

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



Wednesday July 19, 2017
Open Session Meeting Minutes

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

Town Administrator Robert Pontbriand

Not Present: Michael Gibbons, Vice-Chair

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

Approval of Agenda:

Motion: A motion was made by J. Ellis and seconded by R. Defilippo to approve the agenda as posted. **Motion passed 4-0.**

Public Hearing – Application for Appeal of Building Commissioner Decision – Kevin Horgan – 16 Madigan Lane, Ayer – (Filed June 7, 2017): S. Goodwin opened the Public Hearing at 6:05 PM by reading the public hearing notice as advertised in the Nashoba Valley Voice on June 30 and July 7, 2017. The applicant, Kevin Horgan, is seeking to appeal the decision of the Building Commissioner relative to **Site Plan Review (SPR)** for the property known as Ayer Solar II (Assessor's Map 4, parcel 39) pursuant to MGL 40A, sections 8, 15, and 17.

Residents/abutters Kevin Horgan, of 16 Madigan Lane, and Ken Diskin, of 180 Washington Street, distributed a written summation and spoke to the appeal. Approximately a dozen other residents were also in attendance. Mr. Diskin distributed copies of the Dept. of Energy Resource's Model Bylaw language for use regulations pertaining to solar installations as well. Kyle Burchard, from the engineering firm of Goldsmith, Prest & Ringwall (GPR), was present to speak on behalf of the Ayer Solar II project and its applicant.

Mr. Horgan outlined the sequence of events leading to the appeal:

Public Hearing advertised/scheduled for 3/2/2017 before Planning Board for SPR;

GPR did not have complete documents ready;

Hearing therefore not opened but, at Applicant's request, an informal "Discussion" and presentation took place, including questions from abutters;

It was agreed that documents would be ready for official Hearing at 3/27 Planning Board meeting;

On 5/5/2017, prior to this project appearing before the Planning Board again, Charles R. Shultz Jr., Ayer Building Commissioner and Zoning Enforcement Officer, wrote a letter to GPR stating that, "under MGL 40A, Section 3 and the Ayer Town Bylaw 10.2 (a-d) Ayer Solar II does not require Site Plan Review at this time."

On 5/22/2017, Calvin Goldsmith, of GPR, wrote to Jim Fay, Chairman of the Planning Board, withdrawing its SPR application for Ayer Solar II from the Board's consideration.

Mr. Diskin argued that the local Bylaw language of 10.2 (a) re floor area did apply to this project and did trigger the requirement for a SPR. The flaws of the current Zoning Bylaw, still in the process of being revised, were noted, including that the Bylaw does not address new technologies such as solar.

Mr. Horgan stated that the project was “spoon-fed” in pieces to Town boards, perhaps to avoid regulation: The Planning Board previously did a SPR for the Riley Jayne Farm residential subdivision; Lot 10 from the separate Riley Jayne Farm residential subdivision, adjacent to the west of the planned solar array, is now being used by Ayer Solar II to fulfill frontage requirements for Zoning; This commercial use was never part of the SPR for Riley Jayne Farm nor, therefore, did the Planning Board ever have the opportunity to discuss it. Effectively, this placed a Lot associated with a commercial power plant into a residential subdivision without Planning Board review and resident input.

Access to the solar array will be gained by a proposed driveway entering the site from Washington Street, to the east, and work on the driveway is in the process of being issued an Order of Conditions by the Conservation Commission. Mr. Diskin said issues of landscaping, screening, open space requirements, are not part of the Conservation Commission process but do fall under the Planning Board during a SPR. He said the right of public input on these issues should therefore not be taken away from the residents.

Mr. Burchard said GPR initially submitted an application for SPR by the Planning Board “in accordance with the Bylaws” but, after being contacted by the Building Commissioner, withdrew from the process. Mr. Burchard said Town Counsel had been consulted by the Building Commissioner and also agreed.

S. Goodwin questioned why the Site Plan Review process was being fought to begin with. He noted the many residents/concerned citizens in the room for this ZBA Hearing and said that serious communication issues had been revealed in this process.

Mr. Horgan said the applicability of local bylaw 10.2 could be debated endlessly. What he and the other residents were asking was that the Solar II project be reviewed publicly in its entirety, including Lot 10 from the Riley Jayne Farm subdivision, via the once-begun SPR process.

J. Ellis said if the project did not have proper frontage, that was a different issue to address with ZBA.

S. Goodwin said the whole of the project appeared to be snowballing because of the lack of a SPR.

J. Ellis said he did not want to overturn a decision by the Building Commissioner, but he did feel that the Hearing process that had already begun with the Planning Board should not have been aborted.

S. Goodwin said the only way to allow that Hearing process to continue was for ZBA to overturn the decision of the Building Commission. The ZBA’s concern therefore is solely on whether the Commissioner’s decision should be overturned and a Site Plan Review performed, or not.

J. Gugino said she would rather err on the side of allowing greater public input in an open process and would support overturning the Building Commissioner’s decision.

Motion: A motion was made by J. Ellis and seconded by J. Gugino to approve the appeal by Kevin Horgan and overturn the decision of the Building Commissioner regarding Ayer Solar II, thereby requiring a Site Plan Review process to continue before the Planning Board. **Motion passed 4-0 to overturn.**

Motion: A motion was made by S. Goodwin and seconded by J. Ellis to close the Public Hearing. **Motion passed 4-0.**

Public Hearing – Application for Special Permit – Paul A. DiGeronimo, Manager – Air 22, LLC – 22

Fitchburg Road – (Filed June 23, 2017): S. Goodwin opened the Public Hearing by reading the public hearing notice as advertised in the Nashoba Valley Voice on June 30, 2017 and July 7, 2017. The applicant is seeking a Special

Permit from Ayer Zoning Bylaw Section 3.3.2.2 (c) to allow for a drive-through accessory use as part of the proposed construction of a free-standing coffee/donut shop at the easterly end of the parking lot that currently serves the Shop & Save supermarket.

Steve Mullaney, of S. J. Mullaney Engineering, described the project on behalf of Mr. DiGeronimo, who was also present.

A Traffic Impact Statement detailed that the drive-through would use access from two existing two-way curb cuts that already serve the supermarket and parking lot (for 143 spaces) that have been operating on site, under various ownerships, since 1958. The drive-through lane for the proposed new construction will allow for stacking for six vehicles. A bypass lane around the drive-through has also been planned. Plot Plan 34-A-18 shows the site has ample access and maneuvering space for the drive-through, parking, and delivery uses.

Mr. Mullaney said the proposed shop and drive-through may help alleviate Park Street traffic congestion by attracting customers who would otherwise go to businesses around the corner. The supermarket will, however, continue to be the primary draw for customers and therefore the new shop will likely not add traffic problems on Fitchburg Road.

Motion: A motion was made by J. Ellis and seconded by R. Defilippo to grant a Special Permit in accordance with Ayer Zoning Bylaw section 3.3.2.2 (c) to allow a drive-through accessory lane as part of the proposed coffee/donut shop construction. Motion passed 4-0.

Motion: A motion was made by S. Goodwin and seconded by J. Ellis to close the Public Hearing. **Motion passed 4-0.**

Request for One-Year Extension of Special Permit -- Global Montello Group Corp. -- 15 Littleton Road --

(Received June 20, 2017) Scott Fenton, Deputy General Counsel for Global Partners LP, was present. A Special Permit for construction of a drive-through window in a proposed new building was issued in October 2014. The location is on Littleton Road, next to Gervais Ford, near the rotary.

Because the Planning Board did not issue Site Plan Approval until Fall 2015, the ZBA granted a one-year extension in October 2016 to the 2014 Special Permit. Mr. Fenton now represented the Applicant in requesting an additional one-year extension to the 2014 Special Permit, this time extending to October 20, 2018, for good cause.

Given all of the delays in beginning construction, ZBA members asked what constituted "good cause."

Mr. Fenton said that since the 2014 Permit was first issued, Global has become a Fortune 500 company. In this transformation, they have been redesigning their stores in order to provide a better image and services. If the Special Permit is extended, Mr. Fenton said he expected construction to begin in Spring 2018. The previous week, Ayer Planning Board agreed to a one-year extension for the building as well.

J. Ellis said he was skeptical of Global's commitment to this site and the Town. Mr. Fenton said it is a great site, and that they have also been looking at alternatives just in case. However, he added that Global could have terminated its lease with Gervais if it was not committed to this site for the project.

Motion. A motion was made by J. Ellis and seconded by J. Gugino to approve a one-year extension of the Special Permit for Global Montello Group Corp. **Motion passed 3-1 (R. Defilippo dissenting).**

Motion: A motion was made by J. Ellis and seconded by S. Goodwin to close the Public Hearing. **Motion passed 4-0.**

Discussion: S. Goodwin brought up a question posed to the ZBA through Carly Antonellis, Assistant to the Town Administrator. A resident is planning to ask ZBA for a variance to construct a deck. The Bylaw requires a signed and

certified Plot Plan. On behalf of the resident, Ms. Antonellis is asking if ZBA would be comfortable accepting a Mortgage Inspection Plot Plan in lieu of an engineered survey. The Building Inspector has informed the resident of 10 Page Street that he would need a variance for a setback. The proposed deck will be no closer to the plot line than the existing non-conforming house. Town Administrator Pontbriand recommended that ZBA take a formal vote on this question.

Motion: A motion was made by S. Goodwin and seconded by R. Defilippo to accept the Mortgage Inspection Plot Plan as sufficient in this case for the plot plan needed to apply for a Variance before the ZBA. **Motion passed 4-0.**

Approval of Meeting Minutes:

Motion: A motion was made by S. Goodwin and seconded by J. Ellis to approve the meeting minutes from June 21, 2017. **Motion passed 4-0.**

Adjournment:

Motion: A motion was made by J. Ellis and seconded by S. Goodwin to adjourn at 7:20 PM. Motion approved 4-0.

Minutes Recorded and Submitted by Jess Gugino

Date Minutes Approved by ZBA: 09/20/17

Signature of Clerk Indicating Approval: 