

ZBA  
March 24, 2016

**TOWN OF NEWSTEAD - ZONING BOARD MINUTES**  
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY  
March 24, 2016

**MEMBERS**

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

<b>APPROVED</b> 5/26/2016
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**Alternate:** Cheryl Esposito, Alternate  
Max Brady, Alternate

**Other:** Julie Brady, Recording Secretary  
Nathan Neill, Town Attorney

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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 three foot (3') high area variance to construct a six foot (6') high stockade fence, eight feet (8') +/- back from the right-of-way at 7597 Scotland Rd. in the Town of Newstead, owned by Mark & Jacqueline Childs. Town Code being varied: Article IV Chapter 450-36 A (1)(a). SBL# 22.00-1-5.24**

Public hearing was open for comments at 6:32pm.

Nathan Neill, (Town Attorney) 6424 Hake Rd., Akron, NY – The height of the fence in the law was designed for visibility. With a fence variance you should be careful so you can see beyond or so they can see you coming out of the driveway and have time to respond.

Mark Childs (Owner/Applicant), 7597 Scotland Rd., Akron, NY – The fence will be professionally installed closer to the home than the pine trees were. The trees had to be taken down due to a disease that killed them. There will be almost two truck lengths after the fence before the end of the driveway, approximately 30' from the edge of the pavement or 42' from the ROW. Mark showed the board on the survey.

Nathan Neill stated that after viewing the site, there would be plenty of room for visibility.

Bill K. asked if there were any other comments three times and if there was any written comment. After hearing none, a motion was made by Harold F. to close the public hearing and seconded by Fred P. All Ayes. No Nays. Public hearing was closed at 6:47pm.

Harold F. questioned why there was a four foot fence on the survey. Mark C. said that he was considering putting it up the side of the property.

Harold F. questioned Nathan about the site visibility and safety issues.

Bill K. and Adam B. both noted that the previous intersection at Scotland and Martin Rd. is poor to begin with and would leave little reaction time. However, Bill K. stated that this neighborhood is not a high traffic area.

Fred P. asked Mark C., why he needed a six foot high fence instead of a three or four foot fence. Mark C. stated because of the nature of the property and its location directly across the road from a farm. Due to the way the wind blows across the open agricultural land and the activity of this farm, all of the dust and debris blows directly at his home. The fourteen feet high spruce trees cut down on the dust, debris and noise of the farm, but he was forced to cut them down because they died. Fred P. read the law and sees no difference to have the fence two feet higher.

John K. inquired about planting new shrubs or trees.

Mark C. noted the time factor. He still may plant new trees but it would take a long time for them to grow tall enough to help this situation right now.

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Harold F. noted that we have to be careful of special circumstances.

Adam B. said that he agrees with Fred P. that 2' will not make that big of a difference and that he does not see this as a special situation.

Mark C. stated that a neighboring property fronting on Martin Road has a solid stockade fence right at the road.

The board continued to look at the survey and discuss options and the type of fence with Mark C.

Bill K. made a comment that even if the road is expanded, a fence is not a permanent structure and could be taken down.

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 (Y) JK (Y) WK (Y) HF (Y) FP(Y) Overall – (Yes - Fail)  
REASON: A four foot fence 30' from ROW or trees and bushes could be planted
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 (Y) WK (N) HF (N) FP (N) Overall – (NO - Pass)  
REASON: A fence is in character for this neighborhood
3. Whether the requested area variance is substantial.  
AB (Y) JK (Y) WK (N) HF (Y) FP(Y) Overall – (Yes – Fail)  
REASON: The code allows three feet, requesting double.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.  
AB (Y) JK (Y) WK (Y) HF (Y) FP(Y) Overall – (Yes – Fail)  
REASON: Traffic safety concerns, possible visual obstruction for drivers
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(Y) Overall – (NO - Pass)  
REASON: Not self-created, trees died, cannot control wind, dust, debris

Discussion took place by the board regarding placing conditions on this variance or considering four foot high fence instead of six foot high. Overall consensus would be no to even a four foot high variance. Alternate solutions were discussed like building a berm.

A motion was made by Adam B. to deny the variance. Seconded by John K. The Zoning Board was polled to deny this variance as follows:

Bill K. – Yes, Fred P. – Yes, John K. – Yes, Harold F. – Yes, Adam B.- Yes Variance request was denied unanimously.

Minutes of the February 26, 2015 were discussed, noting that after review and guidance from the Town Attorney, Nathan Neill, it has been established that the Zoning Board of Appeals does not have the jurisdiction over wind turbine variances, (only the Town Board does).

A motion to accept the minutes with the above noted was made by Harold F., seconded by John K. All Ayes, No Nays.

A motion was made to close the meeting at 7:28pm by Fred P., seconded by Adam B. All Ayes. Meeting adjourned.

Respectfully submitted,  
Julie Brady, Recording Clerk