

ZBA Minutes FEB 28 2013

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The Zoning Board of Appeals of the Town of Avon held a meeting on Thursday, February 28, 2013 at the Avon Town Hall. Present were Messrs. Ladouceur, Johansen, Vicino, Ms. Hard, Ms. Aube and Mr. McCahill, Planning & Community Development Specialist. Mr. Ladouceur called the meeting to order at 7:30 p.m.

PUBLIC HEARING

February 28, 2013

The Clerk read the call to meeting.

Mr. Ladouceur explained to the public the procedure for the meeting. We will hear the first application and anyone here would like to comment on it there is a public portion of the meeting to do so. Then the meeting will close and we will reach a decision for the first application. Then he will start with the second application followed by comments from the public. For an application to be approved it does not require a unanimous decision of this board, just four of its five members.

Mr. Ladouceur read the Application of William Douglas Crawford, owner/applicant; requesting from the Avon Zoning Regulations Section IV.A.6., a 5' variance from the 15' side yard setback requirement & a 25' variance from the 30' rear yard setback requirement, to permit a 16'x20' shed, located at 44 Orchard Street in an R-15 zone.

Mr. William Crawford stated his lot is only 75' wide. If he observed zoning, the shed would have to be in the middle of his yard. He felt that looked pretty bad. He definitely needs storage, his family is growing and items are filling up his garage and basement. He thought he didn't need a permit. He found out he needed a survey to determine the distance from the property lines. He plans to line it up with his neighbors sheds. The pictures included with his application are sheds copied from the internet similar to what he has planned to purchase, two are larger than he wants.

Mr. McCahill stated he received one phone call from an immediate abutter who received a variance several years ago and was not opposed to this application as long as he keeps 10' away from the property line.

Mr. Ladouceur said on the plan it shows two other sheds and this would be a third in a cluster of sheds.

Mr. Crawford replied that is correct. His house was built in 1927. The house and garage are outside the building lines as they predated zoning.

There were no further comments. Mr. Ladouceur closed the Public Hearing at 7:43 p.m. and opened the Zoning Board of Appeals Meeting.

Ms. Hard made a motion to GRANT, seconded by Mr. Vicino the Application of William Douglas Crawford, owner/applicant; requesting from the Avon Zoning Regulations Section IV.A.6., a 5' variance from the 15' side yard setback requirement & a 25' variance from the 30' rear yard setback requirement, to permit a 16'x20' shed, located at 44 Orchard Street in an R-15 zone.

Mr. Ladouceur noted it is a long narrow lot given the side and back yard setbacks, it doesn't leave a whole lot of room to place the shed. It is going to be placed in an area where there are two other sheds from different property owners, one who gave no opposition to it.

The vote to GRANT was unanimous by Messrs. Ladouceur, Johansen, Vicino, Ms. Aube, Ms. Hard.

Reason – The granting of the variance is in harmony and keeping with the purpose and intent of the regulations and would not be injurious to the neighborhood.

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

Mr. Ladouceur reopened the Public Hearing.

Mr. Ladouceur read the Application of Jack Thavenius, owner/applicant; requesting from the Avon Zoning Regulations Section IV.A.2., a 240 sq.ft. variance from the 1,000 sq.ft. allowed to permit two existing structures to remain as accessory buildings to be used primarily for garage and storage purposes, and a variance to allow secondary use of a portion of one building for a workout and music

room (new home to be constructed on premises) located at 576 Waterville Road in an RU-2A zone. He also read the letter opposing the application from neighbors on Cider Brook Road, Bimal & Falaguni Pastel #195, Tom & Elsee McEachin 190, Steven & Karen Aiudi 211, Roger & Nora Howard 215, Murray & Julianne Wayne 219, David & Kelly Birkenruth 244, Dr. Mark Izard 150, Dr. Andrew Caputo 180. He would like the applicants to address the use issue, height, look and feel of the property, & the driveway issue.

Present were Jack & Christina Thavenius, owners and Dave Whitney, Professional Engineer with an office in the town of Avon.

Mr. Whitney said the property is at 576 Waterville Road, located across the street from the horse barn formerly known as River Farms, now Farmington Valley Show Stables, east side of Waterville Road. The variance request tonight is to permit existing accessory buildings that exceed the maximum 1,000 sq.ft. footprint by 240 feet. The original application also requested in addition to the permitted garage and storage use, use of part of one accessory building as a personal gym and music room. There was concern by the town staff so the application has been amended to eliminate any use of the building other than for storage and garage as noted on exhibit A with detailed description of the proposed uses of the building. The uses would be only for garage and storage.

He continued. The site consists of 2.1 acres, located in an RU-2A zone. There is an existing residential house where the applicants live. It's a small footprint, 1,080 sq.ft. and an existing 160 sq.ft. garden shed, total sq.ft 1240. They plan to build a new primary single family house on the eastern side of the property with a driveway from Cider Brook Road. The present house has two curb cuts from Waterville Road. The existing house, built in 1920, would be modified to become an accessory structure and not a residence.

A big concern expressed was that it looks like a house, it still could be a house, you can't have two residents on a single family lot. To address that, exhibit A about the uses as a garage and storage area, there were notes about physical work to be done to the structure so it will clearly not be a residential building. One, existing house & garage to be converted to garage and storage with no residence allowed; two, existing kitchen to be removed; three, existing plumbing fixtures to be removed from house; four, existing bathrooms to be removed; five, existing appliances to be removed; six, applicant to apply for building permit prior to demolition; seven, all work of converting existing structure and storage building to be completed prior to issuance of certificate of occupancy of primary residence. The idea is to make significant modifications to the structure so that it is clearly not a residence once the primary residence is built.

There are no town regulations to govern what an accessory building should look like. Many of them look like barns, but not all of them in town. Because it is a nice looking structure, the applicant does not feel the need to modify the outside of the exterior of the structure. Leaving it as is would not be in violations of the town's regulations. The primary reason to keep this structure is because it is there. It's an existing asset, it's worth something, & we all desire storage space.

The applicant understands two houses on one building lot is not acceptable and not legal. He is making changes to the existing dwelling. The height of the existing house is about 17½ feet, the new house will be about 33½ feet which was another concern expressed. The concern about traffic on Cider Brook Road is not a concern for this board. Jack has constructed a construction access road so that all construction vehicles will come in from Waterville Road. It is not to be used as a cut through from Waterville Road to Cider Brook Road. The driveway from Cider Brook Road will be used for the new dwelling. There will be gates installed at the existing curb cuts on Waterville Road for this construction road.

Jack Thavenius showed pictures of the existing house. He is attached to this house, he just put on a new roof, painted it and new patio. That is why he would like to keep it and does need more storage. They love the house and want to match the new house by design. He showed pictures of other accessory buildings that look like houses in the area, they don't look like a typical barn. The present

house was built in 1920, not large, a 24'x30' house, a small addition slab added later. It will be a perfect storage garage for his tractor and lawn mower as he has a big yard. The new house will fit in with the neighborhood, his architect is the same as two of his abutters. His new dwelling will be similar as the present house with the same siding, same color trim, & same type of windows. The old house will not be very visible from the new house as there is a significant elevation difference, 208 to 252. It will still be visible from Waterville Road.

Mrs. Thavenius asked to speak in favor of application later after hearing other comments from those present.

Steve Aiudi, 211 Cider Brook Road said there has been a modification to the application to remove the gym and music room. If the board does consider this, would there be screening involved blocking the existing house with evergreens from Cider Brook Road? His view is currently the back of the existing house. His property is to the south. He currently has screening from his house to the house at 588 Waterville Road.

Mr. Bimal Pastel, 195 Cider Brook Road questioned if the square foot requirement was for just the footprint or the whole structure. Mr. Ladouceur replied it was just the footprint. Mr. Pastel continued. He asked if the construction road during construction would be paved? They had heard he was planning to connect the construction road to the proposed driveway to Cider Brook Road so it would connect Waterville Road to Cider Brook Road. The trees on that lot were all gone in two weeks. Now everything is open and clearly visible. He wants Jack to have a secondary structure, that's not the point. It is clearly visible especially after the trees are gone. It takes the appearance of a two acre lot, have one structure visually from outside. He takes the ambiance of the street away, the privacy that we had. He liked to hear he's including plantings around the current home as much as possible. So far he has just taken down the trees then putting up the trees. We already have some plantings in our own yard.

Mr. Ladouceur stated the plan calls for a proposed construction driveway and the proposed driveway for the new house is labeled paved driveway. The Waterville Road driveway access road will be gated to prevent a pass through.

Mr. Thavenius said he has a whole landscaping plan for the lot. He himself will be most affected by looking at it. He is not sure about screening the old house. The construction driveway is just a gravel access road to build the house. The construction trucks will not be using Cider Brook. The trucks are delivering the fill and have to push the fill up hill, if they used Cider Brook it would have been easier to just dump the fill. It is important to keep Cider Brook safe and preserve the integrity of Cider Brook. When construction is done, this gravel road will take me down to my accessory structure. It will not be paved, plantings will be placed, the grounds will be hydro seeded.

Tom McEachin, 90 Cider Brook Road said he is east and across the road. When he cut down the trees it changed the look. He is excited about the house and he used the same architect as his. He hopes the accessory building will fit into the rest of the neighborhood. We all have pristine properties. They all look the same with one house with maybe some small sheds. It's important that this revised plan not be out of character with the rest of the neighborhood. That's what we're all trying to make sure happens. We all want Jack and Christy to have a good home and be good neighbors but it's important that their property doesn't distract from the neighbors. The look and feel of the new and old structures are important that they tie into the rest of the neighborhood.

Mr. Thavenius described the view of the new structure to be similar with the same shingle siding, window look, trim color, similar paint color on the house, similar shingle type & color used in the present house. He is very concerned about how the property looks as he'll be living there. When he bought this property seven years ago it was with the intention of living there until he was ready to build a larger home as it has the frontage on two roads. Cutting the trees was necessary in order to place the house. He did not cut any more than he had to. When you dig around the drip line of a tree, you would kill it.

Mr. Whitney said the access road was constructed at an extra expense so the construction traffic will not have to go on the newly paved Cider Brook Road.

Nora Howard, 215 Cider Brook Road said she has lived there for 60 years and seen a lot of changes. Her concern is the size of the remaining accessory building. She thinks you should be careful to keep with the spirit of zoning which is one lot, one house.

David Birkenruth, 244 Cider Brook Road, lives at the end of Cider Brook Road quite a distance from the applicant's lot. He has one house and a small shed on approximately 10 acres of land. That's not unlike several other properties in their neighborhood. He is removed from the other abutters immediate concerns. Just as a generalized statement, Jack's house that he lives in, not just the footprint, it's a house from the ground up, it's a house and he's building another house. It may not be a house from the inside, but from the outside it's a house. The character of our neighborhood is one lot, one house. He moved to Avon as it has very nice houses on very large lots. It's important for our neighborhood as well as the town. Jack is asking for even more square footage on just measuring on the ground basis then would even be allowed under existing regulations. He is asking for 25% more square footage which is an existing house that is two stories.

Ms. Hard asked if there was a question about the occupancy issue.

Mr. Birkenruth said that Jack has a very nice house that is sitting on two acres. He is now going to build another house on this same lot. It's not whether it's occupied by a car or a person. When you look at that house, both houses, it's two houses, one lot. It's one house that's been cannibalized but the shell is still a house and he's building another house that will be occupied. The house that he's keeping is larger than what's allowed under existing regulations.

Mr. Whitney said you have to understand what the zoning regulations and the building codes are. This may have an appearance of a house but the use is not residential. A CO will not be issued for a structure like this as a residence if it didn't have a kitchen, if it didn't have plumbing. It may have the exterior appearance of a house but it isn't a house under the law.

Mr. Ladouceur said what he's hearing is the concern there's 2 houses, 1 lot. What we have here is a variance for an accessory building. It may look to one person like a house, to another person, if you painted it red, would look like a barn. It's not our place here to get into the aesthetics. It's a factor to come into our decision. We don't have anywhere in town any specific requirements like an historic district. We have to focus on this application. It's considered an accessory building as defined by the revised exhibit A. An accessory building can only be used for garage and storage. If the applicant is making modifications to it for garage and storage, we have to consider it as an accessory building. We want to focus on that part of the application.

Mr. Whitney stated the building is 80 sq.ft. larger, the shed is 160 sq.ft. The actual building is only 80 sq.ft. above the 1,000 sq.ft. allowed.

Mr. Pastel, 195 Cider Brook Road said that is a concern. When you stand in his kitchen and look down you can see the home. It clearly looks like a 2,500 to 3,000 sq.ft. of home.

Mr. Ladouceur said your property at 195 does not extend down to Waterville Road. He asked if the property in front of his had a house on it. Mr. Pastel stated it was an open lot. That is a buildable lot. At some time someone could put a structure there.

Mr. Whitney was told that last year the average size new house being built in Avon is 4,500 sq.ft. There's a chance that a house that size or larger could be built on that lot.

Christina Thavenius, Jack's wife said she finds it unfortunate that some of us are meeting like this. She hears, "we welcome you to the neighborhood," but find it disheartening as she doesn't feel that way. Her husband has reached out to some of you and didn't get any responses from some of these issues. We have just started a family and were very excited to build a house right behind our present house. Hopefully we can be good neighbors. I find this hard as being a teacher in town I have taught some of your kids. I know there was a big shock when the trees were cut down. She was shocked too, it was a big deal. You need to cut down trees in order to build a home. It looks barren because there is not a

house there. We are going to see the shed. That is the variance and we should focus on that variance. Julianne Wayne said communication goes two ways. It was a shock to see the trees gone. One of the features of Cider Brook Road is we inform neighbors and send e-mails to everybody when changes are to be made.

Mr. Ladouceur said the trees are gone, the construction driveway is built. We want to focus on the application.

Mr. Whitney said the existing building has been there for 93 years so it's not like a new structure is being built. The existing house to be converted to an accessory building is 80 sq.ft. over the maximum. If it was a new structure to be built, it would be built at 1,000 sq.ft. In reality it is existing, it's 1080 sq.ft. footprint and that's the reason to request a variance in addition to the existing shed.

Ms. Aube asked if any one objects to the shed. Please raise your hand. Mr. Ladouceur counted 6 people. She then asked if they objected to having three structures on this property.

Mr. Pastel replied that there were four items in the application and you asked what we would be comfortable with. The construction road screened would be helpful, not having three structures, remove one shed as Jack would have more than 1,000 sq.ft. space for storage, better plantation on both sides of the property. He plans to do some planting himself. He did not sense clearly what their intentions were on the day he talked to Jack.

Mr. Johansen questioned if this existing house were 1,000 sq.ft. would he need a variance even with all the work he is planning. Mr. McCahill replied it's really the 80 sq.ft. extra associated with the house that needs the variance. There's also the shed that adds to the variance. On schedule A he is also removing the existing laundry room which is 3'x6' off the back and converting the back room into a garage with barn doors instead of conventional doors.

Mr. Thavenius stated he is removing the plumbing from that room but not actually removing the room.

Mr. Wayne, 219 Cider Brook Road said looking at the house it looks like a lot more than 1,080 sq.ft. that has been mentioned. He wanted to know if that is just from a card file perhaps someone before had expanded it and not gotten a building permit. Has anyone confirmed the size of it? He is not an abutter but drives by this property every day and the new house will not cover or block the old house. The land has been denuded.

Mr. Vicino said that the trees and the neighborly issues are not our issues.

Mr. Whitney said the existing house that is shown on the plan is taken from a class A2 survey by Hodge Surveyor plan dated 1989. The dimensions of the existing house, the foot print, are accurate and taken from an on the ground survey.

Mr. Wayne said they are talking about a footprint, this is a multi story structure so when you're talking about removing 100 sq.ft. from the footprint it is magnified by the fact it is more than one story.

Mr. Ladouceur said according to the town zoning regulations we measure the footprint so whether that structure is one, two or three stories, as long as it's within the height requirement, we only measure the footprint of the building. RU2A is a two acre zone, the largest zone in town. He asked if the application would consider removing the small shed.

Mr. Thavenius said he would remove the shed if that's what the commission is requesting. He would prefer not to have to remove it.

Mr. Ladouceur put this question to the neighbors. If the application was for 160 sq.ft. less, would all of the people here remove their objections to the project. For the record he sees a bunch of shaking heads in the no.

Mr. McCahill said generally speaking in association with large homes he has seen a lot of large detached structures. There are a lot of large out building constructed with a lot of architectural appeal so they don't look like a shed. They look much more like houses or structures that don't resemble a barn or a shed, something more fancy than that. His major problem was that the structure not be misused. The document we have on file now indicates that the structure will be converted to something that can't be used for other than storage. The issue is it is slightly over the threshold of what we would

allow. We don't have an architectural review board, we regulate size and shape. If he wanted to build something like this and it was 1,000 sq.ft. we would not have this meeting tonight.

There was no one else present. The Public Hearing was closed at 9:02 p.m.

ZONING BOARD OF APPEALS MEETING

February 28, 2013

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

Mr. Vicino made a motion to GRANT, seconded by Mr. Ladouceur the Application of Jack Thavenius, owner/applicant; requesting from the Avon Zoning Regulations Section IV.A.2., a 240 sq.ft. variance from the 1,000 sq.ft. allowed to permit two existing structures to remain as accessory buildings to be used primarily for garage and storage purposes, and a variance to allow secondary use of a portion of one building for a workout and music room (new home to be constructed on premises) located at 576 Waterville Road in an RU-2A zone. Discussion followed

Ms. Hard said generally we like to see people come in and have things worked out. We don't want to do anything that upsets the neighbors. Rules are rules and we have to treat people fair as we treat other people in town. It kind of fits in with other variances that have been obtained. Some of the concerns that were in the letter, it sounds as if Jack is trying to press and are not ZBA issues.

Mr. Ladouceur said when he looks at this application, should there be a variance of 240 sq.ft. for accessory buildings. They are a defined term within the regulations. When the application was originally submitted with the gym and music room, it clearly didn't fit within accessory building use. Exhibit A addressed those concerns. When he looks at 1,000 sq.ft. and there was not a structure there, probably the applicant would have built a 1,000 sq.ft. building and not come before the board and he could have built it two or three stories depending on the height. He could have placed it closer to the property lines, farther back toward Cider Brook Road and there would have been a lot of other options there. One other thing to consider is the applicant lives in the house now and it's probably good quality and a valuable asset to the owner and to force someone to raise a structure or a part of a structure to get rid of 80 sq.ft. or 240 sq.ft. is not typically something this board has done. We have had applications where someone has started building things and John finds out about it and stops them. They come before the board. If they have foundations in the ground and structures up, to tear them down is just a waste unless there is an extreme case. If you have an existing structure, it's there. He understands the concern over the driveway, the views, the plantings. It's not matters that we can consider. When you look at what the accessory building can look like, we have no regulations that require it look different than the home. Quite the opposite. When people want a garage or an accessory building, the applicants usually say they plan to match it to the house. With respect to this application, the doors, the windows, the structure, he is trying to work with his architect. He looks to the concerns of the immediate neighbor, their safety concerns about the driveway being a cut thru from Waterville to Cider Brook, he wouldn't want to see that and that has been cleared up. All those concerns have been addressed here. The views the neighbors will see in the future will be markedly different than what they've been presently looking at. He feels this application is a good one and should be approved.

Mr. Johansen said the only issue he has is the definition of a hardship. Is the hardship an inconvenience or not getting what you want. Economics do not matter. If tested at another level it would be hard to uphold, it's something to think about.

Mr. Ladouceur agreed that hardship is something we take very seriously. The question is, is the hardship unique to the property. It would be more pertinent if the applicant came to us requesting a 1300 sq.ft. accessory building to be constructed on the premises. At that time we would ask if he needed an extra 300 sq.ft. Here it is unique as there is an existing structure that's been there for nearly a century and that's what takes it out of that realm. Regarding the small 160 sq.ft. shed, he proposed the question of people to withdraw their objection if it was removed. The applicant said he would consider it although he didn't want to. It didn't seem to make a difference to any of the people here whether the shed was removed or not. He was not going to order the shed to be removed if it's not going to make a difference to whether other people object or not.

The vote was unanimous to GRANT the Application for Jack Thavenius, owner/applicant, 576 Waterville Road by Messrs. Ladouceur, Johansen, Vicino, Ms. Hard & Ms. Aube.
There being no further business, the meeting was adjourned at 9:15 p.m.
Respectfully submitted,
Shirley C. Kucia, Clerk