign by-laws.

Scott Savage read from a comment on zoom seeking to limit hours of operation. Mr. Hodgens asked Mr. Follo about the hours. Mr. Follo said the limitation proposed by the zoom comment would effectively shut the business down. Ms. Biagetti agreed with Mr. Follo that the hours must be convenient for customers. Mr. Follo said he doubts the hours of operation will be an issue. He will not operate to the maximum allowed. He just wants some flexibility as he gets the business going.

Mr. Hodgens said that he would close the public hearing unless there were objections. No objections were made. The hearing closed.

Mr. Hodgens outlined the conditions that had been discussed. Mr. Savage discussed an additional condition about security cameras. Following a discussion, all agreed that the Chief of Police will be able to address the specific security needs. Mr. Savage said that he would be satisfied with the conditions set forth by the Chief of Police.

Mr. Alexander emphasized that signage must not change. Ms. Biagetti said that appears to be the proposal.

Ms. Biagetti said that we have a pistol range in Hopedale available 24 hours a day. She could not recall any incident in connection with that facility. Standards of security and education tend to make such facilities among the safest. Mr. Follo said they pride themselves on safety.

Mr. Hodgens then read through each of the requirements for a special permit and asked any ZBA members to raise objections if they believed any of the requirements were not satisfied (use in harmony with by-laws, all requirements met, use will not have detrimental effect that outweighs benefits, master plan not a factor, use will not endanger public safety, off-street parking, water and sewer not an issue, traffic and pedestrian safety will not be put in jeopardy).

Mr. Hodgens returned to the motion of Mr. Costanza and outlined the following conditions that had been discussed:

1. Compliance with all state and federal law.
2. Hours of operation daily from 10 a.m. to 8 p.m.
3. Retail sales area limited to 700 square feet.
4. Compliance with any conditions imposed by Hopedale Chief of Police.
5. Signage will be limited to existing signs at the property (allowing for appropriate name changes).

Mr. Hodgens asked Mr. Costanza if he was incorporating those conditions into his motion. Mr. Costanza confirmed that he was doing so. Mr. Savage seconded the motion.

A roll call vote followed on the motion:

Scott Savage	yes
Nicholas Alexander	yes
Sandra Biagetti	yes
Louis Costanza	yes
Christopher Hodgens	yes

Mr. Hodgens declared the motion had passed unanimously, and a special permit would issue.

Mr. Follo asked that the language in a letter he received from ATF be incorporated into the special permit. Mr. Hodgens read the language aloud and said that would not be a problem and would be included because that is what has been discussed.

Summary of Findings and Decision

The subject property at 2 Evergreen Lane consists of approximately 1.26 acres with a single wood-frame structure containing 13 units (about 11,387 square feet) built in 1988. Unit 12 will house the proposed use. The property is in a GB-A district (General Business A) under the Hopedale Zoning By-Laws. Sale and manufacturing of firearms is allowed in a general business district only with a special permit issued by the ZBA. Hopedale Zoning By-Laws § 11.3.

An applicant does not have “an absolute right to a special permit.” MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638, 639 (1970). The decision to grant or deny “special permits is within the discretion of the board.” ACW Realty Management, Inc. v. Planning Board of Westfield, 40 Mass. App. Ct. 242, 246 (1996). “Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.” G.L. c. 40A, § 9. Conditions may consider “protection of the neighborhood, the Town, and the natural environment” and may include limitations and restrictions designed to address specific features of the proposed use. Hopedale Zoning By-Laws § 10.6(e). Based upon the governing standard, the Hopedale Zoning By-Laws, and the facts presented at the hearings in the instant case, the ZBA exercises its discretion in favor of issuing a special permit with conditions.

A special permit may not issue unless the ZBA finds that “all of the requirements” of the Hopedale Zoning special permit criteria under Hopedale Zoning By-Laws §§ 10.6(d)(1)-(8) are satisfied. Based upon the information available at the public hearings, the ZBA concludes that the special permit criteria are satisfied.

The proposed use will primarily involve the retail sales of firearms. An ancillary use will be modifying firearms (defined under federal regulations as “manufacturing”). There are no “detrimental effects which outweigh its benefits to the neighborhood, town or zoning district in which it is located.” Hopedale Zoning By-Laws § 10.6(1). The proposed use is appropriate for this general business district. Evergreen Lane is a quiet office/retail area with access to route 140. The subject property (1 of 13 units) is very similar to other properties, structures, and assorted businesses in the plaza. The retail store is mainly designed to serve students from a firearms school in Shrewsbury. Traffic is expected to

be minimal with no more than one or two customers in the store at any given time. Signage will be limited to existing signs with appropriate name changes. The only alterations to the structure will be barred windows or rolling steel doors for security purposes. The retail operation is small. The sales floor will be limited to 700 square feet. The store itself is not a “road-side” operation. Instead, it is accessed by a road connecting with route 140 and neatly tucked away in a plaza that houses similar office and retail concerns. The customer base is small and, at least initially, drawn from a firearms training school in Shrewsbury. Given the limited nature of the business, the dimensions of the subject property, and the proximity to neighboring properties, the ZBA is satisfied that the proposed use will not “materially endanger or be hazardous to the public health and safety.” Hopedale Zoning By-Laws §10.6(3). There will not be any adverse impact on traffic or pedestrian safety. Hopedale Zoning By-Laws §10.6(8). There is ample off-street parking in the plaza. Hopedale Zoning By-Laws §10.6(4). Water, sewer, surface water, and groundwater issues are not impacted. Hopedale Zoning By-Laws §10.6(5)-(7). The Master Plan is under development and is not a factor. Hopedale Zoning By-Laws §10.6(2).

No objections were raised by local officials. Several residents raised concerns about the inherently dangerous nature of the product being sold. One resident also added that there has been a noticeable decline in Hopedale during the past 20 years with increased traffic, trucking, pot shops, and now firearms. Residents questioned whether this type of business is what we want for Hopedale.

All of the concerns raised by residents are certainly valid and appreciated by the ZBA. The brief summary of their concerns as set forth herein is not meant to minimize their concerns. This summary also does not convey the passion of their presentations and their affection for Hopedale and concern for its future. While valid, the concerns do not squarely correspond to the criteria for issuing a special permit under the Hopedale Zoning By-Laws. For example, an objection based upon a genuine and understandable dislike of firearms, unease over inadequate gun-control laws, concerns about gun violence, or fear of firearm misuse is not a sufficient legal basis to deny relief. To the extent that some concerns may touch some of the criteria, the ZBA is persuaded that the application merits relief as long as the conditions imposed are followed.

Based upon the foregoing, the ZBA hereby allows the application for a special permit allowing for the retail sales of firearms and allowing for the manufacturing of firearms other than destructive devices with the following conditions:

1. Compliance with all state and federal law.
2. Hours of operation daily from 10 a.m. to 8 p.m.
3. Retail sales area limited to 700 square feet.
4. Compliance with any conditions imposed by Hopedale Chief of Police.
5. Signage will be limited to existing signs at the property (allowing for appropriate name changes).

Copies of this decision will be filed with the Town Clerk and sent to the applicant, Building Commissioner, Tax Assessor, and Police Chief.