

ZBA
February 26, 2015

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
February 26, 2015

MEMBERS

PRESENT: Bill Kaufman, Chairman
Harold Finger
Adam Burg
John Klodzinski
Fred Pask

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| UNAPPROVED 2/26/2015 |
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Alternate: Cheryl Esposito
Joe Dugan

Other: Julie Brady, Recording Secretary
John Jendrowski, Councilman

Meeting was called to order at 6:30pm followed by the pledge to the flag.

Julie B. read the legal notice for the variance request as follows:

Area variance request to construct a wind turbine with a fall line of 137 feet +/- to the 231 feet minimum (which is 1 ½ times the height of the wind turbine) Town Code Chapter varied: 422-5 C (12). This property is located at 11734 Meahl Rd., and is owned by Christopher Milhollen. SBL# 32.00-2-18.1

Bill K. reviewed the procedures; public hearing was open for comments at 6:35pm.

Matt Vanderbrook with Sustainable Energy, 317 Rte 104 Ontario NY, represented Christopher Milhollen. Matt V. explained that the lot limits the area for site requirements. A co-worker has been in contact with the neighbor of the property, but did not have anything in writing supporting the project at this time.

Bill asked three times if there were any other public comments.

A motion was made to close the public hearing by Harold F., seconded by John K. All Ayes to close the public hearing.

Bill K. asked if there were any written comments. Julie B. stated that the only correspondence was from Mark Lee from Erie Cty. who had no comment.

The zoning board discussed the project and each board member was polled as follows:

1. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the area variance.
JK (N) WK (N) HF (N) FP(N) AB (N) Overall – (NO)
REASON: Due to the size of the lot, no matter where they build the wind turbine, the fall line would encroach on their neighbor's property.
2. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
JK (N) WK (N) HF (N) FP(N) AB(N) Overall – (NO)
REASON: The neighbors did not express any issues with constructing the windmill at this location and there is another wind turbine going up in this area.
3. Whether the requested area variance is substantial.
JK (N) WK (N) HF (N) FP(N) AB(N) Overall – (NO)
REASON: No, the request was not substantial because the area of the fall line is open land anyways.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

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JK (N) WK (N) HF (N) FP(N) AB(N) Overall – (NO)

REASON: The area is rural/agricultural and there is already other wind turbines going up in this area.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude granting of the area variance.

JK (N) WK (N) HF (N) FP(Y) AB(Y) Overall – (NO)

REASON: Yes votes were based on the fact that Mr. Milhollen does not have to put a wind turbine up. No votes were based on the fact that he did not create a lot and/or construct the turbine tower prior to coming to the zoning board.

A motion was made by John K. to approve the variance. Seconded by Adam B. The Zoning Board was polled to approve this variance as follows:

Bill K. – Yes, Fred P. – Yes, John K. – Yes, Harold F. – Yes, Adam B. - Yes

Variance request was approved unanimously.

Julie B. read the second variance request:

Area variance request of 23.81' in the Rte 5 Overlay zone to construct a commercial addition that would be 6.19' to the property side lot line instead of the 30' required in the Town Code Article III Chapter 450-26.F(2). This property is located at 11167 Main St. in the Town of Newstead and is owned by Kelly Schultz. SBL# 73.00-1-4.111

Public Hearing was open at 6:48pm

Mike Metzger of Metzger Civil Engineering, 8560 Main St., Williamsville, NY is working with Kelly Schultz (owner of 11167 Main St., Clarence, NY –resides at 11080 Stage Rd, Clarence, NY). The property located at 11167 Main St. is zoned C-2 and is adjacent to the WNY Event Ctr. Kelly Schultz previously owned the WNY Event Ctr. and sold it to Jack Willert, who put in writing that he has no problem with the project. At the time of the sale to Willert, there was no plan of expansion of Kelly's auction house. Mike M. explained the drawings and how the expansion must go in that direction due to the mechanics of the existing interior building. The side setback is in compliance with the C-2 zone of five feet, but the Rte 5 overlay is thirty feet (30'). Most people won't recognize or realize the addition was put on.

Mike M. reviewed the 5 questions to consider when requesting an area variance as follows:

1. Can it be achieved by some other method? An addition oriented in any other fashion would not work. It must extend out from the back of the existing building to maintain the flow of the building's operation. Working within the limits of the underlying zoning, the project would be viable. However, superimposition of the Route 5 Overlay with its extensive side yard setback, confines and limits the project too greatly.
2. Undesirable change? Given the relatively intensive uses already on site and the fact that the addition is internal to the developed area, it is unlikely that the addition's placement would even be noticeable by the general public on Main St.
3. Substantial request? Substantial as defined for use in evaluating area variance impacts is not a measure of size; it is a measure of the relative impact in the context of its surroundings. With acceptance by the only entity potentially affected by granting of the requested variance, there is virtually no impact.
4. Adverse environmental affects? The neighboring property owner agrees with the additions placement. With the addition being located within a relatively intensely developed area under the ownership of the applicant and agreeing neighbor, over an area that is already paved creating no new impervious surfaces, there would be no effects to the physical or environmental setting.
5. Self-created hardship? While the property lines were established by the applicant at the time of sale of the Event Centre leading to the conclusion that the difficulty was self-created, the Auction House addition was not envisioned at the time of sale.

As can be seen here, the benefits to the owner in the relief sought clearly outweigh any detriments that could be perceived, if any.

Bill K. asked three times if there were any further public comments. Hearing none.

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Harold F. motioned to close the public hearing, seconded by Fred P. All Ayes to close the public hearing.

ZBA discussed if there were any other possible options with Mike M. & Kelly S. No feasible options being found and no comments from any other neighbors. Fred P. asked about distance between the structures for fire safety concerns. Kelly S. stated that there would be approximately 42 feet between the buildings. Bill K. said that he spoke with Ralph Migliaccio, Town Code Enforcement Officer, and the fire suppression system would be addressed at the planning board.

Bill K. stated that he agreed with Mike Metzger's presentation of the 5 area variance criteria and suggested that the board "adopt" his reasoning and asked for a motion to approve the variance.

A motion was made by Adam B. to approve the variance. Seconded by Fred P. The Zoning Board was polled to approve this variance as follows:

Bill K. - Yes, Fred P. - Yes, John K. - Yes, Harold F. - Yes, Adam B. - Yes

Variance request was approved unanimously.

A motion was made by Harold F. to approve the minutes from January 22, 2015. Seconded by John K. All Ayes to approve the minutes.

Motion was made by John K. to adjourn the meeting at 7:13pm. Seconded by Bill K. All Ayes.

Meeting adjourned.

Respectfully submitted,
Julie Brady, Recording Clerk