

RECEIVED
MAR 07 2022

TOWN OF AYER
TOWN CLERK

12:10pm

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



Recorded by APAC

Wednesday November 17, 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 6:01 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, October 20, 2021 - Public Hearing – Application for Special Permit – Mark Fermanian - 236 Snake Hill Road (Filed July 23, 2021): S. Goodwin reopened the public hearing at 6:03 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 stated that his suggestion is to vote on it right now. M. Gibbons stated he had items to add after going on the site walk and receiving information from Town Counsel.

Attorney Tom Gibbons stated that he wanted to summarize what the issues are. He stated that the site walk took place on November 13, 2021. His understanding of the concerns from each Board member are as follows: M. Gibbons has concerns that duplexes don't fit into the neighborhood and this would be the first duplex in the neighborhood. Attorney Gibbons stated that he submitted data points to the ZBA earlier today and that... S. Goodwin stated that the ZBA did not need to rehash it. Attorney Gibbons stated the ZBA is making a decision and he has the right to present his case and preserve the record. He noted locations of other duplexes in the neighborhood.

Attorney Gibbons stated that ZBA member R. Defilippo had concerns that the structure would be towering. Attorney Gibbons stated that they will meet the height and story requirements in the Zoning Bylaw.

Attorney Gibbons stated that ZBA member J. Gugino stated that two-families are out of character with the neighborhood. Attorney Gibbons stated that he just listed other duplexes in the neighborhood. He also said that J. Gugino stated that the neighborhood opinion helps the Board establish the character of the neighborhood and the neighbors are against this.

Attorney Gibbons stated that S. Goodwin stated previously that there was no legitimate reason to deny the special permit, but it does not go with the neighborhood and that the Board needs to determine whether it is a good idea to allow a duplex in the neighborhood. Attorney Gibbons stated that he showed there were other duplexes in the neighborhood. Attorney Gibbons stated that S. Goodwin had provided an example of a home in Merrimack, NH where the house was too large with 6 bedrooms and did not fit in the neighborhood. Attorney Gibbons stated that his client would agree to a deed restriction to limit number of bedrooms to no more than 4. He noted there is nothing in the bylaw that limits the square footage of a household. He stated that S. Goodwin said that a duplex does not fit into the neighborhood ambiance and that he and his client have offered to change the appearance of the duplex to make it appear as a single-family home, with just one door in.

Attorney Gibbons stated that Mr. Ellis' concerns were that 46 abutters oppose the proposed and the Board has an obligation to the abutters. Attorney Gibbons stated that denying the permit based on the existence of a petition, without citing a specific bylaw concern, would be arbitrary and capricious.

Attorney Gibbons stated that some of the concerns of the neighbors were that Mr. Fermanian didn't take care of his property. J. Ellis stated that that was not allowed and that the Chair did not let people continue to make statements about the applicant's character. J. Ellis stated we've been through all the concerns of the neighbors. Attorney Gibbons stated that he should be able to present his case and preserve the record.

Attorney Gibbons stated that neighbors had concerns about houses being built on Stratton Hill and the Board determined that potential development on Stratton Hill has nothing to do with this application. Attorney Gibbons then stated that the neighbors are fearful this will set a precedent and that everyone agreed that the ZBA is not a precedent setting Board and all applicants would have to go through a similar process. Another concern was brought forth about traffic and safety of the neighborhood kids; Attorney Gibbons stated that none of the homes on the petition are between 236 Snake Hill and either the entrance to Sandy Pond Road or Calvin Street. Attorney Gibbons then said that the neighbors said that duplexes are out of character; he stated he presented other duplexes in the area. Attorney Gibbons stated that the Board now has an opinion from Town Counsel on neighborhood character. S. Goodwin stated that the opinion from Town Counsel did not give any definitive answers. Attorney Gibbons stated that the real point he wanted to make was that the petition states that the duplex will create irreparable harm but that no one has defined what it means. Attorney Gibbons then referenced the letter submitted by the McGuane's located at 2 Sandy Way. The petition states that the duplex would irreparably harm the neighborhood. He referenced paragraph 5 in which the letter states, *"I've had to deal with all kind of tenants most of my life. A duplex doesn't fit or belong in our single-family neighborhood. It won't fit because it will not be appropriate for the character of the neighborhood. Tenants are not owners. Tenants do not treat their rented house or apartments the same as most owners. Most tenants do not take care of the properties they rent. Call it human nature or an 'attitude', it's just a fact, and you can't fix that with a different front door, size or design."* Attorney Gibbons stated that if the Board is basing their decision on the character of people that may live in that building that is wrong. He stated that he's gone through every reason a Board member have raised and there's been an agreement that it is either not an issue, or they have proposed solution. He is requesting that any Board members that have a problem with the application state what it is. He would like to ask each Board member what their concerns are.

M. Gibbons stated that in his 8 years on the Board, the Site Walk conducted on November 13, 2021 was the first one. He thought it was helpful to look at the lot and the area. He stated since August he has been saying that a duplex will not fit the character of the neighborhood and the opinion of Town Counsel talks about use. The proposed use is residential. He has looked at the 6 criteria of granting a special permit. He saw the letter from the McGuane's that Attorney Gibbons referenced and would never define a neighborhood based on the opinions of one letter. He noted that there are concerns from the neighbors and he too had concerns. After reading Town Counsel's opinion, he is of the opinion that this use will not be more detrimental to the neighborhood. The applicant is not changing the use.

J. Gugino stated she's still over on the neighborhood character in terms of being on one lot and the increasing density in an area that is already fairly dense.

J. Ellis stated he still stands in support of people in the neighborhood. He said when he reads Ayer Zoning Bylaw Section 3.4.B that the Board has to determine that the adverse effects of the proposed use won't outweigh its beneficial impact and that he does not see beneficial impacts to the neighborhood.

Before hearing from abutters, C. Antonellis stated that given the number of neighbors and abutters that testimony should be limited to no longer than 3 minutes.

Carolyn McCreary, 6 Wachusett Ave. East stated that we need to follow our bylaws and she doesn't see any reason why we would need to make an exception and she doesn't see a good reason.

Bob and Susan-Tordella Williams, 5 Hedgeway asked if the intended use is for long term rentals, it is not explicitly stated in the bylaws, so therefore it is excluded. Susan Tordella- Williams would like to echo Carolyn McCreary and asked if this proposal fit within the Town's Master Plan where it states that new development should be built near transit. She stated that she bicycles and walks that road and fewer cars are better.

Kevin Bresnahan, 4 Wachusett Ave. East stated that his children bike and walk past the proposed duplex location. He stated that the character of the neighborhood is viable criteria to consider. He is against this proposal.

Attorney Gibbons stated that he wanted to respond to J. Gugino's and J. Ellis' comments and that density is the first time being brought up as a problem. He stated that there is enough lot size for a duplex given the density requirements. He asked that the neighborhood impact be defined and if there is a problem, he can find a solution.

Mr. Fermanian stated that he is not a public speaker and that much has been said about the character of the neighborhood and that by definition a neighborhood is neighbors, not buildings. All the people that have been complaining are his neighbors and he doesn't know why that they've said north of the bridge there are no duplexes and asked if his neighbors were better than the rest of the Town. He stated that this Board has approved several duplexes throughout Town and that he is doing what the bylaw requires him to do. M. Fermanian stated that the Building Inspector is in favor of a duplex and he doesn't know why this neighborhood is so special when the rest of the Town has other duplexes and he is requesting that the Board vote in favor of his application.

Motion: A motion was made by M. Gibbons and seconded by J. Gugino to approve the 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. **By Roll Call Vote:** J. Gugino, no; M. Gibbons, aye; J. Ellis, no; S. Goodwin, no. **Motion failed 1-3.**

Motion: At 6:38 PM, a motion was made by S. Goodwin and seconded by M. Gibbons to close the public hearing. **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Public Hearing – Application for Variance – Brent Routhier - 11 Harvard Road (Filed October 29, 2021): S. Goodwin opened the Public Hearing at 6:39 PM by reading the public hearing notice as advertised in the *Lowell Sun* on November 2, 2021, and November 9, 2021. Applicant is seeking a Variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2 to allow for 11,994 sq. ft. lot where 12,000 sq. ft. lot is required in the A-2 Zoning District for the demolition of current structures and construction of a single-family home. Kevin Conover from David E. Ross Associates was in attendance on behalf of the applicant.

K. Conover stated that currently there is an existing house and a garage and would like to tear them down and construct a single-family home. The lot square footage is short 6 square feet.

M. Gibbons asked if everything else was ok relating to dimensional requirements. K. Conover stated yes.

J. Gugino and J. Ellis had no concerns.

Motion: A motion was made by M. Gibbons and seconded by J. Ellis to approve the variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2 to allow for 11,994 sq. ft. lot where 12,000 sq. ft. lot is required. **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Michelle and George Calhoun, 9 Harvard Road asked if the abutters could be heard from. S. Goodwin apologized. M. Calhoun asked which way the building was going to face, Marshall Street or Harvard Road. K. Conover stated that it is proposed to face for Marshall Street. She asked how much of the lot the house would take up. K. Conover stated that all dimensional requirements will be met. She then asked if the house would be as tall as the condos. K. Conover stated that the building height will meet the requirements in the bylaw. S. Goodwin said the ZBA's purview is only the lot size.

Misty Williams-Fritze, 7 Harvard Road asked why there is a requirement for 12,000 square feet and why they have to allow for an exception. She said that there are 5 new neighbors in the neighborhood in the past nine years.

K. Conover stated that the Town's original zoning, dating back to 1968 calls for 12,000 square foot lots in this district.

Ms. Williams-Fritze stated that they weren't unhappy about someone redoing the house, but she hopes that the size of the structure won't be too big like the duplexes. S. Goodwin stated the ZBA only has purview over the lot size.

Motion: A motion was made by J. Ellis and seconded by J. Gugino to close the public hearing at 6:59 PM. **By Roll Call Vote:** J. Gugino, aye; M. Gibbons, aye; J. Ellis, aye; S. Goodwin, aye. **Motion passed 4-0.**

Public Hearing – Application for Variance – Mark Fermanian - 236 Snake Hill Road (Filed October 29, 2021): S. Goodwin opened the Public Hearing at 6:59 PM by reading the public hearing notice as advertised in the *Lowell Sun* on November 2, 2021, and November 9, 2021. Applicant is seeking a variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2 to allow for two single family lots, one with 67.71 feet of frontage and one with 61.07 feet of frontage, where 100 feet is required in the A-2 Zoning District.

Attorney Gibbons was in attendance with his client Mark Fermanian. Cal Goldsmith from GPR, Inc. was also in attendance. He stated that 236 Snake Hill Road is in the A-2 lot and a buildable lot requires 12,000 sq. ft and 100' feet of frontage. He is proposing to create two lots, both with 12,000 sq. ft., one with 67.71 feet of frontage and the other with 61.07 of frontage. He referenced MGL chapter 40A, section 10. He stated that the lot shape is what gives rise to the need for the variance. He stated that a literal enforcement of the bylaw would cause hardship to Mr. Fermanian. He stated that adding to the hardship, was the ZBA's denial of the Special Permit for this property. During the Special Permit process, he stated that traffic wasn't a concern and that utilities weren't a concern. There are no physical impediments for safe access to this lot. He referenced an email he sent earlier in the day to the ZBA that listed properties in the neighborhood with less than 100' of frontage. He stated it would not be out of character to have lots with under 100' of frontage.

S. Goodwin asked if he had seen the departmental review submitted by the Building Department.

T. Gibbons stated that the Building Commissioner indicated that the special permit for the property would be more appropriate via his submission for the special permit/duplex application.

S. Goodwin then referenced the Building Commissioner's November 3, 2021, letter regarding the frontage on the two abutting properties and the size of the building envelope.

T. Gibbons stated that they would meet the setback requirements. S. Goodwin asked about the driveway for the property.

C. Goldsmith stated they would relocate the driveway between the two houses. The house would be built the long way on the lot, and they are not looking for any relief for dimensional requirements.

S. Goodwin asked for Board member questions. M. Gibbons stated that after taking a look at the lot at the site walk this past Saturday, that he tends to agree with the department heads that the special permit should have been approved. M. Gibbons supports the application.

J. Gugino stated that if we give the variance on frontage, we'd be creating two non-conforming lots. She is opposed to creating two non-conforming lots and is concerned about the density.

J. Ellis stated he is on the same page. There is not enough frontage. He stated when Attorney Gibbons referenced the other houses in the neighborhood with reduced frontage, that the Board didn't know when those houses were built.

Susan Tordella Williams, 5 Hedgeway stated that she doesn't see the difference between a duplex and two houses. It is still two non-conforming lots. She stated that the Towns have Zoning because a neighborhood agrees on the standards they would like to see.

Kevin Bresnahan, 4 Wachusett Ave East stated that he is opposed to this as well. There are traffic concerns with the narrow road and this proposal would overcrowd the lot. He objects to the proposal.

Phyllis Prestileo, 8 Ledge way asked if the lot was going to be subdivided? S. Goodwin stated yes. She stated that it set a precedent that wasn't very agreeable.

Annie Reed, 7 Wachusett Ave. East stated that if the houses can only be 36' wide, there would have to be a driveway that wraps around to the side of the house that will create a lot of hardscape and the appearance would change the way the houses look.

Attorney Gibbons stated he that he wanted to address density concerns from J. Gugino and that they've been through the process for 3 months and it's the first time it is being brought up. He stated that density has to do with the lot itself, so this is not a density issue, this is a frontage issue. The purpose of frontage is safe access to the property which can be achieved even with the reduced frontage. Attorney Gibbons said there is not enough frontage and that's why the ZBA has the authority to grant variances.

J. Gugino stated that Massachusetts law tends to disparage variances and they should be granted sparingly. Attorney Gibbons stated that this Board has granted other variances for reduced lots.

Attorney Gibbons stated that we've just been through a grueling process, and he is now providing a solution. S. Goodwin stated, you are providing an alternate plan, not a solution. T. Gibbons stated that there are other homes with reduced frontage, and this could be granted without substantial derogation from the bylaw.

S. Goodwin asked Mr. Fermanian what his current lot size is at 234 Snake Hill Road? M. Fermanian stated about 16,000 square feet.

Kevin Bresnahan, 4 Wachusett Ave. East stated that he would argue that this isn't a very large lot. He is concerned about the addition of a shared driveway in the neighborhood. Attorney Gibbons stated that if the Board and neighbors prefer two separate driveways, they will do two driveways.

Carolyn McCreary, 6 Wachusett Ave. East stated it is premature to approve this because there have been no plans submitted. She stated she has the same argument as before, that we have zoning bylaws for a reason.

M. Gibbons stated that we approved a variance at 48 Wright Road in 2020, that was arguably closer to where the abutters live. He stated there was not an ounce of feedback on that application and that he thinks the board created the hardship by denying the Special Permit. He stated we have approved variances in the neighborhood before.

S. Goodwin asked M. Gibbons if he felt comfortable creating two non-conforming lots? M. Gibbons stated that's why the ZBA exists. The Board exists for cases such as this.

J. Gugino stated that 48 Wright Road was sold as a nonconforming lot and here we would be creating two non-conforming lots.

J. Ellis stated that we are talking serious frontage and the request is almost half.

Susan Tordella-Williams, 5 Hedgeway stated she is still opposed because there is not enough frontage and the creation of two non-conforming lots. She stated that this property is on the gateway to the neighborhood and the road is very narrow.

Phyllis Prestileo, 8 Ledgeway stated that it is a really bad idea to make two non-conforming lots where a conforming lot currently exists.

Attorney Gibbons stated that the ZBA would be creating a non-conforming lot by way of a variance, which is why the ZBA exists. He stated that he mentioned in the prior hearing in which the Master Plan calls for the efficient use of land, including some leniency relating to the Zoning Bylaw.

He is asking that the Master Plan documents submitted for the previous special permit application be submitted to this application. He stated that he was baffled how the Board at previous meetings stated the issue was neighborhood character and now tonight the issues is density. He referenced a caselaw relating to the Conservation Commission of Reading in which the criteria devised for the occasion.

S. Goodwin stated I want to understand what you just referenced with the case law. Attorney Gibbons stated that this is not a personal attack on any board member. He further stated that the criteria being applied here and on the prior decision is devised for the occasion. He has answered all the issues raised by the Board. He stated there were other homes in the neighborhood with less than the requested frontage.

J. Gugino stated that she feels the person of the applicant did not have any effect on her rulings on this application. S. Goodwin and M. Gibbons agreed.

Motion: A motion was made by M. Gibbons and seconded by J. Gugino to grant a variance pursuant to Ayer Zoning Bylaw (2019, as amended) Section 6.2 to allow for two single family lots, one with 67.71 feet of frontage and one with 61.07 feet of frontage, where 100 feet is required in the A-2 Zoning District. **By Roll Call Vote:** J. Gugino, no; M. Gibbons, aye; J. Ellis, no; S. Goodwin, no. **Motion failed 1-3.**

Motion: A motion was made by J. Gugino and seconded by J. Ellis to close the public hearing at 7:36 PM. **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 J. Gugino to approve the meeting minutes from October 20, 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 7:36 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: February 16, 2022

Signature of Chair Indicating Approval: _____

