

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
May 20, 2021

MEMBERS

PRESENT: Bill Kaufman (WK) Chairperson
Adam Burg (AB)
John Klodzinski (JK)
Vickie Lombard (VL)
Mike Mutter (MM), Alternate
Joshua Kraft, Alternate

Other: Dave Miller, CEO/Zoning Officer, Julie Brady, Recording Secretary

Absent: Fred Pask (FP)

The meeting was called to order at 6:00pm by Bill K.

Julie B. introduced our newest Zoning Board Alternate, Joshua Kraft to the board.

Julie B. read the first legal notice:

Property Address: 7955 Scotland Rd., Akron, NY

Zoning District: Rural Agricultural

Owner: Robert J. Henkel, 10829 Main St. Clarence, NY

SBL#: 22.00-1-6.1

Requesting a 112 square foot area variance to make the existing structure (888 sq ft) compliant to a single-family home in the R-A zone with a minimum square footage of 1000 sq ft.

Town Code varied: Chapter 450-15 F. (1)(b)[1]

Julie B. also read the email to Dave Miller, CEO from Karen Draves, Assistant Regional Attorney, NYSDEC:
Dated May 20, 2021 *see attached memo

Dave Miller stated that the DEC actions are in front of the existing building on site, dealing with grading and driveway. If the owner is adding on substantial square footage, I will check with the DEC as they may need an Article 24 DEC permit for additional work in the regulated area.

Robert Henkel, 10829 Main St., Clarence, NY, owner and applicant. Stated he has mailed in the check to Albany. Unfortunately, he is unable to add on to the structure to bring it up to the 1000 sq ft. minimum at-this-time due to financial reasons. The septic system has already been approved by the County Engineer and I was given permission to cover it up.

Vickie L. asked if the variance would allow him to live there.

Dave Miller stated he has not received any architectural drawings yet. There has never been a certificate of occupancy given for this structure. The building permit was for an accessory structure/shed and was given a Certificate of Compliance by Ralph Migliaccio. To summarize, this variance request should be considered as if there is no home there at all. The applicant is asking for the zba to grant him a variance for a dwelling 888 sq ft instead of the minimum code of 1000 sq ft. If the variance is granted, the applicant will need to bring the structure up to code and be inspected by Dave Miller.

The vote for the area variance 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. (FAIL)

POLL: WK -Y AB - Y JK - Y, VL - Y, MM - Y

Reason: The structure can be brought up to code by adding on in the future when funds are available.

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. (PASS)

POLL: WK N AB - N JK - N, VL - N, MM - N

Reason: It is an isolated area/location, being the last one in the Town of Newstead in the far northeast corner with no neighbors close by.

3. Is request substantial? (FAIL)

POLL: WK -Y AB - Y JK - Y, VL - Y, MM - Y

ZBA
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Reason: 11% of minimum requirement. When dealing with it already being under square footage minimum this may also mean safety issues.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. (PASS)

POLL: WK -N AB - N JK - N , VL - N, MM - N

Reason: NO, the residence is already there and the applicant has taken care of the DEC's concerns/violations.

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? (FAIL)

POLL: WK -Y AB - Y JK -Y VL - Y MM - Y

Reason: The existing structure and issues were there when the applicant recently purchased the property.

A motion was made by Adam B. to deny the variance request. Seconded by Vicki L. Hearing all eyes, no nays, the variance was denied unanimously.

The second legal notice was read by Julie B.

Property Address: VL Dorsch Rd., Akron, NY (East of 13331 Dorsch Rd)

Zoning District: Rural Agricultural

Owner: James Kidder, 13115 Dorsch Rd., Akron, NY

SBL#: 86.00-1-39.11

Requesting a 37 feet area variance to subdivide off a five-acre parcel with 113' of road frontage instead of the minimum 150' frontage.

Town Code varied: Chapter 450-15 D. (1)(b)

The Town & Erie County Mapping have reviewed all of the adjacent deed confirming that there is in fact 113.13' of frontage. The Town Attorney, Applicant's Attorney, Gary Schaff and Erie County Mapping all agreed that a boundary line agreement shall be filed like a deed with Erie County with specific measurements. A new physical deed showing 113.13' will also need to be completed showing drainage and a proposed house for subdivision approval with the Planning board if the variance is approved.

Dave M. stated that this lot was not "grandfathered in" (legal non-conforming use) - as it was inadvertently created when the parcel to the west (Floyd Kidder's, known as 13331 Dorsch Rd.) was subdivided 3/24/2003 11033/4402.

Julie B. stated that 13331 Dorsch Rd. was approved to be subdivided 633.42 from the NW corner of Lot 11 but when it was surveyed off and built on, it was actually 726.42' from the NW corner of Lot 11. This lot moved Floyd Kidder's lot 93' to the east, leaving only 113.13' before the next adjacent existing property heading east (known as 13367 Dorsch, owned by Marie Bell with 150' frontage). All of the deeds were read along this stretch of Dorsch Rd. A quit claim of approximately 37' was found on the deed when James Kidder purchased the property from Walter Ifflander 10/11/2002 11015/8116) and when Walter Ifflander purchased said property from David & Judith Kautz on August 4, 2000 10969-8865. The width of Lot 11 is 1320'.

Written comment received from Erie County Mapper, Lauren O'Meara stated based on their findings there is 113.13' frontage. The quit claim 37' was split/merged into the present configuration.

Julie B. read the definition of the quit claim: The quit claim makes no assurance that the grantor actually has an ownership interest in a property; it merely states that if the grantor does, they release those ownership interests in the property. Title Insurance is not issued in conjunction with a quitclaim deed.

The Town and Erie county mapping suggested reaching out to the surveyor, but neither of us have heard back.

Dave M. brought up that the zoning board could also do an "interpretation" instead of the variance request. Stating that the zoning board believes the frontage of said lot to be 113.13'. Based on additional recent information, I do not believe there is anything to vary.

A vote was taken on whether they should do an interpretation or move forward with the variance request as follows: WK, AB, JK, MM voted variance; VL voted interpretation. 4 to 1 to vote on the variance.

The following vote was taken based on that the applicant is requesting a 37 ft. area variance to subdivide a five-acre parcel for their family to build a home on a parcel with 113.13' frontage.

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. (PASS)
POLL: WK -N AB - Y JK - N, VL - Y, MM - N
Reason: MM stated that the prior subdivision of his brother's lot at 13331 Dorsch Rd. is to blame for this mix-up. VL stated Yes, it can be pursued in a different manner.
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. (PASS)
POLL: WK N AB - N JK - N, VL - N, MM - N
Reason: Fits into the neighborhood as the applicant plans the house to be set back.
3. Is request substantial? (FAIL)
POLL: WK -N AB - Y JK - Y, VL - Y, MM - Y
Reason: 27% request is substantial. WK stated it was the error of the surveyor.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. (PASS)
POLL: WK -N AB - N JK - N, VL - N, MM - N
Reason: NO, the boundary line agreement will help there not to be any issues
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? (FAIL)
POLL: WK -N AB - N JK -N VL - Y MM - N
Reason: An error was made on the previous subdivision leaving only 113.13' frontage. Vicki L. stated that although the error was not intentional this is self-created.

A motion was made by John K. to approve the variance request with the condition that it will be subdivided for family. Seconded by Mike M.

VOTE: AB - Aye, JK - Aye, WK, Aye, MM, Aye Nays: VL

Summary of the Vote: 4 to 1 to approve. The variance was passed with the condition that this parcel will be subdivided for family.

A motion was made by Adam B. to approve the minutes from April 15, 2021. Seconded by John K.
Hearing all ayes, no nays the minutes were approved.

John K. motioned to adjourn the meeting at 7:17pm. Seconded by Vicki L. Hearing all ayes, no nays, the meeting was adjourned.

Respectfully submitted,

Julie Brady, Recording Clerk