

**TOWN OF NEWSTEAD - ZONING BOARD MINUTES**  
**Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY**  
**December 6, 2018**

**MEMBERS**

**PRESENT:** Bill Kaufman (WK) Chairperson  
Adam Burg (AB),  
John Klodzinski (JK)  
Vickie Lombard, (VL)  
Fred Pask (FP)

<b>APPROVED</b> <b>5/23/2019</b>
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**Other:** Max Brady, Alternate  
Brendan Neill, Town Attorney  
Julie Brady, Recording Secretary

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Meeting was called to order at 6:08pm.

Bill K. reviewed the procedures and asked if there was any correspondence. Julie B. stated that there was no correspondence at this time. Julie B. read the legal notice for the variance requests as follows:

Property Address: 13047/13035 Main Rd., Akron, NY 14001 in the C-2 Zone

Applicant's Name: Dominic & Laura Buonanno

- 1. Requesting a 22 foot area variance for a lot frontage**  
**Town Code varied: Article III Chapter 450 D. (2)**
- 2. Requesting an area variance allowing accessory structure to straddle lot line of common ownership to rear/southern boundary of said property.**  
**Town Code varied: Article IV. Chapter 450-27 B.**
- 3. Requesting an area variance of 17 ft. +/- to the easterly side setback created when subdividing property.**  
**Town Code varied: Article III Chapter 450-21 E (2) (b)**
- 4. Requesting an area variance of 11,835 sq ft. for the parcel size created when subdividing said parcel.**

Public hearing was open for comments at 6:11 pm.

Dominic "Bob" Buonanno, 13051 Main Rd., Akron, owner of property. Bob explained that he lives in the house south of 13047 Main Rd. The tenant (Nature's Prize) is interested in purchasing the commercial property. Bob would like to keep the house that is on the same parcel to the east of the commercial property to supplement their income in retirement. The purchaser does not want the rear land, so they would like to subdivide the parcel (61.00-4-39.11) into two, separating the house from the commercial buildings and merging the rear land with his property. This will allow the farmer to have continued access to the fields in the rear. The existing shed that straddles the lot line is the tenants and is temporary. The septic tank is directly behind the commercial buildings and is to the east side of the rental house. Bob B. is requesting 201' of frontage for the stores, leaving 128 feet for the rental house.

Julie B. read the planning board minutes from Oct. 29, 2018 stating the recommendation for 22' area variance for the residential lot width at 13047 Main Rd., Akron.

Vickie L. asked if the properties were there when Bob obtained them. Bob said that the buildings were all existing and in his family. They had a business at this location in the 1970s.

Bill K. asked three times if there were any further public comments. Hearing none, Fred P. motioned to close the public hearing, seconded by Adam B. All Ayes, No Nays.

Bill K. stated that he has a problem with rear lot line for the commercial buildings and would prefer to see it moved back further. Bob B. stated that most commercial properties have smaller businesses closer to the road with larger businesses behind them. He already has an agreement with the tenant and if he moved it back, the commercial property would be too close to his house, making it more difficult to sell it in the future.

The zoning board discussed options and procedures. If the lot line was moved back to be even with the adjacent property to the west (Subway's) rear lot line, this would change the request to 5,202 +/-sq ft. instead of the requested 11,835sq ft.

Julie B. asked for the correction on the third variance request to be 37 ft. instead of the 17 ft. based on the fact that the adjacent property to the commercial property is residential use in the route 5 overlay. Amended code to be varied:

**450-26 F (2): Side yard setbacks shall be a minimum of 30 feet, but shall be a minimum of 50 feet for a commercial use abutting a residential zone or use.**

Brendan Neill, Bob Buannon and the zoning board unanimously agreed.

The zoning board completed the review sheet as follows:

**#1 Variance Request:**

**Requesting a 22 foot area variance for a lot frontage**

**Town Code varied: Article III Chapter 450 D. (2)**

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) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: Existing buildings make it impossible to achieve any other way.
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) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: There will be no change in neighborhood.
3. Whether the requested area variance is substantial.  
JK (N) WK (N) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: With respect to the existing structures it is not that large of a request.
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) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: There is no negative physical or environmental impact including drainage because there will not be a change to other the existing /surrounding properties.
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) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: The structures on these properties were existing prior to the zoning code.

A motion was made by Adam B. to approve the variance. Seconded by John K. All Ayes, No Nays.

Variance request was approved unanimously.

**Variance #2:**

**Requesting an area variance allowing accessory structure to straddle lot line of common ownership to rear/southern boundary of said property.**

**Town Code varied: Article IV. Chapter 450-27 B.**

The zoning board completed the review sheet as follows:

1. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than the area variance.  
JK (Y) WK (Y) AB (Y) VL (Y) FP (Y) Overall – (YES- Fail)  
REASON: Yes, the applicant can move the shed.
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) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: There will be no change in neighborhood. The owner did not even know it was on the property line.
3. Whether the requested area variance is substantial.  
JK (N) WK (N) AB (N) VL (N) FP (N) Overall – (NO-PASS)

REASON: It would only need to be moved five feet off the property line.

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) AB (N) VL (N) FP (N) Overall – (NO-PASS)

REASON: There is no negative physical or environmental impact including drainage because it is already there and has not created any problems.

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 (Y) WK (N) AB (Y) VL (N) FP (Y) Overall – (3-2-PASS)

REASON: The structures on these properties were existing prior to the zoning code.

A motion was made by Fred P. to approve the variance. Seconded by John K. All Ayes, No Nays.

Variance request was approved unanimously.

### Variance #3:

Requesting an area variance of 17 ft. +/- to the easterly side setback created when subdividing property. Town Code varied: Article III Chapter 450-21 E (2) (b)

#### Amended during the meeting to the following:

**Requesting an area variance of 37 ft. +/- to the easterly side setback created when subdividing property in the C-2/Route 5 Overlay Zone. Town Code varied: Article III Chapter 450-26 F(2) due to the fact that the commercial property is adjacent to a residential use.**

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) AB (N) VL (N) FP (N) Overall – (NO-PASS)

REASON: Existing buildings make it impossible to achieve any other way.

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) AB (N) VL (N) FP (N) Overall – (NO-PASS)

REASON: There will be no change in neighborhood.

3. Whether the requested area variance is substantial.

JK (N) WK (N) AB (N) VL (N) FP (N) Overall – (YES-FAIL)

REASON: This is a substantial request, however, it would not be reasonable to move the lot line to the east more because it would be in the middle of the residential lot.

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) AB (N) VL (N) FP (N) Overall – (NO-PASS)

REASON: There is no negative physical or environmental impact including drainage because there will not be a change to other the existing /surrounding properties.

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) AB (N) VL (Y) FP (N) Overall – (NO-PASS)

REASON: The structures on these properties were existing prior to the zoning code. Vickie L. voted "Yes" because it is a large lot and the adjacent property is owned by the same owner. There are many things that could be done with this property.

A motion was made by Fred P. to approve the variance. Seconded by Adam B., All Ayes, No Nays.

### Variance #4

Requesting an area variance of 11,835 sq ft. for the parcel size created when subdividing said parcel.

Amended during the meeting by agreement of the board and the owner, to request the following instead:

**Requesting an area variance of 5,202 +/- sq ft. for the commercial parcel when subdividing, 13035 Main Rd. in the C2/Rte 5 overlay district which requires a minimum area of 45,000 sq ft.**

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 (Y) WK (Y) AB (Y) VL (Y) FP (Y) Overall – (YES-FAIL)  
REASON: Yes, there is enough land to meet the 45,000 sq ft. required code.
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) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: There will be no change in neighborhood.
3. Whether the requested area variance is substantial.  
JK (Y) WK (N) AB (Y) VL (N) FP (N) Overall – (3 NO/2YES -PASS)  
REASON: Adam B. state this is substantial, however, it would not result in the variance being denied based on this one fact. Bill K. stated that due to the fact that they previously reduced the request to lessen the request by more than 50%, the request is no longer substantial.
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) AB (N) VL (N) FP (N) Overall – (NO-PASS)  
REASON: There is no negative physical or environmental impact including drainage because there will not be a change to other the existing /surrounding properties.
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 (Y) WK (Y) AB (Y) VL (Y) FP (Y) Overall – (YES-FAIL)  
REASON: The lot line could be moved back to meet the current 45,000sq ft code. However, the board recognizes the need for the farmer's access as the Town of Newstead is a right to farm community, so this best solution to the situation.

With a three pass and two fail vote, a motion was made by Fred P. to approve the variance. Seconded by John K. The board voted as follows to approve the variance request: Adam B. yes, Fred P. yes, Bill K. yes, John K. yes, Vickie L yes. Hearing all ayes and no nays, the variance was approved unanimously.

The minutes were reviewed from November 8, 2018. Julie B. explained that due to a conflict in the zoning code, the applicant at 12044 Rapids Rd. did not need a variance and has received a building permit and started building his pole barn ten feet from the east side lot line. The codes will be reviewed and corrected for discrepancies per Brendan Neill.

Motion was made to accept the minutes of the November 8, 2018 meeting by Fred P., seconded by Bill K. All Ayes, No nays.

Adam B. motioned to adjourn the meeting at 7:52pm, seconded by John K., All ayes, No nays.

Meeting adjourned.

Respectfully submitted,  
Julie Brady, Recording Clerk