

THE ZONING BOARD OF APPEALS OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING FOR A PUBLIC HEARING ON THURSDAY, NOVEMBER 16, 2023, AT 7:00 P.M., VIA GOTOMEETING: By web, <https://meet.goto.com./217363725>; or by phone: +1 (646) 749-3129, Access Code: [217363725#](#).

Present were regular Board members Chair Christy Yaros, Vice Chair Jaime Polhamus, Aden Baume, Michele O'Connor, and Eileen Reilly. Absent were alternate Board members Thomas McNeill, Vi Smalley, and James Williams. Also present was Planning and Community Development Specialist Emily Kyle.

Chair Yaros called the meeting to order at 7:05 p.m.

E. Kyle took roll call for the Board. We have a quorum of 5 regular members. E. Kyle explained the procedure for the meeting to members of the public.

I. PUBLIC HEARING:

Application of Shawn and Wendy Lisle, Owners and Applicants; requesting from Avon Zoning Regulations, Section IV. A. 2. d., a 5-foot variance from the required 25-foot side yard setback for a generator, located at 8 Hawks Ridge in an R40 Zone.

E. Kyle read the Legal Notice for each Application and Numbers II and III of the ZBA Virtual Public Hearing Process into the record.

E. Kyle said that the Applicants are requesting a variance from Section IV. A. 2. d. for the installation of a generator that would be located within the side yard setback. The closest point of the proposed location to the property line from the outer edge of the generator is 20'. The setback is 25' thus requiring a 5 foot variance. The location of the existing house is nearly on the setback line – the closest corner of the principal structure is 26.3' from the property line. Any addition or mechanicals on this side of the house would require a variance and per building code, generators are required to be at least 5' away from the house. The generator would be as close as possible to the house. There is some sloping on the other side of the lawn and in the rear of the lawn as well. There is an air conditioner condenser on the same side of the house as the proposed generator. The air conditioner was installed many years ago and the generator would be in line with this air conditioner. The proposed generator would not be visible to the neighbors because of the current extensive vegetation screening and it would most likely not be visible from the street either. E. Kyle said that abutter notices did go out and we did not receive any input from any members of the public.

S. Lisle said that everything that E. Kyle explained was correct. He has photos of the wooded area between his house and his neighbor's. He spoke to his neighbor regarding the generator and the need for a variance and his neighbor did not oppose it. S. Lisle looked for alternative locations for the generator but there really is not one. It is on the side of the house where there are already mechanicals including the gas meter. Due to new technology, this generator when it is running will be approximately 60 decibels - which is about as loud as a normal conversation between two people about 3' apart and even when running full speed it is no louder than a

washing machine. Given the vegetation and the distance, he does not believe it will impact his neighbors at all visually or in terms of noise. He thinks the placement would be ideal and unfortunately there is really no other place around the house that would be suitable or economically feasible given the topography and the site.

A. Baume asked if S. Lisle can expand on why other locations are economically unfeasible. S. Lisle said that on the eastern side of the house there is a slope that is about a 10 foot drop from where the generator would be to the northeast corner of the home. From the northeast corner of the house west there is a door and then a hillside to the patio. On the western side of the house is a three-bay garage so there is no space for a generator. There is a screened porch and a sidewalk on the north side of the house so there is no room to put the generator there. The only other spot is in the front of the house which would require him to remove vegetation. E. Kyle shared an aerial map and S. Lisle pointed out the patio with the slope down to the east side of the house and the slope in the rear of the house which goes down about 35' to a stone retaining wall. The front of the property has extensive landscaping which would have to be pulled out and the generator would be unsightly. A. Baume said that "economically infeasible" makes him think that S. Lisle looked into other locations. S. Lisle said that the only other location would be back in the woods which would require him to run a gas line a fair distance. It would be difficult, would have to go through a drainage swale, and would probably require permission to put in a gas line running that far. A. Baume asked if the front was out because S. Lisle did not want to look at the generator. S. Lisle said that he would have to tear out a lot of landscaping to put the generator in the front. S. Lisle shared photographs including the side of the house with the proposed generator drawn in, the wooded area between the houses, and more detail of where the generator would be installed. He said it was only a couple of feet to make this work. A. Baume asked why it was an undue hardship to not have a generator. S. Lisle said that he travels a lot for business and if the power goes out he will worry about broken pipes – another home he owned which flooded was nearly a complete loss. He is concerned that not having a source of backup power means he will not have electricity and therefore, a heat source. E. Kyle said from a hardship standpoint, there is the topography on the other side of the house. The heavy screening to the east side is helpful, as well as the existence of other mechanicals in the same spot as the proposed generator that have been there for some time. She does not have any concerns from a Town staff perspective.

Chair Yaros made a Motion to Close the Public Hearing. M. O'Connor seconded. The Motion passed unanimously. A. Baume said that his question about how loud the generator would be was answered – vegetation does not do much to stop noise but 60 decibels is not loud. As to other possible locations, it was persuasive to him that the hookup is right where the generator is proposed and the Applicant does not have to run a line elsewhere. Chair Yaros and Vice Chair Polhamus agreed. Chair Yaros made a Motion to Approve the variance for 8 Hawks Ridge. E. Reilly seconded. The Motion passed unanimously. E. Kyle said "the granting of this variance will be in harmony with the purposes 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. She told S. Lisle that he will receive an approval letter and will be able to move forward with the building permit.

Application of AMCO Holdings LLC, Owner and AMCO Development, LLC, Applicant; requesting from Avon Zoning Regulations, Section IV. A. 2. d., a 14-foot variance on Richard Street and a 19-foot variance on Stevens Street from the required 40-foot front yard setback for each street for a single-family house, located at 22 Richard Street in an R30 zone.

E. Kyle said that this Application for 22 Richard Street in an R30 zone is actually for two variances because it is a corner lot. Per the Town's Regulations, corner lots have two front yards and two side yards unlike a standard lot that has a front, a rear and two side yards. Therefore, the Applicant is requesting a variance front yard variances on both Richard Street and Stevens Street. The house would be located 21' from the property line on Stevens Street and 26' from the property line on Richard Street thus requiring a 19 foot and a 14 foot variance respectively. Currently the lot is wooded, raw, and untouched and the Owner hopes to construct a single-family home. However, the lot is very restrictive with the presence of a wetland system to the east as highlighted in blue on the site plan. E. Kyle explained the way that wetlands regulations work – the Inland Wetlands Commission (the "IWC") regulates both the wetland system and watercourses, as well as a 100 foot buffer which is called the upland review area. Most of this lot is considered an upland review area and would require some level of wetlands permitting for any construction, tree removal, etc. The actual wetland system existing to the northeast of this lot was recently delineated by a soil scientist. The Owner has been advised that the IWC must approve this so the further away the house can be, the better to protect the resource and the less chance of a negative impact on that resource. The pink outline on the site plan represents the actual compliant area for construction which is quite small. By pushing the house to the west, the Owner hopes to create less of an impact on the wetland system and therefore be approved by the IWC. E. Kyle told the Owner that they would need to come to the ZBA prior to the IWC to see if this was feasible. Because of the proximity to two Town roads, E. Kyle sent this Application to the Town Engineer, Larry Baril, for review. He commented "I don't like the proposed location for the house as it is so close to both Stevens and Richard Streets. I'm wondering why the house isn't being shown closer to the southern setback line which would get him farther away from the wetlands even with moving the house further east away from Richard Street. It appears that he would have to move his septic design a bit but looks like it would work, or maybe the house size is too large for the lot." So L. Baril is suggesting that the orange box on the site plan (the current proposed house location) should slide to the south which is farther away from the wetlands resource. In this case for the ZBA, the hardship is the wetlands. E. Kyle said that we did not receive any formal abutter notice from any neighbors though we did send out notices as required.

Andrew Morse, the managing member of both the Owner and Applicant, said that E. Kyle explained the proposal well. He said that he was told to try to keep this house as far away from the wetlands as possible and that was why it was shifted to the west and north. He also spoke to Matt Brown, Assistant Town Engineer, who was not familiar with the wetlands situation and that is why they suggested moving the house. A. Morse said that after talking to M. Brown, he then understood that it made sense to keep the house where it is and the septic further away from the wetlands. A. Morse said that the house would be approximately 25' off Richard Street which is actually a little bit further back than the house across the street which is less than 25' from the street. He said that the further he can keep the house away from the wetlands, the lesser the impact while someone can still have a backyard here. E. Kyle said that she is unaware of any dialog with M. Brown but she can follow up on that. She asked A. Morse if his experts believe

that the placement of the septic system is less impactful than the house construction itself and A. Morse confirmed that it was. Therefore, he wanted to keep the septic further from the wetlands.

E. Reilly asked A. Morse if he would be living in this house and A. Morse replied that he plans to sell this house. E. Reilly asked why A. Morse chose this area if it has wetlands and setbacks. A. Morse said that this has been an approved building lot since 1952 and he is trying to put up a single-family house. They did not have wetlands standards then but now there has been a significant change in the way that wetlands are regulated and so he is trying to keep the home as far away as possible from the wetlands. E. Kyle said that in order for Town staff to approve a building permit on this lot, it has to go through the IWC regardless of where the house is located. The best chance of getting an approval from the IWC is to put the house as far away from the resource as possible. So in this ZBA application, the hardship is environmental. A. Morse added that the house is consistent with the house across the street and will actually be further off Richard Street. E. Reilly asked if this was a dead end and A. Morse answered that there will be a new street next year. Chair Yaros referenced the comments from the Town Engineering Department and asked how the footprint of the house compares to others on the street including the one across the street. A. Morse said that the proposed home is significantly smaller than other new homes being built in the area. E. Kyle asked what the approximate square footage will be and A. Morse said about 2,000 square feet and it would be consistent with the existing homes in the neighborhood. J. Polhamus asked if the majority of the houses on Richard Street and Stevens Street abide by the required setbacks or do they predate code. A. Morse said that he was unsure and E. Kyle said that if the houses were constructed prior to zoning, then it is very likely that they could be non-compliant with their current zone. A. Morse said that most of the homes in the neighborhood also sit in the middle of wetlands areas. E. Kyle said that the wetlands are an issue in this area and she assumes that if any houses in the area are non-compliant then they have received variances or they were built prior to zoning. J. Polhamus believes that it would be helpful to know if this house would be in line with the character of the neighborhood and the setbacks. A. Morse added that the proposed house would not obscure any views or impact any neighborhood views. A. Baume asked A. Morse if he was set on this house footprint. A. Morse said he had his engineers look at this and they determined that this is the best location. A. Baume asked if the house was not approved here would that be it. A. Morse said that is not necessarily true but he would have to find a way to move forward. A. Baume asked A. Morse if he was set on the size and A. Morse said that size blends in with the neighborhood as all the homes are about 2,000 square feet. He said a small cottage type home would not blend in. M. O'Connor would like to hear public opinion before she has questions.

Daniel Isaacson of 17 Richard Street said he has concerns about the location of the proposed house and building on wetlands. He thought that you could not build within 100' of wetlands. E. Kyle said that the upland review area or the regulated area is not a prohibitory zone. It just requires additional permitting from the IWC. Oftentimes, the IWC will scrutinize design, construction, methodology, and erosion and sedimentation controls. They may change things such as tree clearing limitations or require the house to be pushed further from wetlands. The IWC has their own role relative to potential impacts to wetland and watercourse resources. The 100 foot zone and the wetlands resources themselves are not a prohibitory zone but an area that requires additional permitting review and expert testimony. D. Isaacson said that every house with a basement on Richard Street requires a sump pump which go on and off depending on how

much rain falls, and he is concerned that adding another structure across the street will contribute to the flooding issue in his basement. He has lived here 30 years and in recent years his sump pump cannot keep up with the water. He does not think that adding a house even closer to his house will help the situation. His other concern is having people residing so close to his house. His house is closer to the street than others but the part of the structure close to the street is his garage whereas this would be a living space very close to the road. Another of his concerns is that no one has addressed the drainage problem by putting in storm sewers to eliminate the problem of basement flooding. Since new homes have been built on Richard Street he has noticed a large change in the water running down Richard Street. He thinks it is double the amount compared to past years when there are larger rainstorms.

Molly Weber of 111 Arch Road which is on the corner of Richard Street said that she agrees with everything that D. Isaacson said and she has the same concerns. Brian Campbell of 8 Richard Street said that in the last two years, he has had endless flooding to his front and side yards. He is concerned with adding new houses and what that will do to the water flow with no sewers there. He added that he is concerned with Town pride as a newer Avon resident and asked if there are rules in place to prevent Avon from becoming a West Hartford – a busier town that becomes a mini-city with houses on every little lot. He wants to preserve what Avon has. He is also concerned about the wildlife and the aggressive bobcat and bear outings and what adding houses to this area would do to the wildlife that cuts through this area. Jason Newell of 13 Richard Street is concerned about leech fields for the septic system being so close to the water and the possibility of sewage going into the streams or causing a smell. He asked if there were laws about how close a septic system can be to an existing system. E. Kyle said that after public comments she will address some of the questions raised. Dan Yevin of 9 Richard Street said the water situation is not good, especially when we had the last rainstorm which was more like a mudslide. He was concerned about where the runoff was going and what the implications would be with more building in the neighborhood.

Attorney Vincent Provenzano represents AMCO and he said that his client is aware of and understands the neighborhood concerns. His client is trying to build a house that blends in with the rest of the neighborhood. V. Provenzano said that the neighbors' concerns seem to be about having more homes in the neighborhood and not really the variance. If the variance is not granted, the Applicant may still be able to build a home on this lot but if the variance is granted, then items like the leech fields and the wetlands could be resolved with this variance. He said that his client has a good reputation of building quality homes in nice areas and he is very cognizant of the neighborhood. This is not a situation where the Applicant is building a house that is out of character for the neighborhood and he is not creating an eyesore or problems for the neighbors. V. Provenzano thinks the focus should be on the variance which allows the wetlands to be preserved. A. Morse has done his due diligence on this, he has worked with the Town on this, he hopes to build more homes in Avon, and wants to create a good reputation in each town that he works in. He also lives in Avon and wants to create quality homes in a good neighborhood.

Chair Yaros asked E. Kyle to clarify which comments are relevant to this variance request. E. Kyle thanked the public for comments and said that it is important to understand the roles of various boards. She said that the ZBA acts as a relief valve in cases where it is difficult to meet

zoning regulations for hardship reasons. In this case, the property is an approved building lot prior to wetlands law which was established in 1972. If you had a building lot with no wetlands on it you could simply apply for a building permit without going to any boards or commissions. Here, no matter where the house is proposed, the Applicant must obtain IWC approval. So the Applicant is applying for relief from the setback which because this is a corner lot, has two front yards. It is already restrictive due to the layout of the lot. The wetland resource is what creates a hardship and the need to push a structure toward a property line. Every comment tonight can be reviewed and scrutinized by the IWC which is the next step after ZBA. If the ZBA acts favorably, the IWC would look at such things as the leach field location and drainage. A. Morse will have to hire soil scientists to provide reports showing whether or not a proposed house and site modifications will pose a negative impact to the resource or increase flooding risks. The IWC reviews scientific data in order to issue an approval. The ZBA's only function in this case is to look at the setbacks and whether the ZBA can establish that there is a hardship that justifies pushing the structure into the setback area. Character is looked at but it is not necessarily a factor in the decision. Questions about Avon not turning into West Hartford are complicated but here this lot has been in existence – it was not just created now for the construction of a home. It has been a residential lot that now someone would like to build on it. The public is heard but some of the comments are outside of the scope of what we can use to make the decision regarding a variance request from setback regulations. Also, items like wildlife and preserving open space are not what the ZBA looks at – it is only whether there is a hardship that justifies pushing a house into the setback area.

A. Baume said that the wetlands are a hardship which may push this building west. The effect of moving the house is that it gets close to a corner in the neighborhood (though this is not a high traffic area). J. Polhamus asked if she could get more information on why a septic system is more harmful to the wetlands area than the home. She is not comfortable relying on a conversation between Town staff and the Applicant. E. Kyle said that she received input from the Town of Avon Engineer but she did not receive any follow-up and she believes that it would be helpful to obtain additional information in writing. A. Baume said that the effect on the wetlands will be decided by the IWC who are the ones that have the expertise to evaluate this, but the ZBA decides if they will approve this Application to move this house closer to the road. M. O'Connor would like to know what variance would be needed if the suggestion from the Town Engineer was followed. E. Kyle said that we do not know what the needed variance would be as it was just a possibility of a feasible alternative for this location. Her assumption is that if the house was moved south, you would need the same variance from the Richard Street side and none from the Stevens Street side. That reduces the number of variances. Chair Yaros asked if the ZBA passed the variance and then the IWC did not approve the house, would the Applicant then have to come back to the ZBA. E. Kyle said the IWC would only be looking at impacts to the resource. The IWC could require adjustments to the house because of the wetlands impacts and if that altered the variance by requiring a larger variance, the Applicant would have to come back to the ZBA, give notice, and have a new public hearing. If the IWC found reason to bring the house closer to the resource and further away from the property line, it would not need to come back to the ZBA. E. Kyle said that if the ZBA needs additional information, she suggests not closing the Public Hearing and said that if the ZBA wants more information, they should be as clear as possible so the Applicant understands. J. Polhamus would like more information on why the septic is more harmful to the wetlands than the house. A. Baume agreed and said that would impact why the

footprint of the house is further north on the lot than it could be. E. Reilly would like the Applicant to address the neighbor's concerns about flooding, the water table, sump pumps, and the landslide. Chair Yaros said these concerns were not relevant to the ZBA. A. Morse said that on new construction homes, the rainwater flowing off the property is actually less than if the lot was still wooded. The engineers use a chamber system which traps rainwater in a plastic container underground and discharges it at a drier time of the year. A. Baume asked how this worked and A. Morse explained that the system is engineered for a normal rainstorm and stores the water underground. Once the land is drier, the water dissipates into the soil instead of just coming out of gutters. The system has a discharge pipe at the top for when there is a flood of water and after it fills up the water will come out of a relief. On a standard rainy day, the system will hold the rain and discharge it much slower so it lessens the impact of water running down streets or driveways. A. Baume would like more information from the Applicant to clarify if it is more beneficial to locate the house on the northwest or the southwest corner of the lot. Chair Yaros made a Motion to Continue the Public Hearing until the next regularly scheduled ZBA meeting. J. Polhamus seconded. E. Reilly said that if the neighbor's concerns were not in the ZBA's jurisdiction anyway then the Public Hearing should not be continued. A. Baume said that the ZBA is trying to determine whether there is a hardship and if this location is actually the best place to locate the house. E. Reilly asked who will provide new information to decide this. E. Kyle said that A. Morse will work with his licensed professionals to gather research and data. The Motion passed unanimously.

II. OTHER BUSINESS: Approval of Meeting Calendar for 2024.

Chair Yaros made a Motion to Approve the Meeting Calendar for 2024. E. Reilly seconded. The Motion passed unanimously.

E. Kyle informed the ZBA that she will be on maternity leave beginning in December. Her predecessor, John McCahill, will fill in when E. Kyle is out.

III. NEXT REGULARLY SCHEDULED MEETING: December 21, 2023

M. O'Connor made a Motion to Adjourn. Chair Yaros seconded. The Motion passed unanimously.

The meeting adjourned at 8:20 p.m.

Janet Stokesbury, Clerk
Zoning Board of Appeals
Town of Avon Planning and Community Development