

The Zoning Board of Appeals of the Town of Avon held a meeting on Thursday, September 18, 2014 at the Avon Town Hall. Present were Messrs. Ladouceur, Johansen, Oleyer, Vicino, Ms. Aube and Mr. McCahill, Planning & Community Development Specialist. Mr. Ladouceur called the meeting to order at 7:30 p.m.

## PUBLIC HEARING

September 18, 2014

The Clerk read the call to meeting.

Mr. Ladouceur read the Application of Marcel & Diane Robaczynski, owners/applicants; requesting from the Avon Zoning Regulations Section IV.A.6., a 6' variance from the 20' side yard setback requirement to permit a 1½ story garage located at 390 Lovely Street in an R-30 zone.

Marcel Robaczynski was present. Mr. Robaczynski said that his property is an old school house built in 1700's, taken down and re-built prior to the Civil War, and remained a school house until 1949. There are several building features that do not comply with the Building codes of Avon that were established in 1957. He stated that he does not have a 60' front yard setback or the 20' side yard setback from the existing garage structure. His proposal is to construct a post and beam garage in order to maintain the historical significance with the existing house. Mr. Robaczynski is requesting a variance to construct a 1½ story garage. Mr. Robaczynski referring to the proposed plan, said that an 8' x 10' mud room addition next to the garage that would connect the mud room to the garage was not highlighted and difficult to see. If the mud room addition was approved, the proposal would not meet the 60' front yard setback.

Mr. Ladouceur asked the applicant if his intention was to move the garage 3' feet closer to the road.

Mr. Robaczynski responded by confirming Mr. Ladouceur's statement.

Mr. Ladouceur inquired when the applicant will have a decision as to whether to move the garage 3' feet or keep the current location as proposed on the plan.

Mr. Robaczynski said he would ideally prefer to have an approval to move the garage 3' forward to accommodate the addition of the 8' x 10' mud room.

Mr. Johansen said that the addition would appear to be a large structure if connected to the garage. He inquired if the addition would be affected by the Zoning Regulations depending on whether the addition was attached or detached.

Mr. McCahill responded by stating there would be no issues with regard to the setbacks as far as whether the addition is attached or detached.

Mr. Oleyer asked for confirmation that the proposed garage would be used for storage only.

Mr. Robaczynski confirmed the proposed garage would be used for storage only.

In response to Mr. Ladouceur's question, Mr. McCahill stated that the applicant can submit another application to move the proposed structure forward at some future date if the application, as presented here this evening, is approved. Mr. McCahill stated Mr. Robaczynski approached him with the proposed changes after the abutters had been notified and the legal notice had been published. Mr. McCahill suggested that there is the option to keep the public hearing open in order to allow the applicant to amend the current application. Mr. McCahill stated that the proposal has to be accurately representative of what has been approved. Mr. McCahill stated that the 2 options available to the applicant are to keep the public hearing open for this application and work out the details or to request an approval for this application and reapply for a variance at some future date.

Mr. Robaczynski stated that he would prefer to receive an approval for the current application and possibly apply for a separate variance at some future date. He continued by stating, it is his understanding, that if his application for a 24' x 30' outbuilding is approved that he can make it smaller if he so chooses.

Mr. McCahill confirmed the applicant's statement.

Mr. Ladouceur confirmed with Mr. Robaczynski that the applicant would like to move forward with the decision for the current application and that if the applicant decided he wanted to move the proposed structure closer as discussed, the applicant would have to submit a new application, with an amended drawing, to be reviewed by the Zoning Board of Appeals.

Mr. Ladouceur stated that that essentially at least  $\frac{3}{4}$  of the existing house is within the front yard setback. The existing garage is essentially 1-2 feet into the side yard setback. Currently there exists a house and garage that are non-conforming. He stated that he wanted to confirm that there would not be a public safety issue with regard to the relocation of the garage as currently proposed. As stated by Mr. Robaczynski, this is the only feasible location for the proposed garage as a result of the location of his septic system.

Mr. Hines, abutting resident at 380 Lovely Street, stated he is in favor of the application as proposed. The present structure is deteriorating and he suggested that the current proposal will enhance the property and the neighborhood. In his opinion the 6' variance will not have any negative impact to his property. He strongly urges the Board to approve this application.

There was no one else present. The Public Hearing closed at 7:50 p.m.

Mr. Ladouceur read the Application of Gene Macy & Denise Steele owners/applicants; requesting from the Avon Zoning Regulations, Section IV.A.2., a variance to allow a full bath in the proposed 24'x 36' barn and a 4' variance to exceed the average height of the existing dwelling, located at 269 Arch Road in an R-30 zone.

Mr. Macy and Ms. Steele were present.

Mr. Tom Gresh, The Renovation Group, was also present. Mr. Gresh stated he will be the builder for the proposed renovations.

Mr. Macy stated that the language in the application explains the rationale for the proposed height variance.

Mr. Gresh stated that the proposed barn will be well beyond 100' from the back side of the house, with the sight line being a non-issue for abutting neighbors.

The question was asked if the utilities will run from the house to the structure.

Mr. Gresh stated that the utilities will run directly from the utility pole as a result of an existing septic system.

Mr. McCahill stated that the utilities will be connected to the same meter as the house.

Mr. Ladouceur read 2 affidavits received from Michael Monts, 265 Arch Road and Dawn Safton, 264 Arch Road in support of the proposed barn.

Ms. Aube inquired as to what kind of processing will be conducted on the property.

Mr. Gresh responded by stating that there will be a sink and counters for rinsing apples and berries, but it will not have a full kitchen.

Mr. Macy stated that their intention is to resurrect the gardening that was in existence from the previous owner and he confirmed that there will not be a full kitchen.

Mr. Gresh confirmed that the request for a variance is for a full bathroom and 2 sinks at a separate washing station.

Mr. Macy stated there will be no driveway to the barn.

Mr. Gresh confirmed Mr. Ladouceur's statement that the 2 existing sheds will be removed and the proposed barn will be located in the same place as the the 2 sheds.

Mr. McCahill confirmed, in response to Mr. Ladouceur's question that the size and scope of the full bathroom will be as proposed on the plan. Mr. McCahill continued by stating that the applicant has already applied for a building permit and has addressed the height issue prior to applying to the Zoning Board of Appeals. Mr. McCahill stated that the Zoning Regulations were changed about 8 to 10 years ago to allow an accessory building to be 1,000 sq. ft. At the same time, limitations were eliminated as to how many stories were allowed with an accessory building. What the applicant is requesting is a very modest variance of the height relationship as it correlates to the house.

There was no one else present. The Public Hearing closed at 8:08 p.m.

Mr. Ladouceur announced that there would be a 3 minute break. The public hearing resumed at 8:11 p.m.

Application of Nave LLC, Business; GDK LLC, Property; David Leon. applicant; at 332 West Main Street; requesting an appeal from the decision of the Avon Zoning Enforcement Officer (Town Planner) regarding the approval of a Package Store Liquor Permit, proposed location at 260 West Main Street, Avon Zoning Regulations, Section V.J.2. in a CR zone.

Mr. Leon was present.

Mr. Ladouceur stated that this application was submitted to the Zoning Board of Appeals on August 27, 2014. He continued by stating that the applicant is appealing the decision by the Town of Avon Zoning Enforcement Officer (Town Planner) regarding the approval of a Package Liquor Store Permit approved on May 15, 2014. An appeal, in accordance with Connecticut State Statutes shall be filed with the Zoning Board of Appeals within 30 days.

Mr. McCahill clarified that an appeal may be filed within 30 days "upon actual of constructive notice of such order, requirement or decision", as stated in sub set 3 in Section 8-7 of the Connecticut State Statutes. Mr. McCahill stated Mr. Leon was made aware of the approval that was dated May 15, 2014. Mr. Leon's attorney, Rowena Moffett, in correspondence dated June 25, 2014 requested a legal opinion from Avon's Town Attorney as to how the Zoning Regulations were interpreted. Kari Olson, Town Attorney, responded to Ms. Moffett and Mr. Leon in correspondence dated June 30, 2014.

Mr. Ladouceur stated that we have a copy of Mr. Leon's Building Separation Survey that is also dated June 16, 2014.

Mr. Ladouceur stated he would like to hear from the applicant solely with respect to the application as well as the liquor permit grant and their dates.

Mr. Leon, 332 West Main Street, stated that he had spoken with Mr. Kushner, Town Planner, on numerous occasions and had never received a formal notice of Mr. Kushner's decision. Mr. Leon stated that Connecticut State Statutes, "speaks to an aggrieved person getting a formal notice for this thirty day appeal". Mr. Leon confirmed that he had received a copy of the Town Attorney's opinion. Mr. Leon stated that he filed his application to the Board of Appeals prior to the application deadline, and in his opinion he has a right to be heard as a result of not receiving a formal notice.

Mr. Ladouceur, referring to Section 8-7 of the Connecticut General Statutes, read the following: "Such an appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) Upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) Upon actual or constructive notice of such order, requirement or decision."

In response to Mr. Ladouceur's question, Mr. Leon confirmed that Ms. Moffett was his attorney. Mr. Leon also confirmed that Mr. Leon's attorney was referring to the decision to grant a permit in her correspondence dated June 25, 2014.

Mr. Ladouceur stated that there is no requirement in Section 8-7 of the Connecticut State Statutes that indicates that Mr. Leon should have received a formal notice. He continued by stating that the only requirement stated in Section 8-7 references receipt of the order or actual or constructive notice of the order. He stated that Mr. Leon did have notice of the decision made on May 15, 2014.

Mr. Leon responded by stating that he never received notice of the 30 day appeal period and in his opinion was not treated fairly.

Mr. Oleyer asked for clarification as to what specifically Mr. Leon was appealing this evening.

Mr. Leon responded by stating that he is appealing the decision made by Mr. Kushner on May 15, 2014 with regard to the portion of the building located at 214 West Main Street that is 936.22 feet from the portion of the building that will house the proposed liquor store at 260 West Main Street. He continued by stating that he was only aware of Mr. Kushner signing off on a liquor application in May as seen posted on a placard on Route 44 and prior to June 10<sup>th</sup>.

Mr. Johansen inquired as to who is an aggrieved person as the Connecticut State Statutes states.

Mr. Ladouceur responded by stating there is no definition for an aggrieved person in the Connecticut State Statutes.

In response to Mr. Vicino, Mr. Leon stated that he had counsel from an attorney regarding this matter.

Mr. Ladouceur stated that the Section 8-7 of the Connecticut State Statutes does not require any specific form of formal notice. He continued by stating that the requirement states that there is actual or constructive notice and a 30 day period to appeal.

Mr. Oleyer clarified that the 30 day appeal period is to protect the party who applied for and received the application and for approval.

Mr. Leon stated that in his opinion he should have been informed of the requirements of the Connecticut State Statutes.

Mr. Patel, brother of the permittee of the proposed Bottle Shop Wine & Spirits, indicated that the permittee, Reshma Amin, went through the appropriate channels for a site plan approval for the proposed liquor store, and that it would have been in Mr. Leon's best interest to have hired an attorney to ensure his rights were protected.

Mr. Reshma Amin stated that she agrees with everything her brother, Mr. Patel, has indicated.

Mr. Ladouceur made the motion to dismiss this application for lack of jurisdiction. Mr. Vicino seconded the motion. The motion was unanimous by Messrs. Ladouceur, Johansen, Vicino, Oleyer, Ms. Aube.

The public hearing closed at 8:35 p.m.

## ZONING BOARD OF APPEALS MEETING

September 18, 2014

A Zoning Board of Appeals meeting was held following the Public Hearing.

Ms. Aube made a motion to GRANT, seconded by Mr. Oleyer the Application of Marcel & Diane Robaczynski, owners/applicants; requesting from the Avon Zoning Regulations Section IV.A.6., a 6' variance from the 20' side yard setback requirement to permit a 1½ story garage located at 390 Lovely Street in an R-30 zone. The vote was unanimous by Messrs. Ladouceur, Johansen, Vicino, Oleyer, Ms. Aube.

Reason – The granting of the variance will be in harmony with the purpose and intent of these regulations, will accomplish substantial justice and will not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare.

Hardship – To deny would deprive the owner of a reasonable use of the property.

Mr. Vicino made the motion to GRANT, seconded by Ms. Aube the Application of Gene Macy & Denise Steele owners/applicants; requesting from the Avon Zoning Regulations, Section IV.A.2., a variance to allow a full bath in the proposed 24'x 36' barn and a 4' variance to exceed the average height of the existing dwelling, located at 269 Arch Road in an R-30 zone. The vote was unanimous by Messrs. Ladouceur, Johansen, Vicino, Oleyer, Ms. Aube.

Reason – The granting of the variance will be in harmony with the purpose and intent of these regulations, will accomplish substantial justice and will not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare.

Hardship – To deny would deprive the owner of a reasonable use of the property.

#### Other Items

Ms. Aube inquired if the meeting day or times could be changed in order to accommodate a very busy personal schedule.

Mr. Ladouceur responded by stating that changing the meeting day or time would be problematic for many reasons. The regularly scheduled meetings will remain on Thursday evenings at 7:30 pm..

Mr. McCahill suggested that the alternates consider attending the regularly scheduled meetings to ensure there is a quorum.

There being no further business, the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Judy Schwartz, Acting Clerk for  
Shirley C. Kucia, Clerk