

ZBA  
April 25, 2013

**TOWN OF NEWSTEAD - ZONING BOARD MINUTES**  
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY  
April 25, 2013

<b>APPROVED</b> 6/27/13
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**MEMBERS**

**PRESENT:** Bill Kaufman, Chairman  
John Klodzinski  
Adam Burg  
Corky Keppler  
Harold Finger

**Alternate:** Cheryl Esposito  
Fred Pask

**Other:** Matthew Plunkett, Attorney/counsel for the zoning board regarding the  
Akron Airport  
Julie Brady, Recording Secretary

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

Julie read the legal notice for the first variance request as follows:

Area variance request to construct an attached garage, being only two (2) feet from the side lot line. The request for an eight (8) foot variance reduces the required ten (10) foot side setback line at 12372 Nice Rd., owned by Amanda and David Harrington.

Bill K. read the area variance criteria and opened the public hearing for comments.

Amanda Harrington, 12372 Nice Rd, applicant; described their situation. Survey/proposed site plan and letter from neighbors stating they have no problem with this addition were submitted for the record.

The zoning board stated that they had previously visited the site. The board asked Amanda questions regarding the existing fence, neighbors, layout and drainage.

Bill K. asked three times if anyone would like to speak. Hearing none. The public hearing was closed, motioned by John K., seconded by Adam B., All Ayes

The zoning board discussed the matter and reviewed the survey.

Motion was made to grant the variance request by Harold F., seconded by Adam B.  
Bill K – Yes; Adam B – Yes; John K – Yes; Harold F. – Yes; Corky K. – Yes;  
All Ayes. Variance Approved.

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Harold F. recused himself at this time and Cheryl Esposito took his place for the next variance request on the airport.

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6:45pm Bill K. stated that the next variance request was the continuation of the public hearing for the Christian Airmen, Inc., P O Box 126, John St, Akron, NY 14001.

- “To authorize the use as an airport, ((47.00-2-3, 47.00-2-2.14, 47.00-2-4.1, 47.00-2-5, 47.11-4-23.12, 47.00-2-4.2, 47.00-2-6)which has been a continuous use at this location for over 80 years.” Dated August 15, 2011.

Applied for by: Damon Morey LLP, 9276 Main St. Suite 3B, Clarence, NY 14031

The public hearing was left open from the March 28, 2013 meeting for written comment only.

Motion to re-open the public hearing was made by John K., seconded by Adam B. All Ayes.

Bill K. asked if anyone would like to submit any further written comment at this time. The Village of Akron submitted their letter. Bill K. asked three times for any other written comments, hearing none, Adam B. motioned to close the public hearing, seconded by Cheryl E. All Ayes.

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Bill K. recommended that the zoning board enter into executive session to discuss pending legal issues relative to this variance. Motion was made by John K at 6:50pm, seconded by Cheryl E., All Ayes. The following were in attendance at the executive session: Matt Plunkett, attorney, Bill K., Corky K., Cheryl E., Adam B. and John K. (Harold F. and Fred P., alternate did not go into executive session).

Motion was made at 7:15pm by Adam B. to come out of executive session, seconded by John K. All Ayes.

Bill K. motioned for the following under advice of our attorney in this matter:

“We find that under Sec 267-b(2)(a) of the Town law that the ZBA may grant a use variance only on appeal from the decision or determination of the administrative official charged with the enforcement of our zoning law. That official in Newstead is the building inspector. The applicant has not presented anything to indicate that it has applied to the building inspector for an airport wide use variance and been denied or that it has applied for and been denied an application that necessarily requires the granting of an airport-wide use variance. Therefore, the ZBA is without appellate authority to hear this matter and it must be dismissed. Were we to retain jurisdiction, we note that the application for an airport-wide use variance constitutes a type 1 action under SEQRA and would require referral to the town board for completion of a type 1 review after filing of a complete environmental assessment form (EAF). We can make no determination about how such a type 1 review might affect the validity of the conditioned negative declaration adopted by the town board in July 2011 because that matter is not currently before us.”

Motion to dismiss this variance request based on the fact that this zoning board is without appellate authority to hear this matter was motioned by Adam B., seconded by Cheryl E.

Bill K - Yes; Adam B - Yes; John K - Yes; Cheryl E. - Yes; Corky K. - Yes;

All Ayes. Variance request was dismissed unanimously.

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Minutes for December 27, 2012, February 21, 2013 and March 28, 2012 meetings were reviewed. Hearing no changes, Cheryl E. motioned to accept the minutes, seconded by Adam B. All Ayes.

Motion was made by Corky K. to adjourn the meeting at 7:38pm. Seconded by John K., All Ayes.

Respectfully submitted,  
Julie Brady, Recording Clerk