

THE ZONING BOARD OF APPEALS OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING FOR A PUBLIC HEARING ON THURSDAY, JUNE 17, 2021, AT 7:00 P.M., VIA GOTOMEETING: By web, <https://global.gotomeeting.com/join/393069693>; or by phone: +1 (312) 757-3121, Access Code: 393-069-693#.

Present were regular Board members Eileen Carroll (Chair), Christy Yaros (Vice-chair), Chet Bukowski, Ames Shea, and Alternate member Vi Smalley (voting). Absent were regular Board member Eileen Reilly, and Alternate members James Williams and Thomas McNeill. Also present were Planning and Community Development Specialist John McCahill and Town Attorney Kari Olson.

Chair Carroll called the meeting to order at 7:00 p.m.

Roll call for the Board was taken.

John McCahill facilitated the meeting. He 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 that the Town has notified the abutters to the subject properties as required. He stated that the Avon Zoning Board of Appeals (ZBA) 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.

#### PUBLIC HEARING:

Application of Gregg Fedus; Roegg, LLC, owner/applicant; requesting from Avon Zoning Regulations, Section IV. A. 6., a variance to allow 16% lot coverage (15% permitted); a 24-foot variance from the required 40-foot front yard setback along the Hillcrest Drive frontage; and a 12-foot variance from the required 40-foot front yard setback at the Mountain Ledge frontage (corner lot/road extension not constructed), located at 22 Hillcrest Drive in an R-15 zone. (Postponed from April 15, 2021, and May 20, 2021.)

John McCahill summarized the application materials and Town staff supplemental documents: Town of Avon Zoning Board of Appeals application (one page), dated March 25, 2021, to construct a single family dwelling, request of attorney for Gregg Fedus, Roegg, LLC, to TOA ZBA for postponement of public hearing to ZBA meeting May 20, 2021, received April 13, 2021. Request of attorney for Gregg Fedus, Roegg, LLC, to TOA ZBA for postponement of public hearing to ZBA meeting June 17, 2021, received May 19, 2021; Town of Avon ZBA application (one page) dated 3/25/2021, and duplicate copy with Town staff notations; email correspondence from applicant/owner Gregg Fedus, dated 3/29/2021; Town of Avon Assessor property card; CT State Concord business inquiry confirming entity Roegg, LLC; Town of Avon GIS aerial views of subject property; Town of Avon GIS base map and list of abutting properties which received ZBA public hearing notification via postal mail; mailed 5/6/2021; multiple views of subject property; photographs taken by Town staff; Fedus Engineering, LLC Civil Engineers Elevations Plan, Floor Plans, and Site Plan for 22 Hillcrest Drive; owner/applicant attorney's

memorandum in support of ZBA application, dated June 16, 2021; memorandum from John McCahill, dated April 8, 2021; 22 Hillcrest Drive Variance History; 22 Hillcrest Drive Lot History; neighborhood communications received by Town of Avon.

John McCahill stated that correspondence was received by the ZBA from the following community members: Sara Sanchez, of 20 Mountain Ledge Road, dated April 13, 2021; Susan Anderson, of 17 Mountain Ledge Road, dated April 9, 2021, and June 17, 2021 (this communication was read aloud by John McCahill, as it was received after the Town's ZBA web page posting of the 22 Hillcrest Drive application); Aldona and Jacek Tarlowski, of 23 Hillcrest Drive, dated April 13, 2021; and Tara Rachel Monday, of 16 Pine Trail, dated May 19, 2021.

John McCahill explained the nature of the subject lot at 22 Hillcrest Drive as shown in Town staff photos and Town GIS maps.

Present on behalf of the application for 22 Hillcrest Drive was Greg Fedus, owner/applicant Roegg, LLC, consulting and licensed professional engineer of Fedus Engineering, LLC; and Attorney Edward Cassella, of Saybrook Law located at 29 Elm Street, Old Saybrook, CT 06475.

John McCahill again stated and described the documents related to this application that had been posted to the Town's ZBA web page, per Attorney Cassella's request.

Attorney Cassella described the subject property as located at the corner of Hillcrest Drive and Mountain Ledge Road. He stated that the property remains a legal non-conforming lot of record. He described the locations of the surrounding properties to 22 Hillcrest Drive. He described two site considerations: 1) the subject property is a corner lot with two front yard setbacks; 2) a triangle of land, approximately 450 square feet, exists at the corner of the subject property to the northeast corner which is not a part of the subject property. He stated that the portion of the road on Mountain Ledge Road, at the subject property location, is not a passable road. He stated that the proposed two-bedroom house measured at 1010 square feet, and the footprint was drawn at the 800 square feet minimum dimensions required by the Town's regulations. No other structures or outbuildings were proposed to be constructed on the subject property. The total height for the proposed 1.5 story Cape-style house was 19 feet. He reiterated the setback variances requested. He stated that the charge of the ZBA, under Connecticut General Statutes (CGS) was to consider 1) whether or not the variance would substantially affect the comprehensive zoning plan, and 2) whether or not the zoning ordinance creates undue hardship unnecessarily in carrying out the general purpose of the zoning plan. He stated that according to the Town's regulations, the allowable uses in an R-15 zone were for a single-family property or farming on the property; however, farming would require 10 acres of land. He posed the following questions, as he indicated should be considered under the Town's regulations and the law: 1) whether or not there are special circumstances applicable to the subject property, which are peculiar to the land, and have not resulted from any act subsequent to the enactment of the Town's regulations; 2) those conditions, under the applied zoning regulations, were to cause exceptional difficulty, undue hardship, or deprives the applicant of any reasonable use of the land; 3) that the granting of the variances was necessary for the reasonable use of the land, and those variances by the board are the minimum necessary to achieve the purpose; and 4) the granting of the variances will be in harmony with the purpose and intent of the regulations, will accomplish substantial justice, will

not be injurious to the neighborhood, or otherwise be detrimental to public health, safety, and welfare. He stated that a corner lot would not generally affect other properties in the neighborhood, or in the community at large, and the right-of-way triangular portion adjacent but not a part of the subject property was atypical and in existence prior to the adoption of the Town's zoning regulations. He stated that neither of the conditions resulted from acts subsequent to the enactment of the regulations. He cited court cases and also stated his clients' right to use the land and build the proposed house. He questioned whether or not the presence of a house on the subject property would injure the neighborhood. He stated that the issue of *res adjudicata* was raised in neighbor correspondence and that the board was not bound by this administrative judgement, but instead bound by CGS Section 8-6. He read aloud an excerpt from the Town's regulations to support his notion. He stated that if the variance were to be denied, the property would be rendered useless in its natural condition which would be considered a *taking*.

Mr. Fedus stated that there would be no garage, but that there would be two-three parking spaces available on Hillcrest Drive. He noted that extra care would be taken with grading since the slope of the existing land was steep; "mowable" grading would be created, of a minimum 3-1 slope ratio. The land currently slopes down to the west, and rain from roof runoff would flow to the proposed rain gardens. They are typically designed to handle one inch of rain, of which any excess beyond that amount would be sheet flow via the existing land contours beyond the proposed rain gardens and into the ground. Silt fences and hay bales would be installed during construction.

In response to Alternate member Smalley's question, Attorney Cassella stated that the triangular piece of property adjacent to but not a part of the subject property was shown on the original 1928 subdivision map and is believed to be owned by the Secret Lake community association. John McCahill stated that the Town of Avon has no ownership of the roads; the roads are owned by the association. Attorney Cassella confirmed that it had not been researched whether or not the association would sell the triangular piece of land to the owner at 22 Hillcrest Drive.

In response to Board member Bukowski's questions, Attorney Cassella stated that the subject property would be worthless if his client were not allowed to build on it; Attorney Cassella's position was that it would be useless. Attorney Cassella stated that his client was aware of the nature of the lot of the subject property at the time of purchase. Mr. Fedus stated that he was unaware that previous various applications regarding the subject property, submitted by an owner(s) other than himself, had been denied, and was uncertain whether that information was relevant to the current application before the Board. Mr. Fedus stated that his variance application appeared to entail a textbook hardship. Attorney Cassella stated that it was not possible to build on the subject property lot without seeking a variance, and he confirmed that the proposed house would be 20 x 40 feet and exactly 800 square feet.

In response to Board member Bukowski's question whether or not it were possible to propose a house on the subject lot less than 800 square feet, so that only one variance would be needed from the 800 square foot minimum required by the Town's regulations, and the additional variances regarding the setbacks could be eliminated, Attorney Cassella responded in the negative. Attorney Cassella pointed out the dashed line on the map indicating the building line from one of the setbacks which was impacting the proposed construction. Attorney Cassella

stated that if the proposed house were smaller than 800 square feet, it would not be a reasonable house, a reference he noted from the Town's regulations. The dimensions of the dashed triangle, representing the variance requested due to the building line encroaching on the proposed construction shown on the plan, was 6.5' width x 27.5' length.

In response to Board member Bukowski's question, Attorney Cassella confirmed that the he was not in possession of an appraisal for the lot in its current state.

John McCahill referenced the current Town assessment card information for the subject lot and the sale price history listed on the card.

#### COMMUNICATIONS FROM THE PUBLIC:

Sarah Sanchez, of 20 Mountain Ledge Road, stated that the subject lot would provide its owner(s) with private beach access, and it would be valuable in that sense. She stated with regard to the drainage situation, rain gardens or hay bales would need to be maintained by the property owner on a continual basis.

Tara Monday, of 16 Pine Trail, read aloud her correspondence of opposition to the application. She referenced the other three applications that had been denied for the subject lot. She stated that the drainage that comes off of the mountain slope in the neighborhood freezes in the winter and is hazardous. She stated that the building development on the subject lot would degrade the character of the neighborhood.

Susan Anderson, of 17 Mountain Ledge Road, stated that the houses built on similar lots to the subject property were built before the Town's zoning regulations and were not of comparison. She referenced the limitations of building on the subject lot given the limitations of the existing setbacks. She stated that the drainage in that area of the neighborhood was a major problem.

In response to Board member Bukowski's question to Ms. Sanchez, she stated that during moderate and heavy rainfall the runoff from the mountain slope and the under-maintained culvert together cause major drainage issues, along with frozen runoff on Hillcrest Drive during winter.

John McCahill stated that the area is a private association and it is the responsibility of the association to maintain its road and drainage issues, even though it is assisted by the Town of Avon.

Town Attorney Olson assured the Board in her opinion that res adjudicata did not apply to the Board. The Town's regulations allow the Board to consider and reconsider the applications. She stated that her role was not to sway the Board. She stated that the Board could consider whether or not the Town's regulations had posed a hardship for the applicant due to the adoption of zoning regulations after the lots were created, and whether or not the current regulations prevent a reasonable use of the property.

Attorney Cassella reiterated his party's stance. He also re-acknowledged the neighbors' opposition to the development of the property.

Mr. Fedus stated that one of his firm's specialties was drainage site planning. He re-explained the drainage issues and how it would be resolved, including the existing stone rip-rap swale, currently in disrepair, and that the runoff drainage issues would be controlled by the use of rain gardens and a pervious driveway, and stated the existing problems on the lot would be repaired. He stated that an additional rain garden could be installed in the area of a gap between the other proposed rain gardens, along the western property line. He also stated that underground infiltration could be installed in the area prior to the rain gardens if the Board deemed it necessary. He stated that rain gardens could be installed along Mountain Ledge Road since the land would be disturbed in that area, which would further improve drainage.

In response to John McCahill's question for Town Attorney Olson, she advised that if the Board were to grant a variance that it always be tied to a specific site plan, so as not to provide carte blanche approval for a variance grant regarding a non-specific site plan. Attorney Olson stated that the Board had every right to grant a variance on the minimum required regulation to relieve a hardship that is perceived. If by agreement an applicant will amend its site plan by a minor modification to what was initially proposed, if feasible, then the Board is within its right to tie the variance granting to that specific site plan. She stated that would be the minimum variance necessary to alleviate the hardship. She provided an example relative to this application.

Attorney Cassella indicated to the Board that if it were so inclined to continue the public hearing, his party could present an amended plan to the Board at the next ZBA regularly scheduled meeting.

In response to Board member Shea's question, Mr. Fedus stated that he had not spoken with the neighborhood residents.

Town Attorney Olson stated that the Board needed to focus on the statutory provisions, whether the variances would violate the Town's comprehensive plan, whether the hardship is unique to the specific property, and that there would be no reasonable use of the subject property. She did not believe that the law would allow the Board to deny the variance simply on the basis that neighborhood discussions had not taken place, or that discussions regarding drainage with the neighbors had not taken place, or other similar issues.

Board member Shea stated that her decision regarding the variances would not be based upon whether or not discussions between the applicant and the neighbors had taken place.

In response to Vice-chair Yaros' questions on drainage and the removal of trees from a lot, Mr. Fedus stated that those issues are looked at in the practice of creating a plan for removal.

In response to Alternate Member Smalley's inquiry regarding the amount of weight of past board decisions related to previous applications for the subject property that should factor in to the decision from the current Board and this specific application, Town Attorney Olson stated that it was her understanding that the past applications involved different prior site plans, and that res

adjudicata did not apply to the ZBA. The Town attorney reiterated the strict CGS statutory charge of the Town's ZBA, and the minimum variance required to alleviate the hardship and allow for the reasonable use of the property under the current Town regulations.

In response to Chair Carroll's question regarding the removal of trees on the abutting steep lot, John McCahill stated that the roads of Secret Lake were private but the Town does review work that occurs in the Secret Lake community and plans would normally be reviewed for compliance issues related to various Town departments. Town Attorney Olson stated that the Secret Lake Association would defer to the Town for its ordinances but with regard to private residential roads, the association would be responsible and no single property owner would be personally liable for maintaining private road drainage. The issue of tree removal and its effects on road drainage would not be a basis for a Board decision.

In response to Chair Carroll's comments regarding having received the past minutes from the previous applications related to the subject property, John McCahill stated that they were provided as historic background that possibly could have been discussed.

John McCahill stated that the Town of Avon Zoning Regulations were in existence in 1957. He also stated that the Secret Lake association was assigned its own tax district.

Town Attorney Olson noted that it was the determination of the Board whether or not inverse condemnation of the land was being presented and if the Town's regulations created a textbook hardship. She noted that permitted land uses were according to the Town's regulations. Board member Shea motioned to close the public hearing. Alternate member Smalley seconded the motion. The following members voted unanimously to close the public hearing: Chair Carroll, Vice-chair Yaros, and Board members Bukowski and Shea, and Alternate member Smalley. The motion carried.

Board member Bukowski motioned to deny the variances as submitted. There was no second of the motion. Board member Bukowski withdrew his motion to deny the variances.

John McCahill stated that it would take four Board members to vote in favor of the motion to approve the variances in order for the application to be approved. He stated that the minimum size for the proposed house as submitted in the application measured 20 x 40 feet and that was the minimum 800 square-foot footprint of the first floor for a house size according to the regulations; the Board would need to consider any such amendment to the size of the proposed house as to not prohibit the building of a house on the lot that would be less than the minimum footprint.

Vice-chair Yaros motioned to approve the variances as submitted. Alternate member Smalley seconded the motion. Board discussion ensued.

Board member Bukowski stated he would deny the application based upon his belief that the property was not valueless and also had a reasonable use as a side lot for sale to another property. He stated that the applicant had not provided the burden of proof, and that the degree of variances sought might violate the Town's Comprehensive Plan.

Chair Carroll agreed with Board member Bukowski in the value of the land and that it was not valueless.

Chair Carroll repeated aloud the motion at hand: Vice-chair Yaros motioned to approve the variances as submitted to the Board. Alternate member Smalley seconded the motion. The following member voted in favor: Vice-chair Yaros. The following members voted to deny the variances as submitted to the Board: Chair Carroll, Board member Shea, Board member Bukowski, and Alternate member Smalley. The motion to approve failed by four votes to one (4-1) and therefore, the application was denied.

OTHER BUSINESS:

There was no other business.

NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled virtual meeting and public hearing will be July 15, 2021, at 7:00 p.m.

Alternate member Smalley motioned to adjourn the meeting. Chair Carroll seconded the motion. The following members voted unanimously in favor: Chair Carroll, Vice-chair Yaros, Board members Bukowski and Shea, and Alternate member Smalley.

The meeting adjourned at 9:50 p.m.

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