

THE ZONING BOARD OF APPEALS OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING FOR A PUBLIC HEARING ON THURSDAY, JUNE 18, 2020, AT 7:00 P.M., VIA GOTOMEETING, <https://global.gotomeeting.com/join/868520493>; or Dial by phone: +1 (646) 749-3122, Access Code: 868-520-493#.

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

Chair Carroll called the meeting to order at 7:00 p.m. John McCahill facilitated the virtual meeting.

Roll call was taken for the Board; Charles Castonguay, applicant for 43 Sheffield Lane, was present on behalf of his application; and Derek S. Green, owner/applicant for 129 Secret Lake Road, was present on behalf of his application.

John McCahill stated that notice was provided in accordance with Town regulations, State Statutes, and recent COVID-19 related Executive Orders; and the Town has notified the abutters to the subject properties as required. The Avon Zoning Board of Appeals 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. He summarized the agenda.

PUBLIC HEARING:

Application of Susan Castonguay, owner, and Charles Castonguay, applicant; requesting from Avon Zoning Regulations, Section IV. A.6, a 13-foot variance to the 25-foot side yard setback requirement for a 12' x 20' proposed shed/garage, located at 43 Sheffield Lane in an R-40 Zone.

John McCahill summarized the application form as submitted, including details from the application; he read aloud the applicant's letter of description of the variance request, signed by the owner and applicant. He summarized the accompanying materials, including the image of proposed/similar structure; the GIS map of abutting properties; (ZBA public hearing notification sent to abutting owners via postal mail); the GIS aerial view of subject property; multiple photographic views of subject property taken by Town staff; and subject property plot plan showing proposed shed/garage, proposed location, and proposed variance of side yard setback. He stated that no neighbor communications had been received regarding the variance proposal, as of June 4, 2020. However, a very recently received letter from an abutting neighbor and the applicant's response to the neighbor's letter would be read aloud into the record at the end of the application review.

Mr. Castonguay spoke on behalf of the application. He stated that there is a regulated area and wetlands at the rear of the property which constrain where a shed/garage can be located. If the proposed shed/garage were to be located closer to the existing garage of the home, to honor the

full side yard setback, it would encroach on the existing garage to the point where a small gap would be created between the shed and the garage that leads to the backyard. The problem in this instance would be the difficulty to drive his trailer, containing top soil or gravel or anything to be stored in the walk-out basement, around to the back of the house. He stated that to the left of the two basement windows is a pair of French doors, from which his family accessed the basement from the outdoors; this is the route to drive around to the back from the existing driveway at the north side of the house. Relocating the proposed shed/garage closer to the house would also impede upon future plans to build a terrace off of the back of the house. The existing garage and driveway are already off of that side yard, and it seemed like the natural place for the proposed structure. Locating the proposed shed/garage on the other side of the house would again place it within the side yard setback.

Chair Carroll asked if the Board members had any questions for Mr. Castonguay.

Board member Bukowski inquired if there were a different location for the proposed shed that would be acceptable to Mr. Castonguay, which would not impact on a regulated area or setback.

Mr. Castonguay responded that he felt this was the only location where the proposed shed could be placed. The basis was that there was no possibility of placing a shed in the back yard; there was no possibility in the south side of the yard because there was no driveway. The only other option was to move the proposed structure closer to the existing garage; and this would impact the appearance and future plans for a terrace in the back yard.

John McCahill stated that the correspondence received in the last approximate 36 hours, related to this application, was sent to the Board earlier today in the hope that the Board might have time to read the letters prior to this meeting. He summarized and read aloud the letter from Jimmie and Anne Woods, of 39 Sheffield Lane, for the record, dated June 16, 2020.

Mr. and Mrs. Woods participated in the meeting. Mrs. Woods requested that the Zoning Board of Appeals uphold the law of the Town's zoning regulations with regard to the neighborhood. She stated that they had serious concerns regarding the impact to the value of their property.

John McCahill stated that the both the Woods' letter and Mr. Castonguay's rebuttal response letter had been provided to the other party for review prior to this meeting.

Board member Reilly inquired about the slope of the land mentioned in the Woods' letter, referring specifically to the water runoff from the proposed structure's roofline, which would slope down onto the Woods' property. There appeared to be two photographs of the land with confusing opposing viewpoints of the slope of the land where the proposed structure would be located. In one photograph, it appeared that the structure would be set above the neighbor's land; while the other image appeared as the opposite. She requested that Mr. Castonguay explain the slope of the land.

Mr. Castonguay stated that in the neighborhood, the land generally runs downhill from the north to the south. In moving southerly down the street, each lot lies downhill from the one before it. The land of the Woods' parcel is a little higher than his. The topography in the Woods' backyard

slopes down toward his yard. The land of his backyard sloped down toward the rear yard. The height of the slope referenced in the application was taken from the as-built plan; the as-built showed land sloping down at a measure of six feet, from the north to the south, across the back of his house.

Mrs. Woods directed comments to Chair Carroll. She agreed that the land of the neighborhood slopes downward from the north to the south, but pointed out that the Castonguay's driveway is at a level approximately four feet higher than their basement.

Mr. Castonguay summarized some of the points in his rebuttal letter regarding the Woods' concerns. He did not feel that their concerns were credible. Regarding the issue of water runoff, over the 17 years that he and his wife have lived on the property, the water from the Woods' property ran onto his property entirely. There is a grade to the driveway that goes down to a level of grade that met the Woods' property, and where they meet is at the dividing property line, which appeared as a "gully," for lack of a better term, or lower lying area. From there, the water runs into the backyard and then to the south. The runoff water level would be below their basement; water would have to run uphill in order to affect the Woods' basement. The brook beyond the stone wall in their backyard catches the rainwater. The Woods' also had a concern regarding shadows that could be cast from the proposed structure. He explained that the sun moves across the sky in the morning from the east over the trees in the back yard, which are part of the wetlands, and moves toward the west. As the sun moves toward the west, it gets higher in the sky overhead; the shadows from the sun in the western sky are cast very long, from the front of his house, before the sun sets, to the back of his house. Regarding the Woods' concerns about a darker house, the sun would be too high in the sky for any shadows to be a concern. The existing zoning restrictions allow for a structure's roof to be at 35-feet. For example, if the proposed structure, hypothetically, were as high as 35 feet, and within the zoning setback area, that height would be allowed by regulation. In response to the issue of noise, raised in the Woods' letter, he has done home woodworking projects such as cutting cedar boards on a table saw, and has sanded them, for custom lattice work on his property. He has cut the grass, plowed the snow, and used a leaf blower as necessary. Sometimes music has been played in the background. A lot of noise has not been generated from the property. There was no intention to engage in commercial activity; no work has been performed for other people; there was no side-job; and no business has been conducted from the property. The purpose of the proposed shed/garage would be to store items that would be difficult to fit in the existing garage.

Mr. Castonguay stated in response to Board member Bukowski's inquiry that the existing house is in zoning compliance, however, what was stated in his letter was that the corner of the house on the south side of the property is located only two feet from the 25-foot side yard setback. He did not know how the Woods' property value, quality of life, and privacy would be adversely affected. The quality of the proposed shed/garage will be significant and it would have a poured foundation; and a lot of money will be invested in how it looks. This would benefit the neighbors.

Chair Carroll inquired of Mr. Castonguay if he would be open to installing gutters on the shed, in order to direct water away from the neighbor's property. Mr. Castonguay responded in the positive. Chair Carroll confirmed with John McCahill that this condition cannot be required as

part of an application approval, but can be noted in the record regarding the applicant's intention to follow through with the condition.

Mrs. Woods stated that they are very concerned about noise at the Castonguay property. The table saw at the Castonguay property has been used very frequently and has been very loud; they were concerned that the proposed shed/garage would be used as a woodshop. Both of the Woods have been working from home and the noise has been loud enough so that they have needed to move to different parts of the house to conduct phone calls. She was understanding that the Castonguays are allowed to use the table saw in their garage, however, if such activity were to be located closer to their property, she would therefore be further concerned.

Mr. Woods stated that his understanding of the Town's zoning setback regulations was that one neighbor's activity should not affect the other neighbor's property due to the zoning requirement. Moving activities closer to another neighbor's property would increase the noticeability of whatever those activities may be. He noted that Mr. Castonguay did approach them in a discussion regarding the variance request and showed them what he was proposing back in mid-May, however, they were not sure of the exact property lines. Mr. Castonguay indicated that issue would be later addressed later. Issues do arise when activities move closer to properties of others. Regarding the issue of the impermeable roof of the proposed structure, rain water would be directed differently from the roof than rain on the grass. At the property line between the two properties, referred to as the "gully," three inches of rain water coming from the impermeable roof would be directed somewhere. In this case, it would be directed toward the gully and along the property lines. Also, the elevated driveway had created a slope in the topography, which did not follow the natural flow of the topography in the neighborhood. Regarding the shadows from the sun, the sun would be higher in the sky in summer but lower in the sky during the winter resulting in shadows moving east to west.

Mrs. Woods stated that due to the requirement of the 25-foot side yard setback, the regulations should be enforced. She questioned what the point was for having the regulations if they were not to be enforced. The proposed shed/garage would be really close to their house. She felt that the variance would be an infringement on their privacy. She also thought that there were alternative options for a different location of the shed/garage other than the one proposed, although maybe not ideal to the Castonguays. She asked the Board to carefully consider these concerns.

Mr. Woods stated that side yard setback regulations in town had been increased at a certain point from 25 feet to 35 feet. There was a reason that they were increased, and that was regarding the impact to neighboring properties.

Board member Reilly requested that Mr. Castonguay restate for what purpose the proposed shed/garage would be used.

Mr. Castonguay stated that he would store a riding lawn mower, a snow blower, and approximately 100 flower pots during the planting off-season; also, landscaping tools such as shovels, rakes, etc. No vehicles would be stored in the proposed structure. It would not be used as a workshop. There are many items in the existing garage that are preventing their cars from

being parked inside the space. He thought that cars parked outside of his garage could detract from property values. He was not unsympathetic to the things that COVID-19 has caused many people to do, such as work from home; he was not aware that the noise from the table saw, while the neighbors have worked from home, was an issue. He did not want the Board to deny the variance request based upon a temporary noise condition, and also stated that he was very close to completion regarding his wood working project which require the use of the table saw. The noise generated from the property was not unusual in a neighborhood.

Board member Bukowski inquired of Mr. Castonguay, what issue would prevent him from moving the location of the proposed shed/garage by 13 feet southerly.

Mr. Castonguay responded that a location 13 feet to the south would move the proposed shed/garage closer to the existing garage, would look cumbersome and it would prevent access to drive his van-with-trailer around to the back yard to deliver storage items to the rear of the house. He would have to drive transversely on a sloping curve of the land. It was his intention to install a backyard terrace for seating in the future, however, subsequent to the building of the proposed shed/garage.

Mrs. Woods stated that she did not see a reason why Mr. Castonguay's application would hinge on him being able to drive his car around to the backyard. That reason seemed inadequate and also there seemed to be a lack of care for his neighbor's property. The regulations require the zoning setback and it should remain in place.

Board member Bukowski motioned to close the public hearing for the variance application of Charles Castonguay. Board member Reilly seconded the motion. All voting members were unanimous in closing the public hearing.

Board member Bukowski motioned to approve the application of Charles Castonguay. Vice-chair Yaros seconded the motion.

John McCahill stated that the Board did have an opportunity to discuss the application, at this time, without input from any other participant in the public hearing.

Board member Bukowski stated that he had heard both sides of the discussion and felt there were difficult issues, which he was weighing. He felt that the applicant had presented enough evidence to justify the variance.

Board member Reilly stated that the decision was difficult, however, felt that the Woods were correct in that the proposed shed/garage, which would be aesthetically beautiful, would impede upon the views from their basement by the shadows that would be created, and they would be looking directly onto the proposed shed/garage. She did not feel that the rain water runoff or the noise level issues were significant issues. She felt that as taxpayers, the Woods had a right to maintain a distance between a structure and their property. She would deny the requested variance application for these reasons.

Board member Williams stated that both sides had good arguments; however, the argument from the Woods, that the turnaround for a vehicle to the back of the house was an inadequate reason for the proposed location of the shed/garage, and was stronger than Mr. Castonguay's reasoning.

John McCahill clarified for the record that for the purposes of voting, in order to approve a variance, four votes of approval would be required in order to grant the variance. If there were a 3-2 split vote, the application for a variance would not be granted.

Chair Carroll called for a vote on the application of Charles Castonguay, of 43 Sheffield Lane. Members who voted to deny the application were the following: Vice-chair Yaros, Board member Reilly, Alternate member Williams, and Chair Carroll; Board member Bukowski voted in favor of the application. The motion failed and the application was denied.

Vice-chair Yaros stated that she felt the decision was difficult, and could understand both sides of arguments. However, she denied the application stating that the neighbors needed to work together to achieve an acceptable solution to both parties.

Chair Carroll agreed that there was a level of disagreement between the neighbors of the two properties, and more time for a different plan would be required.

Board member Bukowski stated that he also agreed with Chair Carroll and Vice-chair Yaros in that there needed to be an alternate acceptable solution. He stated he voted in favor, however, with reservations.

Board member Reilly stated that the 25-foot setback should be maintained, as it is the law. The view from the Woods' basement would be blocked and the enjoyment of their property would be impeded. Those were the main reasons why she voted to deny the application.

Board member Williams stated that the law of the Town should be upheld unless there is a very good reason to require a variance. There needed to be sufficient evidence to change the requirements. The reasons should not affect other people.

PUBLIC HEARING:

Application of Derek S. Green, owner/applicant; requesting from Avon Zoning Regulations, Sections IV. A.6 and IV. A.2, a 10-foot variance from the 15-foot side yard setback requirement, a 9-foot variance from the 40-foot front yard setback requirement, a 400 square foot variance from the 1,000 square feet permitted for accessory buildings, and a variance to allow 17% lot coverage which exceeds the 15% lot coverage allowed, to build a detached two-story storage garage, covered staircase, second story rear deck and open carport, located at 129 Secret Lake Road in an R-15 Zone.

John McCahill summarized the application form as submitted and the accompanying materials, including the images of proposed/similar structure; GIS map of abutting properties (ZBA public hearing notification sent to abutting owners via postal mail); GIS aerial view of subject property; multiple views of the subject property; photographs by Town staff; photographs of neighborhood

carports, at 101 Secret Lake Road and 103 Secret Lake Road, similar to the application's proposed carport, of photographs taken by Town staff; subject property plot plan images showing the proposed structure, the proposed location, and the proposed variance of yard setbacks. He stated that no neighbor communications had been received regarding the zoning variance proposal, as of 6/4/2020. John McCahill stated that the public hearing notification was also sent to the President of the Secret Lake Association. As written in the application, the applicant stated the hardship reason to be that the rear area of the foundation borders the old septic system, which is unsuitable to build upon, if placed within the traditional setback. The hardship is unique to the property due to the geography, large trees, and existing non-conforming placement of the garage of the neighbor's property at 135 Secret Lake Road. The proposed garage and carport would be similar to existing ones nearby in the neighborhood. The proposed structure would replace an existing old structure and would improve the neighborhood, in general. A diagram of proposed elevations was included in the application. There is a sewer easement that runs through the back of the property. He described the photographic imagery included in the application documents, including the existing carports, located at 101 Secret Lake Road and 103 Secret Lake Road, similar to the one the applicant/owner had proposed.

Mr. Green, applicant/owner of 129 Secret Lake Road, indicated the location for the proposed garage/carport, which was close to the abutting neighbor's garage, at 135 Secret Lake Road. He stated he has worked with neighbors over the last two years to ensure that they did not have any issues with the proposal. Some of the neighbors had joined the public hearing that evening. The proposed garage/carport would not be as close to the road as those of the other neighbors, as seen in the referenced photographs. The proposed structure could not be located back farther, outside of the front yard requirement, due to the filled-in old septic system which would not provide suitable stability upon which to build. He referenced the amount of trees between the adjacent homes, as seen on the Town GIS satellite picture. The neighbors had agreed that they would rather see the proposed structure than the multiple items currently left outside.

Board member Bukowski and Vice-chair Yaros inquired whether or not the second story of the proposed structure would be a living space.

Mr. Green responded and confirmed that the structure would be used only for storage. The lower level would be used for his hobby, to work on older vehicles, and the upper area would be used for storage.

John McCahill stated that the use of the upper area as living space would not be allowed under current Town of Avon zoning regulations, in any case.

Susan Guimaraes, ZBA Clerk, read aloud into the record a virtual meeting chat message received electronically during the public hearing; the following: "Hello Susan. My name is Adam Pierce. I live at 130 Secret Lake Road. Directly across from Derek Green at 129 Secret Lake Road. I sent an e-mail earlier today voicing my support for their application. I came on tonight to tell the board my support. I have to leave the meeting soon, but want to make sure my support is noted."

Chris Hodson, of 127 Secret Lake Road, spoke on behalf of himself and his wife in favor of the variance request of this application. He felt that this project would be a benefit for the neighborhood, to have a structure to store his items.

Vice-chair Yaros inquired about the 2nd story deck of the proposed garage/carport in relation to the house's structure.

Mr. Green responded that there was a deck on the back of the house, but the additional deck on the proposed garage/carport would be tremendous asset to view the lake.

Vice-chair Yaros inquired of John McCahill whether or not the deck of the proposed garage/carport was included in the square footage of the variance measurements.

John McCahill responded in the negative since the deck would not be covered. However, the staircase was included in the measurements, as impervious coverage, and it was recommended due to the element of snowfall on the south side.

Board member Bukowski inquired on the accuracy of the following numbers: the existing house is 1,038 square feet; the existing deck is 348 square feet; and the proposed new structure would be 1,400 square feet.

John McCahill did not have those calculations at the moment. He confirmed the calculations of the proposed structure. The calculations for the proposed roof and carport would include open areas on the front and sides. The proposed enclosed structure would be 28 x 30 feet. He confirmed that the 1,400 square foot portion included the carport area.

Vice-chair Yaros moved to close the public hearing. Board member Reilly seconded the motion. All voting members were unanimously in favor, and the public hearing closed.

There was no further Board discussion on the application.

Vice-chair Yaros motioned to approve the application of Derek S. Green, of 129 Secret Lake Road. Board member Reilly seconded the motion. The following members voted unanimously in favor: Vice-chair Yaros, Board member Bukowski, Board member Reilly, Alternate member Williams, and Chair Carroll. The application was granted.

John McCahill stated 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.

OTHER BUSINESS:

There was no other business.

The next regular meeting and public hearing is scheduled for July 16, 2020.

Board member Reilly motioned to adjourn the meeting and Board member Bukowski seconded the motion. All members voted unanimously in favor, and the virtual GoToMeeting adjourned at 8:40 p.m.

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