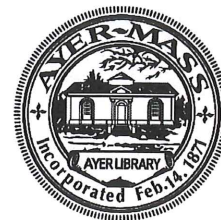


Town of Ayer
Zoning Board of Appeals
Ayer Town Hall
1 Main Street
Ayer, MA 01432



Recorded by APAC

Wednesday August 19, 2020

Remote Participation Open Session Meeting Minutes

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A, Section 18 and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Ayer Zoning Board of Appeals is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort has been made to ensure that the public can adequately access the proceedings as provided in the Order.

Remotely Present: Samuel A. Goodwin Jr., Chair; Michael Gibbons, Vice-Chair; Ron Defilippo, Clerk; John Ellis, Jess Gugino

Call to Order: S. Goodwin called the meeting to order at 6:00 PM.

Approval of Meeting Agenda: A motion was made by M. Gibbons and seconded by J. Ellis to approve the agenda as posted. **Motion passed 5-0.**

Public Hearing: Application for Variance – Kevin Baker, Trustee, Washington Street Realty Trust – 48 Washington Street (Filed 7/10/20): S. Goodwin opened the public hearing at 6:01 PM by reading the public hearing notice as advertised in *The Nashoba Valley Voice* on July 24, 2020 and July 31, 2020. The applicant is seeking a variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.3H1 to allow a 540 sq. ft. studio dwelling unit where 750 sq. ft. is required in a multi-family home. Kevin Baker joined the meeting remotely, along with abutters and nearby residents Dennis Curran, Jonathan and Eileen Kranz, Janet Lomartire, and Barbara Pearson.

Mr. Baker explained the situation. The 3-unit multi-family residence was purchased in March after several years' vacancy. The house, built in 1860, has some pre-existing non-conforming features. The second floor is taken up with a 3-bedroom apartment that will remain unchanged. The first floor is split into 2 apartments, one a 1-bedroom that will also remain unchanged. The other first floor apartment had 2 rooms also in the basement via an open stairwell. On inspection, Building Inspector Charlie Shultz said the stairwell was not safe or up to code and asked that it be closed off. This changes the square footage of the previously existing 1-bedroom apartment, hence the request for a variance for this unit as, with the removal of the stairwell and basement square footage, this apartment would now be a studio with square footage below the 750 sq. ft. required.

Mr. Curran said a 540 sq. ft. unit was substantially smaller than what is now required in the updated Zoning Bylaw. He urged the ZBA not to overturn the will of the revised Zoning Bylaw, even if there are other pre-existing units in Ayer roughly the same below-standard size.

Mr. Curran also had concerns about whether there was adequate parking for all the units. Mr. Baker said that one parking space each would be provided off-street for the two first-floor apartments, while the

second-floor apartment would have 2 off-street parking spaces in tandem. Ms. Lomartire said she would not want the entire yard to be asphalted to accommodate more cars. S. Goodwin understood these concerns but said the ZBA was not dealing with parking at this time; if the parking proves insufficient in the future, the applicant will have to come before the ZBA again at that time. Ensuring compliance with parking will fall under the purview of Building Inspector Schultz, who is also the Zoning Enforcement Officer.

Mr. Kranz asked how the basement would be used going forward. Mr. Baker said there would be no living space down there, just storage and a washer and dryer.

Ms. Pearson also opposed granting a variance for an apartment 30% smaller than required, and asked why 3 families needed to live in that house rather than, say, 2. Mr. Baker said the house was on record as a 3-family and was purchased as such. The Realty Trust wants to improve the property, live up to the Building Inspector's wishes, but still use it going forward as a 3-family house. Its having been advertised as a 3-family affected the decision to purchase, and it would be a significant financial hardship if this were to be lost. Ms. Kranz said she understood the house was being sold as a 3-family and did not think asking the purchaser to change it into a 2-family would have any benefit or change potential parking issues in the future. Mr. Curran said that it was not the Town's concern to ensure a developer make a profit so the hardship issue should not apply. He argued the developer should have done more homework before purchase and had to assume responsibility.

J. Ellis said the purchaser bought the property as a 3-family, and if the variance was not granted, the resultant financial hardship was something caused by the Town's subsequent request to eliminate the stairway and the basement rooms. R. Defilippo said that financial hardship was subjective and the decision to grant a variance should be based on what is good for the town. J. Gugino and M. Gibbons agreed with J. Ellis that the instigation to make the non-conforming units more non-conforming was the result of the Building Inspector's safety concerns. Both also agreed that the house having been listed as a 3-family by the Assessor, and sold as such, was a significant factor.

Motion: A motion was made by M. Gibbons and seconded by J. Ellis to approve the variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.3H1 to allow a 540 sq. ft. studio dwelling unit where 750 sq. ft. is required in a multi-family home. **Motion passed 4-1 by Roll Call Vote, with R. Defilippo opposed.**

Motion: A motion was then made by S. Goodwin and seconded by M. Gibbons to close the public hearing at 6:40 PM. **Motion passed 5-0.**

Public Hearing: Application for Variance – Nasoya Foods USA, LLC. – 1 New England Way (Filed 7/29/20): S. Goodwin opened the public hearing at 6:41 PM by reading the public hearing notice as advertised in *The Lowell Sun* on August 4, 2020 and August 11, 2020. The applicant is seeking a variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2, Dimensional Requirements to allow a 59 ft. building height where 40 ft. is allowed in the Industrial Zone for warehouse addition. Architect Sang Park joined the meeting remotely from California.

The existing 133,239 sq. ft. manufacturing and operation facility was built prior to 1998, with an existing roof height of 59 ft. Nasoya has plans in this application to add a 15,095 sq. ft. refrigerated warehouse addition and is seeking a variance to allow the addition to match the height of the existing building. A second warehouse addition of 11,000 sq. ft., to the same height, is to be planned at some point in the future.

J. Ellis noted the only significant Department Head Review comment came from the DPW regarding stormwater management, truck access, parking, and turning, but that this would be taken up before the Planning Board during Site Plan Review.

Abutters Dan Brackett, of Catania Oils, and Joseph Basile, of JAR Realty Trust, said they had no opposition to the project.

J. Ellis asked if the variance would cover the immediately proposed 15,095 sq. ft. addition, or whether it would also include the eventual 11,000 sq. ft. addition as well. Ms. Sang said the same height variance would be requested for both, but if tonight's variance would only cover the first addition, they would be willing to come before the ZBA again for the other. S. Goodwin said his interpretation of the legal notice was that the ZBA would vote on only the currently-proposed 15,095 sq. ft. addition; the other addition in the future would have to be brought before the ZBA again for a separate variance.

Motion: A motion was made by M. Gibbons and seconded by J. Ellis to approve the variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2, Dimensional Requirements to allow a 59 ft. building height where 40 ft. is allowed in the Industrial Zone for warehouse addition. **Motion passed 5-0 by Roll Call Vote.**

Motion: A motion was then made by S. Goodwin and seconded by M. Gibbons to close the public hearing at 6:53 PM. **Motion passed 5-0.**

Approval of Meeting Minutes:

Motion: A motion was made by S. Goodwin and seconded by J. Ellis to approve the meeting minutes from July 15, 2020 as written. **Motion passed 4-0, with R. Defilippo abstaining, not having been present.**

Adjournment:

Motion: A motion was made by S. Goodwin and seconded by M. Gibbons to adjourn at 6:54 PM. **Motion approved 5-0.**

Minutes Recorded and Submitted by Jess Gugino

Date Minutes Approved by ZBA: 12/16/2020

Signature of Clerk Indicating Approval: Samuel A. Ludwig

Electronic Signature of Chairman inserted by Direction due to COVID-19