

**MINUTES OF A MEETING OF THE
VILLAGE OF AVON ZONING BOARD OF APPEALS
MONDAY, JUNE 6, 2016
7:00 PM, VILLAGE HALL**

I. ATTENDANCE

Daniel Freeman, Chairman
James Gerace
Richard K. Hite
Barbara Sadden
Ernest Wiard

QUORUM, 5 Present, 0 Absent

GUESTS

Susan Ware and
Dale McAdam, 173 East Main Street

IV. NEW BUSINESS

A. USE VARIANCE APPLICATION

Susan Ware & Dale McAdam - applicants
173 East Main Street, Avon

The applicants sought to harbor a miniature horse on their R-1, One Family Residential, district property contrary to Chapter 54 of the Municipal Code. Said chapter prohibited the keeping of horses in any building or on any property other than in an agricultural district.

Freeman called the meeting to order and read the public hearing notice.

**NOTICE OF
PUBLIC HEARING**

PLEASE TAKE NOTICE that a public hearing will be held before the Zoning Board of Appeals of the Village of Avon on Monday June 6, 2016, at 7:00 PM at Village Hall, 74 Genesee Street, Avon, New York on the following matter:

Use variance application of Susan Ware and Dale McAdam of 173 East Main Street for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

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

Dated: May 11, 2016
By Order of the: Zoning Board of Appeals
Of the Village of Avon

Ware said she wanted to adopt a mini-horse which she contended should not be considered livestock, reasoning a miniature horse could not be ridden or be used for plowing.

Ware said she wanted "one" miniature horse, explaining she worked at Rochester Psychiatric Center and wanted to train the animal as a "therapy horse" for use with patients at the Center and at the Avon Nursing Facility.

The horse would have to be trained so, it must be young when it came to them, Ware told Board members. She and her husband had missed two opportunities at horses thus far. They had had *Begin Again Horse Rescue* out to look over their property and they'd approved, Ware continued.

Ware had read the Code and it prohibited any animal, except "household pets," but Ware contended a miniature horse was not livestock. A woman in Rhode Island had taken her municipality to court and the court had ruled her miniature horse had a gentle disposition and, size-wise, would never reach the stature of a Great Dane or St. Bernard.

Miniature horses were small enough to be considered pets and people were far less likely to be allergic to them than cats or dogs, Ware argued. Because of the closeness of the bond, miniature horses made great companion animals, she added.

How had the need for a use variance come up? Hite asked.

Regulations (Municipal Code) said no horses (in an R-1 district) so, she had done a lot of research on the subject, Ware responded.

Did Ware feel the Code didn't apply? Hite followed-up, adding the Board could rule:

1. No variance was required
2. Grant the variance
3. Not grant the variance

Should this application come under the State Environmental Quality Review Act (SEQR)? Wiard asked. SEQRA would require the Board to consider, avoid or mitigate significant environmental impacts of projects they approved, the plans or regulations they adopted and the projects they undertook directly.

They were just applying for a variance, Sadden countered.

Freeman didn't feel there was a need for a variance, reasoning the Code read "for livestock."

Chapter 54, *Animal and Dog Control*; Section 1, *Keeping of certain animals restricted*, of the Municipal Code said:

"No persons shall permit, keep or maintain sheep, horses, cows, goats, skunks, pigs, foxes, poultry, chickens, ducks, geese or any other animal or fowl, except animals commonly used or known as 'household pets,' such as cats dogs, birds, fish and the like in any building or on any property within the Village of Avon except in the agricultural district and except that horses may continue to be kept, subject to the

provisions of this chapter, if they were kept prior to the date of the adoption of this local law."

Ware had contacted the Guide Horse Foundation and gotten a miniature horse OK'd for use as a "therapy horse?" Sadden asked.

Their horse would get trained as a "therapy horse" and Ware said she would use it at the Rochester Psychiatric Center and Avon Nursing Facility.

How long would you use the animal as a "therapy horse?" Sadden followed-up.

The lifespan of a miniature horse was 20 years, McAdam volunteered. He and Ware had gone to the Planning Board and wound-up with a split vote, he noted.

A use variance was difficult to obtain, Hite remarked.

A use variance allowed landowners to put their land to a use that was not permitted under the zoning law. This type of variance might be granted only in cases of unnecessary hardship. To prove unnecessary hardship, the owner must establish that the requested variance met four statutorily prescribed conditions:

1. The owner could not realize a reasonable return on the property as zoned
2. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district
3. Granting the variance will not alter the essential character of the neighborhood
4. The hardship is not self-created

If a parcel of land was zoned for single-family residential use and the owner wished to operate a retail business, the owner must apply to the Zoning Board of Appeals for a use variance.

A use variance to harbor a miniature horse in a residential district hadn't been requested before, Freeman noted.

Is it our decision to make? Hite wondered.

We could determine a miniature horse was a pet and a variance wasn't needed, Freeman said.

I believe it's a pet, Sadden said.

It would be an indoor/outdoor animal, but would sleep outdoors, Freeman said.

A horse is a horse, Wiard declared.

But, the Municipal Code said animals were restricted - except for cats, dogs, fish, birds "*and the like,*" Ware objected.

EXECUTIVE SESSION

Freeman requested an executive session at 7:28 PM. The Board returned to open session at 7:50 PM.

Upon returning to open session, Freeman said the Board needed more information from Village Attorney Reid Whiting and from the Village Board.

Their next opportunity for a miniature horse would be in the fall, Ware told Board members, they needed the right-sized horse as well as one with the right disposition, she added.

We'll catch up with Reid, Freeman assured them.

II. APPROVAL OF THE MINUTES

MOTION: Sadden moved for approval of the minutes of August 20, 2015. Seconded by Hite. Voting in favor were: Freeman, Gerace, Hite, Sadden and Wiard. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

III. OLD BUSINESS

Nothing pending.

V. ADJOURNMENT

The Board adjourned at 7:57 PM.

Gary Margiotta
Deputy Clerk