

ZBA
May 22, 2014

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
May 22, 2014

MEMBERS

PRESENT: Bill Kaufman, Chairman
John Klodzinski
Adam Burg
Harold Finger
Alternate: Fred Pask
Other: Julie Brady, Recording Secretary
Absent: Corky Keppler
Cheryl Esposito, Alternate



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 an attached garage, being three (3) feet from the southerly side lot line. The request for a seven (7) foot variance reduces the required ten (10) foot side setback CODE 450-15 E (2)(a). PROPERTY LOCATION: 6827 Cedar St., Town of Newstead. Owned by Donald Schultz: SBL#33.00-4-4.

Bill K. opened the public hearing for comments.

Don Schultz, 6827 Cedar St. explained the reason for his variance request. He would like to put a 17' wide attached garage where the existing driveway is, but because the legal width of the lots when his house was built was only 75', the attached garage would be only 3 feet from the lot line. Mr. Schultz did provide a letter from his neighbor on that side, Paul Zika stating that he had no problem with him building this garage.

Harold F. asked what the distance was between the garage and the neighbor's house. Don S. stated that they will not be even with each other, the front of his garage will be by the back of Paul's house. There's no fence, it's just open, Paul's house is ten feet from the lot line.

Bill K. asked about the drainage. Don S. explained that Paul's property grades off towards Don's property. The water just settles and is not an issue.

Bill K. asked if the garage will be framed and sided. Don S. said it will be sided the same as the addition to his house.

Bill K. asked three times if there were any further comments. Hearing none, Fred Pask motioned to close the public hearing, seconded by Harold Finger. All Ayes. The public hearing was closed at 6:38pm.

The ZBA discussed the request. Fred P. stated the drainage should be addressed when Don goes for a building permit. Bill K. asked if Don had septic or sewer. Don S. stated that he has a sand filter and that he also has a drain in the driveway with a pipe that goes to the curb that takes care of drainage concerns.

Bill K. read through each of the 5 area variance criteria and polled each board member 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.
VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)
REASON: Narrow Lot which was code when the house was built does not allow enough room to build an attached garage 10' from the side lot line.
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.
VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)
REASON: This area is already residential and the neighbor has no problem with this.
3. Whether the requested area variance is substantial

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VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)

REASON: It is a large distance to request but there is precedence for this case.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.

VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)

REASON: The neighbor letter supported the construction of this garage and no other neighbors were opposed to it. This is a residential 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.

VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)

REASON: The hardship was created due to the Code/width of the lots when the house was built, therefore Don S. did not create this situation.

Motion to approve the variance request was made by Harold F., seconded by Adam B.

VOTE: Bill K – Yes; Adam B – Yes; John K – Yes; Harold F. – Yes; Fred P. - Yes

All Ayes. **Variance Approved.**

Julie B. read the second legal notice as follows:

Area variance request to construct a six (6) foot high fence 35' from the right-of-way. The request for a two (2) foot high variance increases the four (4) foot height requirement for fences 30' from the right-of-way. CODE 450-36(1)(a). PROPERTY LOCATION: 12352 Rapids Rd. Town of Newstead, Owned by Joseph & Elisa Dugan: SBL#32.00-3-9

Bill K. opened the public hearing at 6:52PM.

Joe Dugan, 12352 Rapids Rd, brought everyone up to speed on the group home that is right next door to them as of this past winter. This group home houses a level 2 sex offender and 5 deemed violent residents who walk up and down Rapids Rd which is not safe. Joe explained that they moved to Akron 8-9 years ago for the peace and quiet of country living and now they can't even enjoy their property. They recently put in a \$30,000 inground pool and want privacy. The residents of the group home are very vocal and can see into the Dugan's yard even though they do have five 9' blue spruce trees which set back 25' from the ROW. They would like to place the privacy fence approximately ten feet behind the row of trees and plan to plant more landscaping to fill in as a natural buffer.

Elisa Dugan, 12352 Rapids Rd., stated that she was sexually abused at age four and the sex offender that lives right next door sexually abused a four year old girl. Elisa stated that their only option is to put up this privacy fence.

Leonard Coffta, 12431 Rapids Rd., stated he was here to support the Dugan's and does not agree with the law and how the neighbors found out about this group home.

Bill K. asked what type of fence they would put up? Elisa D. said that it will be a white vinyl fence if People Inc. pays for it and a nice wood fence if they have to pay for it.

Harold F asked if they had discussed this with their neighbors. Elisa D. said the neighbors were fine with it. In fact there is a tall privacy fence on the corner of Greenbush and Rapids. Harold F. also asked why People Inc. would pay for it? Is it going on their property? Joe D. explained that People Inc has promised to put up a fence along the side of the property.

Elisa D. stated that they did not need a fence for their dogs because they already have an invisible fence. She also commented that they had an appraisal done that says their house is now \$25,000 lower in value because of the undesirable neighbors.

Bill K. asked about being able to see out into traffic. Elisa D. said that they have a circular driveway and the fence would not obstruct the view.

Bill K. asked three times if there were any more comments. Hearing none, John K. motioned to close the public hearing, Adam B. seconded the motion. All Ayes. Public hearing was closed at 7:01pm

The Zoning Board discussed that there was no problem or general concerns with putting up the fence. Bill K. mentioned other places that received variances for eight foot high fences for safety issues.

Joe Dugan asked if they could amend their request to put up an eight foot high fence. Bill K. stated that he would recommend that as a condition.

Bill K. read through each of the 5 area variance criteria and polled each board member 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.
VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)
REASON: Other option would be trees which would take too long to grow and mature to provide this kind of privacy.
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.
VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)
REASON: Because the Dugan's plan on using quality materials, it will improve the looks of the property
3. Whether the requested area variance is substantial
VOTE: AB (Yes) JK (Yes) WK (Yes) HF (Yes) FP (Yes)
REASON: This request is substantial yet the situation is unique
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.
VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)
REASON: The neighbors support the construction of this privacy fence and no neighbors were opposed to it. Also, the Dugan's have access to a U shaped driveway to eliminate backing out into traffic.
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.
VOTE: AB (No) JK (No) WK (No) HF (No) FP (No)
REASON: The hardship was created due to the group home moving in after they had lived there several years.

Motion to approve the variance request was made by Bill K. with the condition that the homeowner can construct the fence to a maximum height of eight feet, seconded by John K.

VOTE: Bill K – Yes; Adam B – Yes; John K – Yes; Harold F. – Yes; Fred P. - Yes

All Ayes. Variance Approved.

The Zoning Board reviewed the minutes from November 21, 2013. Fred P. motioned to accept the minutes as read, seconded by Harold F. All Ayes in favor to accept said minutes.

Motion was made by Fred P. to adjourn the meeting at 7:13pm. Seconded by Adam B. All Ayes. Meeting adjourned.

Respectfully submitted,
Julie Brady, Recording Clerk