

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

Join by web, <https://global.gotomeeting.com/join/699775389>;

or dial by phone United States: +1 (872) 240-3412, Access Code: 699-775-389#.

Present were regular Board members Eileen Carroll (Chair), Christy Yaros (Vice-chair), and Ames Shea; present were Alternate members Vi Smalley and James Williams. Absent were Board members Chet Bukowski and Eileen Reilly, and Alternate member Tom McNeill. Also present were Hiram Peck, Town of Avon Director of Planning and Community Development and Zoning Enforcement Official; John McCahill, Town of Avon Planning and Community Development Specialist; Town Attorney Kari Olson, of Murtha Cullina.

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

Roll call for the Board was taken.

John McCahill facilitated the meeting. He 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. He stated that 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 Timothy Martin, owner/applicant; requesting from the Avon Zoning Regulations, Section X. C. 1., an appeal from the decision of the Building Inspector/Town Planner for the denying of my permit by deeming the property a non-buildable lot (permit denial dated 1/12/2021 & 1/11/2021), located at 14 Westridge Drive in an R-40 zone.

Present on behalf of the application for 14 Westridge Drive was applicant/owner Timothy Martin. Mr. Martin asked John McCahill whether or not his email response to a memorandum by Hiram Peck had been distributed to the Zoning Board of Appeals (ZBA) prior to the March 18, 2021, meeting as requested by Mr. Martin.

John McCahill stated that the Zoning Board of Appeals (ZBA) members had received a copy of Mr. Martin's email response, via email, prior to this meeting for their review.

John McCahill summarized the application materials and Town staff supplemental documents: the application (one page) and owner/applicant narrative; Town of Avon Application for Building Permit, with subject property notated as "Not an approved lot," dated 1/11/2021, and 1/12/2021; Town of Avon emails sent to Timothy Martin from Town Building Official and Town Director of Planning and Community Development, both dated 1/12/2021; Town of Avon

Assessor property card confirming parcel ownership; GIS map of abutting properties, and list of abutting properties which received ZBA public hearing notification via postal mail; Town of Avon GIS aerial views of subject property; multiple views of subject property from photographs taken by Town staff; the Foundation Plan for the building permit submitted by applicant/owner; Northeast Consulting, LLC, Septic System Plan submitted by applicant/owner; memorandum from Hiram Peck, AICP, CFM, Director of Planning and Community Development and Zoning Enforcement Officer (Town Planner and ZEO), dated 3/12/2021; neighborhood communications.

John McCahill stated that there had been two previous appeals which he notated on the application page. The April 27, 2006, appeal was noted as untimely and not heard by the ZBA. The January 1, 2007, application was a variance to Town of Avon Zoning Regulations Section IV. A. 6., which was heard and denied by the ZBA at that time. Mr. Martin's application for the March 18, 2021, ZBA public hearing was an appeal to Section X. C. 1. John McCahill read aloud Mr. Martin's application narrative, received by the Town of Avon on March 1, 2021. He stated that on the "Town of Avon Application for Building Permit One or Two Family Dwelling," the permit approval area on the page showed Hiram Peck's signature and zoning notation as "Not approved 1/11/21," and "Not an approved lot/Returned to Bldg Dept 1/12/21 and John McCahill's signed wetland notation as "N/A 1/11/21." The email sent by Town of Avon Building Official Raymond Steadward, dated 1/12/2021, indicated that the Building Department could not issue the permit without zoning approval, and that the Town of Avon Planning and Community Development department had determined that the parcel was not a legal lot. An email to Mr. Martin was issued by Hiram Peck, dated 1/12/2021, which stated that the building permit application had been denied, that the land was not an approved lot, that his money was being returned from the Building Department, and that he could appeal the determination to the ZBA. John McCahill indicated on the Town staff photographs of the subject parcel that the building for Carr Hardware, in the commercial zone, was located on an abutting property southerly from the subject parcel. He stated that Mr. Martin had submitted a proposed location for a single-family house on his submitted plan for the subject parcel.

Mr. Martin stated that his current application before the ZBA was to appeal the Zoning Enforcement's decision that the land was not a buildable lot. He stated that a former owner had split the land of the subject parcel and a portion was zoned as commercial property. He stated that he was not aware, and had not seen a record, that the remaining almost half-acre parcel (subject parcel) was not a legal lot. He stated that he sought to settle the appeal with the Town, and to exhaust his administrative remedies, prior to litigating a claim regarding this appeal in court against the Town of Avon. He stated that in his application plan, lot setback restrictions would not be encroached upon in the building of his proposed house on the subject parcel; the proposed house would not infringe upon residential neighbor properties or the abutting commercial lot. He stated that the subject parcel was taxed as a buildable lot at the time of his purchase of the parcel. He stated that since the land was zoned for single family residential use, and the parcel was deemed not buildable by the Town, that he believed it was a "taking" by the Town of Avon. He stated that the ZBA never addressed the issue of whether or not the Town Planner and ZEO was correct in determining that the parcel was not a lot. He spoke about the reasonableness of his appeal and that the ZBA should comply. He stated that he would not have a problem filing suit against the Town of Avon if the ZBA did not grant his appeal.

John McCahill stated that there were correspondence letters from neighbors submitted to Town staff. One from Jason Indomenico, of 24 Westridge Drive, dated March 15, 2021; the other from Heidi Zacchera, of 14 Westridge Drive, dated March 17, 2021. He read aloud the letter from Ms. Zacchera, which the ZBA had not received prior to that meeting, due to the timing of Town of Avon receipt.

Chair Carroll asked for the ZBA comments or questions at that time.

In response to Board member Shea's questions, Mr. Martin stated that he was a builder and had built other houses in Avon. Mr. Martin stated that typically, depending on the property, he would conduct a title search, research the land records for any restrictions, and research how the land is taxed and represented by the Town. He responded that he did not solely rely on tax bills to determine whether a parcel was buildable. He stated that he relied on getting a building permit. He acknowledged that he had not received a building permit for the subject parcel. He stated that he had not requested a refund for tax payments for the parcel; he would do that in one of the first steps of a takings lawsuit. He stated that he had looked at the Town's regulations on existing lots, and had referenced this in his response to Hiram Peck's memorandum to the ZBA.

Alternate member Smalley stated that she had researched the elements of Mr. Martin's narrative, and his response correspondence including the court cases referenced in that response. Alternate member Smalley stated that she did not see any proof of the taxes in his application, as the taxes were referenced as part of his response to the Town Planner and ZEO. In response to Board member Smalley's questions, Mr. Martin stated that he purchased the parcel in 2004, and the parcel had remained the same size since 1995. He stated that he had paid higher taxes on the parcel since those dates. He stated that the Town's Grand List would show the tax assessment records. He confirmed that the parcel purchase amount paid in 2005 was \$45,000.00. He thought that the value of this parcel as a building lot would be approximately \$100,000.00. He believed that the parcel was valueless, and that the value had been taken. In response to Alternate member Smalley's question, Mr. Martin believed the lot to be determined as a single family residential lot, in a single family residential zone.

John McCahill stated that the subject parcel is located in a residential R-40 zone.

In response to Alternate member Smalley's question, Mr. Martin stated that a parcel in an R-40 zone contains a minimum of 40,000 square feet. He believed that all of the lots in that area of the R-40 zone were not 40,000 square feet. He stated his desire to build a three-bedroom Cape Cod style home that would not encroach on the parcel's setback areas.

In response to Alternate member Williams' questions, Mr. Martin stated that this application represented all new evidence since the last ZBA decision on the variance application in 2005. He stated it was a different argument than what would have been submitted in a variance request.

In response to Chair Carroll's questions, Mr. Martin confirmed that he was told by the Town of Avon, since 2006, when his application to build on the parcel was rejected in 2006, that the parcel was not a legal lot of record and that the parcel was residual land. He noted it was taxed as a buildable lot. He stated that he could prove his assertions. He confirmed that the Town Planner

and ZEO has always stated that the parcel is not a buildable legal lot. Chair Carroll inquired why Mr. Martin did not present the evidence to support his arguments. Chair Carroll asked Mr. Martin if the parcel were found to be a legal buildable lot at the time of his purchase of the parcel, why his applications had been denied in the past. Chair Carroll inquired about his tax and assessment records.

Chair Carroll confirmed that the Board had no further questions for Mr. Martin at that time.

John McCahill stated that Hiram Peck's memorandum as submitted to the ZBA was displayed on the GoToMeeting screen for the Board's reference, at that time.

In response to Chair Carroll's question, Hiram Peck stated that the parcel has always been zoned as R-40 since the Town had adopted zoning regulations. The original lot had been created as part of the Pinewood Acres subdivision; the subdivision consisted of land in both the towns of Simsbury and Avon. The subdivision occurred prior to the adoption of zoning regulations and also subdivision regulations in the Town of Avon, which were adopted in the latter part of 1957. At that time, the lot was a pre-existing legally non-conforming lot. It was non-conforming with regard to the size of the lot, as the lot was never 40,000 square feet; the lot at that time was approximately 37,000 square feet. Regarding the parcel's current configuration, the previous legally non-conforming lot had incurred a *first cut* of the land, which the property owner at that time was entitled to conduct. However, the owner created an additional non-conformity of the property. The lot had been cut in half of its previously legally non-conforming lot, prior to Mr. Martin's purchase of the parcel. The parcel is now smaller than other lots in this zoned area.

Vice-chair Yaros stated that the parcel had been purchased by Mr. Martin on June 15, 2005. She inquired about what prompted a letter from the former Town Attorney on September 1, 2005, if there was no building permit application until January 13, 2006.

Hiram Peck stated that he had discussed the matter with the former Town of Avon Planner and ZEO at that time. He stated that the former Town Attorney's letter was issued due to the situation of the parcel and the likelihood that there would be questions raised. Former Town Attorney Michael Ziska had issued the letter. Hiram Peck stated that for a prospective land owner to determine whether or not a parcel was buildable, one of the simplest solutions would be to ask for the Town Planner and ZEO's written opinion as to the status of the legality of a buildable lot. He emphasized that the Town continually receives those types of questions from prospective land buyers with great frequency. He had not found an office record of that type of correspondence from Mr. Martin regarding the subject property.

In response to Chair Carroll's question, Hiram Peck confirmed that Mr. Martin's building permit had been denied because the parcel remains a non-legal, non-conforming, and non-buildable parcel of land. Once the first cut to 14 Westridge was made, the remaining parcel lost its status as a pre-existing legal lot.

In response to Alternate member Smalley's question, Hiram Peck confirmed that the parcel had been purchased by Mr. Martin in 2005, and at that time it was a non-conforming parcel and non-legal lot.

Vice-chair Yaros sought confirmation that the lot was buildable at the time the previous owners purchased the lot on October 25, 1996. Hiram Peck confirmed that it was a legal non-conforming lot at that time. He noted that his statements at the March 18, 2021, public hearing did not constitute new information regarding the subject parcel.

In response to Alternate member Smalley's question regarding where to find reference to these issues in the regulations, Hiram Peck stated that the Board should rely on the letter from the former Town Attorney Michael Ziska. He reiterated aloud the applicable part of the Town's regulations.

In response to chair Carroll's question, Hiram Peck stated that people who purchased these types of parcels had options as to their land uses, such as making donations to land trusts, or if the land were adjacent to their property someone might wish to purchase the parcel to add it to their existing property as a buffer, or for the purpose of establishing a natural setting. She inquired if the land had always been taxed as a legal building lot. Hiram Peck responded that since the land had been reduced to its current size, since April 4, 1995, it had been taxed as excess land and not as a legal building lot.

Town Attorney Olson stated that the reason for the first cut, made by the original owner of the 37,000 square foot parcel which was located partially in a commercial zone and partially in a residential zone, was to take a portion of the lot in order for a zone amendment to increase the space for parking. She stated that it was currently a parcel and not a lot under the Town of Avon Zoning Regulations.

In response to Board member Shea's inquiry regarding the standard of review for the Board in considering an appeal from the decision of the Town Planner and ZEO, John McCahill stated the ZBA duties from the Avon regulations to be the following, in excerpt: Section C. Zoning Board of Appeals, 1. "To hear and decide appeals where it is alleged that there is an error in any order, requirement, or decision made by the Enforcement Officer; ..." He confirmed that the application for 14 Westridge Drive was a direct appeal of the current denial by the Town Planner and ZEO Hiram Peck.

Vice-chair Yaros inquired regarding the meaning of a quit claim deed, since the parcel at 14 Westridge was acquired in that manner.

Town Attorney Olson responded that the original owner of the property had transferred the land to a company of which Mr. Martin was the sole member, and then the parcel was quit-claimed to Mr. Martin personally.

Mr. Martin clarified the sequence of ownership of the parcel prior to his ownership.

Chair Carroll inquired if any member of the public participating in this meeting wished to speak.

Heidi Zacchera, of 17 Westridge Drive, stated that it appeared as if Mr. Martin wanted to cram in a proposed house on a very small piece of land; her understanding of this solidified to her the status of the land as a non-conforming parcel.

Jason Indomenico, of 24 Westridge Drive, stated that he purchased his property in March of 2007. At the time of his purchase, he had inquired about his own property and about the parcel at 14 Westridge Drive. He stated he was told at the time that the parcel at 14 Westridge Drive was a non-conforming, non-buildable parcel due to its size according to the Town's zoning regulations. He stated he had concerns about Mr. Martin's proposed area for the leeching fields of the septic system in relation to the location of his property.

Christine and Michael Skeggs, of 4 Foxridge Lane, owners of a property located on a diagonal from 14 Westridge Drive, stated that the parcel of 14 Westridge Drive did not fit with the rest of the residential neighborhood; if a house were to be built on this parcel, it would take value away from the neighborhood, and the parcel did not conform.

Richard Lobrutto, of 24 Foxridge Lane, stated that he concurred with the statements of the other neighbors in the neighborhood.

Board member Shea motioned to close the public hearing. Alternate member Smalley seconded the motion. The following members voted unanimously in favor: Chair Carroll, Vice-chair Yaros, Ames Shea, Vi Smalley, and Jim Williams. The motion carried.

Board member Shea commented on the application issues and the testimonies heard regarding 14 Westridge Drive. She stated that based upon all of the statements made that evening, including Mr. Martin's testimony, that she would vote to uphold the Town Planner and ZEO's determination and to deny Mr. Martin's application to the ZBA.

Alternate member Smalley motioned to deny the appeal and to uphold the Town Planner and ZEO's decision. Alternate member Williams seconded the motion. The following members voted unanimously in favor: Chair Carroll, Vice-chair Yaros, Ames Shea, Vi Smalley, and Jim Williams. The motion to deny the appeal carried.

PUBLIC HEARING:

Application of Cynthia McGuire-Dunn and Taylor Hogan, owners/applicants; requesting from the Avon Zoning Regulations, Section IV. A. 6., an 8-foot variance to the 25-foot side yard setback for a proposed covered porch and a 6-foot variance to the 25-foot side yard setback for a proposed enclosed sitting area with pergola; located at 88 Bayberry Hill Road in an RU-2A zone.

Present on behalf of the application were Taylor Hogan and Cynthia Dunn. Also present was Bill Hinkel, of Hinkel Design Group, LLC.

John McCahill summarized the application materials and Town staff supplemental documents: the application (one page) and applicant/owner hardship description; Town of Avon Assessor property card; GIS map of abutting properties, and list of abutting properties which received ZBA public hearing notification via postal mail; Town of Avon GIS aerial views of subject property; multiple views of subject property, photographs taken by Town staff; and Hogan Dunn Residence Addition plans, Proposed Site Plan, Preliminary Exterior Elevations Plan, and Preliminary Partial Driveway Plan, by the project architect. He stated that neighborhood

communications regarding the application were not received by the Town of Avon. He read aloud excerpts from the applicants/owners' description of hardship. He described the physical access to the house at 88 Bayberry Hill Road. He described the details of the activities proposed as related to the proposed variance.

Mr. Hogan stated that the purpose of the proposed variance was to make the home more architecturally appealing, considering the potential of the property.

Mr. Hinkel summarized the application and stated the benefits of increasing the architectural elements and for the use of extra space by the property owners' family. He stated that the lot consists of 4.7 acres, but the existing house was constructed in the cramped southwest corner of the lot. He stated that despite the larger size of the lot, and considering the location of the existing house, there does not remain much space for additional construction on the property without proposing a variance. However, his team tried to minimize the impact of the variance.

Chair Carroll inquired if the Board had questions for the applicants/owners.

There were no questions from the Board.

Chair Carroll inquired if there were any questions/comments from the public.

There were no questions/comments from the public.

Board member Shea motioned to close the public hearing. Alternate member Smalley seconded the motion. The following members voted unanimously in favor: Chair Carroll, Vice-chair Yaros, Ames Shea, Vi Smalley, and Jim Williams. The motion carried.

Board member Smalley motioned to approve the variance as requested in the application. Chair Carroll seconded the motion. The following members voted unanimously in favor: Chair Carroll, Vice-chair Yaros, Ames Shea, Vi Smalley, and Jim Williams. 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:

There was no other business.

NEXT REGULARLY SCHEDULED MEETING:

The next regularly scheduled virtual meeting will be April 15, 2021, at 7:00 p.m.

Vice-chair Yaros motioned to adjourn the meeting and Alternate member Smalley seconded the motion. All present voting members voted in favor to adjourn: Chair Eileen Carroll, Vice-chair

Christy Yaros, Ames Shea, Vi Smalley, and James Williams. The motion carried and the meeting adjourned at 8:44 p.m.

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