

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
March 30, 2017

MEMBERS

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

APPROVED 7/27/2017

Alternate: Max Brady, Alternate
Vicki Lombard, Alternate

Other: Michael Borth, Code Enforcement Officer
Nathan Neill, Town Attorney
Julie Brady, Recording Secretary

Meeting was called to order at 6:38pm, followed by the pledge to the flag.

Bill K. reviewed the procedures. Julie B. read the legal notice for the variance request as follows:

Two area variances to subdivide 4384 Billo Rd. leaving both lots less than the minimum lot width of 150'. Requesting a 46' lot width and a 47.5 lot width variance.
Owned by Douglas & Karen Brauer
Variance Town Code varied: Article IV. Chapter 450-15 D (b)
SBL# 85.00-1-1.11

Public hearing was open for comments at 6:40pm.

Mike Metzger, 8245 Sheridan Dr., Williamsville, NY- Metzger Engineering, representing Doug Brauer, owner of 4384 Billo Rd. Requesting a single lot subdivision on a deep lot. Lot width is currently 132' wide, (showing the GIS map to the board) explaining where there is an existing house on the southern border. The proposed home would be on its own lot on the north side, back 400' nestled in the woods. The zoning ordinance allows for 2 single family homes to be on one lot if it complies with lot variance. This lot is currently 5 ¼ acres so Mr. Brauer could potentially put 5 primary residences on this lot. He will not be doing that. Mr. Brauer is requesting one single home on each lot with over two acres per lot. The Town's comprehensive plan mentions multiple incidences of preserving agricultural land so this is a very good use of land due to the fact that Mr. Brauer is developing non ag property. (In this situation the benefits to the owner out-weigh any detriment to the neighbors.) Mr. Metzger reviewed the 5 area variance questions, stating it's a perfect fit for the area, it's a residential request for a residential area. Although there is an open development law in the Town of Newstead, this is not a proper application. Our proposal is unique because the houses will not be side by side and is not substantial because there is "elbow room" configured this way. In 2015 and 3/27/2017, we presented this proposal to the planning board and they were in full support.

Mr. Metzger then showed the grading and drainage plan, showing that this project is indeed feasible. He also addressed the federal wetlands not affecting this project.

Mike Borth, CEO, corrected Mr. Metzger's interpretation of Town Code 450-8(a) stating that only two homes could be built on this lot, not five.

John Burns, 5555 Salt Rd., Clarence, owner of vacant land, 200' to the south of 4384 Billo Rd., stated he is 100% opposed, this will set a bad precedence. The applicant has other property on Hiller he can subdivide. Mr. Burns has concerns about ground water contamination.

Aaron McKenzie, 4414 Billo Rd, owner of the property adjacent to/north of 4384 Billo Rd. Completely against this project. Concerned with drainage. This area has clay and poor drainage to begin with and there is standing water behind his house. Mr. McKenzie chose to live here knowing no one would build behind him because of the quarry.

Jackie Zielan, 4374 Billo Rd, owner of the property adjacent to/south of 4384 Billo Rd. Same concerns as Mr. Burns in addition to concern regarding rental properties. The current home at 4384 Billo is a rental

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property and although it is well maintained, she worries that if an owner does not occupy these homes, they will not care for them the same. Mr. McKenzie agreed.

Nathan Neill, Town Attorney, stated that under current zoning, they don't need a variance to build two homes on this lot due to the acreage (not the frontage). Nathan explained the difference between open development and flag lots and how this lot is pre-existing. As far as setting a precedence, the zoning board should hear each case on its own merits.

Mike Metzger responded to the comments

- By adding just one more house will not affect the character of the neighborhood, which could be built today without a variance.
- Mr. Brauer plans to sell the lot in the future for someone else to build a new home on, which would more than likely be owner occupied.

Aaron McKenzie explained that the rear of these properties is under water right now. He also questioned if they would be cutting down trees to put the driveway in.

Jackie Zielan said the DEC was out when she built her property and there are definitely wetlands.

Bill K. asked if Mr. Brauer had any potential buyers yet? He also explained to Mr. Brauer that if the variance gets denied they cannot request the same thing again without having a unanimous vote from the zoning board to rehear the variance request.

The Review sheet was completed 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.
AB (N) JK (N) WK (N) HF (N) FP(N) Overall – (NO-PASS)
REASON: The lot was non-conforming (*less than the required 150' width) to begin with so there is no other way
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.
AB (Y) JK (Y) WK (Y) HF (Y) FP (Y) Overall – (Yes-Fail)
REASON: The neighborhood currently exists with single family homes evenly space on larger parcels. If granted this property would create unnecessary concentration and density. Drainage concerns, swales may fail.
3. Whether the requested area variance is substantial. (20')
AB (Y) JK (Y) WK (Y) HF (Y) FP (Y) Overall – (Yes-Fail)
REASON: A 46' and 47.5' is a significant width to decrease an already non-conforming lot.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
AB (Y) JK (Y) WK (Y) HF (Y) FP(Y) Overall – (Yes-Fail)
REASON: Drainage issues, wetlands and setting precedence for the 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.
AB (Y) JK (Y) WK (Y) HF (Y) FP (Y) Overall – (Yes-Fail)
REASON: Owner knew it was a non-conforming lot width when he purchased the lot. He could put two homes on the lot instead of subdividing.

A motion was made by Harold F. to deny the variance. Seconded by Adam B. All Ayes. The Zoning Board was polled to deny this variance as follows:

Bill K. –Yes, Fred P. – Yes, John K. – Yes, Harold F. – Yes, Adam B.- Yes Variance request was denied unanimously.

Variance Request #2 was read by Julie B.

**Requesting a seven foot height area variance to construct a 27 foot high detached garage at 13227 Stage Rd., owned by Alfred & Camille Osborne
Variance Town Code varied: Article IV. Chapter 450-15 F (2) a
SBL# [part of 74.00-3-7.11 currently being subdivided]**

Public hearing opened at 8:13pm

Nathan Neill explained that this code will most likely be amended in May to allow for 30' high accessory structures.

Al Osborne, 37 Farmingdale Rd., Cheektowaga, NY – owner of 13227 Stage Rd., passed out site plans, explained that the pole barn will emulate the house and is requesting a higher pitched roof to achieve this look. The pole barn will be 30' from a wide tree lined lot west lot line. Mr. Osborne also explained the drainage plan and said he has already applied for a driveway permit and is waiting for the culvert pipe. The reason he needs the 27' + high roof is to accommodate his RV. The barn will be constructed out of steel with an inset porch with stone on the bottom. It will have 18" overhangs to match the house.

Bill K. summarized the written comments from Linda Knop, owner of 13207 Stage Road, adjacent neighbor to the west. Her main concern was the building obstructing her view and devaluing her property. Ms. Knop supplied a dozen photos showing where the barn will be placed directly in view from her living space. Bill asked when they were planning on building.

Al Osborne stated that they are planning to build the barn right away to get their belongings out of storage and then proceed with the home.

Michael Borth, CEO commented that if it wasn't for the height variance, Mr. Osborne could build today. The additional height is for the peak.

Nathan Neill stated that the code is being amended as the trend is for taller garages with higher peaks.

Max Brady, ZBA Alternate, 27 Front St., Akron stated that the neighbor will probably not be pleased with the pole barn being constructed regardless of this variance request.

Bill K. asked Mr. Osborn if he would like to amend his request to "Up to 30'" instead of the initial request of 27' at this time. Mr. Osborn agreed.

Bill K. asked 3xs if there were any further comments. Hearing none, Fred P. motioned to close the public hearing, seconded by John K. All Ayes. The board discussed the request and then polled as follows:

The Review sheet was completed 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.
AB (Y) JK (Y) WK (Y) HF (Y) FP(Y) Overall – (Yes-Fail)
REASON: Yes, they could excavate out the bottom of the barn, allowing for the RV to fit or simply not put such a high peak on the barn.
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.
AB (N) JK (N) WK (N) HF (N) FP (N) Overall – (NO - Pass)
REASON: By building a new pole barn and soon a new home, it will improve the neighborhood, will look nice and fits in with the residential area. Pole barns are common in the country.
3. Whether the requested area variance is substantial. (7'+)
AB (N) JK (N) WK (N) HF (N) FP(N) Overall – (No - Pass)
REASON: the Town Board is looking to increase the maximum height of accessory structure to 30' anyways so this is not a substantial request.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
AB (N) JK (N) WK (N) HF (N) FP(N) Overall – (No-Pass)
REASON: This will be an improvement to the area, (new & maintenance free). Drainage is being address as well.
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.
AB (N) JK (N) WK (N) HF (N) FP (N) Overall – (NO - Pass)

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REASON: Not self-created, the law will be amended to 30' in the near future. Trying to make it look aesthetically pleasing by matching pitch of roof and style to house.

A motion was made by Harold F. to approve the variance. Seconded by John K. All Ayes. 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 by unanimously.

A motion was made to accept the minutes of the December 8, 2016 meeting by Adam B., seconded by Bill K.. All Ayes, No nays.

A motion was made to close the meeting at 8:39pm by Adam B. seconded by John K., All Ayes. No Nays

Meeting adjourned.

Respectfully submitted,
Julie Brady, Recording Clerk