

TOWN OF NEWSTEAD - ZONING BOARD MINUTES

Newstead Town Hall, 5 Clarence Ctr. Rd, Akron, NY

June 26, 2025

MEMBERS

PRESENT: Bill Kaufman (WK) Chairperson
Adam Burg (AB)
Vickie Lombard (VL)
Fred Pask (FP)
Joshua Kraft (JK)

OTHER: David Miller, Code Enforcement Officer
Katie Bird, Clerk
Julie Brady, Senior Clerk
Emily Janicz, Town of Newstead Attorney
Drew Reilly, Wendel
Justine Seefeldt, Wendel, Town Engineer

UN-APPROVED

06/26/2025

The meeting was called to order at 7:01pm with the pledge to the flag.

Bill K. reviewed the house rules and asked if there was any written correspondence. Katie B. answered no.

Katie B. read the legal notice as follows:

Request for a 12' front yard area variance for an accessory structure.

Town Code Varied: Chapter 450-27 A

Location: 7309 Maple Road, Akron NY 14001

Owner/Applicant: Christopher & Janet Elis

Bill K. opened for public comment.

Christopher and Janet Elis of 7309 Maple Road, owner and applicant, explained that they would like to build a pole barn next to their property without having to move their existing above ground pool. Janet further explained that she and her husband would run into financial difficulties if they were required to bring in fill to place on alternative locations on the property.

Bill K. asked if the home was closer to the edge of right away than the pole barn distance they are requesting.

David Miller commented yes, and that he was able to stop by the location and measure the distance firsthand and there is a significant drop-off behind the location they are requesting which would need a significant amount of fill to accommodate alternative locations. Additionally, they are requesting the minimum setback required to complete the project.

Bill K. asked if there were any other comments. Hearing none, Fred P. motioned to close the public hearing, seconded by Vickie L. Hearing All Ayes, No Nays, the public hearing was closed at 7:14pm.

Bill K. asked the zoning board if they had any questions or comments. Hearing none, the zoning board voted on the variance request 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.
POLL: AB-Y WK-N VL-N FP - N JK-N (PASS)
Reason: Financial burden to bring in fill, Practical location with 7' drop-off, minimum variance requested.
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.
POLL: AB-N WK-N VL-N FP -N JK-N (PASS)
Reason: Fits in the character of the neighborhood.
3. Whether the requested area variance is substantial.
POLL: AB-N WK- N VL-N FP - N JK-N (PASS)
Reason: Minimal request, supported by the Code Enforcement Officer (apx.16%).

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

POLL: AB-N WK-N VL-N FP-N JK-N (PASS)

Reason: No watershed, or wetland changes.

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.

POLL: AB-Y WK-Y VL-Y FP-Y JK-Y (FAIL)

Reason: Resident is familiar with layout of property when purchased.

A motion was made to approve the variance request by Adam B., seconded by Vickie L. Hearing All Ayes, No Nays, the zoning board unanimously approved the variance request.

The meeting was called to order at 7:17pm.

Katie B. read the legal notice as follows:

Request for a use variance for a Tier 3 solar energy system in the R-A zoning district.

Town code Varied: Chapter 450-15 in conjunction with Chapter 180-8

Location: 7300 Sand Hill Road, Akron NY 14001

Owner: Ciminelli Muir Woods LLC; **Applicant:** Jeffery D. Palumbo, Attorney for National Energy Development LLC

Bill K. reviewed the standards for a use variance request and 5 factors when rendering a decision but clarified this was being treated as a public utility and the standards are different. He informed the public some of the questions they will inquire about, which include if there is a be a public need for the utility, minimum intrusion to the surrounding area, if there was an alternative location and if a SEQR review was completed and their findings. Bill K. asked if there was any written correspondence. Katie B. answered yes, and a copy was provided to each Zoning Board member.

Bill K. read the written correspondence from resident Ken Hoebert of 7343 Sandhill Road. The letter expressed concerns regarding the intent of the property being changed for its original use for green space or future hopes of a park. He expressed concern with who the solar project would benefit and that it could potentially be considered a hazardous site. His concerns additionally expressed the diminishing agricultural space and how that along with hazardous waste could affect the community of Newstead.

Bill K. then clarified that this piece of land was initially purchased by Ciminelli Muir Woods, LLC, to replace and mitigate that piece of land for a swap in commercial development that they purchased to keep the environment fair. Its intent was to keep it in green space and leave it undeveloped. They found another area to complete the delineation process. Emily Janicz confirmed that the Army Corps of Engineers was contacted.

Bill K. opened for public comment.

Matthew Dubois, Attorney representative for owner Ciminelli Muir Woods, LLC, explained they are requesting a use variance for 8 acres on the 64-acre parcel to proceed with a fenced community solar site. He explained that the site was acquired in 2006 and is currently vacant land. The plans include 1.5 megawatts of power that would be feasible enough that the current surrounding substation could handle its capacity. He confirmed the intent was to request that the project be allowed in the R-A zoning district and will otherwise be in compliance with all setbacks and soil/wetlands requirements. He further explained that the applicant National Energy Development LLC, is a local development based in Depew with a number of projects in works. He further explained that it does apply to be a public utility and that it is considered a public necessity. Matthew then explained the site chosen is an ideal site and works with National Energy Equity, a national company to locate prime sites to utility inter-connection with capacity.

Bill K. then asked how many acres the whole parcel is, and how many are you asking to use?

Matthew D. answered 64 acres total. The fenced area would be 8 acres, and the access road would make the whole project a total of 14 acres.

Bill K. asked what do you plan to do with the remaining portion of the property?

Matthew D. responded that the developer doesn't have any plans for the remaining portion of the property and the remaining portion would remain vacant.

Joshua K. asked for clarification based on the National Wetlands inventory map for the wetland that is present; and where the proposed solar site is located and if that is something that needs to be looked at?

Matthew D. responded that it was included in the site plan and taken that into account with their engineering firm and that it was designed with the 30' setback requirement in mind.

Drew Reilly, representative of the Town of Newstead with Wendel Engineering, clarified that the wetlands needed to be updated since the law was updated January 1, 2025, and the previous wetlands map is 2 years old.

Bill K. informed the applicant that if the variance was granted that it would be restricted to the minimum. If anything, additional would be requested the applicant would need to resubmit it to the zoning board for approval.

Matthew D. confirmed that he understood and that the amount requested was requested for practical consideration with what the substation capacity could manage without additional upgrades.

Bill K. asked if there was a mitigation plan that was in place when this project becomes obsolete? Is there a plan to return the property back to its natural state?

Matthew D. confirmed, that yes, it is part of Newstead Solar Law standard for every project to post a decommissioning security bond of 125% value of the project with an escalator for the end of the life of the project.

Adam B. asked if there is a deficiency for power that this site would fill and what impact would that have on electric customers if it was not granted?

Matthew D. informed that it was the policy of the state to obtain more renewable energy, and there is a floor of 70% of renewable energy to be achieved by 2030 and therefore it is considered a public necessity. He informed Adam there would be 1.5 megawatts less power to the grid and would reduce the supply. If residents subscribe, they would receive incentives of tax credits off of their energy bill.

Joshua K. asked how that process worked, in subscribing to that credit?

Matthew D. explained that your normal utility company works with the community solar company in conjunction with the state to credit consumers who subscribe.

Bill K. asked if there is any intention of putting battery storage on the site?

Matthew D. stated there was no battery storage on site.

Joshua K. asked if there would be any transformers on site, and if they contained oil?

Matthew D. confirmed there would be transformers on site, with cement pads and there is a small amount of oil.

Bill K. asked if there was a maintenance plan for periodic maintenance of the facility?

Matthew D. confirmed that there is an operation maintenance plan that is required as part of the solar law, which includes periodic maintenance of the panels and surrounding groundwork.

Bill K. asked Dave Miller, what happens if there is a violation of the agreement, and can the planning board set up requirements for grooming the property?

Dave M. confirmed that yes, if they are in violation of the original site plan approval they will be issued a violation notice.

Joshua K. asked how long construction activities would take.

Matthew D. informed him that the project if projected in Spring could be constructed by fall if approved.

Adam B. asked if the infrastructure permits were already obtained to hook up into the main grid?

Matthew D. informed Adam they have already obtained and confirmed interconnections to ensure it was possible to proceed and would supply the interconnection agreements for the Town review.

Bill K. asked if there were any additional questions, hearing no. He opened the floor to public comment.

Eric Friedman, resident of 7310 Sandhill Road, was concerned about the original plan for the greenspace this land was intended for. He expressed distrust with the Town and the residents with its original intent. He further explained his concern with the health disturbances that may occur with the transformers, the glare, potential radiation and proximity to his property. He further explained that his view of his agricultural land would be obscured with solar panels and, that 450' of his property would be obscured with their entrance driveway, disturbances of heavy equipment, and industrial equipment. Eric further explained that he was concerned with the impact a commercial solar property would have on the value of his property and the resale value of his home. He suggested it be placed in a commercial zoned property instead of agricultural zoned property so that it could rather be leased to a farmer for its original intent.

Bill K. asked if the variance was granted, will there be another public hearing for the planning board?

Dave Miller informed Bill K. that it would go to the Planning Board for recommendation to the Town Board and the Town Board holds a public hearing prior to voting.

Colleen Friedman resident at 7310 Sandhill Road expressed concern with the hum that transformers emit. Additionally, she was concerned with how this project correlates with the Town of Newstead comprehensive plan with protecting agricultural land and prime farming soil and if granted what precedence does this set future projects being allowed in the Town.

Jean York resident at 7269 Sandhill Road informed the board about the previous project that was not welcome in the area, that included new electrical lines and boosted the electrical power in the area, she questioned why this project was needed since this project already fulfilled the need for electrical power in the area and how this would benefit the immediate need in Newstead. As far as renewable energy as she informed the public the Governor expressed a push for nuclear energy, and that solar energy may be an obsolete renewal energy source in the future. Jean went on to express the need to preserve the agricultural land in the area.

Mike Keller, resident of 7287 Sandhill Road expressed concern that wildlife in the area will be impacted and his living experience will be disturbed by the solar farm installation.

Kris Beyer-Jones owner of 7065, 7023, and 7033 Sandhill Road asked for clarification of a tier 3 solar project. She further questioned why this could not be incorporated in a C-1, C-2 or Industrial zoned location. She questioned how easy it would be to expand on the 14 acres given the parcel is 64 acres total. Kris B. further explained she was stopped from putting up a personal windmill on a private residential residence but why is it okay to build a solar farm in a residential area? Her concern followed with the decommission issue whether the business was to go out of business or is no longer in operation, who would remediate and maintain the solar farm if approved. She explained that they lease out their properties to local farmers who are running out of land in the area and would like to keep the property a right to farm community. She expressed concern for the value of her properties if a solar farm was installed and how these impacts could impact generations in her family.

Dave Miller, addressed the concern with the tier 3 project and how it was based on consumption versus size. He informed the residents that tier 3 was requested because it is strictly for commercial sale and not size.

Kris Beyer-Jones asked why the Town code has it written that a tier 3 solar project can be up to 100 acres?

Emily Janicz, Town Attorney informed the residents that there is an upper limit on the size a tier 3 can be, but it is designed to the code in a commercial and industrial zone.

Kris Beyer-Jones asked then theoretically they requested a tier 3 for the use of commercial production, but could the applicant have chosen a smaller property?

Emily Janicz, said that it will be a consideration for the Zoning Board and said that will be a question for them to address, if there is an alternative location that could have been chosen for this project.

Kris B. asked if the Zoning Board would be the first approval of the variance?

Bill K. confirmed yes, if they meet the elements, we would be the first approval but there would be additional conditions set forth by the Town and Planning Board and State standards.

Kris B. expressed her concern with the initial intention of protecting the greenspace and how that would be reviewed by the board.

Bill K. confirmed that SEQR review would be necessary to gather additional information for review to ensure the environmental impact of this project on this property prior to any approval of the process.

Courtney Weigand resident of 6902 Sandhill Road informed the board that she had an extensive background in civil engineering in utility engineering. Her concerns with the project included aesthetic views of a solar project versus vacant farmland that could be used for farming. As well as the impact of property values and how this would impact neighboring properties. She expressed neighboring properties have active farming and they will be impacted by the solar project. She voiced noise pollution that would not minimize the sound of transformers. Courtney added that the temperature would increase, and the natural habitats would be disturbed including soil health. Courtney is aware of pheasants, mink, as well as short-eared owls which is a declining species and regularly observed by Cornell school of Ornithology in this location. She stated it would add strain on the local infrastructure and services in the community. She was concerned with the buy in subscribing to this energy program. She additionally commented that the lifespan of the solar project only lasts 25 to 40 years and the return from the impact would be detrimental to the soil quality and farming community. Courtney summarized that the transformers used have PCB's and if they have catastrophic failures that it will affect the water table.

Matthew D. informed Courtney W. that the program was free to residents.

Ross Rumfola resident at 11541 Miland Road expressed distrust in the Town of Newstead and Ciminelli Muir Woods, LLC for a change in plan that was originally set forth to maintain greenspace.

Bill Weigand, resident at 6902 Sandhill Road expressed that Ciminelli Muir Woods, LLC lied about the original intent of the property and how it was supposed to be used when purchased.

Kurt Beyer, resident at 7302 Sandhill Road, asked the board to consider the precedent that this would set for the rest of the community for future projects.

Chris Merkle, resident at 6992 Sandhill Road, said that the sacrifice the community would make to only see 10% off our electric bill would not be a feasible return.

Bill Detine, resident at 7317 Sandhill Road, voiced his view would be obstructed and the climate in the area is not beneficial for the solar farm project considering we get short days of sun.

Dan Senko, resident at 7271 Sandhill Road articulated it was a commercial solar complex and wanted to play a video of transformer noise to the public.

Bill K. informed the residents that because he does not know the source of the video and its location that it was advised not to play the video.

Dan Senko, added that solar power is relatively clean, but the inverters make noise. He questioned the response time for first responders and if our fire company had training in this equipment in case of an emergency. He additionally added the question on how this would affect his property value and how this project would obstruct his views.

Joseph Buccella, resident at 6887 Sandhill Road, commented there are 56 sunny days a year and does not see the value in this project.

Maureen Warren daughter of Larry and Beatrice Carey residing at 11241 Miland Road commented that the property she grew up on always was quiet and was a environmental sanctuary.

Colleen Friedman resident at 7310 Sandhill Road, commented that a commercial industrial project should not be allowed in a agricultural zoned district.

Pete Richardson resident 7223 Sandhill Road commented that this project feels like “Spot Zoning”, with comments of minimal intrusions not being the case. He also went on to quote a Buffalo News article. That allegedly stated that regardless of what happened after the purchase of this parcel by Muir Woods, LLC, it would be turned over into a park, the article also assured the board there would be no additional development on the site. - Sources Unknown. Pete restated that his trust in the developing company may be a pattern with false credibility to what its original intent my Ciminelli Muir Woods, LLC was quoted to be.

Emily Janicz, commented that she contacted the US Army Engineer Corps, to ensure there was no longer any wetland mitigation needed on this parcel. The project was modified, so that the wetlands mitigation was no longer required in Newstead. Emily, also explained that she cannot speak for Ciminelli Muir Woods, LLC in regards to business operations.

Eric Friedman, resident of 7310 Sandhill Road stated that Ciminelli Muir Woods, LLC is using a tactic called “Banking Wetlands”. They find property to purchase and move wetlands, in order to proceed with their projects.

Bill K. confirmed that the property would be leased.

Sara Cullinan resident located at 6905 Sandhill Road, questioned how this would affect the tax roll?

Emily Janicz informed the residents that the property would undergo a payment in lieu of taxes (PILOT Agreement), she further explained there would be a negotiation between the applicant and Town, if the project would be approved and move forward that would require a payment to the Town. This payment would account for the difference in the value of unimproved versus improved upon value.

Drew Reilly stated that the intent of the project and the meeting is to regulate projects such as this tier 3 solar project. He informed the public that solar companies can approach the Zoning Board with projects such as this, as a public utility. He continued with re-explaining the due diligence a SEQR requirement would take in ensuring the environmental impact review is fully conducted to provide information for complete determination.

Emily Janicz commented that the SEQR process would need to be conducted, per the Town Engineer and the Zoning Board would need to declare lead agency with coordinated review.

Bill K. asked if there were any additional comments.

Matthew D. thanked the community for public comments and concerns. He addressed that the concerns would be brought to the applicant for review.

Fred P. motioned to adjourn the public hearing, keeping the public hearing open for future comments, second by Joshua K. Hearing All Ayes, No Nays, the public hearing was adjourned.

Adam B. motioned to declare lead agency for SEQR review with a coordinated review attached. Fred P. motioned, second by Fred P. Hearing all Ayes, No Nays, the motion was approved.

The minutes from September 19, 2024, were reviewed. Vickie L. motioned to approve the minutes, seconded by Adam B. Hearing All Ayes, No Nays, the minutes were approved unanimously.

Respectfully submitted by,

Katie Bird
Recording Secretary