

ZBA  
August 28, 2014

**TOWN OF NEWSTEAD - ZONING BOARD MINUTES**  
**Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY**  
**August 28, 2014**

**MEMBERS**

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

<b>Approved</b> <b>9/25/14</b>
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Meeting was called to order at 6:35pm followed by the pledge to the flag.

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

**Area variance request of 125 feet lot width and 7,102.80 sq ft lot area varying the Town Code Chapter 450-15 (D)(1)(a) and (b). This property is located at 7949 Maple Rd., and is owned by Barbara, Carl & Karen Conrad. SBL#21.01-1-24**

Bill K. reviewed the procedures and opened the public hearing for comments.

Henry Chimes, 7985 Maple Rd. (adjacent neighbor of Conrad's) sent a letter to the ZBA and stated that he is in full support of this "property line correction". He is looking forward to it happening. He wants to keep the green/wooded area on Maple Rd so that it doesn't change the neighborhood.

Roland Georger, Esq. representing Conrads, 1925 Kensington Ave., Bflo, NY 14215 Prepared a packet for the zoning board. He described how this is a unique situation. Dr. Conrad passed away, his wife is in assisted living and the children live out of town. When they were under contract to sell this property, it was discovered that the propane tank and only entrance to the basement are on the Chimes property. The driveway is on Roll Road however, the Code Enforcement Office, Ralph Milgiaccio, interprets the Town Code 450-29 that they cannot change the address to Roll Rd. which would make the 1<sup>st</sup> variance request of 25 feet lot width a non-issue because there is approximately 450' of frontage on Roll Rd. The adjacent owner on the corner of Roll & Kathryn was unwilling to sell or gift property to them.

Harold F. asked if there would be new deeds created. Mr. Georger stated that a new deed would be created and filed for both the Conrads and the Chimes.

Fred P. asked if they would need subdivision approval. But because they are not creating a new lot, but merely moving the property lines, it would not be necessary.

Mr. Georger stated that this problem was caused by either the surveyor or contractor many years ago. It will not affect the neighborhood and would correct the drainage as well.

Bill K. explained that the Kathryn Drive subdivision is why there is a zoning board because of the issues they had when first developing the area. Bill asked if there were any more comments.

Fred P. made a motion to close the public hearing. Cheryl E. seconded the motion. All ayes. No nays.

The board discussed the following:

Bill K. addressed the review sheet and explained how this is a unique situation. Harold F. and Fred P. stated that they would like to correct the mistake that was made so many years and this made sense. Bill K. asked if they could move the house. Mr. Georger said no due to the expense. Cheryl E. said it's reasonable, practical and asked if they looked at every option.

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Mr. Georger stated that the Conrad's do not have the means to move the house and they have looked at every possible option.

Harold F. said that although the request is extremely substantial, he thinks we should work with them. His concern was for the address and emergency services being able to find them if they use a Maple Rd address.

Each board member was polled on Part 1, leaving 25 'of frontage instead of the required 150'.

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.  
CE (N) WK (N) HF (N) FP(N) Overall – (NO)  
REASON: Home was constructed & located incorrectly years ago and no economical means 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.  
CE (N) WK (N) HF (N) FP(N) Overall – (NO)  
REASON: No changes to the neighborhood, may even improve it.
3. Whether the requested area variance is substantial.  
CE (N) WK (N) HF (Y) FP(N) Overall – (NO)  
REASON: Harold voted yes because of changes in required frontage. The other voted No because there is more than enough frontage on Roll Rd. where the driveway is.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.  
CE (N) WK (N) HF (N) FP(N) Overall – (NO)  
REASON: This will help the neighborhood and will not impact the area negatively.
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.  
CE (N) WK (N) HF (N) FP(N) Overall – (NO)  
REASON: This problem was created by the contractor years ago. According to the survey the house and propane tank is on the neighbor's property.

A motion was made by Harold F. 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, Harold F. – Yes, Cheryl E.- Yes

Variance request was approved unanimously.

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Part II of the variance request for re-adjusting the lot line, leaving 37,897 sq ft instead of the required 45,000 sq ft.

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.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: Home was constructed & located incorrectly years ago and no economical means 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.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: No changes to the neighborhood, will help neighbors.
3. Whether the requested area variance is substantial.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: 15% is not substantial- doesn't change anything

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: No impact – neighbor can keep green space.
  
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.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: This problem was created by the contractor years ago. According to the survey the house and propane tank is on the neighbor's property.

A motion was made by Harold F. 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, Harold F. – Yes, Cheryl E.- Yes

Variance request was approved unanimously.

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

**Area variance request of 25 feet +/- to the 75 feet minimum set back from the right-of-way for construction of a private garage. Town Code Chapter 450-27(a). This property is located at 7565 Cedar St., and is owned by David & Sharon Zobel. SBL# 21.00-4-11.1**

Bill K. opened the Public Hearing

David Zobel, 7656 Cedar St. presented the wetland delineation and survey as he described their plans to construct a 24x30 pole barn type private garage. The location of the pole barn would be where the current turnaround is and would not encroach on the neighbors. Mr. Zobel showed a drawing of the esthetically pleasing building and explained that if they moved it back, they would need to cut down a tree and the move their dog kennel and shed. The other side is flooded so that is not a viable option either. Ralph Migliaccio said that this building is not a private garage because they already have one garage. It would be considered an accessory building. Mr. Zobel stated that they plan to use it as a garage. If he moved the garage back 75' it would be 12' from the house.

Bill K. asked who was constructing the garage. Mr. Zobel said Fingerlakes Construction. It will be a 3 car garage with a concrete floor.

Harold F. stated that the codes are there for a reason. A discussion followed about alternative places to build the garage or possibly angling the garage. Fred P. asked if the existing garage was being used. The Zobels explained that they have a car and motorcycle in the existing garage but cannot fit his truck in the garage.

Cheryl asked if the contractor stated where the pole barn should be built. Mr. Zobel said he was an engineer by trade and tried every alternative option. They already have an existing turnaround and pad for this location and it would not be cost effective to have to bring in fill and put in a new driveway.

Bill K. asked if the dog kennel was used. Mrs. Zobel said they have two dogs. The kennel is attached to a shed for them to go in also.

Mr. Zobel explained that by placing two structures side by side it would create an undesirable wind tunnel. By placing in this location, no trees or buildings will need to be removed and it will not cause drainage issues. None of the neighbors have an issued with it either. If they were on a Town Road and the building was considered a private garage the setback would be 50' and they wouldn't need the variance.

Bill K. said he wanted to table the issue to clarify the definition of a private garage.

Cheryl E. said that she didn't think it made that big of a difference because it would be a 15 foot or a 25 foot variance.

Bill K. asked if there were any more public comments. Hearing none, Harold F. motioned to close the public hearing, seconded by Cheryl E. All Ayes, No nays.

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Each board member was polled on the review sheet 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.  
CE (N) WK (N) HF (N) FP(N) Overall – (NO)  
REASON: Not cost effective (cost for new driveway) Applicant claims this is only location 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.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: No changes to the neighborhood
3. Whether the requested area variance is substantial.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: No because of size of property
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: This project will not impact the neighborhood or drainage
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.  
CE (Y) WK (Y) HF (Y) FP (N) Overall – (Yes)  
REASON: It is self-created because they want it in that location, but does not preclude granting of the area variance.

A motion was made by Harold F. 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, Harold F. – Yes, Cheryl E.- Yes

Variance request was approved unanimously.

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

**Area variance request of 5 feet to build a show room/storage building 60 feet from the right-of-way instead of the required 65 feet per the Town Code Chapter 450-29. A (2). This property is located at 13090 Main Rd. in the C2 Rte 5 Overlay and is owned by 13634 Main Rd Corp.**

Bill K. opened the public hearing.

Jan Schaefer, 13090 Main Rd., Akron, owner of this property and Buck's Motor Sports.

Jan explained that they would like to put up a cold storage building and make more room in the dealership. The ZBA reviewed the photo of where the 5' variance would be needed.

Harold F. asked how far the building is now. Cheryl looked at the plans and estimated about 66-70' on an angle.

Fred P. asked if the new building would surround the existing building. Jan said "yes".

The planning board sent a memo recommending this project and there was no comment from the County planning.

Bill K asked if there were any other public comments. Hearing none, motion was made by Harold F. to close the public hearing.

Each board member was polled on the review sheet 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.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: No other way to expand this commercial building.

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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.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: No changes to the neighborhood, it improves the building. Better than being vacant.
3. Whether the requested area variance is substantial.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: It's only a minor corner of the building
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.  
CE (N) WK (N) HF (N) FP (N) Overall – (NO)  
REASON: This project will not impact the neighborhood or drainage and the planning board recommended it.
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.  
CE (Y) WK (N) HF (N) FP (N) Overall – (No)  
REASON: Cheryl said Yes, it is self-created because they want it in that location, but does not preclude granting of the area variance. Other members voted no because of the need for the business to grow, he must add-on.

A motion was made by Fred P. to approve the variance, seconded by Harold F. The Zoning Board was polled to approve this variance as follows:

Bill K. –Yes, Fred P. – Yes, Harold F. – Yes, Cheryl E.- Yes

Variance request was approved unanimously.

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The Zoning Board approved the minutes from July 24, 2014. Harold F. motioned to accept the minutes, seconded by Bill K. Cheryl abstained due to the fact she was not at the last meeting. Harold F., Bill K. and Fred P. all voted yes to accept said minutes.

The Zoning Board discussed the required training. They would like to know if they exceed four hours of training in one year, will the additional hours be carried over to the next year.

Motion was made by Harold F. to adjourn the meeting at 8:17pm. Seconded by Cheryl E. All Ayes.

Meeting adjourned.

Respectfully submitted,  
Julie Brady, Recording Clerk