

THE ZONING BOARD OF APPEALS OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING FOR A PUBLIC HEARING ON THURSDAY, SEPTEMBER 17, 2020, AT 7:00 P.M., VIA GOTOMEETING, <https://global.gotomeeting.com/join/322611085>; or Dial by phone: +1 (872) 240-3212, Access Code: 322-611-085#.

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

Chair Carroll called the meeting to order at 7:08 p.m. John McCahill facilitated the virtual meeting.

Roll call was taken for the Board. Joao Godoy, of 8 Columbus Circle, and William and Caren Pauling, of 23 Stony Corners Circle, were present on behalf of their applications. Identified as participating from the public was John Gonsalves, of 38 Old Farms Road.

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 Tonia Godoy, owner, and Joao Godoy, applicant; requesting from Avon Zoning Regulations, Section IV. A. 6., a 13-foot variance from the required 15-foot side yard setback and a 28-foot variance from the required 30-foot rear yard setback to permit moving an existing building structure (shed approximately 16 x 12 feet), to the northwest corner of the property, located at 8 Columbus Circle in an R-15 Zone.

John McCahill summarized the application form as submitted by the applicants. He read aloud the applicant's letter of description of the variance request, signed by the owner and applicant. He summarized the accompanying materials: ZBA public hearing notification sent to abutting owners via postal mail; the Town of Avon GIS map of abutting properties; the Town GIS aerial view of the subject property; multiple photographic views of the subject property taken by Town staff; and subject property plot plan showing the proposed location for the shed and proposed variances for the side and rear yard setbacks. John McCahill summarized and read aloud some excerpts from Mr. Godoy's submitted application. He read from the application submission describing why strict application of the regulations would produce undue hardship. He read from the application section for the applicant to state why the hardship was unique to the premises and not shared by other premises in the neighborhood; this section referenced, in part, the Town of Avon sewer easement running through the residential properties of the Columbus Circle

neighborhood. He read from the section for the applicant to state why the variance would not change the character of the neighborhood. John McCahill read an excerpt from the section where the applicant states the neighbors' positions and stated that the Board had the opportunity to read the lengthy conclusion in this application. He went on to reference images of Town GIS maps of the subject property and the abutting neighbors' properties, which received notice of this public hearing from the Town of Avon. He reviewed photographs taken by Town staff of the subject property, including those of the existing shed and the area of the proposed relocation of the shed. He reviewed the variance request as two feet from both of the property lines in the northwest corner of the property. He again referenced the Town of Avon sewer easement that ran through the subject property. He referenced a full-size copy of a survey map showing the subject property.

Mr. Godoy stated he did not have additional comments to add to his application for 8 Columbus Circle at this time in the hearing.

Chair Carroll opened questions from the Board.

Board member Bukowski raised the issue of whether or not the applicant was able to get a sealed inventory of the subject property. He referenced the Town of Avon Zoning Board Regulations where the Board's discretion to approve or not approve an application based on the sealed inventory was noted; and the Board had the discretion to hear an application without the technical requirement of a sealed inventory. He read aloud an excerpt from the regulations. He noted that absent was a technical survey of the subject property. He wanted input from the other Board members on the issue of a licensed survey requirement.

John McCahill stated Board member Bukowski noted in the regulations the language and the ambiguities that exist. It is a matter of the Board having a level of comfort with the degree of survey, and appropriate signatures, as it relates to the size of the property and the degree of the variance. The smaller shed on this property might not trigger the need for a professional seal, however, the proposed location of the shed is close to the property lines. The Board may need a level of comfort that the shed would be placed as requested in the variance, and where the property lines are located.

Mr. Godoy referenced a different ZBA variance application, of Laura Veneziano at 9 Columbus Circle in Avon, and that the Board made a decision based on the maps she included in her application, similar to those that he had submitted.

John McCahill inquired of Mr. Godoy whether or not he had a comfortable reference point on his property where the two feet from the property lines would begin and end in order to relocate the shed.

Mr. Godoy responded that he had the level of comfort relative to Laura Veneziano's in her own application.

Chair Carroll stated that the Veneziano application was not before the Board at the present time. She stated that the questions for Mr. Godoy were whether or not he was certain as to where his

property lines were located, and whether the new placement of the shed would respect those property lines.

Mr. Godoy responded that he was certain.

Chair Carroll indicated that without a survey, the Board would not know with certainty.

Mr. Godoy referenced the application of Laura Veneziano.

Chair Carroll stated that the Board could not reference those documents as they were not before the Board at the present time. She inquired whether or not a survey had been conducted for the property.

Mr. Godoy stated that he had not had a survey conducted for his property.

Alternate member McNeill inquired whether or not there were markers, such as ground pins, on the property, in the specified corner, to indicate the location of the property lines.

Mr. Godoy stated his belief that the property had been surveyed at a point in time and that the location ground stakes of the survey line still remain.

Alternate member McNeill stated that it was incumbent upon the applicant to fit the shed within the lines for the proposed location according to the specific variance requested. If the shed were relocated to a place in noncompliance with the variance, the owner would be required to move it.

Board member Yaros inquired whether the survey would show the gradation of the land.

John McCahill responded that a land survey does not typically show topography, however, based on the actual photographs of the property there is no issue in this respect.

Board member Bukowski reiterated that there is no doubt that a sealed survey was not conducted for this property. Under the ambiguously worded zoning code, the Board has discretion to disregard this requirement. Notwithstanding the absence of the sealed survey, the location of the shed appears to be reasonable and in accordance with the zoning scheme of the neighborhood.

Alternate member McNeill inquired about the fence surrounding the back of Mr. Godoy's property, and whether or not it was his fence or his neighbor's.

Mr. Godoy responded that the pasture fence, at the rear of the subject property, was his. The white fence along the intersecting side of the property in the proposed relocation corner was his as well; and an abutting neighbor has a fence at the back end on the neighbor's side of the property.

John McCahill stated, in response to Alternate member McNeill's question, that the Town does not require a permit for a fence under seven feet according to the current Town building code.

Vice-chair Yaros inquired if it is known whether or not the fence is in the right location with regard to the property line.

Board member McNeill stated that since the Town does not currently require a fence permit for the existing height, the assumption would be that the fence is within the subject property lines. If there are survey marker pins in the ground, then the shed could be properly located according to the variance requested.

Mr. Godoy stated that he was bringing before the Board the same facts as Ms. Veneziano had brought before the board at the hearing for her application, and that person's was approved; she had relied on the map on file at the Town. None of these issues were of concern in the application of Laura Veneziano.

Vice-chair Yaros stated that she was not on the Zoning Board of Appeals in 2019. She had no other reference other than what was presented to the Board at this hearing.

Chair Carroll reiterated that she did not have the records of the other referenced application in front of her, and therefore she could not make any comparisons to the other application. She indicated that the issue of the property markers needed to be resolved. There has been no decision on this application yet. There may be more questions that might lead to a resolution.

Mr. Godoy stated, in response to Chair Carroll's question, that the fence along the rear property was installed in 2012, and the fence at the side of the property in that proposed relocation corner was installed in 2013. He believed that his neighbor, abutting the rear property, installed his fence at the rear side in 2016.

Board member Bukowski stated, in response to Chair Carroll's question regarding the location of the fences and property line markers, that it was helpful to have those ground markers. He noted the issue of the Town of Avon sewer easement running through the subject property, and that numerous other properties in the neighborhood had relocated sheds to the edges of their properties. He did not believe there was an objection from the neighboring property owner adjacent to the shed. It would seem that this would be an appropriate variance to grant. He echoed what Alternate member McNeill had stated that it might be appropriate to have additional proof which would show that the proposed location of the shed would not violate any property boundaries. If the Board's discretion were waived, he would want to see additional proof of property boundaries and the shed location would be within the limits of the variance requested.

Alternate member Williams did not have any comments regarding this application.

Vice-chair Yaros inquired if Board member Bukowski was referring to the Board's discretion with regard to this application or that the waiving of discretion would set a precedent.

Board member Bukowski stated that, based on his reading of the regulations, the Board discretion was based case-by-case. It is difficult in this case, due to one of the applicant's main arguments being that something was interpreted differently previously, and what was decided previously is not before the Board; the Board cannot criticize it. He stated that whatever is ruled

at this meeting, might be construed to be a precedent, however, it was his opinion that under the Town zoning regulations there appears to be the Board's discretion that would be applied on a case-by-case basis.

Chair Carroll agreed with Board member Bukowski that the way the Town regulations are written, the Board has discretion and should be applied on a case-by-case basis. She did not believe that a precedent would be set for future applications.

Chair Carroll opened questions or comments for the Board to the public.

Mr. John Gonsalves, of 38 Old Farms Road, stated that there had been issues along the property line and therefore he installed a fence on his property. However, he had a professional survey conducted for his property which indicated the back property line. He offered his help in resolving the rear property line issue by allowing Mr. Godoy the use of his survey in determining the back line of Mr. Godoy's property. He believed that the wooden survey stakes from the previous property survey were not still in place. He stated that the stakes had been 10 to 12 inches from Mr. Godoy's pasture fence at the rear side of the property. Mr. Gonsalves' fence was installed according to the stakes that were in the ground at the time. His fence was installed approximately five inches from his rear survey line; he stated that John McCahill had inspected his fence at the time. Mr. Gonsalves inquired that if the shed were located on Mr. Godoy's side of the existing pasture fence, then he would have no issue with the proposed location of the shed according to the requested variance.

John McCahill stated that Mr. Gonsalves' fence was over six feet tall, and according to the Town building code at that time, prior to the current amended code of the seven-foot height, Mr. Gonsalves' fence required an inspection according to the building permit required at that time.

Mr. Gonsalves inquired if Mr. Godoy would consider the shed height to be a little lower than what currently exists, since Mr. Godoy proposed taking the shed apart. The shed roof is old and Mr. Gonsalves would rather not see the whole roof from his back yard, however, he would work with Mr. Godoy. Mr. Gonsalves stated that he had made an offer to Mr. Godoy to help lay out the shed at the rear property line with the use of his own survey. If Mr. Godoy were to lower the height of the relocated shed, then he would have no issues. There is a lilac bush at the rear of Mr. Godoy's property. Mr. Gonsalves inquired whether or not the lilac bush would remain, as it would cover some of the roof line.

Chair Carroll stated that the Board could not require Mr. Godoy to adhere to any requests regarding property vegetation. She asked Mr. Godoy if there was anything he wanted to share regarding the issue of his property vegetation.

Mr. Godoy stated that the proposed shed would be the same dimensions as what presently exist; he would not change them. He stated that the application speaks for itself and the placement would be two feet from the property line. He was not willing to use the lilac bush in this regard and he confirmed that he had cut the bush down on the day of the hearing. Mr. Gonsalves has a detached building at the rear of his property that is taller than the shed. The view of that garage will be the same as the view of his shed.

Chair Carroll sought clarity from Mr. Godoy and inquired if he meant two feet from the existing fence; or whether or not he would pull out the fence.

Mr. Godoy stated that the proposed relocation of the shed would be two feet from the property line. He would pull out the pasture fence on the north side of his property; and he would move the shed farther back by one foot. The proposed shed will be two feet from the property line and the fence will be moved to one foot from the property line.

Board member Bukowski sought confirmation from Mr. Godoy that he was intending to move the fence back by one foot.

Mr. Godoy responded in the affirmative and confirmed this distance.

Chair Carroll asked Mr. Godoy if he considered the fence of the abutting neighbor at the rear of his property to be the property line.

Mr. Godoy stated that he considered the property line to be marked by the stakes in the ground from a professional survey that was done at the rear abutting property. He confirmed that it was Mr. Gonsalves' survey. He believed that in some areas the line was two inches from the back of the four-by-four inch posts of Mr. Gonsalves' fence.

Chair Carroll inquired if the Town could confirm that the ground markers are still existing in order to confirm where the property line exists.

John McCahill stated that his role was not that of a surveyor.

Mr. Gonsalves stated that he looked for survey marker stakes on the day of the hearing and could not find any. He questioned that if the shed were to be two feet off of the property line, one that was undetermined since the stakes were missing, how anyone would know where the line was. He thought that the issue would be resolved if the shed were on Mr. Godoy's side of his pasture fence; and stated that if the fence were removed, then a survey should occur.

Chair Carroll confirmed there were no further comments from the Board, the applicant, or the participating public.

Vice-chair Yaros motioned to close the public hearing. Board member Bukowski seconded the motion. All present members voted in favor: Chair Carroll, Vice-chair Yaros, Board member Bukowski, and Alternate members Williams and McNeill. The motion carried.

Board member Bukowski motioned to approve the variance as submitted in the application of 8 Columbus Circle. Alternate member McNeill seconded the motion. All present members voted in favor: Chair Carroll, Vice-chair Yaros, Board member Bukowski, and Alternate members Williams and McNeill. The motion carried.

John McCahill 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.

Application of William R. and Caren M. Pauling, owners/applicants; requesting from the Avon Zoning Regulations, Section IV. A. 6., a 15-foot variance from the required 25-foot side yard setback for a 24' x 24' two-car garage with loft, located at 23 Stony Corners Circle in an R-40 zone.

John McCahill confirmed that William Pauling, an owner and applicant at 23 Stony Corners Circle, was present. John McCahill summarized the application form as submitted by the applicants. He read aloud the applicants' letter of description of the variance request, signed by the owners/applicants. He summarized the accompanying materials: ZBA public hearing notification sent to abutting owners via postal mail; the Town of Avon GIS map of abutting properties; the Town GIS aerial view of the subject property; multiple photographic views of the subject property taken by Town staff; a plan image of the proposed or similar structure; a survey conducted in 2020 showing the proposed structure and its location along with the variance to yard setbacks shown as requested in the application; and neighborhood communication related to the variance request, dated 8/28/2020. John McCahill summarized and read aloud some excerpts from Mr. and Mrs. Pauling's submitted application. He read from the application section, as submitted, as to why strict application of the regulations would produce undue hardship. He read from the application section, as submitted, for the applicant to state why the hardship was unique to the premises and not shared by other premises in the neighborhood. He read from the application section, as submitted, for the applicant to state why the variance would not change the character of the neighborhood. He referenced images of Town of Avon GIS maps of the subject property and the abutting neighbors' properties, which received notice of this public hearing from the Town of Avon. He reviewed photographs taken by Town staff of the subject property and its existing building structures. He reviewed the elevational drawings submitted for the proposed structure. The plan for the 24' x 24' garage also noted that there would be a second-story loft. The right elevation of the proposed structure faces toward the existing house and the left elevation faces toward the woods. The subject property is very extensive along the frontage of Stony Corners Circle and is very narrow in depth of the lot. He reviewed the area on the survey where the proposed structure would be placed, relative to the photographs taken by Town staff. The owner had already cut down the trees that would be required to be cut for the proposed garage location. John McCahill stated that there are visible ground stakes past the driveway where the garage will be located and ground stakes for the property line. John McCahill read from a letter of support of the application, from Carl Folia Jr. and Patricia Folia Carnright of 120 Stony Corners Circle. He pointed out the location of the neighbors who wrote the letter on the map of abutting properties. He noted that the variance distance requested is one foot greater than what may be the final building setback distance.

Mr. Pauling stated for clarification that the proposed structure has a one-foot overhang and the foundation would be staked to 11 feet into the side yard setback. He did not have any further comments.

Chair Carroll inquired if the Board had any questions for the applicant or if they wished to discuss the proposed variance for 23 Stony Corners Circle. There were no comments or questions from the Board.

John McCahill noted that there were no other participants from the public at that time in the virtual hearing, and therefore no other comments to be heard.

Vice-chair Yaros motioned to close the public hearing. Alternate member Williams seconded the motion. All present members voted in favor: Chair Carroll, Vice-chair Yaros, Board member Bukowski, and Alternate members Williams and McNeill. The motion carried.

Alternate member Williams motioned to grant the variance as submitted in the application. Board member Bukowski seconded the motion. All present members voted in favor: Chair Carroll, Vice-chair Yaros, Board member Bukowski, and Alternate members Williams and McNeill. The motion carried.

John McCahill 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.

OTHER BUSINESS:

Approval of the Town of Avon Zoning Board of Appeals Meeting Schedule 2021: Chair Carroll motioned to approve the calendar as submitted to the Board. Board member Bukowski seconded the motion. All present members voted in favor: Chair Carroll, Vice-chair Yaros, Board member Bukowski, and Alternate members Williams and McNeill. The motion carried.

The next regularly scheduled meeting will be October 15, 2020.

Board member Bukowski motioned to adjourn the meeting. Vice-chair Yaros seconded the motion. All present members voted in favor: Chair Carroll, Vice-chair Yaros, Board member Bukowski, and Alternate members Williams and McNeill. The motion carried and the meeting adjourned at 8:25 p.m.

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