

THE ZONING BOARD OF APPEALS OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING FOR A PUBLIC HEARING ON THURSDAY, JANUARY 21, 2021, AT 7:00 P.M., VIA GOTOMEETING:

Join by web: <https://global.gotomeeting.com/join/673875461>; or dial by phone, United States: (872) 240-3212, Access Code: 673-875-461#

Present were regular Board members Eileen Carroll (Chair), Christy Yaros (Vice-chair), Chet Bukowski, and Ames Shea; and present was Alternate member Jim Williams (voting). Absent were Board member Eileen Reilly, and Alternate members Tom McNeill and Vi Smalley. Also present was John McCahill, Town of Avon Planning and Community Development Specialist; Hiram Peck, Director of Planning and Community Development, and Town Attorney Thomas A. Kaelin, Thomas A. Kaelin – Attorney At Law.

Chair Carroll called the meeting to order at 7:00 p.m. John McCahill facilitated the virtual meeting.

Roll call was taken for the Board.

John McCahill read aloud the legal notice for the meeting. He stated that notice was provided in accordance with Town regulations, State Statutes, and recent COVID-19 related Executive Orders; and the Town has notified the abutters to the subject properties as required. The Avon Zoning Board of Appeals was created as required by Section 8-6 of the Connecticut General Statutes, and functions in accordance with the powers and duties of Section X – Administration and Enforcement, C., of the Town of Avon Zoning Regulations. The public hearing will be closed after the application review is complete. Voting will follow after the close of the public hearing. He summarized the agenda. He stated that this special meeting had been scheduled since the last regular meeting had been cancelled due to a snow storm.

#### PUBLIC HEARING:

Application of Donna J. and James R. Barnes, owners, and James R. Barnes, applicant; requesting from Avon Zoning Regulations, Section X. C. 1., an appeal from the decision of the Zoning Enforcement Officer, Cease and Desist Order, dated 11/10/2020, located at 145 Deercliff Road in an RU2A zone.

John McCahill summarized the application materials and Town staff supplemental documents: the application (one page) of Donna J. and James R. Barnes, owners, and James R. Barnes, applicant for 145 Deercliff Road; a Town of Avon Zoning Board of Appeals (ZBA) public hearing legal notice, posted to the Town of Avon ZBA web page, dated January 8, 2021; a Town of Avon ZBA agenda with meeting access details and web link, posted to Town of Avon ZBA web page, dated January 8, 2021; letter from Attorney Gregory W. Piecuch, Law Office of Gregory W. Piecuch, LLC, dated, December 10, 2020, regarding his client's application to ZBA, including supplemental materials related to Town of Avon Zoning regulations, neighbors' complaints, and the issues of rental properties; Town of Avon Zoning Enforcement Officer's Cease and Desist Order, to the property owner at 145 Deercliff Road, issuance copy, dated November 10, 2020; and subsequent Town of Avon communications to the property owner at

145 Deercliff Road; Town of Avon ZBA public hearing notification letter to the applicant; GIS map of abutting properties and ZBA public hearing notification sent to abutting owners via postal mail; Town of Avon GIS aerial view of subject property; multiple views of the subject property, with photographs taken by Town staff; neighborhood communications received by Town of Avon, and a memorandum written by John McCahill, dated January 20, 2021, with an attached memorandum from Director of Planning and Community Development and Zoning Enforcement Officer Hiram Peck, dated January 4, 2020, was also included in the materials.

John McCahill read aloud Attorney Piecuch's letter, dated December 10, 2021; he summarized an Avon Police Department case/incident report, dated November 6, 2021, and indicated that a number of police reports had been submitted as part of the application. He referenced several of the properties included in the copies of online rental properties submitted with the application. He read aloud the Cease and Desist Order for 145 Deercliff Road, from Town official Hiram Peck, dated November 10, 2020; in addition, he referenced to two letters, dated October 5, 2020 and October 19, 2020, sent by Hiram Peck to Mr. Barnes at 145 Deercliff Road, which he noted were substantively the same in content as the Cease and Desist Order. He noted the abutting property owners were located at 143 Deercliff Road, 147 Deercliff Road, 18 Ridge Crest Lane, and 108 Vermillion Drive. Correspondence submitted to the ZBA regarding the application for 145 Deercliff Road were: a letter from Attorney Brian R. Smith, of Robinson and Cole, LLP, dated January 15, 2021, submitted to the ZBA on behalf of his clients, the Forresters, who reside at 143 Deercliff Road in Avon; an email to the Town ZBA, dated January 17, 2021, by J. Steven and Rosemary Neamtz, who reside at 147 Deercliff Road; and an email to the Town ZBA from Robert and Linda Forrester, dated January 19, 2021.

Present on behalf of the application were applicant/owner James R. Barnes, located at 145 Deercliff Road, and his Attorney Gregory W. Piecuch.

Attorney Piecuch stated that, as determined by an appellate court, the ZBA makes its determination de novo, and without deference to the actions of the Zoning Enforcement Officer. He stated that in looking at the Town's Cease and Desist Order, the case is not particular to the property at 145 Deercliff Road, and noted other properties in Avon with similar rental situations; and that the Town Zoning Enforcement Officer made a general, broad, and blanket finding, for use of any property in Avon regarding repeated rental purposes as a violation of Avon's code. The order was not tailored to a particular function, but a prohibition on short-term VRBO or Airbnb rentals, regardless of who would use the home, how the home would be used, or the length of time it would be used. He stated that the order appeared as a prohibition on short-term rental properties. He stated that the Town's regulations did not restrict the right of the residential property owner to rent to a third party; and the rental of a property did not necessarily constitute commercial use. He read aloud an excerpt from Attorney Brian R. Smith's letter to the ZBA, on behalf of Attorney Smith's clients. Attorney Piecuch questioned which provision in the Town's regulations distinguished the difference between a short-term and long-term rental. He did not find specific activities stated as prohibited within the Cease and Desist Order. From Attorney Piecuch's perspective, there existed a permitted use of the property under Section IV of the Town's zoning regulations, including accessory uses and functions at homes.

Mr. Barnes stated that he and his family also reside in the state of Rhode Island, for personal family reasons, and that he works from home in Avon. He stated that he recognized his neighbors' rights to enjoy their peaceful properties, and that he also expected the legal right to enjoy his property in a manner that did not impede upon his neighbors' peace. He stated that the allegations in the complaints were not accurate. There had been rentals on his property where neighbor complaints had not been made; and his property was not rented as a party venue on a nightly basis, as the allegations were suggested by the neighbors. The fairly consistent frequency of rentals, since October 2019, had been approximately twice per month, including the period of time since he first started receiving Town complaints, in October 2020. He noted the use of his property, since the Town's involvement, where there had been a gathering of pregnant women with no complaints by neighbors. Police responded to a complaint by Ms. Neamtz (at 147 Deercliff Road) when she reported a birthday celebration involving 16 people, when individuals were turning around in her driveway, however, police indicated a quiet affair in their report. He referenced details of the police report that had been submitted to the ZBA. Mr. Barnes referenced other parties and gathering events, such as a wedding reception, engagement party, and a New Year's Eve party, where there were no complaints from neighbors or police reports produced. Since the Cease and Desist Order, there were three police reports filed in November 2020 and December 2020; two of the police reports indicated there was no noise disturbance. A complaint from one of his neighbors was sent to VRBO (real estate rental website), which VRBO in turn sent the complaint to Mr. Barnes to address the concerns. The neighbor's complaint indicated the following: 145 Deercliff Road was rented as a wedding party venue; the home's location on a private road; 20-30 guests every weekend for parties; the property is a commercial venue in a residential area; complaints had been made to the neighbor, Town, and police, and they were now seeking legal recourse for the rental shutdown; please stop this from happening; 20-30 people every weekend trespass and drive drunk using our driveway; please don't list this house anymore. Mr. Barnes stated that the property was not advertised as a wedding party venue rental. He stated there were gatherings for families at Thanksgiving, Christmas, and gatherings for birthday parties. He stated that he was not renting his home for commercial venues. He refuted the drunk driving, as police reports did not state this issue, and the number of individuals present for the events, as purported by the neighbors. He stated they were baseless statements that skewed the truth. He stated that there may have been legitimate complaints in the past, however, he had since tightly managed his property so as not to disturb his neighbors' peace. He stated that numerous inquiries had been turned away since October 2020, and he had only allowed family gatherings. He cited his VRBO listing description. He stated that he stays nearby or on site for the gatherings. He did not allow DJs or caterers. He cited rental reviews for his property that were written by renters after the gatherings. He stated that he had five reservations for the remainder of 2021 that he wished to honor. He stated that there were dozens of properties in Avon which were listed and rented on a nightly basis. He stated that the Town's response to his assertion was that it does not look into these properties unless complaints are filed to the Town. He stated that he had turned away a dozen requests in the past 60 days. He stated there would be irreparable harm and material loss to his and his family's income by ceasing the rentals.

Attorney Piecuch stated that it was reasonable for an owner-occupied home to have a cocktail party or family reunion, or friends over, as were fully consistent in the use of a single family home as required by the Town's zoning regulations. Accessory uses were provided for in the

regulations. He stated that if the property owner were to move away for a couple of years and were to rent the house for this period and the tenant had these events, it would be allowed under the Town's regulations. He again reiterated the lack of specific term of rental or type of rental stated in the Town's Cease and Desist Order. He refuted the commercial advertising test, as applied to the Town's regulations, in naming the activities at 145 Deercliff Road as commercial. He questioned the distinction between putting the property listing on VRBO for a week vs. a month. He stated that there was nothing in the Town's regulations related to the issue of recurring rental vs. non-recurring rental. He questioned the rental of the home to a family for one year, or to 12 families and each family for one separate month of the year. He cited multiple additional examples of different rental scenarios, including those found on Realtor.com and Coldwell Banker, in relation to rental distinctions in the Town regulations. He stated the difficulty in finding what was and was not permitted in the Town's Cease and Desist Order. He stated that the ZBA was not a legislative body and did not make policy decisions, yet operated in a quasi-judicial capacity. He questioned whether or not Mr. Barnes had been singled out for activities at his property, in that there were many other homeowners in Avon who are renting out their homes with the exchange of money. If the issue were a specific activity, then that issue would need to be addressed.

Chair Carroll asked the Board for its questions and commentary.

Board member Shea inquired if Mr. Barnes responded to either of the first two letters from the Town. She inquired about his earlier statement that he would be at the property or nearby during the events at his house. She inquired if Mr. Barnes utilized a written agreement with renters, i.e. a signed a contract, virtually or actually, for the use of the property when listed on VRBO, etc.

Mr. Barnes responded that the first Town letter was not certified, and he did not receive it, and the second letter was certified and he had received it. He stated that he responded to Mr. Peck's correspondence. He stated that renters only accepted the terms as listed on the VRBO, etc., website; he confirmed that he did not utilize a separate written contract, agreed upon by a renter, for the use of his property. He stated that there are rules and regulations that renters reviewed but that no contracts had been signed.

Board member Shea inquired about Mr. Barnes' vetting of the renters and that he stated he had requirements for use of the home, related to DJs or noise, etc., and whether or not the requirements were stated in the VRBO web site information. She inquired how he enforced his rules and regulations specific to the use of his property. She noted that it was unusual that there were no written requirements for the property use, to be signed by renters, in the materials submitted to the Board.

Mr. Barnes stated that the particular rules and regulations were not stated on VRBO, but they were shared with a renter prior to an event, and there might have been phone communication or correspondence with the renter. He stated that in screening the renters, he would ask them what they planned to do at the property. He assured the Board that the rules existed and that renters reviewed them prior to renting the home.

Board member Shea inquired if Mr. Barnes was stating that the complaints of neighbors were not truthful. He responded that many inaccurate statements were made by neighbors.

Board member Bukowski inquired of Mr. Barnes if he considered the property at 145 Deercliff Road to be his primary residence. Mr. Barnes responded in the affirmative. Board member Bukowski inquired about the number of approximate nights Mr. Barnes spends at 145 Deercliff Road. Mr. Barnes responded that he spends nearly every night at 145 Deercliff Road except during weekend rentals. Mr. Barnes confirmed that most times he was not present during the rentals. Mr. Barnes stated that the total approximate regular number of renters per event was between 12 and 16 people, including people who might be sleeping at the residence, since he received the Town's Cease and Desist Order. In response to Board member Bukowski's question regarding Mr. Barnes' listing on VRBO, etc., that the residence sleeps 16 people, Mr. Barnes stated that the total average amount of people at a rental event was not greater at the events prior to his receipt of the Town's Cease and Desist Order, during the time period from 2019 until the present.

Chair Carroll inquired if Mr. Barnes received the Cease and Desist Order from the Town, dated November 10, 2020. Chair Carroll inquired about the number of times Mr. Barnes had rented the property since receipt of the Town's Cease and Desist Order, dated November 10, 2020.

Mr. Barnes stated that he had received the Town's Cease and Desist Order, dated November 10, 2020. He stated that he rented the property seven or eight times since receipt of the order.

Chair Carroll noted that Mr. Barnes wanted to contest the Town's order, however, still rented the property since the date of the order, and that activity was in violation of the order.

Mr. Barnes stated that he clearly contested the order, and has made the ZBA appeal, and that he had agreements with parties, individuals, to rent the home; and that he felt obligated to honor those agreements.

Chair Carroll questioned why Mr. Barnes did not feel obligated to make contact with the Town to see if the rentals since November 10, 2020, would violate the order.

Board member Shea stated that within the State of Connecticut, one has the right to file an appeal to the Town and to also apply for a variance. She inquired of Attorney Piecuch why there was no variance application for 145 Deercliff Road.

Attorney Piecuch stated that he would not respond regarding his party's strategy, and that they had not waived their rights to apply for a variance.

Attorney Piecuch stated that he had met with Hiram Peck at Town Hall, at the exterior of the Town building, since the order was issued, and that Mr. Peck indicated that the Town was willing to work on the issues noted in the order. Attorney Piecuch stated that he and his party offered to work out the issues.

Chair Carroll confirmed that the Board had no further questions at that time.

Attorney Piecuch inquired of Mr. Peck if there were any other properties, other than 145 Deercliff Road, that the Town looked into and had issued a Cease and Desist Order.

Hiram Peck stated that as of the time of this meeting the Town had not issued any other Cease and Desist Orders for particular reasons. He stated that, as mentioned in his memorandum to the ZBA, the Town does not typically seek them out. He noted that until the Town received a number of complaints regarding activities at 145 Deercliff Road, the Town was unaware of the types of use of the property at 145 Deercliff Road. Since the applicant has indicated other rental properties in Avon, the Town would consider this to be a written complaint, and would be happy to look at those properties in the near future.

Hiram Peck wished to emphasize some main points, and stated that Attorney Piecuch noted that the Town's regulations did not indicate a lot about property rentals or discriminate about the types of uses. Hiram Peck pointed to his own memorandum to the ZBA where he stated that the Town's regulations were very clear that the uses that were not covered in the Town's regulations were not permitted; it was the main point that the Town's regulations were constructed around the types of property uses which have been permitted in the Town, and according to the State of Connecticut. He stated that this particular matter did not involve other units that may or may not have been rented or were being offered for rent in town. He stated that the matter of this particular property was the result of the many complaints that the Town received from the neighbors. Those complaints were followed up by the Town police, that indicated in some cases that there were a number of people at 145 Deercliff Road, or that there had been a medical situation there, etc., but it remained that there were a number of complaints investigated by the police. He pointed out that currently, there were a number of restrictions imposed by the State of Connecticut on the number of people at gatherings due to the pandemic. He stated that, as pointed out by one of the Board members, there has been no intention to cease the activities at 145 Deercliff Road. There had been no communication with the Town until the day the appeal was due, and no communications from the applicant with the neighbors regarding their fears and safety concerns.

Chair Carroll opened commentary to the public at that time in the meeting.

Attorney Brian R. Smith, of Robinson & Cole LLP, representing his clients Robert Forrester and Linda Forrester, owners of 143 Deercliff Road, stated that he had submitted a letter to the Town ZBA, dated January 15, 2021. He wanted to assure that the Board reviewed the letter, and he summarized its contents. He stated that the Forresters have owned the private driveway which has provided access to 145 Deercliff Road, where Mr. Barnes continues to reside, as well as 147 Deercliff Road and 151 Deercliff Road; these were the four individual single-family residences that depended on this driveway. He stated that as was typical with a shared driveway, there were easements in place that allowed the other owners to use the road to gain access to their properties. He stated that the increased and commercial use of the driveway has increased the traffic on this private road. The Forresters had personally observed people driving onto their property, to back out, and to drive onward to 145 Deercliff Road on a frequent basis. He stated that the issue at 145 Deercliff Road was not that it was a rental, but a commercial use of the property. The findings of the Cease and Desist Order, issued November 10, 2020, indicated the rentals for gatherings were not a permitted usage according to the Town's regulations. He stated

that if someone were to rent a single-family home for a week or a year, that by itself would not be the issue. He stated that the kinds of uses occurring at this house were not proper, such as wedding parties, sweet sixteen parties, etc.; and that the activities were violations of Section IV of the Town's regulations, as cited in Mr. Peck's memorandum. He stated that those types of gatherings were permitted in only commercial zones where there are establishments such as Avon Village Center, hotels, motels, and hospitality services. He stated that these types of uses were illegal on a residential property and were not permitted in the regulations. In the regulations, if the use were not specifically permitted in the zone, then they were deemed prohibited; and the property uses which have occurred at 145 Deercliff Road were prohibited. It would not be the issue of minimal accessory uses of the property, as the actual issue was the activity of large gathering events that would be commonly found at Avon Old Farms hotel, for example. He questioned if the number of online rental examples cited by the applicant included shared driveways by property owners. He referenced some of those rentals, cited by the applicant, in which there were advertising statements by the rental property owners that no parties or events were to occur at those properties. He stated that this public hearing was the time and opportunity for Mr. Barnes to produce his rules and regulations, but had not produced any. He strongly suggested that the use of Mr. Barnes' house was an improper use, a nuisance, as well as a safety concern to the neighborhood. The issue of noise was not the primary issue. He stated that Hiram Peck's Cease and Desist Order was valid, and that his clients requested that the Board uphold the Cease and Desist Order and deny the appeal by the applicant.

Rosemary and Steven Neamtz, abutting property owners at 147 Deercliff Road, stated that they have lived in their house for 14 years, and that she was the neighbor who had made the calls to the police. She stated that during the times her husband had traveled for work, she and her two teenage children remained at the house. She summarized the struggles that her family has endured living next to the rental events that have taken place at 145 Deercliff Road, including bachelor parties. She noted her 16-year old who was afraid to drive and that her children were afraid to walk the family dog. She stated that she has awakened on a Saturday morning to a group of nearly naked men, seen at the back patio of 145 Deercliff Road. She stated that she has never called the police about noise issues, and that her main concern remained issues of safety. She stated that her property had been used as a parking lot for a large funeral reception of approximately 70 people at 145 Deercliff Road. She stated the following: that renters have trespassed on her property; people had recently knocked on her door wanting to know where to park to unload tables for a party at 145 Deercliff Road; and there have been pedestrians leaving the house at 145 Deercliff Road physically drunk and at risk on the private driveway. She stated that 145 Deercliff Road had been marketed as a premier estate to host weddings, corporate receptions, and family reunions; and those events have occurred. She stated that she also had rights where she lives, in a residential neighborhood, on a private road, and that the bottom line was safety. She stated that the road as constructed was a small, winding, narrow, and dark road with an egress for the four residential homes. She stated that Mr. Barnes had represented inaccuracies in what was actually occurring at his property, and she noted that it has been used as a commercial venue.

Steven Neamtz, property owner at 147 Deercliff Road, stated that there has been a danger from the events and someone would eventually get hurt. He stated that some of the rentals were per the night.

Ms. Neamtz stated that the real estate rental comparables, as presented to the ZBA by the applicant, were actually small homes with few people that could be able to rent those properties. She stated that since Mr. Barnes has been renting his home, there have been four weddings at 145 Deercliff Road. She requested on behalf of her family that the Town's Cease and Desist Order be upheld by the ZBA.

Attorney Thomas Kaelin, representing the Town of Avon, sought to clarify some of the points made that evening. With regard to the viewpoint presented from the applicant's attorney that the Cease and Desist Order was vague and problematic, Mr. Kaelin stated that the order was clear, concise, and enforceable. The Town's order stated that only a single family residential home was allowed in the zone and that the uses ongoing at 145 Deercliff Road were not of a single family residential use. He stated that there were two critical points: with regard to Attorney Piecuch's suggestion that one could not find in the regulations the specific language prohibiting this use, Attorney Piecuch misunderstood the nature, purpose, and writing of the Town of Avon's regulations. He stated that in actuality, the regulations provided that unless a use was specifically allowed, and clearly permitted, the use remained prohibited. The regulations did not work the way it was argued by Attorney Piecuch, as he argued that unless specifically prohibited, anything was allowed. He stated that one would not find language in the Town's regulations with regard to short-term rentals, VRBO rentals, etc., because they were not in the regulations and they were not permitted. He stated that there had been argument and discussion this evening regarding rentals, commercial usage, and the exchange of money. He stated that the regulations focused on single family residential usage for the residential zone; and that if the rental were per night, the rental was not for single family use; and for this situation, the regulations did not permit this usage. He stated that for those referenced reasons, the Town's Cease and Desist Order should be upheld by the ZBA.

Mr. Barnes stated that the landing page to the rental listings included a section for house rules, and it was there where it stated: no parties, no pets, and no smoking; and that he had made changes to these rules by removing previous language from the past. He stated that, with regard to the shared and private road for the four homes, 151 Deercliff Road has also listed on VRBO/Airbnb and rented to individuals; and therefore two homes on this road have rented the properties on a nightly or weekend basis, and the usage was not out of the ordinary. He stated that since receiving the Town's Cease and Desist Order, he had not had any legitimate complaints.

Attorney Piecuch stated that his understanding of the regulations was not backward. He stated that Attorney Smith had mentioned certain rental situations that he felt were permitted in the regulations. He questioned the time period allowed for rentals in a single family home, and that the Town's Cease and Desist Order had stated a blanket rule, was overbroad, and which discounted that certain rentals on VRBO, etc., could be permitted. He stated the need to know what gatherings were permitted.

There were no further comments or questions from the public.

Board member Shea motioned to close the public hearing, and Chair Carroll seconded the motion. All present voting members voted in favor: Eileen Carroll (Chair), Christy Yaros (Vice-



chair), Chet Bukowski, and Ames Shea, and Alternate member James Williams. The motion carried.

Board member Shea referenced Attorney Piecuch's statement that the ZBA had been tasked with a de novo review, and she agreed with this statement. She stated that part of the ZBA's role as a quasi-judicial board was to judge the veracity of the witnesses. She stated that Mr. Barnes' testimony only chose certain facts from the many documents, however, he had contradicted himself on several points. Those points included: that Mr. Barnes did not allow parties, but he had discussed wedding events that had taken place at his property, and the witness Ms. Neamtz had discussed a funeral reception and a bachelor party at 145 Deercliff Road; Mr. Barnes had stated that he had remained in the house or nearby, yet much of the public testimony was comprised of circumstances which Mr. Barnes could not respond to, since he was not seemingly at or nearby the residence. She stated that Attorney Piecuch had stated that there was nothing in the regulations to answer his concerns regarding the Town's order and which presented an unsolvable problem. She stated her review of the Town's zoning regulations and the types of issues for which the ZBA was responsible, and that in this case the ZBA had the authority, "To hear and decide appeals where it is alleged that there is an error in any order, requirement, or decision made by the Enforcement Officer;..." She did not believe that in deciding the issues before the Board that evening, there was an attempt to legislate in any way; and that the State of Connecticut has provided much leeway for local community boards' decisions. She stated that this hearing had been very thorough. She stated that the Town's zoning regulations were to be interpreted through the viewpoint of public health, safety, general welfare, to conserve the value of property, and for appropriate property use. She stated that she had not heard the applicant's contradictions to the public statements on safety issues; and she believed the public statements regarding safety to be credible. She stated that the value of property could be looked at from the viewpoint of the neighborhood, and not just from the owner/applicant's situation. She stated that the general issue of a rental property listed on VRBO may not be of a commercial nature, however, the activities at Mr. Barnes' house, in a residential neighborhood, reflect much more of commercial usage than residential usage.

Board member Bukowski stated that he had reviewed the Town's zoning regulations and agreed with all the commentary that Board member Shea stated, and also agreed with the latitude of the Board in interpreting the regulations. He stated that Section IV of the zoning regulations, which referenced single family residences, did permit the use of the home for an occupation or business activity resulting in a product or service for money, however, there were limitations including that occupation or business activity must be less than 25% of the entire house, and importantly, that it did not present a nuisance to the neighborhood. He stated that the use of a single family home for a home occupation was permitted as an accessory use, but it was subject to those limitations including the nuisance to the neighborhood, which was apparent in this case.

Alternate member Williams stated that if activity or use were not permitted in the rules of Section IV of the zoning regulations, than that usage was prohibited; and that was the code which the Board was following. He stated that if Mr. Barnes had answered the letters when they were first sent, the present situation could have been clarified much earlier. He stated his interpretation for the Board to follow a clear enforcement.

Vice-chair Yaros stated that she agreed with the statements of Board members Shea and Bukowski and Alternate member Williams.

Chair Carroll stated that she agreed with all of the remarks by the Board in this hearing; in particular, that Mr. Barnes did not comply with the Cease and Desist Order and that Mr. Barnes conducted seven or eight more rentals since that order; and that it did not reflect well on Mr. Barnes' intention for the Board's decision on the application.

Chair Carroll confirmed that there were no further comments or questions from the Board.

Board member Shea motioned to deny the appeal of James Barnes from the ZEO Hiram Peck's Cease and Desist order, dated 11/10/2020; based on the following:

1. The ZBA is tasked under the Avon Zoning Regulations with either granting a variance from the regulations, which is not being requested here, or to correct an error in any order, requirement, or decision made by the ZEO, which is what we are asked to do this evening.
2. The appeal is denied as the ZBA finds no error for the following reasons:
  - a. The cease and desist order was made based on the use of the subject property as a commercial enterprise even though it is located in an RU-2A zone, which is not permitted and is therefore prohibited under the regulations (evidence includes statements and documents in the record provided by the appellant and his counsel of use beyond that of a residential property, including wedding parties, wakes, and other gatherings of non-family members of the appellant for money);
  - b. Additionally and without reliance on a finding that the use of the property that is the subject of this cease and desist order has been commercial in nature, the evidence reflects that the activities at the property in question directly endanger the safety of the neighborhood and the general welfare of the residents of the neighborhood;
  - c. Finally, as it is the ZBA's duty to encourage the appropriate use of property in Avon, in order to maintain the character of the surrounding neighborhood, and for the reasons set forth in the record both written and via testimony tonight, and independent of a finding of the commercial nature of the use of this property, the activities which are the subject of the cease and desist order do not reflect the appropriate use of this property and those uses are therefore not to be upheld by this board pursuant to its duties under the Zoning Regulations of Avon and the CT State Statutes.

For these reasons and the evidence submitted in support thereof, the appeal from the cease and desist order is denied.

Vice-chair Yaros seconded the motion. All present voting members voted in favor of the motion: Chair Eileen Carroll, Vice-chair Christy Yaros, Board members Chet Bukowski and Ames Shea, and Alternate member James Williams. The vote to deny the appeal of the Zoning Enforcement Officer's order, dated 11/10/2020, was unanimous and the motion carried.

OTHER BUSINESS:

There was no other business.

NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled meeting, virtual, will be February 18, 2021, at 7:00 p.m.

Chair Carroll motioned to adjourn the meeting and Board member Shea seconded the motion. All present voting members voted in favor: Chair Eileen Carroll, Vice-chair Christy Yaros, Board members Chet Bukowski and Ames Shea, and Alternate member James Williams. The motion carried and the meeting adjourned at 9:06 p.m.

Susan Guimaraes, Clerk  
Zoning Board of Appeals  
Town of Avon Planning and Community Development