

THE ZONING BOARD OF APPEALS OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING FOR A PUBLIC HEARING ON THURSDAY, OCTOBER 20, 2022, AT 7:00 P.M., VIA GOTOMEETING: By web, <https://global.gotomeeting.com/join/624833701>; or by phone: [+1 \(571\) 317-3116](tel:+15713173116), Access Code: [624833701#](https://global.gotomeeting.com/join/624833701).

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

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

E. Kyle took roll call for the Board. We have a quorum of 5 members.

I. CONTINUATION OF PUBLIC HEARING:

Application of Dariusz and Basia Nartowicz, Owners and Applicants; requesting from Avon Zoning Regulations, Section IV. A. 6., a 16-foot variance from the required 20-foot side yard setback for a shed, located at 57 High Ridge Hollow in an R30 Zone.

E. Kyle read the Legal Notice and numbers II and III from the Virtual Public Hearing Process into the record. The Public Hearing is still open for the above referenced Application. She gave a recap of the Application. E. Kyle visited the property to determine the hardships that were discussed at last month's ZBA meeting. One photograph showed the size of the boulders that were described at the property line which faces Chevas Road. They are fairly large and seem to be common in this part of Town. Another photograph showed the grassy area which was described in last month's meeting. The area has a pitch to it which would require 3-4' of fill to make the area level for a shed. The Town did receive yesterday a lengthy letter in opposition to this Application. The proposed hardships are the boulders and a topographical challenge that would require fill to level. According to the Connecticut General Statutes, the evaluation by the ZBA for this proposal should be about these hardships and not aesthetics or financial impacts. Finally, E. Kyle showed a sketch of the proposed shed with dimensions that she received from the Applicants. The height would be compliant with Avon Zoning Regulations.

B. Nartowicz agreed with E. Kyle's summary and added that the back of the lot goes into a V shape and that is where they are planning to build the shed because it was an unused portion of the land. B. Nartowicz agreed that the photograph does not show the grade of the land. There is also a pool so if you tried to grade the land, it would drain into the pool. D. Nartowicz added that there is an existing shed by the fence that is in very poor condition. The proposed shed would replace the existing shed that has a hole in the roof, is disintegrating, and is not safe. E. Kyle said that the proposal included a taller, white vinyl fence that has been started and will continue along the side of the property.

E. Kyle said that at the last meeting the Commissioners asked for more photographs and a sketch of the shed. Chair Carroll asked about the location of the shed and E. Kyle showed the likely location of the existing shed and the fence line. The new shed is much bigger than the existing

shed. Chair Carroll asked about the topography of the land and E. Kyle said that the majority of the wooded area is fairly rocky and it also seems to be rocky in the neighborhoods that surround this area. The grass here is not rocky on the surface but it could be ledge underneath. As you go from the driveway towards the back yard there is a pitch upwards. The Applicants would need about 3-4' of fill to level a gravel pad in the grassy area. The lot plateaus once you reach the wooded area. Chair Carroll asked where the playscape is and if the pool was there when the Applicants bought the property. B. Nartowicz confirmed that the pool was there when they bought the property. E. Kyle shared a photograph that showed the playscape and the short end of the new shed.

E. Kyle said that the Town received a new letter from an abutter, Tammy Regalado of 99 Chevas Drive, yesterday afternoon which was forwarded to the ZBA. T. Regalado is present and referred to the Town ordinance for zoning and said that there are 4 requirements needed for a variance. The first one is that the property is peculiar and is not like the properties in the area. She said that this lot does not meet that requirement. She asked if any consideration was given to the other side of the property other than the Chevas Road side. E. Kyle described the topographical change and photographed the areas that the Applicants described as hardships. T. Regalado does not think that this property is different from any other property and is not peculiar. She believes the new, larger shed can be placed in another location. Ruben Regalado of the same address added that if you elect to construct on your property, there are procedures to follow. He followed those procedures when he replaced a deck and he asked if those procedures were followed here. E. Kyle said that no permit was pulled for this shed originally. The Building Code is enacted by the State of Connecticut – it is not town by town. Sheds that are 200 square feet and under do not require a building permit. Town zoning applies to setbacks so regardless of size, sheds are still required to meet zoning setbacks. This shed is 288 square feet which triggers the need for a building permit which the Applicant did apply for retroactively. Also, sheds that are 200 square feet or smaller have different setback requirements – Zoning would have only required a 10 foot setback but because the shed is over 200 square feet, the setback is 20'. Sheds are different from decks and extensions of houses, etc.

Janice Calkins of 106 Chevas Road said that she can see this shed from most of her property, both inside and outside of her house. She asked why we have rules if they are not followed.

Tracy Evans-Moyer of 51 Highridge Hollow said that her property is directly adjacent to the Applicants' property and she would see the shed wherever the Applicants put it on their property. She is the homeowner that is likely to be the most impacted as to property value by this shed. She wants the Applicants to demolish the current shed which is an eyesore. T. Evans-Moyer wants the Applicants to have a place to store the lawn equipment, the pool equipment and the snow removal equipment so it is not on the lawn or in the garage (so their cars could be in the garage). She wants the homeowners to take care of their property, store their equipment away, and build a shed that is not an eyesore. The shed will be on a part of the property that is unusable and it is probably as hidden as it could be. James Moyer of the same address added that especially since he has seen some of the additional photographs, he feels that this is a good improvement to the property.

Carly Regalado of 99 Chevas Road said that this is whether the Applicants should be granted a variance, and it is not about aesthetic properties as E. Kyle stated at the beginning of the meeting.

Mike Lloyd of 105 Chevas Road said that he submitted photographs at the last meeting of his view of the shed. The proximity to his property line and the size of the shed are the issues for him. The shed is about 12" from the fence and on the property line. From his deck, he sees the broad side of the 24' shed with a completed second story to it. He does not know what the total peak height will be but you may be considering another 6-7' in additional height. It is currently 9' to the second floor so to make any further roofline or pitch it will require at least 6' for a traditional pitched roof.

C. Regalado said that there are many solutions to where the Applicants' could place the shed that are not in violation of local building ordinances.

D. Nartowicz said the shed will be built according to the Town Regulations and referenced the sketch he provided. He said that the shed will be visible from other properties wherever you put it on the property. B. Nartowicz said that some of the comments from abutters are incorrect – the structure is not 9' tall yet nor is it the distance from the fence that was described. B. Nartowicz said that they picked the flattest area for the shed because anywhere else has a 3-4' pitch. Once the shed is finished, it will not be an eyesore. They would like to keep part of their backyard for their children to play. You cannot build anything in the front yard and the side yard is fenced in. They are trying to make improvements to their property to add value for all the neighbors. Her lot is triangular and not rectangular so it is harder to find a place to put the shed.

M. Lloyd said the shed measures 106" tall – just shy of 9'. The corner pin for the property has been identified and it was 40" off the property and structure. When he applied for a building permit, he had to remove trees and boulders in his yard, raise the grade 2-3", and comply with the 25 foot rear and side setbacks. He has a different perspective of the shed than other neighbors. The shed roofline may overhang the fence and the entire broad side of the structure runs directly along that fence line. He does not oppose a shed but the size of this shed is concerning.

T. Regalado wanted to clarify the 33" was the base of the structure not the structure itself and is unsure what is counted for the variance. She also believes that there are irrelevant facts that should not be under consideration such as room for children to run. There are many pie shaped lots in the area where people are able to comply with the setbacks.

B. Nartowicz said that where M. Lloyd is measuring from is a corner. The shed is not parallel to the property line – the shed is off the property line so it is only that corner that becomes an issue. It is almost at a 45 degree angle and not flush against the whole property line. E. Kyle said that procedurally the way that variances are processed is from the closest point of contact so that dictates the 16 foot variance.

E. Kyle said that because the date of receipt of this request was the last regularly scheduled meeting of September 15, the public hearing must close within 65 days of that receipt which is November 19, 2022. Chair Carroll made a Motion to Close the Public Hearing. M. O'Connor

seconded. The Motion passed unanimously. E. Kyle said that the ZBA needs to deliberate and will need a Motion to Approve or Deny giving reasons for either scenario, or continue the matter to the ZBA's next regularly scheduled meeting on November 17, 2022. The decision making process is based on hardships and hardships alone, not aesthetics, finances, or children. Vice Chair Yaros made a Motion to Deny this Variance. J. Polhamus seconded. The Motion passed unanimously. E. Kyle said that the Town's Regulations require a reason for the vote. Chair Carroll said that the reason for her denial was that she did not feel that the hardship was demonstrated in a way that satisfied all four of the provisions of the Zoning Regulations. Vice Chair Yaros asked if the ZBA can revisit this if the Applicants were to come back with a different version. E. Kyle confirmed that the Applicants can reapply and go through this process again. E. Reilly said that she feels that neighbors are important and have a right to enjoyment of their property. E. Kyle asked E. Reilly to confirm that she has reviewed all the Application materials and the minutes from last month's ZBA meeting because E. Reilly was not able to be at last month's meeting. E. Reilly confirmed that she had. B. Nartowicz said that the items that the abutter commented on in a letter today such as putting in an in-law suite and adding electricity to the shed are not true. B. Nartowicz continued that this abutter's property only abuts the Applicants property in the front and on the side. The abutter's property is not near the back of the Applicants' property where the shed is proposed and the abutters cannot see the Applicants' backyard. The Applicants did not feel that the letter was addressing the hardships involved. Chair Carroll assured the Applicants that she did not give the letter much weight – the decision was based on the demonstration of hardship. She also said that the letter alluded to personal relationships and Chair Carroll and the Applicants agreed that they have no relationship.

## II. PUBLIC HEARING:

Application of Thomas R. and Katherine Daly, Owners, and Katherine Daly, Applicant; requesting from Avon Zoning Regulations, Section IV. A. 6., a 20' variance from the required 25-foot side yard setback for an above-ground pool deck, located at 204 Thompson Road in an R40 Zone.

E. Kyle read the Legal Notice. She said that the ZBA had an Application for this property in March, 2022 for a variance for a pool that was approved. Now the Applicant is requesting a 20 foot variance from Town of Avon Regulations Section IV. A. 6. for an above-ground pool deck. The deck is parallel with the pool so it is the same 20 foot variance and equidistant to the property line. The area of the pool location can be observed in the submitted photographs. The hardships are the same as documented before which include leaching fields which spread gradually throughout the middle of the yard and some topographical challenges on the eastern side of the backyard. The pool deck will be connected to the pool – there is nowhere else that it really could be. E. Kyle shared photographs from both before the pool was put up and after. A patio was also constructed which does not need to abide by zoning setback requirements unless they are over 4' tall. The proposed deck will bridge the gap between the patio and the pool. K. Daly contemplated this as all one application but at the time of the Application for the pool, she was uncertain of the plan for the deck. Also she evaluated whether or not it would be possible to put a deck on the side of the pool towards her yard but it was too close to the septic system. E. Kyle said that the Town did not receive any letters either in support or opposition. For the pool Application, the Town did receive a positive letter from the closest neighbor to the pool.

Chair Carroll asked if there were any visuals of what the deck will look like. K. Daly said that the deck will cover the section between the patio and the pool and it will be approximately 18' by 10-15'. E. Kyle shared the drawings of the proposed deck submitted for the building permit.

Chair Carroll made a Motion to Close the Public Hearing for this Application. E. Reilly seconded. The Motion passed unanimously. No ZBA members had any questions or comments. Chair Carroll made a Motion to Approve this variance for 204 Thompson Road. E. Reilly seconded. The Motion passed unanimously. E. Kyle stated for the record "That the granting of the 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."

III. OTHER BUSINESS: None.

IV. NEXT REGULARLY SCHEDULED MEETING: November 17, 2022

M. O'Connor made a Motion to Adjourn. E. Reilly seconded. The Motion passed unanimously.

The meeting was adjourned at 8:07 p.m.

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