

TOWN OF AYER
BOARD OF HEALTH

TOWN HALL – 1 MAIN STREET – AYER, MASSACHUSETTS 01432 – (978) 772-8220 Ext 145

Minutes of November 10, 2021 - Ayer Board of Health Meeting

Location: Remote Participation via Zoom

Meeting was recorded and broadcast by APAC

Members Present: Stephen Slarsky, Chairman, Pamela Papineau, and Patricia Peters

Also Present: Heather Hampson, Administrative Coordinator and Bridgett Braley from Nashoba Associated Boards of Health

Public Hearing Mimi's Place, LLC 96 East Main Street

Present: Stephen Wentzel, owner, Attorney Christophers Lilly, Robert Pontbriand, Town Manager, Attorney Janelle Austin, K&P Page, Ira Grossman, Nashoba Board of Health, Charlie Shultz, Building Commissioner, Chief Gill, Police Chief, and Chief Johnston, Fire Chief.

At 5:30 PM S. Slarsky read the COVID-19 notice to open the Board of Health meeting.

S. Slarsky went over the guidelines for the public hearing stating that the Town would present their concerns, then the applicant would have a chance to speak, and the Board would ask questions of the applicant before opening the hearing to the public how will be given 2 minutes to speak.

S. Slarsky stated that the purpose of the meeting is to hold a public hearing for the hotel/motel license for Mimi's Place located at 96 East Main Street the hearing is required by state law.

At 5:34 PM P. Peters read aloud the public hearing notice that was printed in the paper and posted outside town hall there for opening the public hearing.

P. Papineau went over the timeline of events that lead to the hearing this evening. P Papineau stated that Mr. Wentzel purchased the property known as Casa Manor and applied for a Hotel/Motel license which led to a public hearing back in October 2020 for the license. The Board held several public hearings regarding the hotel/motel license through the fall and winter to gather as much information as possible on the application. At the Board's February 2, 2021, meeting the Board voted and granted a 90 license with conditions which both Mr. Wentzel and his representative Attorney Lilly agreed to. The hearing was then continued to May 10, 2021, when the Board reviewed the conditions placed on the license and how and if those conditions where met. At the May 10, 2021, meeting Mr. Wentzel showed no evidence of trying to meet the Boards conditions of the 90-day license putting him in violation of Massachusetts laws for the operation of a hotel/motel as he is using the property in a non-transient manner allowing people to stay more than 90 days or longer. After the May 10, 2021, meeting Health Agent Bridgette Braley issued a letter to Mr. Wentzel to bring the property to compliance. Later in the summer of 2021 an injunction was filed by Mr. Wentzel against the Board of Health. As a result of the injunction the Judge gave the case back to the Board and allowed the timeline to start again allowing Mr. Wentzel to reapply for a hotel/motel license for the property now known as Mimi's Place. The application was received for a license for the 2022 year which led to the public hearing this evening.

Town Manager, Mr. Robert Pontbriand gave a brief statement to the Board expressing the Town's overall concerns with the property. Mr. Pontbriand stated that the new owner of the motel there has been a complete lack of management of the property. Mr. Pontbriand also mentioned that there is no signage for the property for emergency personal to locate units as well as when you call the number listed for the property the message you hear is from the old owners of the property not the current one. Mr. Pontbriand lastly stated that the Town Manager's Office has received multiple complaints from abutters to the property due to the lack of oversight on the property, the property is not operating in a transit manner as a hotel/ motel there are people staying in small rooms that do not meet codes leading to a quality-of-life issue.

Police Chief Gill went over the Police Department's concerns with the property. Chief Gill stated that he has a report of incidents at the property located at 96 East Main Street over the last three years. Chief Gill stated in 2018 there were 3 quality of life calls, and in 2019-2020 there were 14 quality of life calls in 2020-2021 the number of law enforcement responses to the address increased to 40 for the year. Chief Gill stated that not only have the calls to the property at 96 East Main Street increased with the new owner there has also been an increase of calls from neighbors in the area regarding disorderly people, people walking into other people's private homes looking for the motel. Chief Gill stated that when the police do so to the property to investigate a call there is no management on site.

Ms. Bridgette Braley, Health Agent for the Ayer Board of Health, wanted to comment on P. Papineau's review of the application process. The Board of Health is responsible for issuing a license and the public hearing this evening is in response to the application for a hotel/motel license. Ms. Braley stated that as part of the licensing process yearly inspections are to be completed and stated that she was last on the property in 2018 and follow up was scheduled in September of 2020 when the new owner took over and trigger a public hearing for the new license. Ms. Braley mentioned that she went out to investigate a bed bug complaint and was concerned to find out that people had been living in the motel. This is when a guest register was requested, along with plans of the rooms and other items were requested.

Fire Chief Johnston stated that back during the original public hearing in the fall of 2020 it was requested by the Fire Code Enforcement Officer that a letter by a professional engineer be submitted to the Department stating that the fire suppression system met code for a hotel/motel. If the property is not to be used as a hotel/motel the system will need to be upgraded to meet the code.

Ms. Braley mentioned that the square footage of the units where 4-6 people are living are in violation of the housing code as well as there is no inspection of lead in a hotel/motel.

Attorney Lilly addressed the comments made so far in the meeting. Attorney Lilly stated that they have contacted the police department and are working with the police to address their concerns. Attorney Lilly stated that the previous owner of the motel lived on site so there was 24-hour surveillance, Mr. Wentzell does not live on site but nearby with a number listed at the front desk to call for emergencies.

Attorney Lilly went on to state that the motel is offering a service to those that live there that can not afford to move into an apartment for any number of reasons and gives them a place to stay. Attorney Lilly also mentioned that in the Town approved Master Plan the property is listed as an important emergency housing option for the town. Attorney Lilly also stated that the property has been in existence and used for the same use since the 1950's as well as people listing the property as their home to register to vote since the 1980's. Attorney Lilly stated that the property has been used for housing for a long time and the town was aware of the situation and has let it continue with no issues and only brought up the problem when Mr. Wentzell took over the property.

Mr. Steve Slarsky mentioned that the Board of Health has not been on site to do an inspection for the last several years it was not till a recent complaint that the agent went to the site. Mr. Wentzell applied to the Board of Health for a hotel/motel license which the Board reviewed and is reviewing at this meeting not a license for apartments. The Board needs to look at the defined use of a hotel/motel and ensure the property is being operated as defined to vote on issuing a license.

Attorney Janelle Austin, KP Law, stated that the matter before the Board is the hotel/motel license which was applied for by Mr. Wentzell since he took new ownership of the property. The Board previously denied the application and after a court order the Board is reviewing the manner again. The revised application is for a limited number of units where the original application was for the entire property.

Mr. Slarsky asked since Mr. Wentzell is applying for a hotel/motel license for the six units if he has a housecleaning company he uses for the rooms.

Attorney Lilly mentioned that Mr. Wentzell cleans the rooms himself.

Mr. Wentzell mentioned that he does have a laundry service that he uses.

Mr. Slarsky asked if there was a pest control company since there was a complaint a while back about bed bugs.

Attorney Lilly stated there was a pest control company.

Mr. Slarsky asked if there was a posted rate for the motel per night.

Attorney Lilly stated that there is a set rate per night for the motel, but it does need to be posted.

Mr. Slarsky mentioned he was not sure if the office needed to be maned 24 hours a day but asked if there was someone at the front desk regular hours for people to check in.

Attorney Lilly mentioned that Mr. Wentzell and his partner spilt the office hours but will need to hire an office manager for when they are not available as well as post Mr. Wentzell's number on site.

Mr. Slarsky asked if there was anyone to do onsite maintenance for the property.

Attorney Lilly mentioned that maintenance on site is completed by Mr. Wentzell.

Mr. Charles Shultz, Building Commissioner, stated that he had some concerns about the back units on the property stating he was not sure if they met building or safety code.

Attorney Lilly stated that they are just looking at the 6 units in the front for the hotel/motel license.

Mr. Shultz stated that since all the units are owned by the same person, he expressed concern about ensuring all 26 units on the property are to code.

Attorney Lilly stated that once the 6 hotel/motel units are permitted then they will work on the other units on the property.

Mr. Jonathan Cocker, architect for Mr. Wentzell, stated that the 6 units are proposed to be used for

hotel/motel were built well before building codes were in effect, they are in the R-1 use group under the building code. They do not have sprinkler systems or a fire alarm system but do have individual smoke detectors in each unit. Each unit is a traditional motel set up, sleeping area, area for clothes and restroom. From a building code standpoint existing units that meet the existing non-conforming only if an addition or a level 2 or 3 renovation would a sprinkler system be needed.

Mr. Shultz stated the over the years when doing the public safety inspections on the units the units comply the smoke detectors and are existing non-conforming for sprinkler system.

Attorney Lilly stated that they are not talking about changing the use for the units in the back as they are zoned residential has been apartments in the past and would like that to continue. Attorney Lilly stated that they will go to the Building Commissioner and deal with the issues that are there at some point. The town did mention earlier in the meeting about over crowding in some of the units but stated that there is no inspection report from the Board of Health for that issue to determine the issue to shut it down. Attorney Lilly that this has come to the Boards attention based on what Mr. Cocker has provided and the square footage with the number of occupants, in that there are only 2 units that exceed the occupancy limits.

Mr. Slarsky mentioned that the Board is only looking at the 6 units that was applied for, for the hotel/motel license. The other units in the back will not be part of the hotel/motel license and will not be discussed this evening. Mr. Slarsky thank Attorney Lilly for talking about the property and what is going on at the site and recognizing the safety issues.

Attorney Lilly wanted to discuss 105 CMR 104.840 that allows the Board to issue a variance to give Mr. Wentzell to allow the people that are staying in a non-transient manner time to transition them to a long-term loving situation. There are 36 people that will be left with no place to live if the property is shut down. Attorney Lilly stated that in the letter received by Mr. Wentzell from Ms. Braley after the last meeting in May stated that the property had to be vacated even though it was stated by the Board that it was not their intention to leave people homeless.

Ms. Pam Papineau mentioned that there has been a lot of talk this evening about transient and definitions of transient and stated that this in the Town's Bylaws as a hotel/motel. Ms. Papineau stated that the largest of the 6 rooms is 283 sq.ft. with no cooking facility and asked what they would propose for a definition of transient or temporary for that kind of rental facility.

Attorney Lilly stated that the idea that the definition is in the Bylaws is not correct it is in the Zoning Bylaws which he feels does not apply here since the hotel/motel has existed prior to zoning.

Ms. Papineau stated that it was not her point, the point is that as a town they have weighed in on this matter on what is an acceptable definition of transient and wanted to know what Mimi's Place would like to see as a definition of transient.

Attorney Lilly stated that he would suggest one year.

Ms. Papineau commented that one year in a 283 sq.ft. room with no cooking facilities would not be appropriate.

Attorney Lilly stated that was correct and would meet the definition of transient as the Board sees it. Attorney Lilly stated that Mr. Wentzell would continue to put together a plan for the property and will

accommodate what the Board of Health, with the 90 days stay for all guests. Attorney Lilly that Mr. Wentzel will continue to work with the Town on the remaining units.

Ms. Papineau stated that the idea is not for all the units but just the 6 units what they would see as a definition of transient.

Attorney Lilly stated that he sees transient as one year but as a policy for the 6 units as part of the application he sees 90 days to accommodate the Board of Health.

Mr. Slarsky thanked Attorney Lilly for that clarification and noted that there is a list of people staying at the property from and now that shows people staying longer then 90 days. A letter dated February 11, 2021, states that the applicant was in total agreement with all the items the Board requested, including the 90-day limit. Mr. Slarsky stated that for any number of reasons those conditions were not met. Mr. Wentzel never come back to the Board to address those items and has given the Board no other option than to action against the non-compliance.

Ms. Braley stated that the letter that went out was drafted by Town Council and was sent out on Nashoba letterhead as the agent, just wanted to clarify that for those present.

Attorney Lilly stated that they have always been willing to work with the Board and don't feel that they have not always been willing to work with the Board.

Mr. Slarsky stated that the Board's focus is the health and safety of those in the town that is the only intent of the hearing this evening.

Mr. Slarsky opened the meeting for public comment.

There were several abutters to the property that expressed concerns with the property and the safety of their families listing police presence and drugs arrests at the property. Abutters also expressed concerns about Mr. Wentzell not contacting or communicating with the neighbors about the problems with the property.

Ms. Cyndi Lavin stated that in the past, the church she works with use to put people at Casa Manor for a night or two. Due to the current use of the property, as longer-term stays, they are unable to use the property as they did in the past. Ms. Lavin mentioned that she would like to see the property used in a transient manner again.

Mr. Slarsky went over the items that the Board will discuss and vote on this evening including the 2021 license the new 2022 6-unit license and if needed a vote to vacant the property.

Ms. Trish Peters asked if the Board has any say in the 90-day transient definition.

Attorney Janelle Austin mentioned that as Ms. Braley stated the transient definition is listed in Mass General Law 94G stating the 90-days as well as in Ayer's Zoning Bylaws. There is also a definition in Mass General Law Chapter 140 that states a hotel/motel must be operated in a transient manner and suggested that the Board use those definition in making their decision.

Ms. Peter's stated that she asked due to the question on the 283 sq.ft. unit, stating that 90-days seems like a long time for a unit that small.

Attorney Austin stated that there are also health and safety codes that may come up as well but first we look at the use and see if that use meets the legal requirements and there are of course other requirements for living facilities.

Mr. Slarsky asked Attorney Austin for some clarification stating that the original license is for the entire property not just the front 6 units, if the Board is deciding on the original license, it's on all units.

Attorney Austin agreed with what was stated earlier that the Board will be voting on 3 items: first the original license from 2021, the second item is for the 2022 license application which is for 6 units and lastly if the Board finds any violation of the sanitation code if any action will be taken.

Attorney Lilly stated that the 2022 license is for the 6 units and if there would be any modifications to the 2021 license, he asked that it be modified to only the 6 units as stated in the 2022 license application.

Mr. Slarsky stated that what the Board licensed in 2021 after the testimony heard is not in compliance with what the Board approved and asked the other Board members for their thoughts on the 2021 license.

Ms. Peters stated that she was disappointed with the lack of oversight on the property and certain activities that takes place on the property. Ms. Peters stated that the Board has been reviewing this property for over a year and would like to see an end to the discussion.

Mr. Slarsky mentioned that the condition listed in the 2021 license was never adhered to.

Ms. Papineau mentioned that the license issued in February had conditions which both Attorney Lilly and Mr. Wentzell agreed to before issuing the license and none of conditions were met. Mr. Papineau stated that if anyone that stays at the property is left homeless it is not the Board's responsibility it is that of the property owner who has not met the conditions that were agreed upon at this time. Ms. Papineau stated that Board's responsibility is to act on the hotel/motel license for the property which is not meeting the legal requirements of that use and therefore can not issue a license. Ms. Papineau also expressed her frustration that the neighbors have never met Mr. Wentzell and find that it is irresponsible to operate a business in a residential neighborhood and not introduce yourself to the neighbors. It is not operating as a motel now and never has with no indication that it will ever comply and do not see how the Board can renew a license or issue a new one for the operation of a hotel/motel.

Vote on 2021 license

At 7:21 PM P. Papineau made a motion to revoke the hotel/motel license issued for 2021 for Mimi's Place located at 96 East Main Street. P. Peters seconded. No discussion. Vote to approve by roll call vote: P. Papineau, aye; P. Peters, aye and S. Slarsky, aye

Vote on 2022 license – 6 rooms

At 7:23 PM P. Papineau made a motion to deny the hotel/motel license for 6 rooms located at the property known as Mimi's Place. P. Peters seconded. P. Papineau stated that the property does not fit the definition of a hotel/motel as it is not operating in a transient manner.

Discussion: Mr. Slarsky stated that if the property is brought into compliance and meets the requirements of the code and it is inspected and safe for intended use as a motel they can come back to the Board. The other Board members agreed.

Vote to approve by roll call vote: P. Papineau, aye; P. Peters, aye and S. Slarsky, aye

Discussion on Vacating the property

P. Peters asked Attorney Austin if the Board could set a length of time in which to have those staying on the property to vacate.

Attorney Austin stated that since the property no longer has a motel license the Board can set a length of time for those to vacate the property.

P. Peters asked if this was for 6 units.

S. Slarsky stated that if the vote to vacate is for the entire property under the 2021 license and suggested that the length the Board decides gives those staying on the property enough time to find adequate housing.

P. Papineau mentioned that the Board should also consider the fact that we are coming into the holidays and winter and should set a date for early spring.

The rest of the Board agreed.

At 7:34 PM P. Papineau made a motion to set a date of April 1, 2022, for everyone to vacate the property. P. Peters seconded. P. Papineau stated that the property does not fit the definition of a hotel/motel as it is not operating in a transient manner.

Discussion: The Board discussed how Mr. Wentzell would be notified of the Board's decision this evening as well as those staying at the property. Attorney Austin stated that a letter would be sent and would contain any conditions set by the Board.

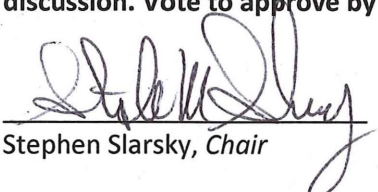
Vote to approve by roll call vote: P. Papineau, aye; P. Peters, aye and S. Slarsky, aye

P. Papineau stated that the notice to vacate should be placed where everyone can access and see it. P. Papineau also mentioned that the Board should get updates on the property and the status of those staying there.

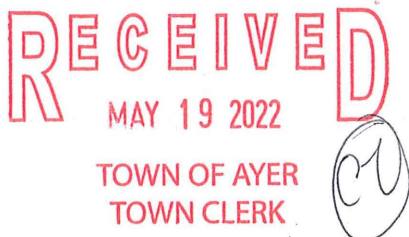
P. Peters agreed.

S. Slarsky agreed that getting regular updates on the status of those living on the property and how many have relocated would be good as well as any status on bringing the property into compliance.

P. Peters motioned to close the hearing and adjourn the meeting at 7:46 PM. P. Papineau seconded. No discussion. Vote to approve by roll call vote: P. Papineau, aye; P. Peters, aye and S. Slarsky, aye


Stephen Slarsky, Chair

Respectfully Submitted,
Heather Hampson, Administrative Coordinator



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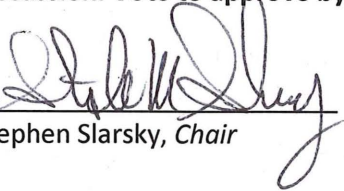
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Stephen Slarsky, Chair

Respectfully Submitted,
Heather Hampson, Administrative Coordinator

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TOWN OF AYER
TOWN CLERK

