

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
December 8, 2016

MEMBERS

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

APPROVED 3/30/2017

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

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

Bill K. reviewed the procedures. Julie B. read the legal notice for the variance request as follows:
Requesting a (40') forty foot area variance to construct an addition at 11342 Main Rd. in the I2/Route 5 Overlay zones, (10') ten feet from the side lot line instead of the required (50') fifty feet side setback to a residential use (in the C2 zone) according to the Route 5 zoning overlay district. Town Code varied: Article III. Chapter 450-26. F (2) Owned by Group V Real Estate Inc.

Public hearing was open for comments at 6:35pm.

Lowell Dewey, Engineer from C&S Engineers, Inc., 141 Elm St. Buffalo, NY 14203 presented the variance request representing the Casilios. QuaDPharma needs to grow their business. The current building at 11342 Main Rd was built in 1991 zones I2 which requires the ten feet side setback which they would meet. In 1991, the Route 5 overlay required a 50' side setback adjacent to a residential use. The Casilios have tried working with the needs of their tenant, as well as the neighbors. The addition will go on top of the existing pavement and they will (by law) deal with the septic system and storm water drainage. QuaDPharma does not produce chemicals that will impact the environment and they are a good, quiet neighbor.

Nathan Neill, Town Attorney, stated the language in the Rte 5 overlay actually says "Commercial use, not industrial use" as Quad Pharma is one of two areas zoned I2 in the Rte 5 overlay zone, this is not addressed directly. Therefore, you may only require a 20' variance instead of the 40' variance requested.

Mary Casilio Powell, 2357 Wehrle Dr, Williamsville, NY 14221, President of Group V Real Estate, stated that the property has been zoned industrial since 1959. The previous owners had a recycling center.

Don Kreher, 13212 Main Rd., Akron, NY. If Krehers Poultry Farm wanted to put an addition that doesn't fit the zoning codes, we would move it to fit. They have enough property to do that.

Amy Engler, 11328 Main St., Clarence, NY, spoke her concerns of the project; windows facing her backyard, drainage and a generator on the west side of the building. Would the noise of the generator impact her enjoying her backyard/pool. She is happy for QuaDPharma, she just doesn't want it to change her lifestyle. Amy also doesn't want it to be an eye sore and asked about hiding it by creating a berm and planting pine trees to block it out.

Peter Casilio, 9170 Thompsonwood, Clarence (part owner of 11342 Main Rd) Peter said that Mary (Powell) has been working with QuaDPharma for the past 3 years to keep them at this site. They are good neighbors and we would like to keep them in the Town of Newstead. If we move the location of the addition, it would be expensive and we are competing within WNY where free rent is offered. The generator would be less than 90 DBA, like the noise from a tractor. The position is not exact and would be in an insulated enclosure to minimize the noise. Peter stated that they have no issue with landscaping by planting pine trees to blend the building with its surroundings. By law, this project will need to contain, control and treat all storm water. It cannot leave the site.

Harold F. asked where the existing drainage goes now.

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Lowell Dewey, stated that they will do their best to address it at the time of the planning.

Peter Casilio, noted that there will be no windows in the expansion. That area will be manufacturing or storage. The high bay area to the north side (rear of the bldg.) will be less than 40' with the expansion to the south/west would be the same as the existing building (20').

Mary Powell, stated that she has spoken to the neighbors and Janice Zirnheld is in favor. There is also an opportunity to work with Amy Engler doing landscaping and addressing her concerns.

Bill K. asked if they needed space for a retention pond.

Peter Casilio stated that although he did not build the original building, he believes all the storm water is being managed by underground piping to a pond on the lower 50 acre parcel of land below the escarpment.

Mary Powell, confirmed that they are aware they have a lot of work ahead of them, but realize that they have to take care of the drainage.

Bill K. asked if we had heard from Erie County. Julie B. replied that it was not necessary to get their comments due to the fact it was a side setback.

Bill K. asked three times if there were any more comments. Hearing none, he requested the public hearing be closed. (6:58pm) A motion was made by John K., seconded by Harold F., All ayes to close the public hearing.

ZBA looked at the information and maps before them and discussed the request.

Bill K. asked what were other avenues explored.

Peter Casilio stated that the obstacles were emergency and delivery vehicles getting around the building, encroaching on the building in the rear that is leased to Perry's Ice Cream. Cost excessive and not feasible for manufacturing on two levels.

Mary Powell, the tenants rejected other options that would have been in compliance.

Adam B. asked about QuaDPharma's future in the Town of Newstead as we would hate to see an empty building there in the future.

Mary Powell gave a history of QuaDPharma. founded by Steve Panero in 2010. In 2014, QuaDPharma was acquired by one of its early customers. Athenex Pharmaceuticals (f/k/a Kinex Pharmaceuticals) was impressed enough with the service provided that they decided to purchase QuaDPharma. They were going to building Dunkirk, but we are trying to keep them in Newstead.

Peter Casilio said this is a 10-15 year plan at minimum. Our goal is to be there for long term which will not happen if this is not approved. They plan to rejuvenate the old building as well and hope to make this a fallback position for the company's future. Our goal is to be a good neighbor and keeping them in Newstead.

Mary Powell - for us to make this type of multi-million dollar investment we have to have a long term lease.

Bill K. polled the board to correct the legal notice (per Nathan Neill's suggestion) requesting a change from a 40' variance to a 20' variance based on the Rte 5 overlay terminology of commercial use instead of industrial (which is not specifically addressed).

Adam B. (Y) John K. (Y) Bill K (Y) Harold F. (Y) Fred P. (Y) All Ayes.

Julie B. noted that communication was received just before the meeting began from Krehers and Group V Real Estate/QuaDPharma.

Bill K. stated that Kreher's concerns over drainage would be taken care of during the planning phase and approved by the Town engineers. The Kreher's also asked how this may impact their property value.

Adam B. answered because he is in real estate that it would have minimal impact due to the fact that it is already in a commercial zone and the Clarence School District.

John K. asked if they were able to get rid of the "saw tooth" (points to the west) portion of the building. By removing those points, there would not be a need for a variance.

Lowell Dewey stated the equipment and module labs for the manufacturing flow does not work without those points.

Michael B. stated that he has reviewed the plans and this was the only option.

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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: Adam B.- It is an existing building, tenant needs to maintain 1st floor for manufacturing line, owner will to work with neighbors. Bill K. -Due to the Rte 5 overlay requirements, they are restricted further. Harold F. The property is well kept, this type of industry would have less impact on the neighborhood than other types of industry. Fred P. The use is consistent, it's existing and is one of the only areas zoned I2.
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: Adam B. the owners had valid answers why they can't proceed with the project any other way (ex. emergency vehicle access). Bill K. they have tried numerous alternatives and are willing to work with the neighbors. Fred P. owner stated this is what is required to keep tenants.
3. Whether the requested area variance is substantial. (20')
AB (N) JK (N) WK (N) HF (N) FP(N) Overall – (No - Pass)
REASON: Given the scope of the project and the existing property, 20' is not substantial. John K. it's essentially just the tips of the building that are 10' from the property line.
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: Adam B. will improve appearance of building & demonstrated willingness to work with neighbors landscaping. John K. The environmental impacts (drainage) will have to be dealt with in the planning phase at the planning board level.
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)
REASON: Not self-created, the building was existing before the Rte 5 overlay zone was created. Other options were tried.

A motion was made by Adam B. to approve the variance. Seconded by Fred P. 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 August 25, 2016 meeting by John K, seconded by Bill K.. All Ayes, No nays.

A motion was made to close the meeting at 7:26pm by Fred P., seconded by Harold F., All Ayes.

Meeting adjourned.

Respectfully submitted,
Julie Brady, Recording Clerk