

THE ZONING BOARD OF APPEALS OF THE TOWN OF AVON HELD A VIRTUAL REGULAR MEETING FOR A PUBLIC HEARING ON THURSDAY, FEBRUARY 18, 2021, AT 7:00 P.M., VIA GOTOMEETING:

Join by web: <https://global.gotomeeting.com/join/918539933>; or Dial by phone +1 (571) 317-3112, Access Code: 918-539-933#

Present were regular Board members Eileen Carroll (Chair), Christy Yaros (Vice-chair), Chet Bukowski, and Eileen Reilly; and present was Alternate member Jim Williams (voting). Absent were Board member Ames Shea, and Alternate members Tom 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 7:02 p.m. John McCahill facilitated the virtual meeting.

Roll call was taken for the Board.

John McCahill 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 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 Bennett and Sarah Goss, owners/applicants; requesting from Avon Zoning Regulations, Sections IV. A. 6. and IV. A. 2., a 10-foot variance to the 30-foot rear yard setback for a proposed in-ground pool (20' x 40'), located at 106 Old Mill Road in an R-40 zone.

John McCahill summarized the application materials and Town staff supplemental documents: the application (one page) of Bennett and Sarah Goss, owners/applicants, at 106 Old Mill Road, including some neighbor statements in support of the application, aerial view and other photographs, maps, plans, and pool plans; a Town of Avon Zoning Board of Appeals (ZBA) public hearing legal notice, posted to the Town of Avon ZBA web page on February 3, 2021; a Town of Avon ZBA virtual public hearing process via GoToMeeting format; a Town of Avon ZBA agenda with meeting access details and web link, posted to Town of Avon ZBA web page on February 3, 2021; email correspondence, between subject property owner and an abutting neighbor, submitted for the record by Bennett Goss; Town of Avon Assessor's residential property card; Town of Avon GIS maps, including aerial views; GIS map of abutting properties to 106 Old Mill Road that received Town of Avon public hearing notice, and list of those properties; multiple views of subject property from photographs taken by Town staff; large scale survey map, and close aerial view of subject property; additional communication submitted to the ZBA by abutting neighbors Thomas Mango, Esq. and Elizabeth Mango, at 60 Briar Hill Road.

John McCahill read aloud excerpts from the Goss' application statements on hardship, and the variance request in relation to the character of the neighborhood; he referenced the letters of support from some of the abutting neighbors and noted their location to the subject property; he summarized the additional application documents submitted by the Gosses, and noted specifications related to the Goss' survey. He referenced the correspondence from an abutting neighbor at the rear of the property who had expressed concerns regarding the proposed variance. The correspondence from Elizabeth and Thomas Mango, residing at 60 Briar Hill Road, was received just prior to the meeting, and he read aloud the entire letter, dated February 17, 2021, into the record. He read into the record the correspondence from the Gosses, who submitted a written statement from Juiliano's Pools & Spas.

Bennett Goss, applicant/owner at 106 Old Mill Road, spoke regarding his family's personal reasons for the variance application and explained the hardship as stated in his application; that the house is situated back farther than the neighbors' properties and it would affect his family's ability to fully enjoy the property. He noted safety issues as reasons for the proposed variance, and that there would be a safety fence around the pool and a six-foot high perimeter fence around the proposed pool area. He introduced his family's attorney in this matter, Sandra Stanfield, to further explain the nature of the variance application.

Attorney Stanfield stated that there existed a hardship in this application, and the Gosses wanted to ensure the safety of their three young children. She stated that CT law is clear that a variance should be granted if there is a hardship, and that a hardship may arise from the shape, size, or topography of the lot for a use permitted in the zone. She stated that there would only be 35 feet from a back deck of the Goss' home to the 30-foot rear setback line. It was recommended that there would be a buffer between the proposed planting area on the plan and the patio, and at the location of the proposed patio there would be a safety fence. She stated that if the safety fence around the proposed pool were brought closer to the deck, a child could climb the safety fence from the deck and enter the pool area. She mentioned the components of the proposed patio, the safe walking distance around the pool, and somewhere to sit around the pool; there would be the perimeter privacy fence around the whole area. She noted that the privacy fence would also act as an additional safety measure. She referenced the woods at the rear of the Goss's property abutting the rear property of the neighbors, the Mango's, and that one would not be able to see the other's rear property area due to the proposed privacy fence. She stated that the Mangos have indicated their intention to sell their property at 60 Briar Hill Road, and that a pool on a residential property would only add to neighborhood property value. She referenced the distance between the Goss' and Mango's properties at the rear abutting property line and the wooded area between the properties.

Lisa Campo, a realtor present at the meeting and speaking on behalf of the applicants/owners, stated that those who have installed a pool and a privacy fence, at this time in real estate history, have seen huge increases in property values. She stated that an in-ground pool and fenced perimeter would be an asset to any future potential buyer of the adjacent Mango residence.

Attorney Stanfield stated that the Gosses needed the 10 feet of variance since there was not a great deal of space in their back yard and that the Board has granted such variances in the past for very similar reasons.

Board member Reilly stated that she is also a realtor and did not agree that a fence would bring any additional value to an adjacent property; a pool would only bring additional value to a property if the potential buyer sought the existence of a pool, and that it remained a deterrent for those that did not want a pool. She inquired why it was suggested that a pool and perimeter pool area fence at 106 Old Mill Road would add value to 60 Briar Hill Road.

Ms. Campo stated that she had contacted a local fence retailer who indicated that the sales in fences had increased dramatically during the pandemic period of time.

Board member Bukowski inquired of the applicant/owner regarding the proposed location of the pool on his property.

Mr. Goss responded that his family wished to provide a safety boundary between the deck and the house and the pool area, and that the proposed location for the pool would leave open a large play area away from the pool.

Alternate member Williams inquired about the length of the safety area from the deck to the pool.

Mr. Goss responded that the proposed area between the edge of the pool and the house is 15 feet, which allows for a safe area between the deck and the area around the pool.

Attorney Stanfield clarified the areas and reasons for the variance request on the Goss' map.

Board member Reilly inquired where the safety fence would be located on the map. She questioned if the pool were moved closer to the house if that would break a safety code. She inquired about the effects of moving the proposed pool 10 feet closer to the house. She stated that if the pool were moved closer to the house by 10 feet then everyone could enjoy their properties.

John McCahill responded that the purple outline on the map represented the proposed pool and the shaded area represented the proposed patio area.

Attorney Stanfield indicated that the line around the shaded area would be the safety fence. She reiterated the Goss' stance that the proposed pool needed to remain in the location as shown on the plan for safety reasons.

Chair Carroll stated that the Board would need to rule based upon the variance application before it, and not rule on an amended plan.

Chair Carroll opened commentary to the public. The Board first inquired if there were any members of the public who wished to speak in favor of the variance. Secondly, the Board would call on those who wished to speak in opposition to the variance.

John Bouille, of 101 Old Mill Road located across the street from the subject property, stated that the rear of the Goss' property was private and wooded, and the view to the abutting rear property

was private especially in the summer months. He did not believe that the variance would be detrimental to the rear abutting property owners based upon the shapes of the lots. He was in favor of the variance.

Mr. Mango, Esq., on behalf of himself and spouse Elizabeth Mango both owners of 60 Briar Hill Road, spoke in opposition to the variance application. Their property was the only one along the rear abutting setback. He stated that there were mischaracterizations of the wooded area at the rear setback of the two properties and the views between the two properties. He stated that the Gosses have clear-cut half of the trees in the rear setback. He referenced one of the Goss' photos where more trees were tagged for removal. With the further removal of trees, there would be no wooded barrier on their property. The families now had direct views to the windows of both houses. He pointed to one of the photos and stated that the particular view of the rear of the property was misleading and not representing the actual side where the proposed pool would be located. The proposed location of the pool would be actually closer to his property than what appeared in the submitted photos. He stated that to prove the hardship was the burden of the Goss' and not his family's burden. He did not find an actual hardship, and that there was no hardship regarding a map which was given to them by a realtor. He stated that the rest of the neighborhood was very wooded. Mr. Mango, Esq., stated that the Goss' map did not show actual distance measurements of the proposed patio, deck, and landscaping areas, and the discussion from the Goss' party was based upon estimations and therefore the distance was indeterminate. He stated that there was a clear alternative to move the pool rather than the Board granting the variance. He stated that there was no evidence of the Goss' assertion that the Goss' house was the furthest set back on a lot within the entire neighborhood, and that there were several other houses in the neighborhood with houses set deeper. There was also one with a pool located closer to the house than the distance which the Gosses were proposing, and the Goss' house location on the lot was not unique to the neighborhood. Mr. Mango, Esq., stated that his family did not want their property rights to be encumbered, and if the variance were to be approved, the variance would run with the land and exist in perpetuity. His family also did not want water runoff from the slope of the land onto their property, even though a representative of Juliano's pool company refuted, in writing, that this would be a problem. Mr. Mango, Esq., did not want to lose any potential buyers as a result of the variance if it were to be approved. He restated that according to the case law, there must be a hardship associated with the property of the applicant/owner, and that the hardship must be beyond the owner's control, and the hardship must not be self-created. He stated that there should be many alternatives considered, such as a smaller pool, reducing the deck size, reducing the planting bed size, and reducing the grassy strip area. He stated that in a conversation with the Goss' attorney, he was told that the grassy strip would be in existence as a play area for the Goss' children, but the security issue was not mentioned. He did not see safety issues considering all of the various planned areas of separation from the pool. He stated that the pool could clearly be built on the land without the variance; the variance should not be granted because the Gosses were dissatisfied and wanted the pool and spacing built a certain way. He stated that setbacks were established to protect the continuity of the neighborhood. He requested on behalf of his family that the Board deny the variance application.

No member of the public wished to make further commentary.

Board member Bukowski motioned to close the public hearing, and Vice-chair Yaros seconded the motion. All present voting members voted in favor: Eileen Carroll (Chair), Christy Yaros (Vice-chair), Chet Bukowski, and Eileen Reilly, and Alternate member James Williams. The motion carried.

Chair Carroll inquired if the Board wished to deliberate.

Board member Bukowski stated that although he was sympathetic to the Goss' requests, he confirmed his agreement with Mr. Mango, Esq., in his interpretation of the law. Board member Bukowski referenced case law in which personal preferences and/or disappointment in the use of the property by an owner did not constitute hardship. He believed that a pool could be built somewhere else on the property or a smaller pool could be installed.

Board member Reilly agreed with Board member Bukowski's statements. Her earlier inquiries regarding the questions of safety were in alignment with apparent findings that the pool could be located elsewhere on the property, outside of setback areas; for these reasons she would not grant the variance.

Vice-chair Yaros and Alternate member Williams had no further comments.

Board member Bukowski motioned to deny the variance application. Board member Reilly seconded the motion. All present voting members voted in favor of the motion to deny the variance application: Chair Eileen Carroll, Vice-chair Christy Yaros, Board members Chet Bukowski and Eileen Reilly, and Alternate member James Williams. The vote was unanimous and the motion carried.

Board member Bukowski reiterated his reasons for denial of the application, that the applicant/owner had not proven the hardship as defined by Connecticut case law. The owners/applicants' desired location and dimension preferences did not meet the level of hardship as required by regulation. He stated it was clear that there were alternatives for installing a pool on the property other than the location proposed in the application.

Board member Reilly stated that the laws of Avon were in place to protect property rights.

Chair Carroll stated that although she was sympathetic to the Goss' situation, it seemed that there were other construction alternatives to pursue on their land.

Vice-chair Yaros agreed with the reasons of the other ZBA members, and that legally, a zoning hardship had not been met.

Alternate member Williams stated that the regulation laws needed to be followed.

OTHER BUSINESS:

There was no other business.

NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled virtual meeting will be March 18, 2021, at 7:00 p.m.

Chair Carroll motioned to adjourn the meeting and Vice-chair seconded the motion. All present voting members voted in favor to adjourn: Chair Eileen Carroll, Vice-chair Christy Yaros, Board members Chet Bukowski and Eileen Reilly, and Alternate member James Williams. The motion carried and the meeting adjourned at 8:53 p.m.

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