

**MINUTES OF A MEETING OF THE VILLAGE OF AVON  
ZONING BOARD OF APPEALS  
THURSDAY, NOVEMBER 18, 2021  
6:00 PM; VILLAGE HALL**

**I. ATTENDANCE**

Daniel Freeman, Chairman  
Christopher Conine (6:20 PM)  
James Gerace  
Richard Hite (6:27 PM)  
Ernest Wiard

**GUESTS**

Ryan Marciniak, Area Variance Applicant  
Kelly Marciniak

**STAFF**

Gary Margiotta, Secretary  
Andy Anderson, Code Enforcement Officer – absent

**QUORUM**, 5 Present, 0 Absent

The first half hour had been intended for a review of Marciniak’s application, the five factors, set forth in the statute, for weighing an area variance application and questions for the applicant. With the late arrival of two members, the Board got underway at 6:20 PM.

**IV. NEW BUSINESS**

**A. Area Variance Application**

31 Linden Street  
Avon, NY 14414  
Village Residential (VR) District  
80-foot X 175-foot lot (14,000SF)

**Ryan & Kelly Marciniak**

31 Linden Street  
Avon, NY 14414

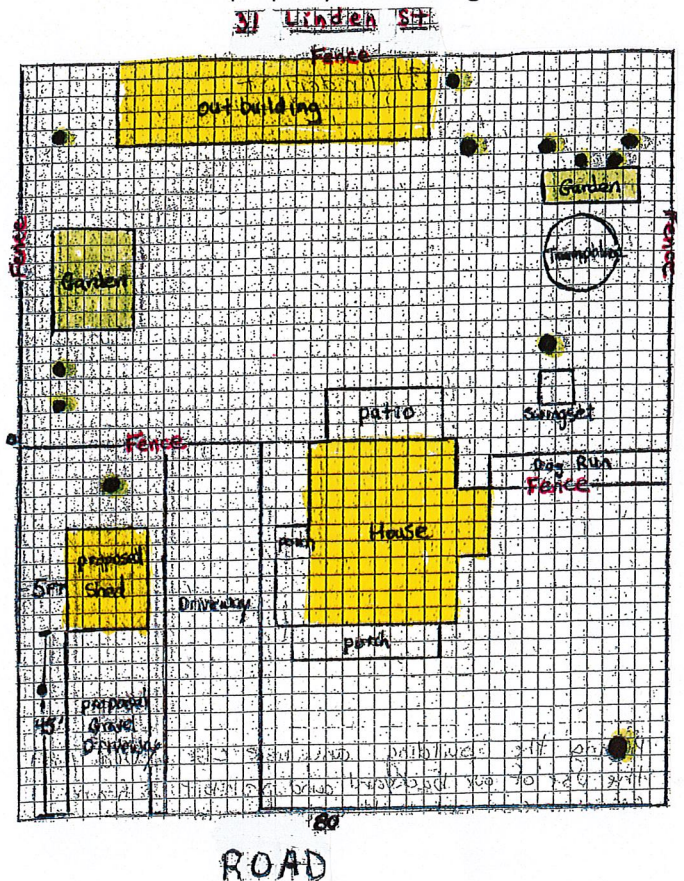
Marciniak wished to erect a manufactured, 12-foot X 21-foot shed, 45 feet from the road and about 5 feet from the north side property line. The Municipal Code required a 10-foot side yard setback.

Wiard asked where the shed would be located, noting there wasn’t another property in the Village with a shed in the front yard.

Ryan & Kelly Marciniak



31 Linden Street



Marciniak explained the shed would be a "hobby shed," even with the front of the house, maybe a few feet back. The shed would provide extra space for his wife, he continued. All they used the yard space for now was parking, but a shed there would be handy for going back and forth to the house.

His neighbors to the north were Joseph and Kristen Webb. Conine noted the Webb's apparently had no problem with the shed. Gerace added he'd talked with Joseph Webb and concurred. Kristen Webb was Freeman's daughter. Webb would have been at the meeting, Freeman said, but his kids had been sick.

You're not pissing any neighbors off, that was the biggest thing, Conine said. His personal concern was the people the variance would affect (*Hite arrived at this point*).

The shed would be moveable, Marciniak told Board members. He hadn't wanted to put it in the back yard because he had four kids and three dogs and didn't want to take away from them.

Freeman officially opened the meeting at that point.

**II. APPROVAL OF THE MINUTES**

**MOTION:** Conine moved to approve the minutes of the meeting of October 27, 2020. Area variances for David & Patricia Warner of 121 Temple Street and Justin Gutzmer & Kaitlin Freeman of 117 South Avenue had been approved at that meeting with no other business having been conducted. Hite seconded the motion. Voting in favor were: Freeman, Conine, Gerace, Hite and Wiard. Voting against were: none.

**CARRIED, 5 Ayes, 0 Nays**

**III. OLD BUSINESS**

Nothing pending.

**IV. RETURN TO THE MARCINIAK AREA VARIANCE APPLICATION**

Freeman read the public hearing notice.

Conine noted the Planning Board had given Marciniak's variance application a positive recommendation, with one vote against. His biggest concern was the neighbor (*Webb*) and, if the Marciniak's were saying the Webb's had no problem with it, Conine was ready to move for approval.

But, Hite questioned how future neighbors might feel about it.

It would be a moveable shed, Conine emphasized.

He'd be putting the shed on a stone pad (*as opposed to a foundation*), Marciniak added. His wife, Kelly Marciniak, said they parked there now, there was no gravel down and she was tired of parking in the mud.

**NOTICE OF PUBLIC HEARING**

**PLEASE TAKE NOTICE** that a public hearing will be held before the Village Zoning Board of Appeals on Thursday, November 18<sup>th</sup>, 2021, at 6:30pm at the Village Hall, 74 Genesee Street Avon, New York, on the following matter:

An appeal by Ryan Marciniak of 31 Linden Street, Avon, NY for an area variance to erect a 12-foot, single story, wood frame hobby shed on the north side of his property, 5 feet from the property line.

The property is in a Village Residential (VR) district. Chapter 30, Section 23, of the Municipal Code requires a 10-foot side yard setback in such a district.

The Zoning Board of Appeals will, at the aforesaid time and place, hear all persons in support of this appeal or objecting thereto. Persons may appear in person or by agent or attorney.

Dated: October 22, 2021

By order of the Zoning Board of Appeals of the Village of Avon, Dan Freeman, Chairman

Just because one neighbor said it was OK didn't mean it was grounds for approval, Hite claimed. His biggest concern was, why not push it back?

There was a tree behind where Marciniak hoped to put the shed and it would be 27 feet from the front of the shed to that tree.

Would there be any difference if Marciniak were proposing a garage instead of a shed? Freeman wondered, asking, would that be a problem?

The shed would be on a gravel pad at the end of a gravel driveway – they could move it, if they had to, Conine contended.

Hite went back to the prospect of having new neighbors moving in next door.

Looking at the surroundings, Conine couldn't foresee buying a house and being that concerned about a shed.

### **Five Criteria for Weighing An Area Variance Application**

Freeman took Board members through the five factors, set forth in the statute, for weighing an area variance application.

#### **#1 Would an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance?**

Hite, Freeman and Conine said, no.

#### **#2 Could the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than the area variance?**

The shed could be located somewhere else, Hite suggested.

That would interfere with the dogs (*and kids*) use of the yard, Freeman countered

It would be an undesirable change, putting the shed anywhere else, Marciniak contended, adding, this was the best place.

Alternatives might come to our minds, but not his, Freeman added.

He has alternatives, just not ones he considers desirable, Hite said.

#### **#3 Is the requested area variance substantial?**

Yes, 50 percent of the 10-foot setback called for in the Code, Hite pointed out.

Conine said he understood where Marciniak was at. He wanted to make his property as functional as possible. The Board was trying to make the right decision for the Village. The shed could be a permanent structure for the next owner of the property, he conceded.

It could be a garage, Hite said. Should the shed be considered a permanent versus a temporary structure? We're OK if it's a temporary structure, but what if it were a permanent structure? Could the variance be conditioned on the shed being a temporary structure? he wondered.

Could there be a different option? Conine asked.

**#4 Would the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?**

Hite, Conine and Freeman said, no.

**#5 Was the alleged difficulty self-created? This consideration should be relevant to the decision of the Board, but should not necessarily preclude the granting of the area variance.**

No, Freeman said, adding he didn't believe so.

Yes, Hite disagreed, it was self-created, Hite said, explaining anytime you did something it was self-created.

**MOTION:** Conine moved for approval of the area variance. Voting in favor were: Freeman, Conine, Gerace, Hite and Wiard. Voting against were: none.

**CARRIED, 5 Ayes, 0 Nays**

**V. ADJOURNMENT**

**MOTION:** Gerace moved for adjournment at 7:00 PM, seconded by Freeman. Voting in favor were: Freeman, Conine, Gerace, Hite and Wiard. Voting against were: none.

**CARRIED, 5 Ayes, 0 Nays**

Gary Margiotta  
Secretary