

TOWN OF NEWSTEAD - ZONING BOARD MINUTES
Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY
January 12 and February 2, 2023

MEMBERS

PRESENT: Bill Kaufman (WK) Chairperson
Adam Burg (AB)
John Klodzinski (JK)
Vickie Lombard (VL)
Mike Mutter (MM)

Other: Dave Miller (DM) CEO
Emily Janisz, Town Attorney
Julie Brady, Recording Secretary

ABSENT: Fred Pask (FP)
Joshua Kraft (JK)

The meeting was called to order at 6:34pm by Bill K. to continue the use variance request to construct and operate a hotel with 30-35 rooms on site including an additional event venue to service wedding and golf events in the R-A district, owned by Lucas James/ Arrowhead Timberlodge LLC.

The zoning board went into executive session at 6:32pm.

A motion was made by John K. to come out of executive session at 7:40pm; seconded by Adam B. All Ayes, No Nays.

Motion was made by Adam B. to retable the use variance for Arrowhead Boutique Hotel/event venue located at 12292 Clarence Ctr Rd., Akron, NY 14001 in the R-A Zone to February 2, 2023 at 6:30pm. Seconded by Vickie L., Hearing all Ayes No Nays the use variance request will be continued on February 2, 2023 at 6:30pm, providing additional time for the applicant to supply more detailed financial (& other) documentation.

Adam B. motioned to adjourn the meeting at 7:47pm, seconded by Mike Mutter, Hearing All Ayes, No Nays the meeting was unanimously adjourned until February 2, 2023.

Meeting resumed on February 2, 2023

PRESENT: Bill Kaufman (WK) Chairperson
Adam Burg (AB)
John Klodzinski (JK)
Vickie Lombard (VL)
Mike Mutter (MM)

Other: Dave Miller (DM) CEO
Emily Janisz, Town Attorney

ABSENT: Fred Pask (FP)
Joshua Kraft (JK)
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The meeting was called to order at 6:34pm by Bill K. to continue the use variance request to construct and operate a hotel with 30-35 rooms on site including an additional event venue to service wedding and golf events in the R-A district, owned by Lucas James/ Arrowhead Timberlodge LLC.

The board read Lucas James' February 1st submission of documents until 6:53pm.

Dave M. laid out the original submission from 2020 to compare with the current submission.

Bill K. and Lucas J. discussed the restaurant. Lucas J. handed out the business plan to the board.

The zoning board went into executive session at 6:55pm. John K. motioned to go into executive session, seconded by Adam. All Ayes, No Nays.

A motion was made by Mike M. to come out of executive session at 8:02pm; seconded by Adam B. All Ayes, No Nays.

Dave M. commented on the packet submitted late yesterday afternoon and asked if everyone had a chance to look that over. The original application from 2020 included a proposed restaurant on the first floor. In late 2022, the proposal showed a wedding banquet facility on the third floor and what you have now shows a restaurant on the third floor. We have received three different submissions. John K. said that the drawings show both a restaurant and a wedding venue.

Mike M. addressed Lucas, "You are going for a variance in the R-A for a hotel. Why aren't you going for rezoning?" Lucas stated that he was told from the beginning that rezoning was not going to happen there. Bill K. stated it would be considered spot-zoning. The master plan designates areas for hotels. Bill K. also questioned the unforeseen, "what if the golf course closes?"

Dave M. noted that golf courses have evolved into an entertainment facility. There is nothing in our code that defines exactly what a golf course is. The evolution is changing over the years, from his personal perspective.

The following vote was taken for the use variance for Arrowhead Boutique Hotel/event venue located at 12292 Clarence Ctr Rd., Akron, NY 14001 in the R-A Zone.:

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial: Yes **X** No _____
 AB-Y; JK-Y; WK-N; VL-Y; MM-Y **(PASSED)** 4 Ayes, 1 Nay
 Proof: VL: agreed society is changing golf course isn't just a golf course anymore
 MM, JK, AB: were satisfied with the P&L & Balance Sheets submitted. BK: A return can be made from current operation being performed on property.

Motion was made to pass criteria #1 by Vicki L, seconded by Mike M. All Ayes, No Nays

2. The alleged hardship relating to the property is unique. Yes No **X**
 AB-N; JK-N; WK-Y; VL-Y; MM-Y **(FAILED)** 2 Ayes 3 Nays
 Proof: WK: (Y) Because property zoned R/A but given a special use permit for an activity not allowed in this zone. MM: (N) already gave special use permits, hotel in R/A zone is not a permitted use. VL: (Y) based on previous approvals to expand has made the situation unique. AB: (N) The courts have held that "It's not the uniqueness of the plight of the owner but the uniqueness of the land causing the plight which is the criterion". The land is not unique.

Motion was made to fail criteria #2 by Adam B., seconded by John K., All Ayes, No Nays

3. The requested use variance, if granted, will **not** alter the essential character of the neighborhood. Yes **X** No _____
 AB-Y; JK-Y; WK-N; VL - Y; MM-Y **(PASSED)** 4 Ayes 1 Nay
 Proof: WK: (N) Adding this facility has the potential of being opened and staffed 24 hours a day which will add hours of lighting, noise, traffic issues that are currently not there. MM, AB, JK, VL: (Y) this would be a continuation of a previously allowed uses like the venues already there.

Motion was made to pass criteria #3 by Adam B., seconded by Vickie L. All Ayes, No Nays.

4. The alleged hardship has **not** been self-created: Yes (Not self-created) **No X**
 AB-N; JK-N; WK-N; VL-Y; MM-Y **(FAILED)** 2 Ayes, 3 Nays
 Proof: WK: Applicant stated, "We had very little knowledge of what we were getting into when buying the golf course." VL: (Y) Yes it has not been self-created due to Covid, a situation beyond human control caused a delay. Investing diligently to bring it to today's standards. Investment based on previous approval prior to covid. AB: (N) I do believe it is self-created, based on the current request. MM (Y) This was not self-created due to Covid, putting money back into the golf course.

Motion to FAIL criteria #4 by John K. seconded by Mike M., All Ayes, no nays.

A vote was taken for the use variance as follows:

Adam (Yay) – Passing
John (Nay) – Fail
Bill K (Nay)- Fail
Vickie (Yay) - Passing
Mike M. (Nay) – Fail

Motion to deny the variance was made by Adam B. , seconded by John K. All Aye No Nays.
The variance was denied.

DETERMINATION OF ZBA BASED ON THE ABOVE FACTS:

The ZBA, after reviewing the above four proofs, finds:

- (X) That the applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes.

- () That the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA shall grant a variance to allow use of the property in the manner described below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

John K. motioned to adjourn the meeting at 8:31pm, seconded by Bill K., Hearing All Ayes, No Nays the meeting was unanimously adjourned.

Respectfully submitted for the January 12th meeting as being present and by transcription of recording on February 2, 2023,

Julie Brady
Zoning Board Clerk