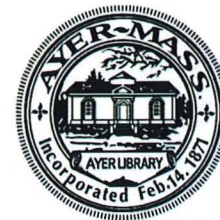




**Town of Ayer  
Zoning Board of Appeals  
Ayer Town Hall  
1 Main Street  
Ayer, MA 01432**



**Wednesday, November 16, 2022**  
**Remote Participation Open Session Meeting Minutes**

**Present:** Michael Gibbons, Vice-Chair; Ron Defilippo, Clerk; Jess Gugino; John Ellis

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

**Absent:** Samuel Goodwin, Chair

**Call to Order:** M. Gibbons 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 Carly Antonellis, Assistant Town Manager at atm@ayer.ma.us or 978-772-8220 ext. 100 prior to the meeting.

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

Seconded by J. Gugino

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

**Motion Passed (4-0)**

**Public Hearing – Application for a Variance – Nasoya Foods USA, LLC. – 1 New England Way (Filed October 28, 2022).**

M. Gibbons opened the public hearing at 6:05pm by reading the public hearing notice as advertised in *The Lowell Sun* on November 2, 2022, and November 9, 2022. The applicant is seeking a Variance pursuant to Ayer Zoning Bylaw Section 6.2 to allow for the construction of a portion of a building to a height of 75ft where 40ft is allowed. The ZBA was joined by Attorney Thomas Gibbons representing the client.

T. Gibbons asked that the hearing be continued until all members of the ZBA could attend.

**Motion:** A motion was made by J. Ellis to continue the Public Hearing – Application for a Variance – Nasoya Foods USA, LLC. – 1 New England Way (Filed October 28, 2022) until November 30, 2022 at 6:00pm.

Seconded by J. Gugino.

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

**Motion Passed (4-0)**

**Approval of Minutes:** J. Gugino made a motion to accept the meeting minutes of October 19, 2022 as written. Seconded by J. Ellis.

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

**Motion Passed (4-0)**

**Public Hearing – Application for a Variance – Jeffrey E. Greco and Andrea L. Greco 37 Sandy Pond Road (Filed October 28, 2022).**

M. Gibbons opened the public hearing at 6:10pm by reading the public hearing notice as advertised in *The Lowell Sun* on November 2, 2022, and November 9, 2022. The applicant is seeking a Variance pursuant to Ayer Zoning Bylaw Section 5.2.1.1, Section 6.2, and 6.3(B) to allow for an existing single family home to remain on the property located at 37 Sandy Pond Rd. until a new single family home to be constructed on the property is complete with the condition that the existing single family home shall be removed prior to the issuance of an occupancy permit by the Town of Ayer Building Inspector for the to be constructed single family home.

T. Gibbons gave a brief overview of the property, noting that on February 16, 2022, the ZBA had granted a variance for this property in regard to frontage. The owners are planning on building a new home on the property and would like to keep the existing home until the new one is complete. They were informed that the existing home would need to be demolished before work on the new home could commence unless they got ZBA approval to keep the existing home. If allowed to keep the existing home on the property, it would be demolished prior to the issuance of an Occupancy Permit for the new home.

The Greco's are asking for this variance based on several hardships. The most pressing is the water and sewer lines connecting the existing home to the three-family on the adjacent lot. If the existing home is to be removed prior to construction then the lines will need to be relocated now, and new lines run later, which will increase the cost of the project for the owners. The existing home is also currently occupied by the Greco's son and family, in removing the home would cause the family to move earlier than anticipated.

In granting the variance, the current occupants of the home will have time to move. The existing home will also shield the construction of the new home from view. This will not be in violation of the existing bylaw since there new home will not be issued an Occupancy Permit until the existing home has been demolished.

T. Gibbons reviewed the comments from the Town Department Heads, most had no comments, or issues with the proposed plan. The Building Commissioner did raise some concerns about the home being partially constructed, or not completed, leaving the town with two homes on a single lot. T. Gibbons explained that if the home is never built the variance will lapse, and of the older home is not demolished then the Zoning Enforcement Officer could take action.

This situation was likened to if there is a house fire, the owners are allowed to have a temporary mobile home on the property until the home is rebuilt.

M. Gibbons asked about the letter from Roger Kanniard.

T. Gibbons explained the R. Kanniard is allowing the Greco's access to backside of their property through his in order to build their new home. Though they do have right of way access from McDowell St.

M. Gibbons was concerned that the existing home would become a storage unit. He would like construction to start within six months.

Andrea Greco responded that they would like to break ground in March or April of 2023 and be moved in by November of 2023.

J. Gugino suggested making it a condition of the variance to not use the current building as storage.

M. Gibbons suggested that a time condition be added the variance.

C. Antonellis clarified that the variance will lapse after a year if not work has been started.

J. Ellis asked what guarantee the ZBA has that the older house will be taken down, except for the withholding of the Occupancy Permit, what kind of enforcement does the Board have.

T. Gibbons responded that a reasonable date could be added as a condition in addition the condition of the Occupancy Permit.

J. Ellis asked if a reasonable date could be added to the conditions for the demo of the older home.

M. Gibbons concern is that the existing home will not be demolished for several years.

J. Ellis asked if the white house near the street was that was being demolished.

A. Greco explained it is the grey house. The white house is the three-family home, and that will be staying.

T. Gibbons further explained that the three-family home is on a different lot and has been subdivided.

R. DeFilippo asked how it the property had been subdivided.

T. Gibbons explained that it is allowed if the buildings were built prior to the current zoning.

J. Ellis asked that once the new house is built will it be in compliance with the current zoning.

T. Gibbons stated that all setbacks will be met, and a variance was granted in February 2022 by the ZBA for the frontage.

J. Ellis asked if the new home is being built behind the current home.

Jefferey and Andrea Greco explained that the new home is being built behind the current home, that they would like their home set back from the road. They would like to demolish the existing home as it will obstruct their view.

J. Gugino has no issues with this application.

M. Gibbons opened the meeting up to public comment.

There was no public comment.

**Motion:** M. Gibbons made a motion to approve the Variance pursuant to Ayer Zoning Bylaw Section 5.2.1.1, Section 6.2, and 6.3(B) to allow for an existing single family home to remain on the property located at 37 Sandy Pond Rd. until a new single family home to be constructed on the property is complete with the condition that the existing single family home shall be removed prior to the issuance of an occupancy permit by the Town of Ayer Building Inspector for the to be constructed single family home.

Seconded by J. Ellis

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

**Motion Passed (4-0)**

**Motion:** J. Gugino made a motion to close the public hearing of 37 Sandy Pond Road at 6:38pm.

Seconded by J. Ellis

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

**Motion Passed (4-0)**

**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)**

Jim Thorpe and Sergio Musto of Green International presented responses to the open comments from the peer review. The comments have been color coded, yellow; the applicant can resolve, red; requires a waiver or is dealt with later, blue; will need board approval and can be a condition of approval.

J. Ellis noted that only two peer review meetings were budgeted and asked if the last meeting counted since not much was discussed.

C. Antonellis said that the last meeting did count.

C. Antonellis stated that the peer review is looking for input from the Board on red and blue comments.

J. Thorpe recognizes that the applicant is seeking many waivers, and the list of waivers will be sent to the Board for approval.

C. Antonellis recently sent an updated list of waivers.

Stephanie Kiefer of NOAH stated the waiver list is nearly complete, some waivers for parking and stormwater were added. The list of waivers is consistent with J. Thorpe's recommendations.

J. Gugino asked if the Board was voting on waivers tonight, and if waivers require a simple or super majority. Paul Haverty of BCS Group explained that there was no vote tonight and it requires a simple majority.

J. Thorpe noted that neighboring properties parking lot encroached on the property and the applicant will have to coordinate with the current landowner to fix this issue, and this will be put in place before the start of the project.

Taylor Dowdy of BSC Group noted that a discussion had taken place with the owner and the pavement will be removed, and the work will be shown on the plans. This can be a condition of approval.

J. Gugino asked if this could be a condition of purchase.

T. Dowdy said it could not be since they do not currently own the property.

J. Thorpe stated that the project will have to meet all ADA requirements and include a full grading plan. This is recommended as a condition of approval.

P. Haverty noted that this will be a very detailed decision and will have a lot of conditions.

J. Thorpe spoke about the Zoning waivers needed including the number of parking spots required in zone A-2. S. Kiefer noted these waivers have been added to the list.

J. Thorpe discussed the lack of a flood study, and that this is an issue to be taken up by the Conservation Commission.

T. Dowdy noted that the FEMA data is the best data available and that is what was used.

J. Thorpe recommended the continued coordination with the DPW regarding sewer peak flows and recommends this to be a condition of approval.

T. Dowdy stated that the number of bedrooms was sent to Dan Van Schalkwyk, the head of the DPW.

D. Van Schalkwyk did receive the email but had not done the necessary calculations yet.

J. Thorpe also noted that the water main connection will have to be coordinated with the Water Department.

T. Dowdy said a utility plan was sent to D. Van Schalkwyk.

D. Van Schalkwyk confirmed this and will continue to coordinate with T. Dowdy.

J. Thorpe noted that for comments 50-64 a revised landscape plan will be needed. This is usually included in the final construction plans. The question to the Board is if they would like this on the plans now so that Green International can review or make it a condition of approval.

G. Gibbons would like Green International to look at the plans.

J. Gugino agrees and would like to know if the removal of trees in the buffer zone has to do with the proposed retaining wall.

T. Dowdy asked if this was referring to comment 57. In which it was recommended more diverse species of trees be planted in the buffer zone.

S. Kiefer also added that in response to this block of comments that all updates will be coordinated between plans, and the final plans will be consistent. The landscape architect also recommends a diverse variety of plants.

J. Thorpe noted a waiver will be needed for building height, and this waiver was included in the original list of waivers.

J. Thorpe noted snow storage needs to be shown on the plans, and that the storage of snow would not impact parking, or the wetlands. A revised location is recommended but defers to the Conservation Commission.

T. Dowdy says other areas can and will be identified.

J. Gugino asked when the final plans will be submitted.

P. Haverty stated that they will be submitted after the application has been approved and the permit is issued.

J. Gugino asked if meeting with the Conservation Commission would affect the plans submitted to the ZBA.

P. Haverty said that it could affect the plans and the applicant would have to come before the Board to ask for modification to the plan.

S. Kiefer also said that a condition could be put in place based on the Commission's recommendations.

J. Thorpe discussed the next set of comments which dealt with Stormwater regulations. Per the Town's Stormwater Regulations, a percolation test is to be performed before the building permit is issued.

J. Thorpe also recommends that two gate valves be added to the water main in order to limit shut-downs to the complex, but this would need to be coordinated with the DPW.

J. Thorpe noted that no exterior building lighting was present on the plans, and in order to assess it need to be included.

S. Kiefer noted that the biggest worry is parking lot lighting. The lights around the building will allow for safe entrance and exit to buildings.

T. Dowdy said the lighting will be directed to specific locations.

J. Thorpe will talk with the lighting expert and follow-up.

M. Gibbons asked if the Board had any questions, and what is needed from the Board tonight.

P. Haverty said the Board can discuss the comments further and not vote is needed tonight.

S. Kiefer added that all blue comments can be made into conditions of approval, and many of the red comments could be converted to blue.

J. Gugino asked about adding a traffic light, and how that would be coordinated with MassDOT.

Samuel Offei-Addo of NOAH said that this would be an issue for after occupancy, which might trigger a traffic study.

M. Gibbons asked if MOAH would conduct the study.  
S. Offei-Addo said that would be a MassDOT project.  
J. Ellis asked about the status of the crosswalks.  
T. Dowdy said none have been proposed because the road is owned by MassDOT.  
J. Ellis asked how a crosswalk could be added if the Board wanted one.  
S. Offei-Addo believes this would require coordination between MassDOT and the DPW.  
D. Van Schalkwyk said it would have to be between the applicant and MassDOT, if it was a requirement of the Board.  
S. Kiefer stated that the Board cannot condition a State Permit.  
P. Haverty did say coordination between the two could be conditioned.

M. Gibbons opened the meeting to public comment.  
There was no public comment.

M. Gibbons asked what the next steps are for the Board.  
P. Haverty that some coordination needs to be done but a decision can be drafted. He will start writing the draft decision with the waivers and suggested determinations.

**Motion:** A motion was made by J. Gugino 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 December 21, 2022, at 6:15pm via Zoom.

Seconded by J. Ellis

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

**Motion Passed (4-0)**

**Motion to Adjourn** by J. Gugino. Seconded by J. Ellis.

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

**Motion Passed (4-0)**

**Meeting Adjourned at 7:55pm**

Minutes Submitted by Samantha Benoit, Administrative Coordinator

Date Minutes Approved by the ZBA: Jpc. 21, 2022

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