

Minutes of the Avon Planning Board—July 8, 2010

Attendance

Present- Ernst, Kenny, Mahon, McGovern, McLaughlin, O'Malley, Ryan, Talmage, Maloney

Absent- Davey, Egan, Placitella

Also present-Attorney Rubino, Engineer Rooney, Bd. Secretary Brautigan

The meeting was opened by John O'Malley who was filling in for Chairman Maloney who was noticed for this property, and for the Vice Chairperson Mss. Egan who was absent.

The first application was for Mr. and Ms. Mark Dolan of 339 Lincoln Ave who are requesting permission to install an in ground swimming pool of 14 by 24 feet. This application will require several variances.

Attorney Tim Middleton is representing the applicants. Attorney Middleton introduced this application outlining the variances required. The variances required are for impervious coverage of over 50%, a setback variance for the east property line, the distance from the pool and the main residence of 7.16 feet, and the distance from the proposed pool and the garage of only 6 feet.

Mary Dolan was the first witness called by Atty. Middleton. Ms. Dolan is sworn in by Attorney Rubino. Ms. Dolan testified that she had lived in Avon for many summers as a renter of various properties in Avon, and they liked Avon so they looked for a house to purchase. They wanted to purchase a house with a pool but could not find one. She also stated they have not rented the garage, but previous the owners did rent it during the summers. In answer to a question from Atty. Middleton, she stated we have two young children who could use the pool.

Atty. Rubino swore in Mr. Dolan. He explained they have not rented the garage apartment. Family members who visit have only used it. We have taken the kitchen out, changed it back to a one-car garage, and currently use the second floor for storage.

The next witness called for the applicant by Attorney Middleton was the Engineer, Shuber. He stated the lot is located in the residential zone, outlined what buildings are currently located on the lot, and that the wooden deck located on the property will be removed. The impervious coverage will be at 54.2 percent and is not in agreement with Engineer Rooney's report. The mechanical equipment will be located on the west side of the property next to the garage. He also outlined the material to be used around the pool as stamped concrete with a stone walkway from the pool area to the garage, and a walkway to the lane. Engineer Shuber stated if we were to conform to the current ordinance, the pool would be limited to a width of 7 feet, and this is not a reasonable size for a pool on this property.

Question from board member Talmage, "was any consideration given to shifting the pool over 10 feet so it would be 10 feet from the property line?" Mr. Shuber answered, "Our intent was to maximize the use of the current property. When looking at the property we felt this was the best use of the property and the location of the pool on the property." Atty. Middleton added the applicant would prefer to keep the pool where it has been suggested on the plan.

At this time, the meeting is opened to questions from the public.

Kathy ?? of 343 Lincoln Ave. -I am opposed to this application being approved as the town has worked hard to keep the green area and the privacy of the resident's property. They have established the set backs and pool locations and this is not in line with the Ordinance. In addition, drainage and water run off will be a problem.

Jill Popivich- Stated she is opposed to this application as drainage and water run off will be a problem. The Zoning Ordinance should be upheld. She commented, we are reducing the green space and replacing it with other materials. I am also concerned with the set backs and the impervious coverage. Drainage is also a consideration and could be a problem .

In answer to another question from a resident, Engineer Shuber indicated that to install the pool we will have to remove two trees. .

Engineer Rooney stated that safety is a question with reduced set backs. In most towns, pools are considered impervious coverage. I feel it is clearly impervious coverage.

Atty. Middleton then summarized the application referring back to the testimony of the applicants.

Motion by McGovern, second by Mahon, that the application be approved with the following stipulations and or variances.

1. Move the location of the pool 4 feet to the east to allow for the required 10 foot set back on the west side of the property.
2. Allow a variance for the distance between the pool and the main residence.
3. Allow a variance for the distance between the pool and the garage.
4. Replace the impervious surface around the pool with a wood deck or with some other surface considered pervious coverage If is not wood it will be approved by Engineer Charles Rooney.
5. The impervious coverage will be at 50% or less then 50%.
6. The applicant agrees the property will contain only one residence, and any past resolutions issued to a previous owner of this property allowing more then one residence will be voided.
7. Prior to any building permits being issued the applicant will provide six copies of new plans and drawings showing,
 - A. all agreed to changes.
 - B. the proposed landscaping for the rear yard, and the pool area.
 - C. this will be submitted to the Avon Planning Board Office for final approval by Avon Borough Engineer Charles Rooney.

Vote on the motion:

Yes- Ernst, Kenny, Mahon, McGovern, McLaughlin, O'Malley, Talmage,

No- None

Not voting- Maloney (noticed), and Ryan

The second application was from GNG Acquisitions of 526 Main Street and George Gyftakis the owner of the property.

Chairman Maloney replaced Mr. O'Malley for this hearing. Mr. O'Malley took his place with the other board members.

The attorney for the applicant is John Jackson Esq. Attorney Jackson outlined what the applicant was seeking with this application. The applicant is seeking the following.

1. Approval of a bathroom recently installed in the rear part of the building without obtaining a building permit to complete this work.
2. All current existing uses at this property should be allowed.
3. **To allow for storage, and/or a tradesman shop in the buildings located at the rear of the property.**

4. Two existing rental apartments located on the second floor of the front section of the property
5. One existing restaurant and one existing stationery store located on the ground floor facing Main Street.

Tom Petersen, Architect for the applicant, is sworn in as the first witness for the applicant.

Mr. Petersen explained how the current units located on the property are being utilized. This included a two-bedroom apartment, a one-bedroom apartment, a restaurant, a small gift shop, and an office used as a graphics business located behind the gift shop. Parking is not a problem as the driveway is used. The rear building could be used for a number of purposes.

Tom Petersen stated he spoke with the current tenants listed above and they are all satisfied with the current arrangements.

Maloney asked how this problem or matter came up?

Mr. Gyftakis indicated he and his father operated the business, and they had a tenant in the rear of the building when they purchased it. The tenant used it for storage. He collected scrap metal, used it to store some cars, and the scrap metal he collected. At some point a bathroom was installed.

The following exhibits were presented by Tom Petersen. They were photos showing:

- A-1 the rear open area of the property.
- A-2 the building from Main Street
- A-3 the front of the rear building.
- A-4 the rear stairs to the apartments

Attorney Jackson stated that the owners gave no permission to use this part of the rear building. In addition, when Mr. Gyftakis spoke with Mr. McMahon he was informed the open office area could be used by one or two people, but not for a living or residence area.

A question was raised by a board member about parking in the driveway.

Answer- They park one car behind the other.

Question from Board member Ryan- If there is parking in this driveway how do emergency vehicles have access to the rear of the building.? The question was not answered directly except to say that no one parks in the driveway for an extended period of time.

Question from Mr. Maloney- How many CO's have you obtained for this property?

No one answered the question, but Attorney Jackson stated that when he asked for this information it was not there.

At this point Ms. Sheila Sullivan stood up and indicated she gave this information to Attorney Jackson. She then showed him the document he was referring to, and that it was among the documents he had requested and received.

Ms. Sheila Sullivan was sworn in as a witness. Ms. Sullivan stated that Attorney King was given all the information he requested.

Question to Ms. Sullivan from Attorney Rubino- What do you do for the borough?

Ms. Sullivan- I am an administrative Assistant in the Avon Borough office, and I work with the Building Department. I was noticed by the applicant as I live within 200 feet of this property.

Attorney Jackson received all the information he requested. That is part of my job. I also completed the proper forms to receive this information on this property. I have the same information and papers that Attorney Jackson received from the Avon Borough office.

Attorney Rubino to Ms Sullivan- How long have you been a neighbor to this property?

Ms. Sullivan- Two years.

Question-How long have you lived in Avon.?

Answer- about 23 years.

Exhibit A-5 The documents issued for this property and held by Ms. Sullivan was entered as evidence.

Ms. Sullivan continued, that when the fire Inspector went to the property he found some one living in one of the rear units. In this rear unit was a refrigerator, a microwave oven, and someone was living in it. At this point some one interrupted Ms. Sullivan and asked if any citation had ever been issued? Ms Sullivan stated, "yes, one was issued for not having a CO and for a non-conforming use. He did receive a notice and Order of Penalty from the Construction Office on October 29, 2009 for not having obtained a permit."

Attorney Jackson indicated he had only one property card. "I did not receive all of the information for this property"

Ms. Sullivan- "I went back to the files and gave you all the information you specifically requested. I gave you all the information you requested."

Atty. King-"I requested all the information available for this property and I was informed you have to be more specific as to what information you want."

Ms. Sullivan-When requesting information you have to more specific. I gave you every single document you specifically asked for.

Atty. Jackson-I feel this building has been there forever. There must be more documents for this property. "I informed them, I want every single document that the town has that pertains to this property. When I spoke to Ms. Sullivan I informed her that was what I wanted on this property."

Ms. Sullivan- "I gave you all the information you specifically asked for". I did not know how far back you wanted to go. You have to more specific. We have to know what it is you want."

Atty. Jackson- "I wanted every single document that pertains to this property."

Atty. Jackson- I do not see this as a non-conforming use of the property. If someone puts in a micro wave oven or a hot plate, is this an extension of a non-conforming use. I am not sure where you draw the line. Is this an extension of a non-conforming use? At what point does this become an extension of a non-conforming use?

A discussion about property cards that are available as this is a very old building. During this discussion, a motion was made by board member Maloney.

Motion by Maloney to carry this application to the August 12 meeting. The applicant will not have to re-notice this meeting. Second by Ryan.

Vote on the Motion- Yes- Ernst, Kenny, McLaughlin, O'Malley, Ryan, Talmage, Maloney

No- None