

ZBA
January 22, 2015

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
January 22, 2015

MEMBERS

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

UNAPPROVED 1/22/2015

Alternate: Joe Dugan
Other: Julie Brady, Recording Secretary

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

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

Area variance request to construct a wind turbine with a fall line of 126 feet +/- to the 230 feet minimum (which is 1 ½ times the height of the wind turbine) Town Code Chapter varied: 422-5 C (12). This property is located at 7269 Sandhill Rd., and is owned by Donald & Jean York. SBL# 32.00-1-23.12

Bill K. reviewed the procedures, welcomed Fred P. as a board member instead of an alternate. Public hearing was open for comments at 6:35pm.

Ryan Storke, CEC Energy, 2 Remington Park Drive, Cazenovia, NY 13035 explained the project at 7269 Sandhill Rd. The York's are leasing the wind turbine from United Wind. The energy being produced will power the home and other buildings on the property. The tower has lattice no guide wires and is 13x13x9.

Harold F. asked why they chose that location

Ryan S. replied that other areas of the property are very wet and lower which would not be a conducive site. The site they've selected is much higher and dryer.

Fred P. How high above the tree line will the blades be? Will there be a flicker affect for the surrounding homes and will these homes be affected by the sound of the blades turning?

Ryan S. The bottom of the blades are approximately 50 feet above the tree tops and will not create a flicker affect because they are not tall enough and it is far enough away. The sound will only be heard within 500' of the turbine at approximately 50 decibels total maximum depending on the wind.

Harold F. What will happen if it falls?

Ryan S. - We have not had one fall but it would collapse on itself. The falling part of the tower would pivot and fall into the standing structure.

Bill K. - What is the life of these turbines?

Ryan S. -The first one constructed is now 30 years old. Maintenance and upgrading of the equipment will determine the longevity of the turbine.

Bill K. - Is this turbine leased?

Ryan S. - Yes, York's are leasing from United Wind and have a maintenance agreement. At the end of the lease agreement the York's can either buy it out or decommission bond to have it taken down. The power is for the homeowner and United Wind gets the tax benefits/credits and can depreciate the value.

Adam B. - What if the homeowner defaults?

Ryan S. - The leasing agency would proceed with a lawsuit and decommission.

Bill K. - What if the property transfers?

Ryan S. -They can either take on the lease or decommission

Bill K. – We have received written documentation from the affected neighbors, *(Christopher and Wideman) stating that they understand the circumstances and have no problem.

Bill asked three times if there were any other public comments.

A motion was made to close the public hearing by Harold F., seconded by John K. All Ayes to close the public hearing.

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.

JK (N) WK (N) HF (N) FP(N) Overall – (NO)

REASON: Due to the wetness of the area, they have chosen the best site to construct the turbine.

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.

JK (N) WK (N) HF (N) FP(N) Overall – (NO)

REASON: The neighbors did not express any issues with constructing the windmill at this location.

3. Whether the requested area variance is substantial.

JK (N) WK (N) HF (N) FP(N) Overall – (NO)

REASON: No, the request was not substantial because the area of the fall line is open land anyways.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

JK (N) WK (N) HF (N) FP(N) Overall – (NO)

REASON: This wind turbine is not tall enough to effect the neighbors and cannot even be heard from 500’.

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.

JK (N) WK (N) HF (N) FP(N) Overall – (NO)

REASON: Due to the wetness and lower elevation of the rest of the land, it was optimal to place the wind turbine in this higher/dryer area.

A motion was made by Harold F. to approve the variance because the adjacent property owners had no problem with this placement. Seconded by John K. 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 unanimously.

Discussion was had as to whether a condition of the variance should be obtaining a demolition bond. It was agreed this should be handled by the Code Enforcement Officer.

Julie B. read the second variance request:

Area variance request of 45 feet to place storage units 5 feet from the side lot line. The Town Code requires structures to be 50 feet from the side lot lines. Additionally requesting an area variance for 5 feet from the rear of the property verses 10 feet as required. This property is located at 11234 Main St. in the C2 Rte 5 Overlay and is owned by 11234 Main St. Inc. SBL#60.03-1-9

Public Hearing was open at 6:55pm

Janice Carson, 11212 Main St., Clarence, NY – owner of the property to the west of 11234 Main St. asked Steve Baldo (owner of 11234 Main St.) if he would be willing to move the buildings over a few more feet from the west side lot line. Janice also asked if he would sign an easement for her driveway access to the rear of her property which is blacktop one foot onto Mr. Baldo’s property.

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Mr. Baldo and Ms. Carson proceeded to review the site plan and discuss the placement of the fence, buildings and blacktopped areas. Ms. Carson said that property has always had access to the rear via this driveway and it would be blocked if Mr. Baldo put up a fence on the property line.

Harold F. asked about maintenance and drainage concerns.

Mike Metzger of Metzger Civil Engineering, 8560 Main St., Williamsville, NY is working with Jim Bola and Steve Baldo on this project stated that there will be a closed pipe drainage system either in front or back. The buildings are basically maintenance free with a pitched roof and gutters. There would be ample room to get a ladder behind the buildings for repair if needed. Mike stated that he has spent a lot of time with the Code Enforcement Officer and fire chief and they were both satisfied with the movability and access of the buildings as proposed on the site plan.

Adam B. asked if there would be a burm in front.

Jim Bola, 53 Titam Ford Lane, Williamsville, NY, stated that there would be a decorative fence across the front and the buildings would be set back 65' from the right-of-way.

Bill K. asked about the snow, ice and drainage concerns.

Mike M. stated that the buildings are not overly large.

Mike M. explained the project. Steve Baldo has owned this property since 1996 and occupied it as auto sales until the manufacturer closed the facility. After searching for a way to re-use the facility, this project seems like a viable business and an asset to the Town.

Mike M. reviewed the 5 questions to consider when requesting an area variance as follows:

1. Can it be achieved by some other method? There is a gas line across the property that limits placements of building and for the project to be a viable option at this density the site plan reflects the best arrangement of the buildings.
2. Undesirable change? This is a unique situation because we are using an existing commercial site, not a vacant property being developed. The surrounding properties lend itself to continuing as a commercial property (commercial to the west, rental residential owned by Steve Baldo to the east, and vacant to the north)
3. Substantial request? Considering it within the context instead of numerical the request is not substantial due to the fact the Rte 5 Overlay added after Baldo bought this property requires the 50' side setbacks whereas the original C2 Zoning was 0 or 5 feet which is what we are requesting.
4. Adverse affects? This use would be less evasive than the previous use and same answer as number 2.
5. Self-created hardship? Due to the Rte 5 overlay being applied after purchase and the loss of his auto dealership, this is in no way a self-created hardship.

Bill K. asked if this would be done in phases over 4 years as previously stated with the 2013 variance request.

Steve B. said yes, they would first develop the west side, then working outward to the east side.

Bill K. was concerned that one of the variances was for the rear property which may not be developed until 4 years down the road. Would the variance still be valid?

Mike M. stated that once the site plan is granted, it would be for the entire project.

John K. asked why they were coming to the zoning board again, 18 months after receiving a variance to do the exact same project.

Steve B. – A feasibility study was originally done showing this would be a viable business.

However, a big competitor, (Uncle Bob's at Main & Transit) put on a large addition so we waited to do another feasibility study to see how that may impact our project and we are glad to report that we are prepared to move forward with the project this year.

Fred P. asked if there would be outside storage and retail.

Steve B. replied that at first there will be room for RV's etc. but as each phase is built there will be less and less room. They will have roughly 10000 sq ft of climate control space which is actually a bigger demand. They have no plans for retail at this time.

Bill K. asked if they would be willing to do one variance at a time.

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Steve B. said they will not do the project without assurance of the approval of the entire project.

Bill K. asked three times if there were any further public comments. Hearing none.

Fred P. motioned to close the public hearing, seconded by John K. All Ayes to close the public hearing.

Bill K. noted Janice Carson's concerns, that the request and the actual zoning board members were the exact same as 2013 when they granted the variance. There were no other written comments.

Harold F. stated that under good faith, he wanted to see this move forward and saw no reason to come to a different conclusion. Adam B., John K. and Fred P. agreed.

Adam B. asked if they would be starting this year.

Mike M. said yes, he has been authorized to begin the site plan.

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.
WK (N) HF (N) FP(N) JK (N) Overall - (NO)
REASON: Due to the size of the property and working around the gas line and existing buildings, this is the only configuration in order to have room for emergency vehicles and enough units to make it worth-while.
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.
WK (N) HF (N) FP(N) JK (N) Overall - (NO)
REASON: Since the property was previously used as commercial this use would have no ill effect on the neighborhood
3. Whether the requested area variance is substantial.
WK (N) HF (N) FP(Y) JK (N) Overall - (NO)
REASON: The variance request was not substantial because we took into consideration the route 5 overlay. The property lines were established prior to the route 5 overlay. The footprint of the property was established based on the holding zoning prior to the overlay under the old zoning the request would not have been substantial. Fred voted yes because 45 feet is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
WK (N) HF (N) FP(N) JK (N) Overall - (NO)
REASON: No, because the property is continuing to be commercial.
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.
WK (N) HF (N) FP(N) JK (N) Overall - (NO)
REASON: No, because the Rte 5 overlay went into place after the purchase of the property and the forced closing of the auto sales was no Mr. Baldo's fault.

A motion was made by Harold F. to approve the variance. Seconded by Adam B. 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 unanimously.

Motion was made by Harold F. to adjourn the meeting at 7:38pm. Seconded by Fred P. All Ayes.

Meeting adjourned.

Respectfully submitted,
Julie Brady, Recording Clerk