

TOWN OF NEWSTEAD - ZONING BOARD MINUTES

Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY

June 2, 2011

MEMBERS

PRESENT: Bill Kaufmann, Chairman
 John Klodzinski
 Adam Burg
 Harold Finger

Alternate: Fred Paske

Absent: Corky Keppler

OTHER: Julie Brady, Recording Clerk
 Ralph Migliaccio, Code Enforcement Officer

Use Variance – 12474 Main Road, Akron, NY 14001

Applicant: Jerry Pasinski, 232 Main Road, Akron, NY 14001

The meeting was opened at 7:32pm to discuss the use variance request to house horses in an existing barn located at 12474 Main Road in the C2 Zone. Bill Kaufman led the pledge to the flag, Julie Brady read the legal notice. Bill K. read the use variance requirements and opened the public hearing at 7:35pm.

- Glen Wheeler, 6740 Cummings Road, stated that he does not want horses in that barn. He noted that there are already horses in the barn before he even received the variance. Mr. Wheeler and his neighbors chose to build on Cummings Road because it was a residential neighborhood and he doesn't want to live downwind of horses and have to smell them. He asked what Mr. Pasinski had in mind?
- Bill K. stated that the issue is that the barn is in the commercial zone.
- Jeff Loga, 5630 Cummings, stated he had the same concerns as Mr. Wheeler, he doesn't know what the rules are for animals. His concern is the upkeep of the property and the smell of the horses.
- Glen Wheeler also noted the concern of an electric fence being a danger to neighborhood children.
- Doug Ceisner, 100 East Ave., stated that he owns property on Main Road also, and when the Town Board did the Rte 5 Overlay, he knew there would be problems. The property at 12474 Main Road used to be the old Wukman Farm and was farmed ag for years. The Town of Newstead is an ag district/"Right to Farm" community. In order for Mr. Pasinski to make his property commercial all he would have to do is give one riding lesson. As for the upkeep, the SPCA checks on that. Kreher's farm property on Main and they have taken care of their odor issues. As for the barn at 12474 Main, it is an ag building built for ag use.
- Jerry Pasinski, 232 Main Road, Applicant. I bought the property in March of 2011, it's in bad shape but it has a beautiful barn. I want to demolish the house and refurbish the barn, new roof, siding, windows. I didn't know that you couldn't put horses in a barn. I got a permit for 60 days until I could come to the zoning board to request a variance. I do not want to offend any of the neighbors by having horses. I thought everyone loves horses.
- Harold Finger asked how many horses are there right now.
- Jerry P. said he has 6 horses there and 2 might go but he's not planning on bringing more in.
- Harold F. asked where the fence was going and what kind.
- Jerry P. said it would be a high tensile electric fence and showed the board where it would be placed. The horses are so tame that you don't even need a fence. He also stated that they are his daughter's horses and that he is not boarding any.
- Adam Burg asked if Jerry anticipated any more horses and Jerry replied that not at this time.
- Ralph Migliaccio stated that there are no limits on the number of horses that Jerry could have because he owns more than 10 acres (apx. 29 acres).
- Bill K. enquired as to whether Jerry planned to sell any acreage off? Jerry stated no. The ZBA board examined the survey to confirm the location of the lot.
- Jerry P. gave Bill K. a written statement that the following people had no problem with Jerry having horses at this location and it was signed by 6 people (most of them own property on Main Rd).
- Bill K. asked again about Jerry's intentions towards the property.
- Jerry P. stated that he will demolish the house and garage, put a metal roof on the barn as well as new windows and board & bat siding. He is not a slum lord, these improvements will cost a lot of money. There will be no residence on the property.
- Bill K., What will be done with the tillable property? Will you be selling pumpkins and having hay rides?

- Jerry P. stated that he is leasing it to a farmer to use for crops and will not be selling pumpkins etc.
- John Klodzinski asked if Jerry had any financial documents to realize a reasonable return and if it is a financial hardship?
- Jerry P. stated that he paid \$325,000 and yes it is a hardship. He paid a lot for the property.
- John K. asked if Jerry considered other uses since there is an entire list of acceptable uses in the C2 zone.
- Jerry P. stated that it is his intent to fix up the property to use for his horses
- Bill K. asked how long the property was for sale before Jerry purchased it? Approximately four years .
- Glen W. asked why it wasn't brought up by his attorney that the property could not be used for horses prior to him buying the property.
- Doug Ceisner stated that the Sutton Horse Farm on Buell St. has been there for a hundred years and is the middle of the village and no one complains about the smell of the horses.
- Jeff L. stated that the reason we built on Cummings was to have country living, the animals weren't allowed then and his property value will decrease if this is allowed. Also the signatures produced by Mr. Pasinski should not be taken into consideration as they are not living near this property.
- Nathan Neill, Town Attorney, explained that he was asked if horses could be in a C2 zone. After looking at the zoning codes he found that it was not listed as an acceptable use in the C2 zone. At a separate time Becky asked if land could be farmed (for crops) in the C2 zone and if it was grandfathered if it was farmed 3 years ago. It is my belief that because it is common practice for crop rotation where the land is left to rest on certain years that it would not be a problem for this property to be farmed again. However, I did not realize that these two questions were about the same property. The dilemma is that if it's agricultural does that only pertain to crops. In the RA zone the code includes animals under the agricultural descriptions so how can we say yes to one and no to the other. It is my recommendation that the Town Board review the wording in the code to include ag use in the C2 zone since it is being done and has been done at this location. He did not realize that the wording did in the Code book did not address the ag use and did not think it was a problem. Nathan explained that he lives across from a horse farm on Hake and enjoys that location because of it.
- Harold F. stated that if the barn wasn't on the property and Jerry wanted to have horses, he could build a barn more than 500' from Main Road in the RA district (behind the neighbors) without getting a variance because this would be a permissible use in the RA zone. This is a "Right to Farm" community. One of the acceptable uses in the C2 zone is Farm Sales so we do support farming.
- Nathan N. stated that the Town clearly needs to change the law. Barns are built to house animals.
- Glen W. asked if that is the case then why was the land sold residential? Why was it rezoned?
- Nathan N. clarified that it was not rezoned. The subdivision in which he built was a process of dividing the land not rezoning. Different rules apply. The houses on Cummings Road are in the RA zone which allows horses and farms whereas the first 500' back from Main Road is zoned C2.
- Bill K. clarified that the Sutton Farm on Buell is in the Village as well as the horse farm on Hake. Therefore the Town does not receive complaints on these properties. Bill also asked if there is an ag exemption on the property.
- Julie B. explained that Mr. Pautler has talked with Becky, the assessor and received the proper directions and paperwork to file for an ag exemption on behalf of Mr. Pasinski as the farmer who will lease said property.
- Bill K. asked if there were anymore comments, twice.
- Ralph Migliaccio said that our Town always wants to make everyone happy. Jerry only wants six horses which is a lot less than what he could have. Ralph said that he'd be happy to approve a permit to build a barn 501' back and put unlimited horses with no variance.

Public Hearing closed at 8:15am.

Zoning Board Discussion:

Bill K. discussed the poor condition of said property and how the Town has had to pay a great deal of money to demolish other properties that were in poor condition. Here is an opportunity to have this property cleaned up. This is a "Gateway Property" to our community. The property is zoned in two different zones therefore the applicant has the possibility to erect a new building closer to residence to house horses. I agree with Nathan, the Town Attorney, to recommend this zoning issue be addressed by the Town Board in the Code Book to include agricultural use in the C2 zone.

Bill K. reviewed the 4 criteria for the Use Variance. He stated that he understands the resident's concerns in maintaining and managing the property. However, the applicant has stated that he wants to make improvements as soon as possible. Bill K. stated that he does not want to table this decision and wait for the Town Board to change the law due to the fact that Mr. Pasinski would lose out on an entire summer to make the improvements.

Nathan N. said that it would require a public hearing and several meeting by the Town Board in order to change the code. Bill K. stated that the zoning board is required to make a decision within 30 days so this would not be feasible.

Bill K. recommends approving the use variance with a special use permit to be enforced the Code Enforcement Officer with a one year renewal. This will allow the residents to have the opportunity to voice their complaints. This seems to be fair to the residents and the applicant. A discussion took place as to restricting animals to six horses and other small farm animals.

Fred Pask asked if it met other access etc. requirements in the Rte 5 Overlay?

Nathan N. stated that there would be no new buildings or changes that would affect the Rte 5 Overlay.

Adam B. agrees with restrictions and emphasized that we are a "Right to Farm" community and that it would not change the character of the area and he is a Main Road resident.

Harold F. stated that if Mr. Pasinski wanted to go way back, he could put up a barn with unlimited animals.

John K. said he has horses and supports horse owners. However, he cannot support this use variance as it does not meet all four criteria.

Fred P. said that he would approve the variance with restrictions/special use permit.

Bill K. stated that the special use permit would be renewable by the Zoning Board, however, if the Town Board changes the law, the variance would not be required and Mr. Pasinski would not need to come back.

Bill K. polled the board to accept the use variance to house horses in the existing barn located at 12474 Main Road, Akron, NY. This variance is subject to a Special Use Permit with conditions that no more than six horses can be housed in said barn and that the applicant is to return in one year to the Zoning Board to renew the permit. The applicant will not need to renew the permit if the Town Board changes the law before one year.

Harold Finger motioned to approve the use variance. Adam Burg seconded the motion

John Klodzinski – No – Reason: Use criteria not met

Harold Finger – Aye

Fred Paske – Aye

Adam Burg – Aye

Bill Kaufman – Aye

Meeting closed at 8:40pm.

Respectfully submitted,
Julie Brady, Recording Clerk