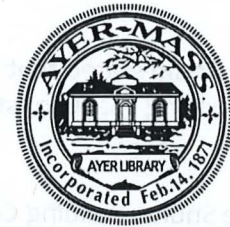


RECEIVED  
AUG 25 2022

TOWN OF AYER  
TOWN CLERK



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



Wednesday June 15, 2022

**Open Session Remote Participation Meeting Minutes**

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

**Also Present:** Carly M. Antonellis, Assistant Town Manager

**Call to Order:** S. Goodwin called the meeting to order at 6:00 PM. He stated that due to the ongoing COVID19 Pandemic, in accordance with Chapter 22 of the Acts of 2022, 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 meeting agenda. S. Goodwin, aye; J. Ellis, aye; M. Gibbons, aye; J. Gugino, aye; R. Defilippo, aye. **Motion approved by Roll Call Vote 5-0.**

**Public Hearing – Appeal of Building Commissioner Decision – Lexvest Ayer, LLC. 0-1 Scully Road**

**(Filed May 6, 2022):** S. Goodwin opened the public hearing at 6:02 PM. The applicant is seeking an Administrative Appeal of a Building Commissioner's decision pursuant to Ayer Zoning Bylaw (2019, as amended) Section 3.1.F regarding a decision on a zoning determination in the Light Industrial District.

Attorney Mark Bobrowski was in attendance on behalf of the applicant. He stated that he disagrees with the building commissioner's determination that the proposed use does not meet the current zoning allowed in the Light Industrial District. The owner of the building is Lexvest Ayer, LLC and the tenant Pumpkin Brook Organic Gardening. Pumpkin Brook provides off-site landscaping services. It currently occupies 4,000 square feet of interior space and some outdoor area. Pumpkin Brook uses the interior space for storage of landscaping tools, trucks and equipment and stores landscaping materials, such as mulch, outdoors. They also use an interior administrative office inside the building. Attorney Bobrowski stated that all uses warehousing and interior storage, exterior storage and professional or business office are permitted in the Light Industrial District. He stated that Matthew Blackham from Lexvest Ayer, LLC. was also in attendance.

S. Goodwin stated that the Zoning Bylaw states that there is no permission by omission, in other words if it is not listed in the Bylaw, it is not permitted. S. Goodwin stated that landscaping is not listed in the table of use. Attorney Bobrowski stated they are not doing landscaping; they are storing landscape equipment.

M. Blackham stated that many of their buildings have many different types of businesses that use their building space for storage. He stated that this is not a retail operation and not open to the public.

Charlie Shultz, Building Commissioner, stated that the Zoning Bylaw states that if something is not expressly permitted than it is prohibited. He stated that he looked under the table of use and landscaping is not listed. Attorney Bobrowski stated that the bylaw is written generically and it doesn't specify what can be stored on the interior or the exterior.

There was further discussion.

M. Gibbons asked how long they have been operating? C. Shultz stated that there was a change in ownership which triggered the need for an inspection of the property.

Priscilla Williams is the Founder of Pumpkin Brook and they have been in the building since March of 2021. P. Williams stated that the company is now under one roof and that the public is not welcome in the building.

C. Shultz stated that though they have been there since 2021, he hasn't seen an application come through for a business certificate or Site Plan Review. He does not have an issue with the business location.

Attorney Bobrowski stated that Site Plan Review may be applicable and if the appeal is approved they will submit an application to the Planning Board for Site Plan Review.

J. Gugino stated that she did not have a problem with this business in the Light Industrial District and would condition the approval for the applicant to go for Site Plan Review with the Planning Board. J. Ellis stated he would also like to condition that a business certificate is filed with the Town. R. Defilippo agrees.

There were no abutter in attendance.

**Motion:** A motion was made by M. Gibbons and seconded by J. Ellis to overturn the decision of the Building Commissioner with the condition that the applicant files for a business certificate and that they submit an application for Site Plan Approval with the Planning Board. S. Goodwin, aye; J. Ellis, aye; M. Gibbons, aye; J. Gugino, aye; R. Defilippo, aye. **Motion approved by Roll Call Vote 5-0.**

**Motion:** A motion was made by S. Goodwin and seconded by M. Gibbons to close the public hearing at 6:24 PM. S. Goodwin, aye; J. Ellis, aye; M. Gibbons, aye; J. Gugino, aye; R. Defilippo, aye. **Motion approved by Roll Call Vote 5-0.**

**Public Hearing – Appeal of Building Commissioner Decision – Mimi's Place, LLC. 94-96 East Main St. & 12-14 Page St.:** Vice-Chair M. Gibbons recused himself as he is a direct abutter to the property. S. Goodwin opened the public hearing at 6:20 PM. The applicant is seeking an administrative appeal pursuant to Section 3.1.F of the Ayer Zoning Bylaw and G.L. c. 40A, §§8 and 15, relative to the Building Commissioner's cease and desist order (the "Order") issued for property located at 14-96 East Main Street and 12-14 Page Street Ayer, MA (the "Property"). The Order orders Mimi's Place, LLC to cease

and desist operating a motel without a license from the Board of Health. Attorney Christopher Lilly was in attendance for the applicant.

S. Goodwin stated that this was as far as the hearing was going to go, as the ZBA has no authority to issue a hotel/motel license. He advised Attorney Lilly that he needed to go to the Board of Health.

Attorney Lilly asked if he could be heard further. S. Goodwin said no, as the ZBA has no authority to issue the license. Attorney Lilly stated that he wanted to overturn a determination in the letter from the Building Commissioner that states that they must cease and desist operating as a motel and that they are not operating as a motel. S. Goodwin advised again that to obtain a motel/hotel license, they must appear before the Board of Health.

Attorney Lilly stated he was looking for guidance from the ZBA on whether or not there needs to be a change of use and he can refile an application. Attorney Lilly stated he understands what the Board is saying but they are not operating a motel currently.

ZBA member J. Gugino stated she understood that the ZBA could not discuss this from a Board of Health perspective, but her question was if the units that they appear to want to designate as residential units, not hotel/motel units, would need a Board of Health license. S. Goodwin stated he did not know, and it was not up for discussion, as the only matter on the table was the Building Commissioner's decision.

Attorney Lilly stated he wished to put facts before the Board. S. Goodwin said no, it was a waste of time. He again advised they needed to go to the Board of Health. Attorney Lilly stated he understood.

ZBA member J. Ellis asked how the Chair wanted to proceed and he agreed with the Chair's position. J. Ellis stated that the issues with the Board of Health need to be resolved first.

ZBA member R. Defilippo stated that he sees other options, such as change of use a possibility, but not for tonight, as it wasn't on the table.

**Motion:** A motion was made S. Goodwin and seconded by J. Gugino that the Ayer ZBA does not overturn the Cease-and-Desist Order from the Building Commissioner as written. J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye; S. Goodwin, aye. **Motion passed by Roll Call Vote 4-0.**

**Motion:** A motion was made at 6:33 PM by S. Goodwin and seconded by J. Ellis to close the public hearing for Mimi's Place, LLC. J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye; S. Goodwin, aye. **Motion passed by Roll Call Vote 4-0.**

*M. Gibbons rejoined the meeting.*

**634 Public Hearing – Application for Special Permit – R.D. Kanniard Homes, Inc. - #33 & 33B Sandy Pond Road:** S. Goodwin opened the public hearing at 6:33 PM. The applicant is seeking a Special Permit pursuant to Ayer Zoning Bylaw Section 5.2.1.2 (Table of Use Regs.) to permit two 2-family dwellings on the property designated as Lot 1 & Lot 2 in the A-2 Zoning District. One 2-family dwelling is proposed for each lot. Kevin Conover was in attendance on behalf of the applicant. S. Goodwin stated that this application had come before the Board before, but there was in an error in the



previous application. K. Conover was experiencing technical problems, the Board waited until he signed back on. He stated that the newly created lots were both over 35,000 ft., where 24,000 is required.

There were no abutters present.

M. Gibbons stated that he was not opposed to the project, but he is concerned with the proximity to corner/intersection. He noted that the primary concern was from the fire department relating to the addresses, which has been rectified. J. Gugino asked about the frontage on each lot. K. Conover stated that Lot 1 had 107 feet and Lot 2 had 103 feet.

**Motion:** A motion was made J. Ellis and seconded by J. Gugino to approve the Special Permit pursuant to Ayer Zoning Bylaw Section 5.2.1.2 (Table of Use Regs.) to permit two 2-family dwellings on the property designated as Lot 1 & Lot 2 in the A-2 Zoning District. One 2-family dwelling is proposed for each lot. J. Gugino, aye; J. Ellis, aye; M. Gibbons, aye; R. Defilippo, aye; S. Goodwin, aye. **Motion passed by Roll Call Vote 5-0.**

**Motion:** A motion was made at 6:53 PM by S. Goodwin and seconded by J. Ellis to close the public hearing. J. Gugino, aye; J. Ellis, aye; M. Gibbons, aye; R. Defilippo, aye; S. Goodwin, aye. **Motion passed by Roll Call Vote 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 May 18, 2022. J. Gugino, aye; J. Ellis, aye; M. Gibbons, aye; R. Defilippo, aye; S. Goodwin, aye. **Motion passed by Roll Call Vote 5-0.**

C. Antonellis stated that she anticipated that the 40B/Affordable Housing application for 65 Fitchburg Road would be filed prior to the next meeting.

**Adjournment:** A motion was made by M. Gibbons and seconded by J. Gugino to adjourn at 6:55 PM. J. Gugino, aye; J. Ellis, aye; M. Gibbons, aye; R. Defilippo, aye; S. Goodwin, aye. **Motion passed by Roll Call Vote 5-0.**

**Minutes Recorded by Carly M. Antonellis, Assistant Town Manager**

Date Minutes Approved by ZBA: July 20 2022

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