

RECEIVED
NOV 18 2021

TOWN OF AYER
TOWN CLERK

1:45pm

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



Recorded by APAC

Wednesday October 20, 2021
Open Session Meeting Minutes

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

Absent: Ron Defilippo, Clerk

Also Present: Carly Antonellis, Assistant Town Manager

Call to Order: S. Goodwin called the meeting to order at 6:05 PM. He stated that due to the ongoing COVID-19 Pandemic, in accordance with Chapter 20 of the Acts of 2021, suspending certain provisions of the Open Meeting Law (OML), public bodies otherwise governed by the OML are temporarily relieved from the requirement that meetings be held in public places, open and physically accessible to the public, so long as measures are taken to ensure public access to the bodies' deliberations "through adequate, alternative means." This meeting will be live on Zoom. S. Goodwin stated that all votes will be taken by Roll Call.

Approval of Agenda:

Motion: A motion was made by M. Gibbons and seconded by J. Gugino to approve the agenda as printed.

By Roll Call Vote: J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Continued from August 18, 2021 & September 15, 2021 - Public Hearing – Application for Special Permit –

Mark Fermanian - 236 Snake Hill Road (Filed July 23, 2021): S. Goodwin reopened the public hearing at 6:07 PM. The applicant is seeking a Special Permit pursuant to Ayer Zoning Bylaw (2019, as amended) Section 5.2.1.2 to allow for the construction of a two-family/duplex residence in the A-2 zone. Attorney Tom Gibbons, Cal Goldsmith from GPR and Mark Fermanian were in attendance. S. Goodwin noted that there were only 4 board members in attendance. Attorney Gibbons stated he would like to proceed. Attorney Gibbons noted that he had sent over some court cases and relevant sections of the Master Plan. S. Goodwin questioned the validity of the court cases. Attorney Gibbons stated that his presentation will highlight the relevance of the cases.

T. Gibbons stated that this parcel is in the A-2 District and the Table of Use provides for two-family dwellings with a special permit. The property meets the dimensional requirements: 12,000 sq feet for a single family and 24,000 for a two family. He said that Section 3.4 of the Zoning Bylaw states that Special Permits can be granted if the Board finds that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood. He then listed 6 of the criteria for granting a special permit. T. Gibbons said that it seemed to him that this proposal meets all criteria, except for character of the neighborhood, based on previous meetings. Board members agreed that they feel the two-family house did not fit in the character of the neighborhood. J. Ellis noted that there are 46 neighbors that are objecting to the proposal. T. Gibbons then went over each criterion for granting a special permit (social, economic, or community needs which are served by the proposal; Traffic flow and safety, including parking and loading; Adequacy of utilities and other public services; Neighborhood character and social structures; Impacts on the

natural environment; and potential fiscal impact, including impact on town services, tax base, and employment). Relating to the neighborhood character, T. Gibbons stated there is no impact in density. He stated that he is well aware of the petition from the neighborhood. He noted that Mr. Fillebrown, an abutter, referred to the proposal as an exception to the bylaw. T. Gibbons stated it was not an exception; it is an allowed use with a special permit. He noted that the petition states this would allow for more multi-family housing and then stated that the ZBA is not a precedent setting authority. Attorney T. Gibbons then referenced several sections of the Master Plan relating to housing and land use.

J. Gugino stated that there has been a lot of emphasis on affordable housing in the references made by Attorney Gibbons. J. Gugino asked if it was going to be marketed/sold as affordable? T. Gibbons stated that it would be fair market housing.

T. Gibbons stated that to deny the permit because there were no other duplexes in the neighborhood... S. Goodwin interrupted and said T. Gibbons was taking what the Board said out of context. T. Gibbons referred to minutes from August 2021 in which Board member M. Gibbons stated that if there were more duplexes in the neighborhood, he would feel more comfortable. T. Gibbons stated that denying the special permit would nullify town meeting's intent. T. Gibbons asked the ZBA to tell him what didn't fit into the neighborhood characteristics.

S. Goodwin said that he went out and looked at the property and he looked at surrounding properties and all were single family homes that were clustered together. He gave an example of when he lived in Merrimack, NH.

M. Gibbons stated that he feels that the duplex, in this situation, does not fit into the character of the neighborhood. M. Gibbons noted that unless the house is deed-restricted, it is not truly affordable housing and Mr. Fermanian can charge as much as he wants.

J. Gugino noted that the Master Plan states that the bulk of higher density residential development is closer to Town. It also notes areas around Flannagan and Sandy Ponds being an outlying area of Town, which to her defines its character.

J. Ellis stated that he felt that the presentation didn't address his concerns. He wants to be supportive of the 46 neighbors that are not in favor of the proposal.

T. Gibbons stated that the Board has the obligation to act within the Bylaw and that all court cases/appeals refer to arbitrary and capricious reasoning. He asked what "irreparable damage" meant in the context of the neighborhood petition?

There was additional discussion between the Board and Attorney Gibbons. J. Ellis stated that the bottom line is we have issues with it not fitting the character of the neighborhood.

Kevin Bresnahan, 4 Wachusett Ave. East stated that it would not fit the character of the neighborhood and that allowing this would allow for additional multi-family housing in the neighborhood. He stated that he is concerned with his kids' safety because of increased traffic. Kevin Bresnahan stated to Mark Fermanian that he had a terrible reputation. S. Goodwin asked Mr. Bresnahan to stop speaking.

T. Gibbons stated that he still doesn't know what "doesn't fit" means. There was additional discussion.

J. Gugino noted that just because something is potentially allowed, does not mean it is automatically allowed.

S. Goodwin asked about the difference in values between a single-family home and a duplex. There was additional discussion. Attorney Gibbons referenced *Fitzsimonds v. the Chatham ZBA* states that the Board may not refuse to issue a permit for reasons unrelated to the standards of the bylaw. He also referenced *Mahoney v. Winchester* and *Fafard v. Reading*. Attorney Gibbons stated that if he knew what the Board's concerns were that he could address them.

Craig Fillebrown, 238 Snakehill Road stated it doesn't go with the neighborhood.

Rhonda Connors, 240 Snakehill Road if he brings this in that it would not fit into the neighborhood and it would change the neighborhood appearance.

Peter Sloan, 4 Standish Road thinks that this will open the door to other duplexes in the neighborhood.

S. Goodwin asked if there were any abutters for the proposal. There were none.

Phyllis Prestileo, Ledgeway, stated that she concurs with the other abutters that have spoken.

Kathy Hebb, 12 Wright Road feels the same way that it will open the door for more and it will have a negative impact on the neighborhood.

T. Gibbons asked what size lot Ms. Hebb had. Ms. Hebb stated that she didn't not know off the top of her head.

T. Gibbons stated that they were willing to have the entrances inside the homes, so it appears to be a single-family home. He is requesting a site visit. He is asking the ZBA to state what the concerns were.

M. Gibbons stated we have focused on neighborhood character and that there are no other single-family homes in the neighborhood.

T. Gibbons stated that the decision that it doesn't fit is arbitrary and capricious. T. Gibbons said that the denial of the special permit is legally untenable. He is again requesting a site visit.

T. Gibbons stated that he wanted to respond to some of the concerns from the neighbors. J. Ellis asked if T. Gibbons had any new information to present. J. Ellis stated that he has not heard of any hardship. T. Gibbons stated that the does not have to provide a hardship because it isn't a variance request.

T. Gibbons stated that concerns have been brought forward regarding numbers of bedrooms. He stated his client will limit the number of bedrooms to four. T. Gibbons mentioned that R. Defilippo brought up the height of the structure. T. Gibbons stated that it will fall within the height requirements for the district. T. Gibbons stated that they will alter the appearance of the home, so it appears to be a single family.

J. Gugino stated that she feels the Board is being badgered.

S. Goodwin stated that we are beating a dead horse. He stated that it is plain how the board, not to mention the neighborhood, feel about the proposal.

T. Gibbons is again requesting a site visit and that the Board review the bylaw.

Phyllis Prestileo asked why it was necessary to apply for special permit. S. Goodwin stated that a special permit is required for a two-family house in the A2 zone.

The Board and Attorney Gibbons discussed objectivity vs. subjectivity. ZBA members agree to ask Town Counsel to define neighborhood character.

Motion: A motion was made by S. Goodwin and seconded by M. Gibbons to have Town Counsel define the term neighborhood character in the bylaw. **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

The ZBA agreed to a site visit on November 13, 2021 at 9:00 AM

Motion: At 7:32 PM, a motion was made by S. Goodwin and seconded by J. Ellis to continue this hearing until 6:00 PM on Wednesday November 17, 2021. **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Request for Extension of Variance – Richard Simpson – 38 Washington St.: The ZBA was joined by Mr. Richard Simpson who is looking for a 6-month extension to a variance he received for 38 Washington Street back in December 2021. He stated that the plans took time to be drawn up and there were some delays with the loan company. C. Antonellis stated that the permit will expire on December 16, 2021; therefore a 6-month extension will toll the permit until June 16, 2022.

Motion: A motion was made by S. Goodwin and seconded by M. Gibbons to approve the request as requested. **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Approval of Meeting Minutes:

Motion: A motion was made by S. Goodwin and seconded by M. Gibbons to approve the meeting minutes from September 15, 2021. **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Adjournment:

Motion: A motion was made by M. Gibbons and seconded by J. Ellis to adjourn at 7:38 PM **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Minutes Recorded and Submitted by Carly M. Antonellis, Assistant Town Manager

Date Minutes Approved by ZBA: 11/17/2021

Signature of Clerk Indicating Approval: Samuel A. Goodwin Jr.