



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



Wednesday, April 19, 2023
Remote Participation Open Session Meeting Minutes

Present: Samuel Goodwin, Chair; Michael Gibbons, Vice-Chair; Ronald Defilippo, Clerk; Jess Gugino; John Ellis; Marylin Schmalenberger, Alternate Member

Also Present: Samantha Benoit, Administrative Coordinator

Call to Order: S. Goodwin called the meeting to order at 6:02pm. He stated that in accordance with Chapter 2 of the Acts of 2023, 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. The public may participate remotely by joining Zoom (Meeting ID# 857 9728 7177) or by calling (312-626-6799). For additional information about remote participation, please contact Samantha Benoit, Administrative Coordinator at sbenoit@ayer.ma.us or 978-772-8220 ext. 114 prior to the meeting.

Approval of the Agenda: Motion was made by M. Gibbons to approve the agenda as written. Seconded by J. Ellis.

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. DeFilippo, aye; S. Goodwin, aye.

Motion Passed (5-0)

Continued Public Hearing – Application for a Variance (Building Height) – DMG Investments, LLC. – 201 W. Main St. (Filed January 30, 2023).

Attorney Thomas Gibbons representing DMG Investments, LLC., Cian Hamill, Darryl Filippi, Drew Garvin, and Isacc Smith of DMG Investments, LLC presented the proposed plan and the need for all three Variances as one presentation.

C. Hamill discussed the process in which this project came to be developed. The company has spent the last 18 months looking for feedback in this project from various town departments.

T. Gibbons explained that this is a single use lot consisting of both 201 and 205 W. Main St., the current owner purchased this property in 2013 and uses this space as a single lot, though each is taxed separately.

S. Goodwin asked if there was a deed with both properties.

T. Gibbons explained both properties have one owner, and the Assessor Maps have not been updated. This property is 2.46 acres and DMG has the property under agreement contingent on

the approval of the Height Variance. The applicant is asking for three Variances, height of the building, width of the building, and a reduction in parking. The Variances are being asked for due to the property being impacted by flood plains and wetlands. The width variance is being requested because a portion of the property is in different Zone with different zoning requirements. A hardship was created by the creation of the bylaw and causes a substantial financial detriment to the applicant. The purpose of the Form Based Code is to increase housing variety and fill housing needs.

D. Garvin explained that this building would have three stories of residential housing, with commercial space and parking located on the first floor. The Fire Department was consulted, and the fire truck's turning radius was accommodated. There will be some drainage from the building into the flood plain.

C. Hamill noted all parking is at grade, and a portion of the parking is located underneath the second story.

D. Filippi explained the building was pushed back 15 feet in respect to the Master Plan to promote retail. The first floor will have a lobby for residents and a private courtyard. Emergency parking spaces will be located in the rear of the building, and there are six on street parking spaces available. The use of four stories was designed using Main St. as context. The building will be made with steel and brick in respect to Ayer's history.

C. Hamill further explained that the façade would be broken with different materials to look like multiple buildings rather than just one large structure.

S. Goodwin asked the Board's thoughts on allowing four stories.

M. Gibbons explained he looked at all the comments from the Department Heads, a believes that the building really seems like three stories given that the majority of the first floor is parking. He is not concerned about the height of the building. He understands Charles Shultz's (Building Commissioner) opinion but is more in agreement with Mark Archambault's (Town Planner) stance. He does believe the Board should be cautious since this is the first project in the area, but since this area is a gateway into town and this is the first viable project to be presented some concessions will need to be made.

J. Gugino is in agreement with M. Gibbons.

J. Ellis believes that this project will not match the area and is outside of the Form Based Code.

R. DeFilippo is opposed to the four stories and believes the bylaws should be upheld.

S. Goodwin opened discussion to the public.

Todd Johnson, owner of 193 and 199 W. Main St., believes the project will overshadow other buildings in the area, and is not in favor of this project. He also noted that the two properties

are not really used as one currently with one portion being used as a parking area. He feels the height is too much.

Beth Suedmeyer feels the information presented is insufficient to qualify for a hardship and has concerns about emergency access.

Jose Squeglia, owner of 201 & 205 W. Main St., explained it is one property and he condensed into one property.

Ken Diskin, Vice-Chair of the Ayer Planning Board, noted that the height requested is similar to the buildings located in downtown Ayer, however rooftop equipment would make the building larger, and it cannot exceed 49 feet.

D. Filippi did explain that the elevator would overrun the height but it is not visible from the ground.

Sara Withee, 11 Groton Shirley Rd. asked about the sewer tie-in.
S. Goodwin noted that is an issue for the Planning Board.

C. Hamill addressed the concern about emergency access, and the plans have been reviewed by both the Police and Fire Department.

Dennis Curran, 51 Pleasant St., commented that the proposed building is being compared to buildings that are located in a different zone, the zones are similar but not the same.

T. Gibbons continued the presentation, explaining that majority of the apartments would be at market rate but 25 would be affordable housing. He understands the concern about upholding the Form Based Code as adopted at Town Meeting, but noted there are issues with lot shape and soil conditions. There is also the thought that this project is what will spark the revitalization of that area of town.

S. Goodwin asked how can the bylaw, as voted unanimously at town meeting for three stories, be ignored.

T. Gibbons noted that since the bylaw went into effect there has not been much development on W. Main St.

C. Hamill also noted that there has not been a flood of application for the area, and the bylaw makes it difficult to develop.

T. Gibbons asked the M. Archambault speak to his position.

M. Archambault explained he does support all three variances, and that developing zoning bylaws is more of an art than a science. Form Based Code is new, and it may be in the best interest of the Town to amend the Zoning Bylaw.

B. Suedmeyer noted that she supports the Form Based Code and believes the project would enhance the gateway to the town, but she feels the financial implications have not been shown and believes the hearing should be continued.

D. Curran asked if the owner had owned the property prior to 2019.

T. Gibbons responded with the affirmative.

D. Curran noted that the area had not been developed due to the Form Based Code and therefore perhaps it should be updated.

M. Schmalenberger asked if any thought had been given the look of the rear of the building. Form Based Code is supposed to encourage gathering place, and the bricked over plaza may not.

S. Goodwin explained that is an issue for the Planning Board.

J. Squeglia explained that the proposed four stories were presented to town officials and was led to believe it would not be a problem.

Geoff Tillotson, Planning Board Clerk, explained he was on the Board when the Form Based Code was put into effect. The Planning Board thought of many possibilities as to what should and should not be allowed, however the future cannot be predicted, and the Code now feels restrictive.

Pauline Conley, 40 Cambridge St., noted that you never know something will work until it is put into action.

S. Goodwin saw no value in continuing the meeting, this would just delay the process another month.

M. Gibbons felt that the Board had heard from all interested parties. He did agree with M. Archambault, and G. Tillotson in that the Bylaw may need to be amended.

Motion: M. Gibbons made a motion to grant the Variance pursuant to Ayer Zoning Bylaw 10.5.16.C (Building Height) to increase the maximum building height to 4 stories in the T.5.1 Village Street zone where 3 stories is allowed.

Seconded: J. Gugino

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, nay; S. Goodwin, aye.

Motion Passed (4-1)

Motion: S. Goodwin made a motion to close the hearing of DMG Investments, LLC for a Variance of Building Height at 7:44pm.

Seconded by M. Gibbons

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, aye; Samuel Goodwin, aye.

Motion Passed (5-0)

Continued Public Hearing – Application for a Variance (Width) – DMG Investments, LLC. – 201 W. Main St. (Filed January 30, 2023).

The presentation and the majority of discussion were taken up during the preceding hearing.

S. Goodwin asked why there was a width restriction put into place.

M. Gibbons believes it was to prevent one developer buying multiple lots to create one large development.

Motion: M. Gibbons made a motion to grant a Variance pursuant to Ayer Zoning Bylaw Section 10.5.16.B (Lot Width) to increase the maximum lot width to 254.1 feet in the T.5.1 Village Street zone where the maximum lot width is 192 feet.

Seconded: J. Gugino

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, nay; S. Goodwin, aye.

Motion Passed (4-1)

Motion: S. Goodwin made a motion to close the hearing of DMG Investments, LLC for a Variance of Building Width at 7:48pm.

Seconded by M. Gibbons

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, aye; S. Goodwin, aye.

Motion Passed (5-0)

Continued Public Hearing – Application for a Variance (Parking) – DMG Investments, LLC. – 201 W. Main St. (Filed January 30, 2023).

S. Goodwin opened the discussion by stating his concerns about the decreased parking, and the unassigned parking.

T. Gibbons explained most of the units will be studios or one bedroom. There will be a large area for bike storage, and the building is on the MART bus route. The building is located close to Devens and the Commuter Rail, meaning not as many people will be driving.

D. Garvin noted many of the residents will be working on Devens.

S. Goodwin's is concerned that with 170 units and 172 parking space the number of spaces available will be limited.

C. Hamill noted that extensive parking studies were conducted, and many of the residents will not have a car. There will also be vacant spaces during the day when people are at work.

J. Ellis asked if the six on street parking spaces counted towards the total number of spaces.
C. Hamill explained that they did not.

K. Diskin in reference to Ayer Zoning Bylaw Section 9.1.2 believes this issue could be under the Planning Board's purview.

T. Johnson spoke to current parking issues in that area of town and there is not enough parking as it is. The MART bus has limited hours, the grocery store is too far to walk, and the train is infrequent with limited hours of operation. There is also a concern about the employees of the new business needing parking.

T. Gibbons the MART bus is on demand seven days a week, and calls must be made before 4:20pm.

S. Goodwin noted he does not see the MART bus often.

C. Hamill noted most households have one car and there will be ample parking.

S. Goodwin questioned the crossover between residents and customers.

C. Hamill explained there are no confirmed commercial spaces, but they should mostly be cafes with a one-to-two-hour turnover parking.

P. Conley noted she sees the MART buses frequently.

M. Schmalenberger asked if handicap parking was included in the total number of spaces.

D. Garvin confirmed that the handicap parking is included.

M. Schmalenberger inquired about the shared parking by customers and residents on the weekend.

C. Hamill expects that all space will not be always in use, and there will be a full-time parking staff, with a parking management plan. The bike room is to encourage bike usage to help alleviate the need for parking.

M. Schmalenberger questioned the usage of bikes in the winter, and what of those living in the two-bedroom units.

C. Hamill explained that often the second bedroom is used as a home office.

M. Schmalenberger noted that they are still short 22 parking spaces, and Ayer is much smaller than the places used in their parking study.

J. Gugino is also dubious about the parking.

K. Diskin believes the ZBA may not be the correct permitting authority.

T. Gibbons believes it may be co-current jurisdiction with the Planning Board.

M. Gibbons believes this issue should be taken up by the Planning Board.

T. Gibbons asked that the applicant be allowed to withdraw their application and allow the issue to be discussed during Site Plan Review.

Motion: M. Gibbons made a motion to accept the withdrawal of the requested Variance pursuant to Ayer Zoning Bylaw Section 9.1.3 (Off Street Parking Requirements) and Section 9.1.5.A.2 (Compact Car Parking Spaces) to reduce the required off street parking from 288 spaces to 172 spaces and to increase the maximum percentage of compact car parking spaces from 10% to 20%. without prejudice.

Seconded: J. Gugino

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, nay; S. Goodwin, aye.

Motion Passed (4-1)

Motion: S. Goodwin made a motion to close the hearing of DMG Investments, LLC for a Variance for Parking at 8:31pm.

Seconded by M. Gibbons

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, aye; Samuel Goodwin, aye.

Motion Passed (5-0)

Motion: S. Goodwin made a motion to accept the meeting minutes of March 15, 2023.

Seconded: M. Gibbons.

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, aye; S. Goodwin, aye.

Motion Passed (5-0)

Motion: S. Goodwin made a motion to adjourn the meeting.

Seconded by M. Gibbons

Roll Call Vote: M. Gibbons, aye; J. Gugino, aye; John Ellis, aye; R. Defilippo, aye; S. Goodwin, aye.

Motion Passed (5-0)

Meeting Adjourned at 8:35pm

Minutes Submitted by Samantha Benoit, Administrative Coordinator

Date Minutes Approved by the ZBA: June 21, 2023

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