



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



Wednesday, January 11, 2023
Remote Participation Open Session Meeting Minutes

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

Also Present: Carly Antonellis, Assistant Town Manager; Samantha Benoit, Administrative Coordinator

Call to Order: S. Goodwin called the meeting to order at 6:00pm. He stated that due to the ongoing COVID-19 Pandemic, in accordance with Chapter 22 of the Acts of 2022, suspending certain provisions of the Open Meeting Law (OML), public bodies otherwise governed by the OML are temporarily relieved from the requirement that meetings be held in public places, open and physically accessible to the public, so long as measures are taken to ensure public access to the bodies' deliberations "through adequate, alternative means." This meeting will be live on Zoom. 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. Gugino.

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

Motion Passed (5-0)

Continued Public Hearing-Application for a Comprehensive Permit (MGL 408, Sections 20-23) Neighborhood of Affordable Housing, Inc. 65 Fitchburg Road (Filed June 24, 2022)

(Note: Various sections of the notice of decision and waiver list will be referenced in the following minutes. To view the sections noted please refer to

https://www.ayer.ma.us/sites/g/files/vyhliif2756/f/uploads/comprehensive_permit_decision_-_revised_1-7-23.pdf)

Paul Haverty of BSC Group continued his presentation of the draft notice of decision for the proposed project.

J. Gugino pointed out a few grammatical errors that would need to be corrected.

J. Ellis expressed concern that the decision states that only 25% of the housing is affordable and not 100%, meaning the applicant could change the project from 100% affordable housing in the future. (IV.B.1)

P. Haverty explained that the language used is the state minimum requirement and cannot be changed by the Board. The Board can put provisions in the list of waivers to guarantee the project remain 100% affordable.

S. Goodwin asked for clarification as to cares for the sidewalks and walkways. (IV.E.20)

P. Haverty explained that it is the responsibility of the applicant, and the language can be updated to reflect that.

J. Ellis noted that the issue of signage had not been addressed. (IV.E.6)

Stephanie Kiefer of NOAH stated that they were not seeking a signage waiver nor was signage going to be included in this project. If that changed the applicant would have to come before the Board again.

P. Haverty explained the updates made to IV.E.27 to include the involvement of the Conservation Commission. Sections IV.F.4, and IV.F.5 were added based on the peer review suggested conditions.

J. Ellis thought that the turning radius of the fire truck had been addressed. (IV.F.4)

Taylor Dowdy of BSC Group noted that it had been but the Green International did not agree with the assessment and submitted drawings.

P. Haverty noted updates to section IV.H.2, in which the Applicant and the DPW shall determine if gate valves shall be needed, and section IV.H.7, in which it is made clear that the applicant is responsible for all trash and recycling removal.

P. Haverty explained that a percolation test shall be required as recommended by the peer review. (IV.I.15)

T. Dowdy explained that soil tests are more common now but both tests will be performed in this case.

P. Haverty explained that the addition of section IV.J.9 in which trees planted along Fitchburg Rd. will be a minimum distance of 10' behind the overhead wires.

This concluded the discussion of the notice of decision. The list of requested waivers was then discussed.

P. Haverty noted that the applicant has asked for a blanket waiver from all Town Bylaws, but it is recommended that the Board look at each waiver individually.

P. Haverty explained the first few waivers are to allow the project to move forward, allowing for changes in setbacks, minimum floor area, and height of the building. (Waivers 1-12).

S. Goodwin asked if the applicant would be returning for Phase II.

P. Haverty noted that this notice of decision and waiver list covers both Phase I and Phase II of the project.

P. Haverty noted the waiver in which the applicant asked for a reduction in required parking spaces. (Waiver 13)

P. Haverty explained that the applicant is seeking a waiver to reduce the number of trees planted per park space.

J. Gugino asked how many trees would be planted.

S. Kiefer explained that there would be no vegetative islands in the parking lot, but they would still plant about 45 trees around the perimeter of the parking lot.

Frank Valdes, NOAH's engineer, noted that other types of plants would surround the parking area.

P. Haverty noted that a performance bond can be required by the Board and does not have to just pertain to the work being done to the entrance to the complex. (Waiver 26)

S. Goodwin asked if the performance bond, noted earlier in the document, was all encompassing.

S. Kiefer explained that the performance bond noted in Waiver 4 was waived.

P. Haverty said he could add a performance bond condition in which the Board can impose a bond consistent with Mass. General Law. (IV.F.6)

C. Antonellis asked what steps the town would have to take in regards to the bond.

P. Haverty explained that Mass. General Law does explain the various ways in which a bond can be posted.

P. Haverty moved the discussion onto the requested waiver of Building Permit Fees. (Waiver 27)

C. Antonellis presented the estimated fees for the project, included was the Water, Sewer, and Building Permit fees. The applicant requested a 100% waiver of all fees. The town does not feel that is possible and suggested a 50% waiver of Building Permit Fees and a 40% waiver of Water and Sewer fees, and have the applicant take up the cost of adding a sidewalk and crosswalk. The Town is also willing to forgo their 30% of all Electrical and Plumbing permit fees. The Electrical and Plumbing inspectors are paid by the permit and therefore the fees cannot be completely waived.

Dan Van Schalkwyk, DPW Director, explained that the connection fees for Water and Sewer help to pay for the use of Devens as well as fund other DPW projects. These fees would help the with maintenance of the Water and Sewer infrastructure. The estimated connection fees were based on the number of bedrooms, the 40% reduction was based on if there were only one bedroom in each unit.

C. Antonellis explained the Building Permit fees were based on the plans that were available at the time.

S. Kiefer asked how the Building Permit fees were calculated.

C. Antonellis invited Charles Shultz, Building Commissioner, to the meeting to explain.

Alicia Hersey, of the Economic and Community Development Office, not that the Board can make the waiver of permit fees dependent on keeping the project 100% affordable.

M. Gibbons asked D. Van Schalkwyk asked if the 40% waiver indicates that 60% of the total cost is what it would take to complete this work.

D. Van Schalkwyk explained that some of the cost is for inspection but he majority is for the connection fees with the capacity at the plant. If the fee is waived then the current payers would have to pay more.

C. Shultz called into the meeting at 7:11pm

C. Shultz explained that the estimated permit fee was based off the estimated total cost of the project, which is about \$31,000,000, Phase I & II. The project was calculated using the town's permit fee schedule for commercial projects which is \$14.00/\$1,000.

S. Kiefer asked why the commercial rate was used, when this is a multi-family project in which the permit fee should be calculates using \$0.75/sf.

C. Shultz explained that according to the International Building Code anything over two-family is considered a commercial building, and no longer considered residential.

S. Kiefer noted that the fee schedule on the Town's website does list a multi-family option under residential.

S. Goodwin asked if S. Kiefer had the square footage totals for both Phases of the project.

S. Kiefer stated that she did not know the exact square footage of Phase I and does not have the square footage of Phase II.

C. Shultz estimated Phase I to be 69,400 square feet based on the plans, however since these are mix-use buildings, this would still be a commercial project.

M. Gibbons believes that if C. Shultz has determined the project to be commercial then that is the calculation that should be used.

F. Valdes agrees that this is a commercial project.

M. Gibbons asked if the the 50% reduction would cover the cost of the staff needed for this project.

C. Shultz explained that this was a estimate that took into account the administrative work, plan reviews, and inspections. He is comfortable that the permit fee would cover the cost of the staff.

S. Kiefer asked that the Board consider using the residential multi-family published rate, and the Board impose the \$0.75/sf calculation.

S. Goodwin reiterated that the Building Commissioner, and the project's architect both believe this to be a commercial project. If the construction demands the use of commercial codes then that is how the fee will be determined.

J. Gugino asked if P. Haverty has encountered this issue in other project.

P. Haverty finds that the Town Bylaw's is vague, but usually large developments are considered commercial.

C. Shultz noted that when a project's position is unclear the most stringent rules apply.

S. Goodwin asked that the discussion move onto the actual fee waiver, as the Board believes this project to be commercial.

S. Kiefer noted that the fee may be too high and therefore not viable.

J. Ellis feels the town is being generous in regards to various fees, and the Board needs to support the Building Commissioner.

M. Gibbons noted that the proposed estimated permit fee of \$217,000 would cover the costs of the inspections, and asked that the building permit fee be capped at that amount.

C. Shultz agreed to the capped cost.

J. Gugino agreed with the cap as well.

R. Defilippo believes that the project is commercial in nature, and the fee should reflect that.

P. Haverty updated Waiver 27 to include the permit fee cap at \$217,000, this includes both the inspection fee and the occupancy fee based on the project being 100% affordable.

S. Goodwin moved the discussion to the Water and Sewer fees. (Waiver 31)

S. Kiefer asked that the fee reduction be greater than the Town's proposed 40%.

S. Goodwin asked that if applicant is able to take up the cost of installation of the sidewalk and crosswalk with the reduction of Water and Sewer fees.

S. Kiefer explained NOAH is willing to fund the engineering and survey work of the project, since it is her understanding that the town is looking into a grant to fund the sidewalk.

D. Van Schalkwyk weighed in on the possible plan. Stating that with the gap between the project and Shop 'n Save needs to be filled for pedestrian safety. The cost of the survey and engineering is relatively cheap and could possibly be done in house.

S. Kiefer offered for the applicant to pay for the construction as to avoid paying prevailing wage.

A. Hersey noted that the grant would cover both the construction and engineering, and therefore if granted neither party would have to pay.

S. Kiefer requested a recess to discuss this plan with the applicant.

Recess: S. Goodwin called a recess at 8:01pm

Meeting resumed at 8:06pm.

S. Goodwin recognized Pauline Conley, a resident of Ayer.

P. Conley encouraged the Board to allow the waivers, as to keep this project 100% affordable.

S. Kiefer relayed that the applicant is concerned that they will not be able to get funding for an off-site improvement. If the Board wished to impose a condition in which the Sewer and Water connection cost is reduced in exchange for an off-site improvement, then they would need a 75% reduction in cost.

S. Goodwin summarized the issue. The applicant is concerned that the town might not get the grant to install the sidewalk, and therefore the client would have to pay for the sidewalk, and they are not sure they can get the funding. The increased reduction request is not reasonable based on the D. Van Schalkwyk's earlier presentation.

J. Gugino clarified that if the cost of the sidewalk is removed from the equation, the 40% reduction would still stand.

Ken Diskin, of the Ayer Planning Board, asked for clarification on the location of the sidewalk.

S. Goodwin explained that the sidewalk would connect from the end of their property to in front of Anderson's Funeral, and from there have a crosswalk connecting it to the Shop 'n Save.

K. Diskin asked if there was another way to figure the cost of the sewer connection. Instead of using the standard calculation of number of bedrooms, maybe using a fixed cost per unit.

D. Van Schalkwyk noted that fees are based on the number of bedrooms for the capacity. Changing to number of units will only calculate a different number but the capacity if still known.

A. Hersey asked if the Board was willing to consider P. Haverty's proposal of the Town and the applicant splitting the cost of the sidewalk project and if the Town can get a grant then neither party pays.

Annika Lambert, of NOAH, reiterated that this off-site might not be something that NOAH can get funding to support.

J. Gugino suggested removing the sidewalk but keeping the 40% reduction for the Water and Sewer connection.

S. Goodwin asked to see what a 75% reduction would look like.

C. Antonellis did the calculations.

D. Van Schalkwyk felt the Water and Sewer fees were more important, and would rather look for other funding for the sidewalk that reduction the connection fee by 75%.

P. Conley commented that the Willows Project did obtain funds for an off-site project.

A. Lambert noted that each project is different and cannot guarantee that a project such as a sidewalk would be supported.

Jonathan Kranz, Chair of the Ayer Planning Board, reminded the Board that this project is huge win for the Town. This project is best opportunity the Town has of achieving it's goal of affordable housing as laid out in the Master Plan.

P. Haverty read the proposed condition, in which the applicant would be responsible for the engineering and survey work for the construction of a sidewalk and crosswalk connecting the property to the Shop 'n Save.

J. Gugino suggested removing the sidewalk discussion from the equation and only focus on the Water and Sewer connection.

S. Kiefer asked that the Water and Sewer fees be reduced to 50%.

The Board was not willing to reduce the Water and Sewer fees by more than 40%.

P. Haverty reviewed Waivers 28-30. These waivers dealt with the Town's Stormwater Bylaws and allowed for the project to move forward.

This concluded the discussion on Waivers.

J. Ellis wished to discuss the language in the notice of decision that stated that the applicant is only required to have 25% of units available as affordable. (IV.B.1)

P. Haverty reiterated that the Board cannot require more than 25%.

S. Goodwin noted that the Waiver concerning the reduction in Building Permit Fees only applies if the units remain 100% affordable.

J. Ellis also questioned the number of parking spaces in regard to the community building. He is concerned that with the community building and pool open to the public there will not be enough parking for residents.

J. Gugino noted that the pool is not open to the public.

C. Antonellis explained that the pool is only open to residents.

A. Lambert explained that the wider community could hold a public meeting if needed, but the pool is only for residents.

J. Gugino asked if there recourse for protecting the Open Space.

P. Haverty explained that protecting the Open Space is outside the scope of this decision.

Motion: S. Goodwin made a motion to close the public hearing of the Application for a Comprehensive Permit (MGL 408, Sections 20-23) Neighborhood of Affordable Housing, Inc. 65 Fitchburg Road.

Seconded: J. Ellis

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

Motion Passed (5-0)

Motion: M. Gibbons made a motion to approve the Comprehensive Permit (MGL 408, Sections 20-23) Neighborhood of Affordable Housing, Inc. 65 Fitchburg Road as drafted and with provisions discussed.

Second: J. Gugino.

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

Motion Passed (5-0)

Meeting Adjourned at 9:04pm.

Minutes Submitted by Samantha Benoit, Administrative Coordinator

Date Minutes Approved by the ZBA: March 15, 2023

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