

RECEIVED  
JUL 15 2021

TOWN OF AYER  
TOWN CLERK

*PC*

11:45am

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



**Wednesday July 21, 2021**  
**Open Session Remote Participation Meeting Agenda**

*This meeting/hearing of the Ayer ZBA will be held in-person at the location provided on this notice. Members of the public are welcome to attend this in-person meeting. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless otherwise required by law. Members of the public with particular interest in a specific item on this agenda should make plans for in-person vs. virtual attendance accordingly. Zoom information for this meeting can be obtained by contacting Carly Antonellis, Assistant Town Manager at [atm@ayer.ma.us](mailto:atm@ayer.ma.us) or 978-772-8220 x100. This meeting will be recorded and air on Channel 8 and [ayerpublicaccess.org](http://ayerpublicaccess.org) the following day.*

**6:00 PM**      **Call to Order**

**Approval of Agenda**

**Public Hearing – Application for Variance – Felipe Goncalves for Jeffrie & Felicity Turgeon**

62 Sandy Pond Road (Filed June 15, 2021)

**Request for Extension of Special Permit – Air 22, LLC – 22 Fitchburg Road**

**Approval of Meeting Minutes**

April 21, 2021; May 19, 2021

**Adjournment**

The next regularly scheduled ZBA Meeting is August 18, 2021

RECEIVED  
JUN 21 2021

TOWN OF AYER  
TOWN CLERK

1:00pm

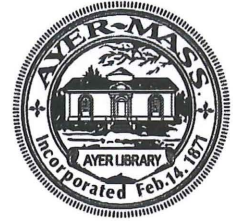


**Town of Ayer  
Zoning Board of Appeals  
Public Hearing Notice**



The Ayer ZBA will conduct a public hearing at 6:00 PM on Wednesday July 21, 2021 regarding an application by Felipe Goncalves for Jeffrie & Felicity Turgeon, 62 Sandy Pond Road Ayer, MA. Applicant is seeking a Variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2 to allow for a 24'9" rear yard setback where 25' is required for home addition. Public Hearing will be held in person with a courtesy Zoom feed; the hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast. For Zoom/Call-In information please contact [atm@ayer.ma.us](mailto:atm@ayer.ma.us) or 978-772-8220 x100.

Advertised June 25, 2021 and July 2, 2021 *The Nashoba Valley Voice*



Town of Ayer  
ZONING BOARD OF APPEALS  
APPLICATION FOR A HEARING

Name of Applicant: Felipe Mendes Goncalves  
(Full Name)

20 Brooks Pond Rd. Leominster, MA 01453  
(Address)

978-320-6582  
(Phone Number)

Felipe@kase remodel.com  
(Email Address)

Applicant is: \_\_\_\_\_ Owner \_\_\_\_\_ Tenant  Licensee \_\_\_\_\_ Prospective Buyer\*

\*If you are a tenant, licensee or prospective buyer please include a letter from the property owner acknowledging the application with the Zoning Board of Appeals.

The name and address of each holder or legal title to the land which is the subject of this petition (list as it appears on the Deed):

Jeffrie S. Turgeon & Felicity A. Turgeon

Location of Property:

62 Sandy Pond Rd. Ayer, MA

Assessor's Map \_\_\_\_\_ Parcel 21-5 Land Size \_\_\_\_\_

Zoning District: A-1 A-2 GR GB DB LI I MUT HCS  
Circle One

Registry of Deeds Book 15851 Page 08

Aquifer Protection Overlay District (circle one) Zone I Zone II N/A

The undersigned hereby petitions the Town of Ayer Zoning Board of Appeals to vary the terms of the Zoning Bylaws for the following purpose:

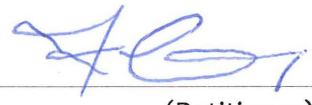
- A VARIANCE from the requirements of the Town of Ayer Zoning Bylaws
- A SPECIAL PERMIT for a specific use which is subject the approval of the Zoning Board of Appeals
- A SPECIAL PERMIT to expand, alter, or change a non-conforming use or structure.
- ADMINISTRATIVE APPEAL (i.e. Building Inspector Decision)

Did you request a building permit from the Town of Ayer Building Inspector? Yes

If yes, were you denied a permit by the Town of Ayer Building Inspector? No  
If you were denied a permit, please attach a copy of the decision from Building Commissioner's Office.

**State briefly the reasons for application and include the appropriate citation(s) from the Ayer Zoning Bylaw:**

Upon completion of the plot plan, we noticed we had to shorten the building in order to meet code, and we did shorten the building, however, when the foundation was built, it was built off 2", which put us back into the setback zone on one small corner of the building. We would like to apply for a variance as this was not intentional.

Date: 06/15/2021 Signed by   
(Petitioner)

978-320-6582  
(Daytime Phone Number)

Felipe@Kasaremodel.com  
(Email)



## **Letter of Acknowledgement**

June 15th, 2021

I, Jeffrie Turgeon, from 62 Sandy Pond Rd. Ayer, MA, acknowledge that Felipe Goncalves from Kasa Remodel & Design is seeking to apply for a hearing with the Zoning Board of Appeals for a variance regarding the addition that was done.

Sincerely,

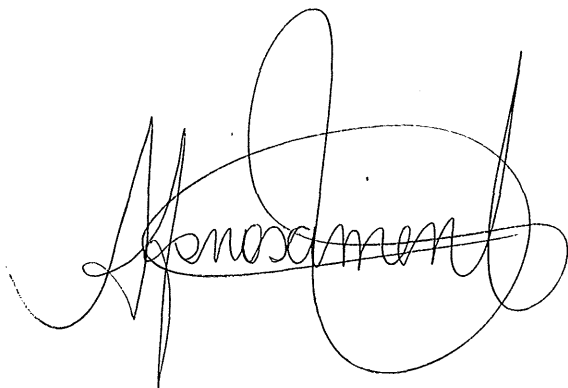
Jeffrie Turgeon

Monday, December 14, 2020

Dear Building Inspector,

We have submitted a Plot plan for an addition on 62 Sandy Pond Road Ayer, MA 01432 and under the addition came in under zoning. This is a document to state on file that we will shorten the addition from 15' to 14'8" in order to meet Zoning.

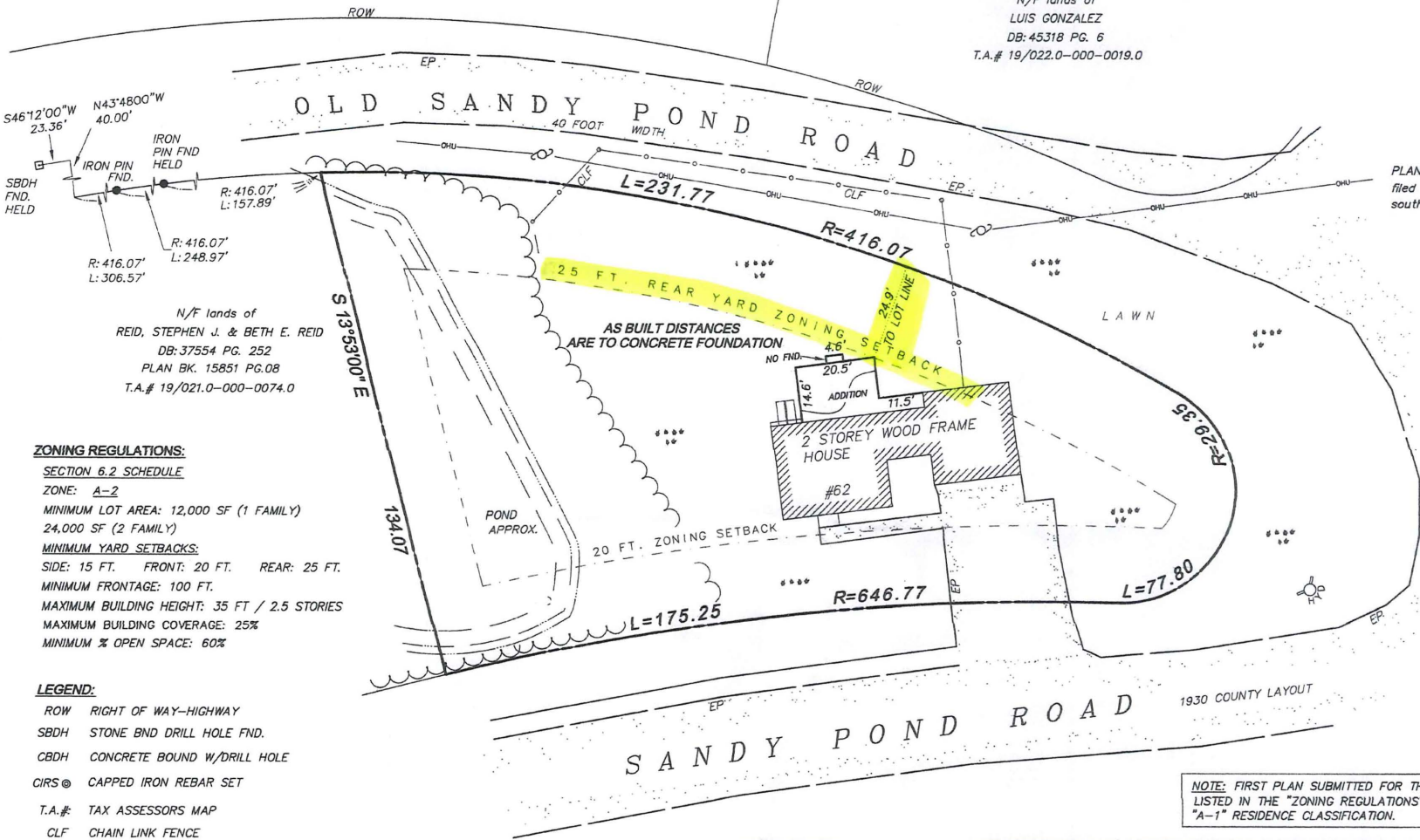
Thank you for understanding.

A handwritten signature in black ink, appearing to be "A. J. [unclear]". The signature is written in a cursive style with large loops and a horizontal line across the middle.

12/14/2020



N/F lands of  
LUIS GONZALEZ  
DB: 45318 PG. 6  
T.A.# 19/022.0-000-0019.0



**PLAN REFERENCE:**  
PLAN # 1274 OF 1984, BK 15851 / 08  
filed at the Middlesex Registry of deeds  
southern district.

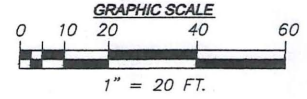
**DEED REFERENCE:**  
RONALD H. CODY TR. CODY FAMILY  
FUNDING TRUST  
TO:  
JEFFRIE S. TURGEON &  
FELICITY A. TURGEON  
DTD: 11/29/2005  
DB: 46559 PG. 19

N/F lands of  
REID, STEPHEN J. & BETH E. REID  
DB: 37554 PG. 252  
PLAN BK. 15851 PG.08  
T.A.# 19/021.0-000-0074.0

**ZONING REGULATIONS:**  
SECTION 6.2 SCHEDULE  
ZONE: A-2  
MINIMUM LOT AREA: 12,000 SF (1 FAMILY)  
24,000 SF (2 FAMILY)  
MINIMUM YARD SETBACKS:  
SIDE: 15 FT. FRONT: 20 FT. REAR: 25 FT.  
MINIMUM FRONTAGE: 100 FT.  
MAXIMUM BUILDING HEIGHT: 35 FT / 2.5 STORIES  
MAXIMUM BUILDING COVERAGE: 25%  
MINIMUM % OPEN SPACE: 60%

**LEGEND:**  
ROW RIGHT OF WAY-HIGHWAY  
SBDH STONE BND DRILL HOLE FND.  
CBDH CONCRETE BOUND W/DRILL HOLE  
CIRS@ CAPPED IRON REBAR SET  
T.A.# TAX ASSESSORS MAP  
CLF CHAIN LINK FENCE  
EP EDGE OF BITUMIN. PAVEMENT  
ROW RIGHT OF WAY

**SURVEY NOTES:**  
1. THIS PLAN IS THE RESULT OF AN ON THE GROUND INSTRUMENT SURVEY  
IN THE MONTH OF NOVEMBER, 2020.  
2. THE PURPOSE OF THIS PLAN IS TO CONFIRM BOUNDARY LINES IN PLACE  
TEING TO BUILDING ADDITION.



**CIRCUMSPECT**  
LAND SURVEY NY VT MA NC  
Roderick R. Frandino, Professional Land Surveyor  
Massachusetts Registration # 55047  
47 Railroad Street #449 Island Pond, VT 05846  
508-209-1853 rod@circumspectlandsurvey.com

**NOTE:** FIRST PLAN SUBMITTED FOR THIS PROJECT INCORRECTLY  
LISTED IN THE "ZONING REGULATIONS" NOTES AS LOT BEING  
"A-1" RESIDENCE CLASSIFICATION.

 Roderick Frandino No. 55047 REGISTERED PROFESSIONAL LAND SURVEYOR STATE OF MASSACHUSETTS	<b>PLOT PLAN-N AS BUILT</b> <b>ONE STOREY ADDITION</b>
	<b>JEFFRIE S. &amp; FELICITY TURGEON</b> OWNER TOWN of AYER MIDDLESEX COUNTY STATE of MASSACHUSETTS
TAX ASSESSORS PARCEL: 19/021.0-0000-0005.0	
SCALE: 1"=20' FILE: AYE-101 FB: 08-15 CAD: AYE-101C MAY 4, 2020	



**Town of Ayer  
Zoning Board of Appeals**

**Transmittal Form – Department Head Review**

X BOS/Town Manager                      Review Deadline Date July 14, 2021  
 \_\_\_\_\_ Board of Health  
 \_\_\_\_\_ Department of Public Works              Public Hearing Date July 21, 2021 at 6:00 PM  
 \_\_\_\_\_ Police Department  
 \_\_\_\_\_ Fire Department  
 \_\_\_\_\_ Building Inspector/Zoning Enforcement Officer  
 \_\_\_\_\_ Conservation Committee  
 \_\_\_\_\_ Treasurer/Tax Collector  
 \_\_\_\_\_ Town Clerk  
 \_\_\_\_\_ Assessor's Office  
 \_\_\_\_\_ Economic & Community Development  
 \_\_\_\_\_ Town Planner

X Variance                      \_\_\_\_\_ Special Permit                      \_\_\_\_\_ Finding/Appeal

Applicant is seeking a Variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2 to allow for a 24'9" rear yard setback where 25' is required for home addition. There was an error Description when foundation was poured. This variance will correct the error.

Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments:  
Defer to ZBA.

Signed *[Signature]* Title Town Manager

Date 6/21/2021







**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

<u>          </u>	<u>BOS/Town Manager</u>	Review Deadline Date <u>July 14, 2021</u>
<input checked="" type="checkbox"/>	<u>Board of Health</u>	
<u>          </u>	<u>Department of Public Works</u>	Public Hearing Date <u>July 21, 2021 at 6:00 PM</u>
<u>          </u>	<u>Police Department</u>	
<u>          </u>	<u>Fire Department</u>	
<u>          </u>	<u>Building Inspector/Zoning Enforcement Officer</u>	
<u>          </u>	<u>Conservation Committee</u>	
<u>          </u>	<u>Treasurer/Tax Collector</u>	
<u>          </u>	<u>Town Clerk</u>	
<u>          </u>	<u>Assessor's Office</u>	
<u>          </u>	<u>Economic &amp; Community Development</u>	
<u>          </u>	<u>Town Planner</u>	

Variance                       Special Permit                       Finding/Appeal

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Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments: Ayer DPW has NO CONCERNS

Signed  Title Director of Public Works

Date 7/14/21



**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

_____	BOS/Town Manager	Review Deadline Date	July 14, 2021
_____	Board of Health		
_____	Department of Public Works	Public Hearing Date	July 21, 2021 at 6:00 PM
<u>X</u> _____	Police Department		
_____	Fire Department		
_____	Building Inspector/Zoning Enforcement Officer		
_____	Conservation Committee		
_____	Treasurer/Tax Collector		
_____	Town Clerk		
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_____	Economic & Community Development		
_____	Town Planner		



X Variance                      \_\_\_\_\_ Special Permit                      \_\_\_\_\_ Finding/Appeal

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Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments:

*None at this time*

Signed *WML* Title *Deputy Chief of Police*

Date *6/28/21*



**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

_____	BOS/Town Manager	Review Deadline Date	July 14, 2021
_____	Board of Health		
_____	Department of Public Works	Public Hearing Date	July 21, 2021 at 6:00 PM
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_____	Town Clerk		
_____	Assessor's Office		
_____	Economic & Community Development		
_____	Town Planner		

Variance                      \_\_\_\_\_ Special Permit                      \_\_\_\_\_ Finding/Appeal

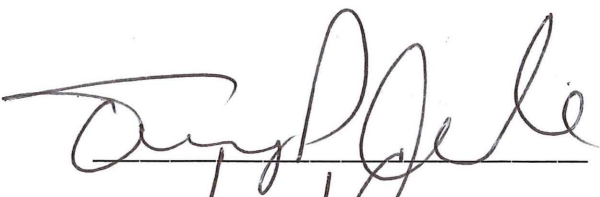
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Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

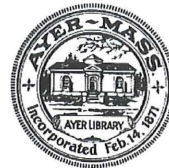
This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments: No fire department issues.

Signed  Title Fire Chief  
Date 6/22/21







**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

_____ BOS/Town Manager _____ Board of Health _____ Department of Public Works _____ Police Department _____ Fire Department _____ Building Inspector/Zoning Enforcement Officer _____ Conservation Committee _____ Treasurer/Tax Collector _____ Town Clerk _____ Assessor's Office _____ Economic & Community Development _____ Town Planner	Review Deadline Date <u>July 14, 2021</u> Public Hearing Date <u>July 21, 2021 at 6:00 PM</u>
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Variance                      \_\_\_\_\_ Special Permit                      \_\_\_\_\_ Finding/Appeal

Description Applicant is seeking a Variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2 to allow for a 24'9" rear yard setback where 25' is required for home addition. There was an error when foundation was poured. This variance will correct the error.

Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments:

*The addition appears to have been built in the 100' buffer zone to a wetland resource area (the pond). Unless the pond is demonstrated to be a stormwater basin, the applicant will have to file with the conservation for an after-the-fact order of conditions.*

Signed *yo-Anley's hr* Title *conservation administrator*

Date *6/24/21*



**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

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_____	Department of Public Works	Public Hearing Date	July 21, 2021 at 6:00 PM
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_____	Fire Department		
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_____	Conservation Committee		
<u>X</u> _____	Treasurer/Tax Collector		
_____	Town Clerk		
_____	Assessor's Office		
_____	Economic & Community Development		
_____	Town Planner		

X Variance                      \_\_\_\_\_ Special Permit                      \_\_\_\_\_ Finding/Appeal

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Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments: *No issues. pd in full*

Signed *Barbara Tierney* Title *Treasurer / Tax Collector*

Date *6/22/21*



**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

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<u>X</u> _____	Town Clerk		
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Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments: No Issues

Signed *[Signature]* Title June 22, 2021  
Date Town Clerk





**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

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_____	Town Planner		

Variance                      \_\_\_\_\_ Special Permit                      \_\_\_\_\_ Finding/Appeal

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Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments:

Signed Thomas Hogan

Title Assessing Administrator

Date 6/24/21



**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

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_____	Conservation Committee		
_____	Treasurer/Tax Collector		
_____	Town Clerk		
_____	Assessor's Office		
<u>  <i>o</i>  </u>	Economic & Community Development		
_____	Town Planner		

  *X*   Variance                      \_\_\_\_\_ Special Permit                      \_\_\_\_\_ Finding/Appeal

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Submitted by   Felipe Goncalves for Jeffrie & Felicity Turgeon   Date   June 15, 2021  

Address   62 Sandy Pond Road   Telephone   Felipe 978-320-6582  

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

Comments:   *RECOMMENDED APPROVAL.*  

Signed   *[Signature]*   Title   *Dir. AOC&D*  

Date   *6/23/2021*



**Town of Ayer**  
**Zoning Board of Appeals**  
**Transmittal Form – Department Head Review**

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_____	Assessor's Office		
_____	Economic & Community Development		
<u>  e  </u>	Town Planner		

  X   Variance    \_\_\_\_\_ Special Permit    \_\_\_\_\_ Finding/Appeal

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Submitted by Felipe Goncalves for Jeffrie & Felicity Turgeon Date June 15, 2021

Address 62 Sandy Pond Road Telephone Felipe 978-320-6582

This plan is submitted for your review, comments, and recommendations. Please return to the Town Manager's Office by the Review Deadline Date so that the Zoning Board can consider your recommendation.

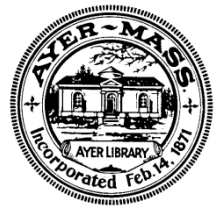
Comments: I support granting this variance as it is a result of unintentional error.

Signed *[Signature]* Title Town Planner

Date 7-13-2021

**Office of the Select Board  
Office of the Town Manager**


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Town of Ayer| Ayer Town Hall| 1 Main Street| Ayer, MA 01432|978-772-8220| www.ayer.ma.us

**Memorandum**

To: Zoning Board of Appeals

From: Carly M. Antonellis, Assistant Town Manager 

Date: July 15, 2021

Re: Request for Extension of Special Permit – Air 22, LLC – 22 Fitchburg Road

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Please see the attached request for extension of a special permit. In consulting with Counsel on this case, they have recommended the following: The permit will expire on July 28, 2021 but it has been tolled pursuant to Chapter 53 of the Acts of 2020 so it will not expire until November 2, 2022 (462 days added on – the amount of days the State of Emergency was in effect). I suggest the Zoning Board of Appeals issue an extension until November 2, 2022, as that would be good cause in accordance with the Act.

Please let me know if there additional questions.

Thank you!



**S. J. MULLANEY ENGINEERING, INC.**  
CIVIL SITE DESIGN & PERMITTING

RECEIVED  
JUN 22 2021  
11:02 AM  
TOWN OF AYER  
TOWN CLERK

April 6, 2021

Ayer Zoning Board of Appeals  
1 Main St.  
Ayer, MA 01432-1365

Re: Special Permit – Air 22, LLC, 22 Fitchburg Rd., Parcel 18-2

Dear Members of the Zoning Board of Appeals:

As you may recall, the Zoning Board of Appeals (ZBA) filed with the Town Clerk on July 28, 2017 a decision approving a special permit to allow a drive through accessory use as part of a free-standing coffee / donut shop at the above-referenced location (copy enclosed).

Per the state Zoning Act, M.G.L. c.40A §9 at this [link](#), prior to August 10, 2016, zoning bylaws had to provide that special permits would lapse in a specified period of time, no more than two years, but, effective August 10, 2016, the maximum duration was increased from two years to three years. Even so, both Ayer Zoning Bylaw (2009) §11.2.1(d) and Ayer Zoning Bylaw (2019) §3.4 G. state that special permits shall lapse within two years if a substantial use thereof has not sooner commenced, except for good cause.

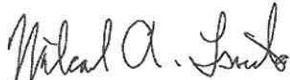
Owner and permittee Air 22, LLC had a tentative lease agreement with a small local chain to locate a coffee / donut shop at the subject site at the time the ZBA processed the special permit application. However, the chain backed out soon thereafter, citing insufficient drive-by traffic on Fitchburg Rd. Thus, Air 22, LLC delayed implementing the use. Air 22, LLC requested that the ZBA extend the permit to July 28, 2021, demonstrating that the permittee had demonstrated good cause for not commencing with the drive through accessory use and extend the period of time before which the special permit will lapse. The ZBA granted the extension and extended the permit to July 28, 2021.

On March 10, 2020, Massachusetts Governor, Charles D. Baker declared a state of emergency due to the outbreak of the 2019 novel Coronavirus (Covid-19). On March 23, 2019 Governor Baker issued an Order requiring all businesses and organizations not designated Covid-19 essential services to close their physical workplaces. On March 26, 2020 Governor Baker issued an order extending the validity of State Permits 45 days after the termination of the state of emergency. As of the date of this letter we are still in a state of emergency. The order does not appear to address local permitting authorities.

As a result of the state of emergency Air 22 LLC was forced to place this project on hold due to the uncertain timeline of the required closures and restrictions. Accordingly, Air 22, LLC respectfully asks that the ZBA, prior to July 28, 2021, determine that the permittee has demonstrated good cause for not commencing with the drive through accessory use as of yet, and/or extend the period of time before which the special permit will lapse for an additional two years to July 28, 2023.

Thank you for your consideration in this matter. Please contact us with any questions or requests for additional information and to inform us of the meeting time and date should you require the permittee to appear before the ZBA regarding this matter.

Sincerely,  
S. J. MULLANEY ENGINEERING, INC.



Mikael A. Lassila, P.E.

Encl.  
Cc: client

RECEIVED  
MAY 20 2019

TOWN OF AYER  
TOWN CLERK

9:01 AM *lf*



Town of Ayer  
ZONING BOARD OF APPEALS

EXTENSION OF DECISION

22 Fitchburg Road

Pursuant to a written request for a two (2) year extension to the granting of a Special Permit to Air 22, LLC. for property located at 22 Fitchburg Road, Ayer MA on April 30, 2019, the Zoning Board of Appeals for the Town of Ayer, Massachusetts pursuant to M.G.L. c. 40A sec.10, finds as follows:

1. On July 19, 2017, the Petitioner was granted a Special Permit to allow for a drive-thru accessory use as a part of free standing coffee/donut shop per Ayer Zoning Bylaw (2009) 3.3.2.2(c)
2. The Petitioner has submitted a request for a request for a two (2) year extension on April 30, 2019
3. At a duly posted meeting of the Zoning Board of Appeals, held on Wednesday May 15, 2019, a motion was made and seconded to grant a (2) year extension to the July 19, 2017 Decision so that the Special Permit will Lapse on July 19, 2021, unless the rights authorized by said Special Permit are exercised within said time period.

By:

*Samuel A. Goodwin, Jr.*

Samuel A. Goodwin, Jr., Chair  
Zoning Board of Appeals

*5/20/2019*

Date



Town of Ayer  
Zoning Board of Appeals  
Notice of Decision  
Appeal Deadline Elapsed

This decision of the Town of Ayer Zoning Board of Appeals for Air 22, LLC. for property located at 22 Fitchburg Road was filed with the office of the Town Clerk on July 28, 2017. 38438-2

Twenty (20) days have elapsed since the date of the filing of this decision with the Town Clerk of the Town of Ayer, and no appeals have been taken from the above decision.

A true copy attest:

  
\_\_\_\_\_  
Susan E. Copeland  
Ayer Town Clerk

Monday, August 21, 2017

Air 22, LLC  
c/o Geranimo Properties  
975 Merrim Avenue, Suite 213  
Leominster, MA 01453

A TRUE COPY, ATTEST

  
\_\_\_\_\_  
AYER TOWN CLERK

RECEIVED  
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2017 JUL 28 AM 8:57

*ly*

Town of Ayer  
ZONING BOARD OF APPEALS  
NOTICE OF DECISION



Submission Date: June 23, 2017  
Petitioner: Air 22, LLC  
c/o Geronimo Properties, Inc.  
975 Merriam Ave. #213  
Leominster, MA 01453

Location of Property: 22 Fitchburg Road  
Ayer, MA 01432  
Assessor's Map 18 Parcel 2

Public Hearing Date: July 19, 2017 | 6:15 PM

Publication Location and Date: *The Nashoba Valley Voice*  
June 30, 2017 and July 7, 2017

Petition: Applicant seeks a Special Permit pursuant to Ayer Zoning Bylaw (2009) 3.3.2.2(c) to allow for a drive through accessory use as part of free standing coffee/donut shop.

Restrictions: None

Findings of Fact:

1. Locus is in GB
2. Project will go before Planning Board for Site Plan Review in August 2017.
3. 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.
4. Plot Plan 34-A-18 shows the site has ample access and maneuvering space for the drive-through, parking, and delivery uses.

Conditions: None

Decision: To grant Special Permit pursuant to Ayer Zoning Bylaw (2009) 3.3.2.2(c) to allow for a drive through accessory use as part of free standing coffee/donut shop.

*Return to  
Air 22, LLC  
c/o Geronimo Properties  
975 Merriam Ave 213  
Leominster, MA 01453*

A TRUE COPY, ATTEST

Town of Ayer  
Zoning Board of Appeals  
Notice of Decision

*Susan E. Popeland*  
TOWN CLERK

*Air 22, LLC / 22 Fitchburg Road*  
Page 1 of 2

**Vote:**

Motion by J. Ellis; 2<sup>nd</sup> by R. Defilippo  
4-0 (4 in the affirmative/0 in the negative)  
Motion Passed (Unanimous)

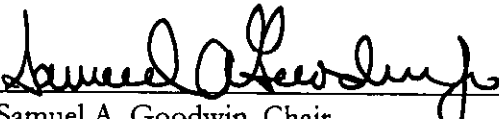
**Board Members Present:**

Samuel A. Goodwin, Chair; Ron Defilippo; John  
Ellis; Jess Gugino

**Board Members Absent:**


Michael Gibbons, Vice-Chair

**By:**

  
\_\_\_\_\_  
Samuel A. Goodwin, Chair  
Zoning Board of Appeals

7/27/2017  
Date

**Notice of Appeal:** Any person aggrieved by this decision may appeal, pursuant to M.G.L. c. 40A, §17, (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section17>) within twenty (20) days after this decision is filed in the office of the Town Clerk of the Town of Ayer.

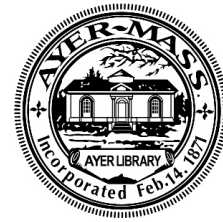
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**A TRUE COPY, ATTEST**

  
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TOWN CLERK



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



**Broadcast on Zoom and Streamed and Recorded by APAC**

**Wednesday April 21, 2021  
Remote Participation Open Session Meeting Minutes**

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

**Also Present:** Carly Antonellis, Assistant Town Manager  
*Via Remote Participation*

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

**COVID-19 Order:** S. Goodwin stated that 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. All votes will be taken by Roll Call.

**Approval of Meeting Agenda:** A motion was made by S. Goodwin and seconded by M. Gibbons to approve the agenda. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye.  
**Motion passed by Roll Call Vote 5-0.**

**Public Hearing – Application for Variance – Sawyer Mae, LLC – Joseph A. Cataldo, Jr.: 66 Westford Road (Filed March 29, 2021):** S. Goodwin opened the Public Hearing by reading the Public Hearing Notice as advertised in *The Nashoba Valley Voice* on April 2, 2021 and April 9, 2021. Applicant is seeking a use variance pursuant to Ayer Zoning Bylaw (2019, as amended) 5.2 Table of Use Regulations Section 5.14 to allow an automotive service repair establishment in the Industrial District located in a portion of the building pursuant to Article 3.2(B)(2). Attorney Tom Gibbons and Joe Catalado, Sawyer Mae, LLC. were present via Zoom.

T. Gibbons stated that the property is the former McNiff farm on Westford Road and is just under 5 acres. Since purchasing the property in 2018, Sawyer Mae, LLC. has built a 9,900 sq ft building that houses office space for MJ Cataldo Landscaping and multiple vehicle bays. There is currently an automotive repair business, Welch Automotive, leasing the bay furthest to the right, if you were standing on Westford Road. They are seeking a use variance for the automotive business. T. Gibbons stated that the power line easement encumbers the property and affects the shape of the lot, which is a good reason for granting the variance. If the use variance were not granted, it would put Welch Automotive out of business, at least temporarily. T. Gibbons stated that there were 4 letters of support submitted with the application.

S. Goodwin stated that the power lines are not new, so the easement was already existing during construction. He asked if the intent was to sublease the bays from the beginning? T. Gibbons stated that during the Planning Board deliberations for Site Plan Approval, it was noted that MJ Cataldo would be the primary tenant, but not the only tenant. T. Gibbons stated that MJ Cataldo is able to repair their trucks and equipment in the bays, so allowing a lease to Welch Automotive, would not be detrimental to the neighborhood. T. Gibbons noted that Erik's Truck and Auto Repair is located at 81 Westford Road and stated that the use is not inconsistent with what is going on in the neighborhood. J. Ellis stated that fact is irrelevant. M. Gibbons stated that it is relevant because there is a similar business on Westford Road.

T. Gibbons stated that the DBA certificate was issued by the Town Clerk's Office in September of 2020. T. Gibbons then summarized the Town Departmental Reviews/Comments. The owner of Welch Automotive was unaware that this use was not allowed in this District. He did apply for and was granted the DBA certificate from the Town Clerk's Office.

Erica Tamlyn, 15 Loon Hill Road, stated that she has concerns about noise at the site and she has noticed more trash at the beginning of the Loon Hill Road development. She also notices noise before 7am.

Gudavalli Ravindra, 3 Lilac Lane, stated that the mulch is kept at the rear of the property near his property line, and it causes dust. He also has concerns on the odor and lighting. S. Goodwin stated that this Board has limited jurisdiction and currently the ZBA can only deliberate on whether to allow the use of the automotive service.

MC Stewart, 21 Loon Hill Road stated that there is a lot of unwanted traffic. She has called Mr. Cataldo to discuss but he never called him back. She stated that there are people walking through her neighborhood while their car is getting serviced. She stated that there is noise coming from the property early in the morning.

Naomi Jones, 5 Liliac Lane stated that she was happy to see the auto mechanic business come to the neighborhood and she has no problems.

Gudavalli Ravindra stated he has had a bad experience and that allowing the auto mechanic will increase the noise. He moved in after the building was constructed.

Discussion continued among the abutters about unwanted traffic. S. Goodwin again reminded meeting attendees that those items were outside of the scope of the ZBA's jurisdiction.

Gudavalli Ravindra asked for a wall to be installed between the properties. S. Goodwin stated that the ZBA has no authority to mandate a wall, or a fence be installed.

J. Ellis stated we need to move on. The hardship of losing customers is not the problem of the ZBA. He referenced a Special Permit for the property. He also referenced the Town Planner's and Economic Development concern about losing industrial land. T. Gibbons stated that there was no Special Permit, it is a "by right" use. There was additional discussion.

J. Gugino feels she needs additional information. T. Gibbons stated that Mr. Cataldo would be happy to have the ZBA down for a site visit. J. Ellis stated he had already been there.

M. Gibbons stated that he has issues he'd like to discuss, but due to the time constraints, he feels that the meeting should be continued.

**Motion:** A motion was made by S. Goodwin and seconded by M. Gibbons to continue the Public Hearing to May 19, 2021 at 6:05 PM. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo. **Motion passed by Roll Call Vote 5-0.**

**Approval of Meeting Minutes:**

**Motion:** A motion was made by S. Goodwin and seconded by M. Gibbons to approve the meeting minutes from March 17, 2021 as written. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo. **Motion passed by Roll Call Vote 5-0.**

**Adjournment:**

**Motion:** A motion was made by S. Goodwin and seconded by M. Gibbons to adjourn at 7:04 PM. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; R. Defilippo, aye; J. Ellis, aye. **Motion passed by Roll Call Vote 5-0.**

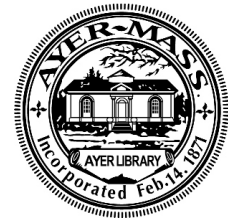
Minutes Recorded and Submitted by Carly M. Antonellis, Assistant Town Manager

Date Minutes Approved by ZBA: \_\_\_\_\_

Signature of Clerk Indicating Approval: \_\_\_\_\_

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

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



**Broadcast on Zoom and by APAC**

**Wednesday May 19, 2021  
Remote Participation Open Session Meeting Minutes**

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

**Also Present:** Carly Antonellis, Assistant Town Manager  
*Via Remote Participation*

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

**COVID-19 Order:** S. Goodwin stated that 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. All votes will be taken by Roll Call.

**Members Present:** S. Goodwin identified all members of the ZBA, stating that all 5 members were remotely present.

**Approval of Meeting Agenda:** C. Antonellis reported that the minutes for April 21, 2021 were not ready and is recommending that they be removed from the agenda. **Motion:** A motion was made by S. Goodwin and seconded by M. Gibbons to approve the agenda, as amended. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 5-0.**

**Public Hearing – Application for Special Permit – Shannon & James Walsh - 21 Wright Rd (Filed April 13, 2021):** S. Goodwin opened the public hearing at 6:03 PM as advertised in *The Nashoba Valley Voice* on April 30, 2021 and May 7, 2021. The applicant is seeking a Special Permit pursuant to Ayer Zoning Bylaw (2019, as amended) Article 2 Definitions "Home Occupation" to allow for the outdoor storage of equipment, trailers, and motor vehicles for landscape maintenance and construction business.

S. Walsh stated that the business is not run out of the home, it is run out of Acton. She reported that is where the employees report for work. She further stated that if maintenance/repairs need to be done on the landscape equipment or vehicles, they bring it to their Wright Road residence to repair it. Their landscape yard in Acton does not have electricity, nor a paved surface and it is much easier for them to work on their equipment in the home driveway.

S. Slarsky, 1 Ledgeway told the ZBA that the increase in the traffic will not be good for the residential neighborhood. S. Walsh then said she and her husband do not run their business from the house. S. Goodwin stated that the road was narrow and he is concerned with the equipment operating on a small street.

S. Goodwin reported that late this afternoon two letters were submitted to the ZBA in opposition of this project. C. Antonellis read the letters into the record:

**Letter 1 – Steve and Sharon Slarsky, 1 Ledgeway, Ayer**

*Please accept this letter in opposition to the requested special permit for 21 Wright Road as posted on your agenda for the May 19, 2021 ZBA meeting. We have lived in this neighborhood for almost 50 years. Wright Road is a residential neighborhood, without sidewalks, dead ended with a great deal of pedestrian and recreational traffic, such as walking, jogging, and hiking. The request is a business application in a residential neighborhood. There have been numerous other requests for other business interests that have been denied by the ZBA in the past. This letter is without prejudice to the petitioners, and we welcome them as neighbors to the neighborhood. The application to maintain commercial equipment is inconsistent with the residential use. The numerous trucks, trailers, equipment noise and additional traffic on the narrow road that was not designed or intended for other than residential use is not in keeping with the character of the neighborhood. We appreciate your consideration in this matter.*

**Letter 2 – Ryan Wilcox 16 Wright Road, Ayer**

*While Sara and I are still planning to attend the remote meeting tonight, I wanted to share my thoughts that rezoning on Wright Road sets a dangerous precedent when there are already previous issues like fireworks and excessive vehicle noise that Sara and I have reported in addition to ongoing construction and blasting for new builds and the noise from the gun club.*

J. Gugino asked if they needed a paved surface because of oil and gas. J. Walsh reported that no, it is easier to fix the equipment on pavement than opposed to laying on gravel. He stated that the request is not for big items, but for items like a skid steer, a mini excavator, dump trucks and lawn mowers.

M. Gibbons stated that the Town Planner was not opposed but suggested that the ZBA could put conditions/restrictions on the Special Permit, if approved. There was additional discussion between the ZBA and the applicant.

S. Slarsky stated we don't want to see an increase in traffic and noise.

Carolyn McCreary, 6 Wachusett Ave. East asked the ZBA to deny the request and stated she supported the Slarsky's letter to the ZBA.

J. Ellis stated he has concerns about the work vehicles in the front of the property.

Chris Prehl, 28 Wright Road stated that working on your work equipment is doing business out of your house. He is also concerned that this will be a difficult issue to monitor/police.

R Defilippo stated he was concerned about enforcement.

**Motion:** A motion was made by S. Goodwin and seconded by J. Gugino to deny Special Permit Request for 21 Wright Road. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, no; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion to deny passed by Roll Call Vote 4-1.**

**Motion:** A motion was made by M. Gibbons and seconded by R. Defilippo to close the public hearing at 6:27 PM. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 5-0.**



**Continued from April 21, 2021 Public Hearing – Application for Variance – Sawyer May, LLC – Joseph A. Cataldo, Jr. 66 Westford Road (Filed March 29, 2021): Reopened the public hearing 6:28 PM. Sawyer Mae, LLC.** Attorney Tom Gibbons was present with Mr. Joe Cataldo from Sawyer May, LLC. Attorney Gibbons stated that the applicant is seeking a use variance for Welch Automotive Services Inc. to be allowed to operate in an Industrial District. The company recently moved to Ayer from Littleton and was granted a DBA certificate from the Town Clerk’s Office; therefore, the applicant was under the impression they could operate in that location. Attorney Gibbons stated that if the variance is denied the applicant will sustain a substantial hardship by losing his investment and having to relocate. He stated that the owner had this type of use in mind when building the facility, as every bay has oil/water separators and MJ Cataldo, the other tenants run their landscape yard there and can fix equipment in their bays. Attorney Gibbons stated that four letters of support were submitted at the previous meeting.

James O’Conor, 12A Turtle Hill Road stated that he occasionally notices Cataldo vehicles because they maintain the condo where he lives. He noted that the Cataldo issue was separate from the petition being sought. Mr. O’Conor has no issues with the application.

M. Gibbons noted that the parcel is built out and that this use does not take anything away from the neighborhood.

R. Defilippo stated that at the previous meeting there were some abutters with concerns with the application. S. Goodwin stated that the neighbors had issues with the landscaping business, not this application.

J. Ellis stated he would be comfortable granting the variance with the condition that it is only for the duration of when Welch Automotive is a tenant. If he closes or relocates, the variance would be null and void.

**Motion:** A motion was made by J. Ellis and seconded by M. Gibbons to approve based on the expiration of the permit of Welch Automotive changing hands. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 5-0.**

**Motion:** A motion was made by M. Gibbons and seconded by R. Defilippo to close the public hearing at 6:41 PM. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 5-0.**

**Public Hearing – Application for Special Permit – Kevin McPherson - 10 Page St (Filed April 26, 2021):** S. Goodwin opened the public hearing at 6:42 PM as advertised in *The Nashoba Valley Voice* on April 30, 2021 and May 7, 2021. The applicant is seeking a Special Permit pursuant to Ayer Zoning Bylaw (2019, as amended) Section 2 Definitions “Home Occupation” and Section 5.3.2.D “Home Occupation” to locate plumbing business with supplies and vehicles out of residence.

*ZBA Board Member M. Gibbons recused himself because he is a direct abutter.*

K. McPherson stated that he is looking to start a plumbing company and run it from his house. He said he will be storing some materials for plumbing use in his garage and home. He anticipates no more than 5 deliveries per week. He said he will be getting a small dumpster for trash. He will not be storing any material, hazardous or otherwise near Balch Pond which is at the rear of his property.

Mr. Joe and Angela Crothers, 5 Groton Harvard Road stated that they are ok with the application, they just want to caution about the traffic issues. When the train goes by the Groton Harvard rail crossing it has the tendency to back up traffic.

Michael Gibbons (recused Board member, also direct abutter), 89A East Main Street stated that he supported the application. R. Defilippo asked if M. Gibbons could speak as an abutter. S. Goodwin said yes because he recused himself as a ZBA Board member and was not voting on it.

J. Ellis and J. Gugino stated they were ok with the application. R. Defillipo stated he had concerns with the application. He does not want large trucks making deliveries in a residential neighborhood. He also has concerns with materials that may be stored there, such as propane.

K. McPherson stated that the deliveries will be made by a standard box truck and delivery vehicles would never exceed the size of a school bus.

C. Antonellis reminded the ZBA that the decision would have to be unanimous since M. Gibbons has recused himself.

**Motion:** A motion was made by S. Goodwin and seconded by J. Ellis to grant the Special Permit as requested. **Roll Call Vote:** S. Goodwin, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 4-0.**

**Motion:** A motion was made by J. Ellis and seconded by J. Gugino to close the public hearing at 6:56 PM. **Roll Call Vote:** S. Goodwin, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 4-0.**

*M. Gibbons rejoined the ZBA.*

**Public Hearing – Application for Special Permit – Timothy & Betsy Dolan - 25 Wright Road (Filed May 3, 2021):** S. Goodwin opened the Public Hearing at 6:57 PM by reading the public hearing notice as advertised in *The Lowell Sun* on May 4, 2021 and May 11, 2021. Applicant is seeking a Special Permit pursuant to Ayer Zoning Bylaw (2019, as amended) Section 7.2.2.a.B (insufficient frontage) for proposed addition. Tim and Betsy Dolan joined the ZBA by Zoom. They stated they have owned the property for 4 or 5 years. They are planning on moving to the property full time after the addition is finished. The addition meets all other setback requirements, but the lot frontage is 63', where 100' is required making it a pre-existing non-conforming lot.

Jamie Prestillio on Ledgeway stated he fully supported the application. He stated that the house is way off off Wright Road.

Julie and Scott Murray, 1 Sandy Way stated that they were very supportive of the application.

Phyliss Prestillio on Ledgeway also stated she supported the application.

ZBA members felt comfortable with the application.

**Motion:** A motion was made by S. Goodwin and seconded by M. Gibbons to approve the Special Permit for

25 Wright Road due to insufficient frontage. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 5-0.**

**Motion:** A motion was made by M. Gibbons and seconded by R. Defilippo to close the public hearing at 7:05 PM. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; J. Ellis, aye; R. Defilippo, aye. **Motion passed by Roll Call Vote 5-0.**

**Adjournment:**

**Motion:** A motion was made by S. Goodwin and seconded by J. Ellis to adjourn at 7:06 PM. **Roll Call Vote:** S. Goodwin, aye; M. Gibbons, aye; J. Gugino, aye; R. Defilippo, aye; J. Ellis, aye. **Motion passed by Roll Call Vote 5-0.**

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

**Date Minutes Approved by ZBA:** \_\_\_\_\_

**Signature of Clerk Indicating Approval:** \_\_\_\_\_

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

DRAFT