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



Wednesday, December 21, 2022

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 R. Defilippo.

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

Motion Passed (5-0)

Public Hearing – Application for a Special Permit – Evelio Herreros – 8 Rosewood Ave. (Filed November 2, 2022).

S. Goodwin opened the public hearing at 6:04pm by reading the public hearing notice as published in the *Nashoba Valley Voice* on December 2, 2022, and December 9, 2022. The applicant is seeking a Special Permit pursuant to Ayer Zoning Bylaw Section 5.2.1.10 (Table of Use Regs.) to permit a home occupation (landscaping) in residential zone A-2.

Evelio Herreros and Dilma Batres of 8 Rosewood Ave. represented themselves for this hearing.

E. Herreros explained that he has been running a landscaping business out of his home and would like to continue to do so. Currently, he owns one truck, one trailer, a back-up trailer, a personal truck, two mowers, and two plows. He would like to grow his business and move into a commercial space but does not have the funds to do so. He is looking for a Special Permit to keep running his business out of his home, until he has the funds to move to a commercial space.

S. Goodwin asked how long the business has been run out of his home.

E. Herreros answered since 2018.

J. Ellis asked if had a business certificate from the town.

E. Herreros received a business certificate from the town hall in 2018.

D. Batres said that they recently had work done on their home, and all the equipment had to be moved, and that is when they received a letter from the Zoning Officer.

C. Antonellis explained that the process for receiving a business certificate has been updated, and prior to this update, the Zoning for each business was not being checked.

M. Gibbons noted that issues like this have come before the Board in the past.

M. Gibbons asked if the personal truck had commercial plates.

D. Batres said that they were advised to have commercial plates because it is occasionally used for business.

M. Gibbons asked how many employees the business has.

E. Herreros answered they have none other than himself.

M. Gibbons has no issues with the business as it is but is concerned for when the business outgrows the space. He wondered if the Special Permit could be conditioned with a time frame. The letter from Mr. Warren helped to influence his decision.

C. Antonellis recommended conditioning the number of vehicles on the property.

E. Herreros reiterated that he is looking to expand his business and move it to a commercial space. He has worked hard to maintain the property and does not park his vehicles on the street. He is looking for time to earn the funds needed to move the business. He also explained he does not run his machines as it is a residential neighborhood, and he tries to be respectful of the neighbors. He also does not want his yard to be filled with equipment.

J. Gugino asked about what kind of time limit could be imposed.

J. Ellis is not comfortable with the time limit, he is concerned it is not binding. He would still have to maintain the zoning with the number of vehicles on the property.

R. Defilippo asked if a time limit could be imposed.

C. Antonellis is unsure.

J. Gugino believes the Board can place a time condition.

J. Gugino asked if the Board can put a limit on the number of vehicles.

C. Antonellis believes it can be put in the conditions.

Ken Diskin of the Planning Board did confirm that Special Permits can be given limitations.

D. Batres asked that the time limit be at least two years given recent hardships.

S. Goodwin asked there were any abutters present.

There were none.

Motion: J. Ellis made a motion to grant a Special Permit pursuant to Ayer Zoning Bylaw Section 5.2.1.10 (Table of Use Regs.) to permit a home occupation (landscaping) in residential zone A-2, with a 24-month expiration. 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)

Motion: S. Goodwin made a motion to close the hearing of 8 Rosewood Ave. at 6:28pm

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)

Public Hearing – Application for a Variance – Teddy’s Honey Hut – 27 Harvard Rd. (Filed November 7, 2022).

S. Goodwin opened the public hearing at 6:30pm by reading the public hearing notice as published in the *Nashoba Valley Voice* on December 2, 2022, and December 9, 2022. The applicant is seeking a Variance pursuant to Ayer Zoning Bylaw Section 9.5.5 part 1 to allow for 3 signs on the existing canopy.

Theodore Maxant proprietor of Teddy’s Honey Hut represented himself for this hearing.

T. Maxant explained that when he inherited the old gas station located at 27 Harvard Rd., he had originally planned to remove the canopy but discovered he could not due to structural issues. An artist was hired to create decals for the canopy to tone down the harshness and give drivers ample notice of the business. T. Maxant noted that the previous zoning issue with the property was taken care of at Town Meeting.

J. Ellis asked if a building permit would be needed for the signs.

J. Gugino has no issue with the signs but noted the property does need a site plan review.

M. Gibbons also had no issue with the signs as long as a building permit is submitted.

C. Antonellis explained once the variance was granted then a building permit could be applied for.

M. Gibbons asked for public comment.

There was none.

Motion: M. Gibbons made a motion to grant a Variance pursuant to Ayer Zoning Bylaw Section 9.5.5 part 1 to allow for 3 signs on the existing canopy.

Seconded J. Gugino.

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

Motion Passed (4-1)

Motion: S. Goodwin made a motion to close the hearing of Teddy’s Honey Hut located at 27 Harvard Rd. at 6:44pm

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)

Public Hearing – Administrative Appeal – Theodore Maxant – 27 Harvard Rd. (Filed November 15, 2022)

S. Goodwin opened the public hearing at 6:45pm by reading the public hearing notice as published in the *Nashoba Valley Voice* on December 2, 2022, and December 9, 2022. The applicant is seeking an Administrative Appeal to overturn the Ayer Zoning/Building Department classification of Flagg Welding under Section 6.2 in the Ayer Zoning Bylaw Table of Use and classify instead under Section 5.9.

T. Maxant represented himself for this hearing.

S. Goodwin asked if there is a welder and a fabricator located within the Honey Hut building.

T. Maxant said that Flagg Welding does not do fabrication, only welding. He argued that Flagg Welding was previously located on Fitchburg Rd., which is in the General Business Zone, and since the Honey Hut is also classified as General Business this should be allowed.

S. Goodwin pointed out that Flagg Welding being previously located in a General Business Zone predated the Zoning Bylaw, and therefore it was allowed at that location, but once the business moved that no longer applied.

S. Goodwin also asked if Flagg Welding strikes an arch in the building.

T. Maxant affirmed that he did, but most similar services do. He explained he did some research on the internet and does not believe Flagg Welding should be considered fabrication.

S. Goodwin believes given the zoning and type of business there should be no welder doing business with the Honey Hut.

M. Gibbons agreed with the Town Hall staffs opinion of the issue, and believes the property needs a site plan review from the Planning Board.

The other members of the Board agree with M. Gibbons' assessment of the situation.

M. Gibbons suggested that the T. Maxant be allowed to withdraw his application.

K. Diskin of the Ayer Planning Board noted that if the application is withdrawn Flagg Welding would have to cease and desist.

T. Maxant asked for a continuance so that he could ask his lawyer to continue the argument. He also asked if the Board would be the ones to make Flagg Welding leave the premises.

S. Goodwin said that would be the responsibility of the landowner not the Board.

A continuance was not granted.

M. Gibbons would like to affirm the decision of the Building Commissioner in this matter.

T. Maxant asked to withdraw his Administrative Appeal.

Motion: S. Goodwin made a motion to accept the withdrawal of the Administrative Appeal to overturn the Ayer Zoning/Building Department classification of Flagg Welding under Section 6.2 in the Ayer Zoning Bylaw Table of Use and classify instead under Section 5.9 without prejudice.

Seconded M. Gibbons.

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 close the hearing of 27 Harvard Rd. at 7:05pm.

Seconded M. Gibbons.

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 will be referenced in the following minutes. To view the sections noted please refer to

https://www.ayer.ma.us/sites/g/files/vyhlf2756/f/uploads/comprehensive_permit_decision_draft_-_revised_12-21-22_002.pdf).

Paul Haverty of BSC Group presented the draft notice of decision for the proposed project. He recommended going over the draft page-by-page with the Board.

Most of the early part of the notice did not warrant discussion since it mostly dealt with the current position of the Town, and a general description of the project.

P. Haverty noted that the notice of decision presumes that the hearing will close on December 21, 2022 (I.2). He also asked if the Purchase and Sales agreement had been submitted.

Stephanie Kiefer of NOAH confirmed that it had.

J. Ellis asked how a Housing Production Plan relates to this project. (II.10.d)

Alicia Hersey of the Economic and Community Development office clarified that the Town has had an approved Housing Production Plan since 2019 and has part of the plan was to find a 40B developer.

M. Gibbons noted that section should be amended.

P. Haverty noted a change to the number of parking space from 157 to 155. (III.14)

J. Ellis has concerns about the number of parking spaces proposed as it does not meet current zoning requirements.

P. Haverty explained this will be addressed in the waivers list.

J. Ellis asked about signage details as there are no plans available at this time. (IV.A.2)

S. Kiefer stated that there are no plans for signage at this time, and that should be removed from the decision. There is no signage waiver being presented either.

J. Gugino asked if 60 days given the current economic climate is enough time to review submitted plans. (IV.A.7)

P. Haverty believes so since the Town still has the peer review consultant available.

J. Ellis asked who would oversee Fire Hydrant maintenance as it is not listed. (IV.A.10)

Dan Van Schalkwyk, Director of the DPW, stated that the hydrants on the property would be considered private and therefore the responsibility of the property manager, and a report would be sent to the DPW.

M. Gibbons noted that the language used makes the project sound as if it is not 100% affordable. (IV.B.1)

P. Haverty explained that the language used it the minimum requirement, and the Board cannot enforce a higher percentage.

M. Gibbons asked what makes the property 100% affordable.

P. Haverty explained it would be a deed restriction.

P. Haverty explained that creating a lottery with local preferences by the Subsidizing Agency is a common practice with other Boards. (IV.B.4)

A. Hersey believes this local preference should be kept given the recent loss of traditionally affordable housing in town. She suggested that anyone who has lived in the town in the last five years be considered local.

C. Antonellis asked these requirements should be submitted to the Subsidizing Agency.

P. Haverty explained it would be after the notice of decision was issued.

J. Gugino asked if the Conservation Commission could be included in the permitting agency. (IV.C.1.c)

P. Haverty said that the Conservation Agent could be included in the permitting agency but not the Conservation Commission.

C. Antonellis asked that all references to the Town Planner be changed to the Building Commissioner.

J. Gugino asked that the Conservation Agent be included in the preconstruction conference. (IV.E.1)

P. Haverty noted that the section dealing with natural gas had been removed. (IV.E.8)

S. Kiefer confirmed that the project would not use natural gas.

Taylor Dowdy of BSC believes the project will have electric heat.

J. Gugino noted that she believes solar panels were proposed.

No one is certain if the project is 100% electric, but they are trying to meet the States sustainability standards.

J. Gugino asked D. Van Schalkwyk to weigh in on the infiltration system. (IV.E.12)

D. Van Schalkwyk felt this was typical, and information that they would need for the stormwater system.

J. Ellis asked is he would be the designee to witness the soil test.

D. Van Schalkwyk agreed that the DPW could be the designee.

P. Haverty noted that the hours of construction would follow the Town's Hours of Construction Bylaw. (IV.E.13)

C. Antonellis was going to check the Bylaw and get the information to P. Haverty.

J. Gugino asked that the location of snow storage should be reviewed by the Conservation Agent. (IV.E.18)
She also asked that the contractor used for snow removal be informed of the snow storage site.

P. Haverty noted the applicant had some suggested amendments to the proposed sidewalk and crosswalk. (IV.F.2)

M. Gibbons noted that the applicant was to add a sidewalk in front of their property but not connect it to the Shop 'n Save located nearby.

J. Gugino stated that a crosswalk would be needed for pedestrians going to Shop 'n Save.

S. Kiefer noted that a crosswalk would not be helpful since there is no sidewalk on the other side of the street.

C. Antonellis showed the two locations on a map, and it was determined that they were farther apart the previously believed.

D. Van Schalkwyk explained that once the permit is complete then MassDOT can be approached about sidewalks, crosswalks, and other traffic calming measures.

S. Kiefer reaffirmed that the applicant is willing to work with the Town and MassDOT on the need for an extended sidewalk and crosswalk, however they are only adding the sidewalk in front of the property.

P. Haverty removed the need for a traffic signal study at the request of the applicant. (IV.F.3)

P. Haverty confirmed with NOAH that the buildings would not be accessed using a key card system. This section was removed. (IV.G.9)

P. Haverty asked if any portion of this property is under the jurisdiction of the Division of Fisheries and Wildlife. (IV.I.6)

J. Gugino confirmed that it is, and the language used should be Natural Heritage.

S. Kiefer asked that the 50' signage requirement for the area be changed to 100'.

The Board would like the 50' requirement to stay.

P. Haverty then moved on to present the list of waivers. The applicant did request a blanket waiver for all Town Bylaws. P. Haverty does not recommended this, and the Board should decide upon each waiver.

S. Goodwin suggested continuing the meeting until January 11, 2023.

P. Haverty suggested that if the meeting were to be continued the Board waive the 40-day deliberation time and vote at the next meeting.

Annika Lambert from NOAH explained that there is a hard deadline for funding, and if this hearing continues, they may lose it. The latest the client can wait is January 18th.

S. Kiefer suggested a two-step approach, extend the hearing until January 11th, and possibly continue until January 18th if needed.

All parties agreed to the extension.

Motion: A motion was made by M. Gibbons to continue the Public Hearing-Application for a Comprehensive Permit (MGL 408, Sections 20-23) Neighborhood of Affordable Housing, Inc. 65 Fitchburg Road (Filed June 24, 2022) until January 11, 2023, at 6:00pm via Zoom.

Seconded by 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 accept the November 16, 2022, meeting minutes 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)

Motion: M. Gibbons made a motion to accept the November 30, 2022, meeting minutes 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)

Motion: J. Gugino made a motion to adjourn the meeting.

Seconded by S. Goodwin.

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 8:41pm.

Minutes Submitted by Samantha Benoit, Administrative Coordinator

Date Minutes Approved by the ZBA:

Jan. 18, 2023

Signature of ZBA Clerk, Indicating Approval:

Samuel A. Goodwin Jr.