

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
October 6, 2011

MEMBERS

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

Alternate: Fred Paske

OTHER: Julie Brady, Recording Clerk
 Nathan Neill, Town Attorney

Meeting came to order at 7:32pm, Bill K. began by stating that the public hearing for the Akron Airport had been closed. The Zoning Board will be consulting with the town attorney, but no additional comments from the public will be allowed unless specifically asked by the board.

Bill K. asked the airport what they were going to do with the plane that was being taken out of service. Would they sell it and therefore, the new owner could continue flying in and out of the Akron Airport, or even house his plane at the Akron Airport.

David Gray from the airport stated that it will no longer be at the airport. Jeff Polumbo said that they could make it part of the sales contract.

Bill K. read the following variances to be discussed and possibly decided on tonight:

Use Variances – At the Akron Airport, Akron, NY 14001

1. **To construct a Maintenance Hanger and five (5) T-Hanger Bays and asphalt apron.**
2. **To pave the existing turf crosswind Runway 11-29 and construct partial asphalt parallel taxiway to Runway 11-29.**
3. **To authorize the use as an airport, which has been a continuous use at this location.**

Applicant: Akron Airport/Christian Airmen, John St., Akron, NY 14001

Nathan N. – clarified that a nonconforming use goes with the land forever but cannot be expanded. That is why the airport needs to come before the zoning board for a variance with each project.

Bill K – the maintenance hangar is close to the existing maintenance building and is therefore within the scope of the existing footprint. He questioned if this was even in the zoning board’s jurisdiction because it is an incidental use to the airport. Whereas, the runway would extend outside the original footprint into the farm field that was purchased in 2001 and 2002.

Adam & John noted that the new maintenance building would be an expansion of what is already there.

Bill K – the maintenance building would be on the original footprint.

A discussion was had regarding the expansion – adding more planes, new buildings etc.

Bill K – asked the board how they felt about having jurisdiction over the maintenance building variance. The board’s consensus was that it is an expansion. **Adam** stated that adding new buildings mean more planes which is increasing business. **Nathan** shared a case study regarding the maintenance building being an incidental use to the airport. He questioned what the original footprint of the airport was and stated that the crosswind runway was not part of the existing footprint.

Adam B. questioned if it mattered that they rent it out to a private company. **Nathan** – “no” airports have maintenance buildings. **John K.** stated that they already have a maintenance building.

Nathan clarified that the question is if the area is used for airport purposes.

Adam B. asked if the area where the maintenance hangar would be going is currently paved

MaryKay Geunther from Passero stated that not all of it is paved

Harold referred to the 1960 Zoning Ordinance, pg. 8 Section 8, Paragraph 5

Adam read under Nonconforming Buildings and Uses #5. Extension of Use. A nonconforming use shall not be extended except within the same building, or on the same lot in the case of uses not located within buildings, which is partially occupied on the effective date of this ordinance.

Nathan surmised that the airport added things between 1960 and 1988.

Harold stated that before 1960 – the runway was not paved and there was not very much there as for buildings. Some buildings may have been built since then without permission. When the airport bought that property, they knew it was a nonconforming use.

The board discussed the dates land was purchased and questioned the original airport footprint.

Zoning was also looked into. The majority of the airport; that which is in question for the variance requests is currently zoned RA. **Adam** pointed out that the maintenance building and hangar would occupy more of the land than was occupied by the existing building. **David Gray** stated that the property to the south of the runway was purchased later. The Fuel Farm was also discussed as to what is currently there and what is proposed.

The difference between the maintenance hangar and the T-Hangars was discussed as regarding their location. **Bill K.** stated that by buying the property that was nonconforming use, it is a self-created hardship.

The financial evidence submitted was a quick book spreadsheet that did not give satisfactory information and a list of grants totally \$7.8 million. The Christian Airmen want to invest more, then their assessment will go up, so how can they afford to keep growing. **Harold** asked to see if they showed difficulty in paying taxes or can't make it. It's part of doing business, you have good years and bad.

Bill K. asked if Christian Airmen was like a club with dues. **David Gray** stated that it is and has 20 members who hold private stock and all members are private owners. Discussion took place regarding the revenue at the airport, fuel sales, hangar rentals, increase dues.

Nathan stated that the question is if you can find a reasonable return for the pieces next to the airport. The general consensus was that the airport had not proved in actual dollar and cents that they could not realize a reasonable return. **Adam B.** stated that they took grants knowing they'd have to pay them back. **Bill K.** also pointed out that they knew that the airport is a nonconforming use which does not allow expansion but still plans on expanding.

The Zoning Board of Appeals reviewed each of the variances along with the four criteria and voted as follows:

VARIANCE #1 (AUGUST 26, 2010)

To construct one pre-engineered metal building which will include one 56' by 51' Maintenance Hangar with concrete floor, and five (5) T-Hangar Bays with asphalt floor, including asphalt apron. Maintenance business on site is in need of more space. Existing T-Hangars are full, aircraft owners prefer to protect aircraft from elements in enclosed hangar space.

USE VARIANCE :

1. Cannot realize reasonable return (include financial evidence)

 X DENIED PASSED

The reason for the board's decision:

From the ZBA Manual –Pg. 13

An applicant who maintains a nonconforming use must not only show that all permitted uses will be unprofitable, but also that the nonconforming use itself cannot yield a reasonable return.

The Akron Airport did not provide sufficient financial evidence to prove that they cannot realize a reasonable return. The Christian Airmen provided the ZBA with a partial quick book balance sheet from 12/31/09 to 4/19/10 & a profit and loss sheet for 2009, but no tax returns. They also provided a list of assurances that the FAA required but they did not provide anything to indicate that there was any reason why they would have to repay the loan. Failure to receive approval for an expansion would not require them to shut down. They have been operating, seemingly successfully for many years without the additional hanger.

VOTE: All Ayes

2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood.

_____ DENIED X PASSED

The reason for the board’s decision:

From the ZBA Manual – Pg. 14

There must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation before a variance thereof can be allowed on the ground of unnecessary hardship. The uniqueness relates, therefore, to the hardship, which in turn relates to the land, and not to the personal circumstances of the owner.

The Akron Airport is unique. It is the only airport in Akron.

VOTE: All Ayes

3. Requested variance will not alter essential character of neighborhood

 X DENIED _____ PASSED

The reason for the board’s decision:

From the ZBA Manual –Pg. 15

Changes which would disrupt or alter the character of a neighborhood, or a district, would be at odds with the very purpose of the zoning regulation itself. The court recognized the right of the ZBA to take notice of the fact that a residential building boom could reasonably be expected in a few years, and that the proposed (expansion) could quite possibly interfere with the residential development of this section.

The Newstead Planning Board recently approved a minor subdivision between Indian Falls and Knapp Rd, directly in the flight path of the proposed paved runway 11-29. This action left 66’ of road frontage making it a prime open development parcel per Local Law #4 of 2009. Also, this area is proposed to have public water in the future, making it more desirable for the current vacant land to be developed. This of course, could impact the owner’s ability to sell the land if the airport expands. (i.e. more aircraft as stated in the minutes) The characteristics of the neighborhood have already changed with drainage issues on East Ave. that cannot be proven is not from the Akron Airport.

Per the Zoning Manual, “in other words, the proposed project need not in and of itself alter the character of the neighborhood if it is shown that the project would set a pattern for future development that would, in time, alter the neighborhoods’ character.”

VOTE: All Ayes

4. The Alleged hardship has not been self-created:

 X DENIED _____ PASSED

The reason for the board’s decision:

From the ZBA Manual –Pg. 16

A use variance cannot be granted where the “unnecessary hardship” complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition he/she now complains of.

The Town of Newstead Zoning Ordinance was in place July 5, 1960. (Pg. 9 of the ordinance #5: Extension of Use. A nonconforming use shall not be extended except within the same building, or on the same lot in the case of uses not located within buildings, which it partially occupied on the effective date of this ordinance.) In 1960, there was no designated zone for airports, therefore it was a nonconforming use when the Akron Aviation purchased 44 acres from individuals in 1969.

VOTE: All Ayes

VARIANCE #2 (AUGUST 26, 2010)

To pave the existing turf crosswind Runway 11-29, and construct partial asphalt parallel taxiway to Runway 11-29. Project is safety related, as Runway 11-29 is utilized, when crosswind weather conditions render use of primary Runway 7-25 unsafe. Parallel taxiway construction is also safety related, since taxiways minimize time aircraft are on the active runway, which minimizes conflicts between arriving and departing aircraft.

USE VARIANCE :**1. Cannot realize reasonable return (include financial evidence)**

DENIED PASSED

The reason for the board's decision:

From the ZBA Manual -Pg. 13

An applicant who maintains a nonconforming use must not only show that all permitted uses will be unprofitable, but also that the nonconforming use itself cannot yield a reasonable return.

The Akron Airport did not provide sufficient financial evidence to prove that they cannot realize a reasonable return. The Christian Airmen provided the ZBA with a partial quick book balance sheet from 12/31/09 to 4/19/10 & a profit and loss sheet for 2009, but no tax returns. They also provided a list of assurances that the FAA required but they did not provide anything to indicate that there was any reason why they would have to repay the loan. Failure to receive approval for an expansion would not require them to shut down. They have been operating, seemingly successfully for many years without the additional hangar.

VOTE: All Ayes

2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood.

DENIED PASSED

The reason for the board's decision:

From the ZBA Manual - Pg. 14

There must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation before a variance thereof can be allowed on the ground of unnecessary hardship. The uniqueness relates, therefore, to the hardship, which in turn relates to the land, and not to the personal circumstances of the owner.

The Akron Airport is unique. It is the only airport in Akron.

VOTE: All Ayes

3. Requested variance will not alter essential character of neighborhood

DENIED PASSED

The reason for the board's decision:

From the ZBA Manual -Pg. 15

Changes which would disrupt or alter the character of a neighborhood, or a district, would be at odds with the very purpose of the zoning regulation itself. The court recognized the right of the ZBA to take notice of the fact that a residential building boom could reasonably be expected in a few years, and that the proposed (expansion) could quite possibly interfere with the residential development of this section. The Newstead Planning Board recently approved a minor subdivision between Indian Falls and Knapp Rd, directly in the flight path of the proposed paved runway 11 29. This action left 66' of road frontage making it a prime open development parcel per Local Law #4 of 2009. Also, this area is proposed to have public water in the future, making it more desirable for the current vacant land to be developed. This of course, could impact the owner's ability to sell the land if the airport expands. (i.e. more aircraft as stated in the minutes) The characteristics of the neighborhood have already changed with drainage issues on East Ave. that cannot be proven is not from the Akron Airport.

Per the Zoning Manual, "in other words, the proposed project need not in and of itself alter the character of the neighborhood if it is shown that the project would set a pattern for future development that would, in time, alter the neighborhoods' character."

VOTE: All Ayes

4. The Alleged hardship has not been self-created:

DENIED PASSED

The reason for the board's decision:

From the ZBA Manual -Pg. 16

A use variance cannot be granted where the "unnecessary hardship" complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition he/she now complains of.

The Town of Newstead Zoning Ordinance was in place in 1960. At that time there was no designated zone for airports, therefore it was a nonconforming use when the Akron Aviation purchased 44 acres from individuals in 1969. More recently, the Akron Airport purchased land from Randall & Schrock (2001 & 2002) with intention of expanding the airport by paving and extending the turf runway into these purchased properties as requested in the variance request of 2010.

Vote: All Ayes

VARIANCE #3 (August 15, 2011)

To authorize the use as an airport, which has been a continuous use at this location for over 80 years.

USE VARIANCE :

1. Cannot realize reasonable return (include financial evidence)

DENIED PASSED

The reason for the board's decision:

From the ZBA Manual -Pg. 13

An applicant who maintains a nonconforming use must not only show that all permitted uses will be unprofitable, but also that the nonconforming use itself cannot yield a reasonable return.

The Akron Airport did not provide sufficient financial evidence to prove that they cannot realize a reasonable return. The Christian Airmen provided the ZBA with a partial quick book balance sheet from 12/31/09 to 4/19/10 & a profit and loss sheet for 2009, but no tax returns. They also provided a list of assurances that the FAA required but they did not provide anything to indicate that there was any reason why they would have to repay the loan. Failure to receive approval for an expansion would not require them to shut down. They have been operating, seemingly successfully for many years without the additional hangar.

VOTE: All Ayes

2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood.

DENIED PASSED

The reason for the board's decision:

From the ZBA Manual - Pg. 14

There must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation before a variance thereof can be allowed on the ground of unnecessary hardship. The uniqueness relates, therefore, to the hardship, which in turn relates to the land, and not to the personal circumstances of the owner.

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VOTE: All Ayes

3. Requested variance will not alter essential character of neighborhood X DENIED _____ PASSEDThe reason for the board's decision:

From the ZBA Manual –Pg. 15

Changes which would disrupt or alter the character of a neighborhood, or a district, would be at odds with the very purpose of the zoning regulation itself. The court recognized the right of the ZBA to take notice of the fact that a residential building boom could reasonably be expected in a few years, and that the proposed (expansion) could quite possibly interfere with the residential development of this section. The Newstead Planning Board recently approved a minor subdivision between Indian Falls and Knapp Rd, directly in the flight path of the proposed paved runway 11 29. This action left 66' of road frontage making it a prime open development parcel per Local Law #4 of 2009. Also, this area is proposed to have public water in the future, making it more desirable for the current vacant land to be developed. This of course, could impact the owner's ability to sell the land if the airport expands. (i.e. more aircraft as stated in the minutes) The characteristics of the neighborhood have already changed with drainage issues on East Ave. that cannot be proven is not from the Akron Airport.

Per the Zoning Manual, "in other words, the proposed project need not in and of itself alter the character of the neighborhood if it is shown that the project would set a pattern for future development that would, in time, alter the neighborhoods' character."

VOTE: All Ayes

4. The Alleged hardship has not been self-created: X DENIED _____ PASSEDThe reason for the board's decision:

From the ZBA Manual –Pg. 16

A use variance cannot be granted where the "unnecessary hardship" complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition he/she now complains of.

The Town of Newstead Zoning Ordinance was in place in 1960. At that time there was no designated zone for airports, therefore it was a nonconforming use when the Akron Aviation purchased 44 acres from individuals in 1969. More recently, the Akron Airport purchased land from Randall & Schrock (2001 & 2002) with intention of expanding the airport by paving and extending the turf runway into these purchased properties as requested the variance request of 2010.

Vote: All Ayes

Referenced:

ZBA Manual, (New York Department of State, Published November 2005: reprint 2011)

Bill K. explained to the applicant that they have 30 days to file a petition. Jeff P. asked where the board would like the papers to go? Bill K. asked Jeff P. to contact Nathan N.

Minutes from June 2, 2011 were reviewed by the board. John K motioned to accept the minutes and seconded by Corky K. It was decided that the board needed more time to review the minutes from Sept. 22, 2011. All Ayes

Motion to close the meeting at 9:57pm was made by Adam B. and seconded by Harold F. All Ayes.

Respectfully Submitted,
Julie Brady
Recording Secretary