

AV08-161101c  
Staple Gierke  
14301 Chagrin Woods Dr.  
**Newbury, OH 44065**

The Newbury Township Board of Zoning Appeals public hearing was called to order by Mr. Lou Tomsic Chairman, at 7:35 p.m. on November 1, 2016 with board members Mary Lee Brezina, Karen Endres, Ed Meyers and Chris Yaecker present. All in attendance who wished to speak at this hearing were duly sworn and asked when testifying to state their name and confirm being sworn in. Mr. Tomsic read the BZA procedures to be followed and confirmed this was a continuance of the 10/4/16 hearing and was now being recorded. Mr. Tomsic read the applicant's variance request – for an agricultural barn expansion:

. **Staple Gierke** requests an Area Variance to construct an agricultural addition to an existing barn for a 80 ft. x 120 ft. riding arena (vs. Art. V, Sec. 5.02 A-5, max. 1280 sq. ft. allowed size & Art. IX, Sec. 9.00 A-2) on parcel 23-186454 at 14301 Chagrin Woods Dr. in the Chagrin Woods Subdivision R-1 Residential District

Mr. Tomsic noted Mr. & Mrs. Babcock attending – they said they were not interested in changing their property line boundaries.

Mr. Tomsic addressed the applicants – they said nothing had changed from their original request to build the expanded riding arena.

Mr. Gierke discussed his options for drainage tile locations and outfall, preferably to the road ditch, all dependent on the final building site.

In answer to Ms. Endres question, Mr. Gierke said the barn had been built for agricultural use by his grandfather who tended horses there on a daily basis.

Mr. Meyers mentioned that he had not attended the initial meeting on this matter but he understood there may be a question about whether this hearing is for the purpose of considering an Area or a Use Variance in the event it is determined that the use was no longer non-conforming because it had terminated for more than two years. Mr. Tomsic said this was to be considered as an Area Variance as no proof negating continuous use had been presented here.

Mr. Joyce explained that any 2 year interruption of agricultural use would require a notarized documented complaint to be filed for court action – records show this barn was built in 1986 when the sub-division was less than 35% built out and was in continuous agricultural use thereafter. Mr. Gierke confirmed even without seeing horses inside, the manure pile in the backyard was proof enough.

Mr. Tomsic confirmed that expansion of this agricultural parcel was not an option as the Babcocks were uninterested in selling off any of their property for Mr. Gierke to qualify for the 5 acre agricultural exemption that would not have needed any zoning variance.

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Mr. Tomsic asked for comments from the audience. Mr. Wolfson, a neighbor to the east, reiterated his objections presented at the first hearing citing dust, noise, traffic, water drainage and (horses or not) the inappropriateness of such a large structure in a residential sub-division with loss of trees, aesthetics and privacy that would adversely impact neighborhood property values.

Mr. Joyce reminded all that the BZA was here to consider the size, not the use, of the proposed addition.

Ms. Dyer said she now must board her horses elsewhere to permit her personal riding use and is unable to properly care for her horse now requiring rehab.

Ms. Endres said the applicants live in a platted sub-division. She conceded that the water run-off is a problem that could be handled with proper downspouts and drainage lines.

Mr. Wolfson again objected to the extremely large size of the proposed riding arena.

Mr. Tomsic stipulated: the board must consider the Area Variance for size, the agricultural use is “off the table”.

Mr. Meyers reminded the applicant is under oath and carries “the burden of proof”. Mr. Yaecker agreed this application was for the expansion of a continuously used horse barn.

Mr. Wolfson restated that noise, dust and privacy were his greatest concern in this residential sub-division.

Mr. Joyce outlined the exception permitting a barn in a sub-division before it is 35% built-out. The only exception would be to prove there were no horses there for 2 or more years without interruption, to negate the continuous agricultural use of the property.

Mr. Wolfson said he had not seen horses there since 2012. Mr. Joyce said he would need a written signed complaint for a court challenge of any BZA decision. Ms. Endres confirmed a neighbor could appeal the BZA decision.

Mr. Gierke said he just wanted to make the neighbors happy, correct any drainage problems and screen the barn from view but Mr. Wolfson “just doesn’t want this to happen”. Mr. Gierke said this barn expansion is for personal riding use only – it is no Blue Lakes commercial facility.

Mr. Tomsic asked if there were any others in the audience who wished to speak – none.

Ms. Endres summarized the property as one parcel with a house, the other parcel with a barn as the principal use with an Area Variance request for an increase of 9 to 10 times the size of the original barn – now considered an expansion of a non-conforming use.

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Mr. Yaecker stated there were differing opinions whether this was an Area or a Use variance. Mr. Tomsic agreed this was an Area Variance – no evidence or proof has been submitted that the non-conforming use was discontinued for 2 or more years – the 30 year old barn is the principal use on this parcel.

Ms. Endres proposed consolidation of the 2 parcels – Mr. Yaecker agreed.

Mr. Wolfson said this does not change any of his previous objections.

Mr. Tomsic said lot consolidation would moot the “principal use” variance request and the percentage size request would be reduced making the size variance “less substantial”. He reiterated that any decision here would not set a precedent as the BZA considers every case on its own merits per Sec. XIV.

Mr. Tomsic interrupted the hearing at 8:20 p.m. for the BZA to retire to executive session.

At 8:40 p.m. the board returned from executive session and Mr. Tomsic reconvened the hearing. He asked the board to consider the Findings of Fact as presented:

- a) The lot still has value with or without the variance,
- b) The variance is substantial – >50% - even if the parcels were consolidated.
- c) There is substantial impact on the neighborhood as the barn expansion would be the biggest building in the sub-division.
- d) There is no affect on delivery of government services,
- e) Applicant says he had no knowledge of restrictions at the time the home was purchased.
- f) The applicant’s predicament cannot be obviated through some method other than a variance as options to purchase additional property and/or permission to ride were explored but not doable.
- g) Board members questioned whether the spirit and intent would be observed by granting the expanded (almost 10 x the permitted) barn size: the house was built on one parcel with semi-restricted agricultural use on the 2<sup>nd</sup> parcel when the barn was built in 1986 with horses in continuous use to date, vs. the current impact of such an overly large building now inconsistent with ORC regulations in this sub-division. There were vigorous objections by multiple neighbors in attendance in the audience.

Mr. Tomsic called for a motion stating that a yes vote would grant the variance.

Karen Endres moved to approve the Area Variance request for an 80 ft. x 120 ft. riding arena, vs. the 1,280 sq.ft. allowed, as an expansion of a non-conforming building in a platted sub-division with the following conditions:

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- 1) Ed Meyers seconded the motion with the vote as follows: The 2 parcels be consolidated into one, the principal use variance now moot with consolidation,
- 2) The Zoning Inspector verification of the recorded lot consolidation prior to issuance of a zoning permit.

Karen Endres	no
Ed Meyers	no
Chris Yaecker	no
Mary Lee Brezina	yes
Lou Tomsic	yes

Mr. Tomsic informed the applicant the variance request was denied.

Mr. Tomsic read to the Appellants and audience, “Within 30 days after service of the minutes denying your request, if someone wishes to challenge this decision through the Court, he or she may. The challenge could reverse or negate our decision.

Mr. Joyce explained the applicants could appeal to the court to sue the Trustees – an action that could result in a mutually agreed upon settlement known as a Judgment Entry.

The board agreed to hold hearings on the first and third Tuesday of the month. These minutes will be signed on November 15, 2016 at 7:30 p.m.

Mr. Tomsic adjourned this BZA hearing at 8:55 p.m.

Marge Hrabak, Secretary

Signatures of the Newbury Board of Zoning Appeals:

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Lou Tomsic, Jr., Chairman

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Chris Yaecker,

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Karen Endres,

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Ed Meyers, V. Chairman

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Mary Lee Brezina

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Marge Hrabak, Sec’y BZA  
Date: \_\_\_\_\_