

Newbury Township
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**Board of Zoning Appeals Meeting
Record of Proceedings**

August 1, 2023

7PM to 7:40 PM

Zoning Hearing regarding: CASE NO. AV 23-008
Zoning Certificate Application No. 071223-0041

Property Address:

16140 Messenger Road Burton, Ohio 44021 located in Newbury Township

Board of Zoning Appeals Members present: Mike Fenstermaker, Scott Koller, Lewis Tomsic Jr., Chairman, Chris Yaecker.

Staff John Boksansky, Zoning Inspector.

Absent / Excused: Ed Meyers, Mary Lee Brezina.

Guest: Michael Cari 16140 Messenger Road, Burton, Ohio 44021

Mr. Tomsic, Chairman stated that we are here to hear an appeal filed by Mr. Michael Cari who resides at 16140 Messenger Road, Burton, Ohio 44021, located in Newbury Township.

Board of Zoning Appeals (BZA) Chairman Lewis Tomsic Jr. called the meeting to order at 7:00 p.m., and stated:

"Good evening. This is a meeting of the Newbury Township Board of Zoning Appeals. The Board of Zoning Appeals is a quasi-judicial body, and as such, its role is similar to a Judge – in a court case. We hear evidence and make decisions based upon the facts presented, the rules set forth in the resolution and the principles of law.

Please keep in mind that the applicant has the burden to produce evidence in support of the application, and the burden to persuade the Board that the evidence justifies the action being asked to take. The Board will not make the applicant's case for him.

This meeting will be recorded. In order to prepare appropriate meeting minutes, each person who speaks will slowly state for the record his/her name and address.

Both the Board and the applicant may request to continue a matter to a future date."

Tomsic asked the audience member(s) present, if they wanted to speak - to raise their right hand. Tomsic swore in Cari and Boksansky. Tomsic noted everyone had been sworn in.

Tomsic asked if all of the interested parties were notified and the Zoning Inspector verified with the Zoning Board Secretary, and stated that yes, all interested parties were notified. A roll call of the members was conducted.

Mr. Tomsic stated that the matter before the Board of Zoning Appeals is for the property owner, Mr. Michael Cari, who is requesting a 10 foot variance. This would result in a twenty foot (20') side yard (west), where a thirty foot (30') side yard is required by the Newbury Township Zoning Resolution. The applicant is planning an addition of an attached garage and storage, located in an R-1 residential zoning district.

Mr. Cari presented his case regarding the attached garage proposal, and the practical difficulty that the proposal presents. He stated that it would be strange to go to the right hand side with the build, and have a garage at both ends of the residence. Other option(s) were explored, such as building a detached garage flanking the driveway.

Chris Yaecker asked if the neighbor had been talked to. Mr. Cari confirmed that he has. The neighbor stated that he does not have a problem with the proposal. He will have 20' to the property line and the woods /trees will remain intact with no encroachment of the neighbor's privacy. Mr. Cari stated that asking for the 10' variance was more in tune with aligning with the 30' requirement and not going too far for a larger: 15' or 20' variance request.

Mr. Fenstermaker mentioned the side wall touching the proposed 20' side yard setback at a few points as proposed. The BZA felt that making the wall flush to the 20' setback versus the proposed jagged walls might be a better resolve. The board spent some time discussing the 50% rule: the ratio of garage area to living area. John Boksansky stated that with the new residential living storage space, there would be a total of 3,228 SF of living space X .50 (50%) = (would equate to) 1,614 SF of permitted attached garage space. Total garage interior space proposed is 1,434 SF, which would be within the 50% permitted range. When asked re: the plumbing intentions of the proposal, Mr. Cari stated that initially no expansion of the plumbing and drains to the addition is planned, but eventually, yes, he would like that to be in the space.

The original home was built in 2010, and the well is in the front of the home and septic is to the rear. These facts limit the placement of the addition. The upper story of the addition eventually would be made into usable space, and perhaps would utilize the rear corner of the space to add stairs for access.

With that said the BZA summarized the project and made preparations for a motion to be entertained. Additional discussion ensued regarding Mr. Cari's stating that his uncle did the original home plans and is now working on the addition plans. They are currently getting the numbers together for the build to assure budget considerations. Mr. Cari stated, "We want to do the plan to achieve parameters of what is needed so that the addition did not overwhelm the home." He further explained that, with the proposed addition, we don't want the home to look like one big garage.

Mr. Tomsic made a motion to accept the twenty foot (20') west side yard as proposed by the applicant, where thirty (30') is required for the construction of an attached garage and residential storage.

The Motion was seconded by Mr. Yaecker. Mr. Tomsic, Chairman called for a roll call vote regarding the motion on the table.

Mr. Tomsic asked Mr. Boksansky to conduct a voice vote roll call.

**Mr. Fenstermaker – yes. Mr. Kollar – yes. Mr. Tomsic- yes. Mr. Yaecker – yes.
Motion Passed: 4-0.**

All were in favor, and the Motion for the Side Yard Variance was approved.

Mr. Cari thanked everyone for listening and approving the proposal and he hopes to be under roof this construction season, in 2023. Finish drawings are the next phase of the project, and Mr. Tomsic stated that once the minutes from the meeting are approved and final variance documents prepared and signed, a zoning certificate can be issued and passed to Mr. Cari for securing his building permit.

Mr. Cari thanked all present and left the meeting.

Mr. Tomsic and the BZA went over the Findings of Fact for this hearing, to review the issues related to the facts for this case.

a. Whether the lot in question will yield a reasonable return or whether there can be any beneficial use of the lot without the variance?

Applicant answer in italics: I do not believe there is any better area to add due to existing house and drive location. I believe the design should yield a reasonable return.

BZA REVIEW a. The board commented, that it appears that this is the only place where the property could be added on to, and accomplish the needs of the applicant.

b. Whether the variance is substantial?

Applicant: I do not feel that a 33% variance is substantial, due to the layout of the property.

BZA REVIEW b. The variance appears to be substantial at 33% but the addition would be under thick dense tree cover, as relates to the west property.

c. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance?

Applicant: I do not think the character of the neighborhood will suffer. Will not be able to see the addition from the road.

BZA REVIEW c. Essentially, the proposed addition would be barely visible from the road, and the front setback would not be compromised. No objections were stated via neighbors.

d. Whether the variance would adversely affect the delivery of governmental services?

Applicant: Not at all.

BZA REVIEW d. No, does not appear that government services would be impacted at all.

e. Whether the lot owner purchased the property with the knowledge of the zoning restriction?

Applicant: Yes. We tried to keep the house to the left of property in the event that we might build a first floor bedroom on the right (east) side of the house.

BZA REVIEW e. Yes, the owner knew of the restrictions, and answered the question honestly.

f. Whether the lot owner’s predicament feasibly can be obviated through some method other than a variance?

Applicant: The zoning inspector was kind enough to make a site visit to discuss the predicament. We both determined that this proposal is the best use of the property.

BZA REVIEW: f. Mr. Tomsic stated, “that it appears to be the best use of the property, and I believe, Mr. Cari demonstrated the practical difficulty substantiating the need for the variance, given septic and well placement.”

g. Whether the spirit of the intent behind the zoning requirement would be observed and substantial justice done by granting the variance

APPLICANT: I think it would. I truly feel that a 33% variance is not asking for too much. There is quite a bit of woods on the left (west) side of the existing house. The new structure will still be over 100’ from the neighbor’s house.

BZA REVIEW g) Mr. Tomsic, believes that the 33% variance is substantial, but tempered by the proposed addition being 100’ from the inhabited property to the west, as well as dense foliage to the west, between the properties.

Meeting adjourned at 7:40 PM.

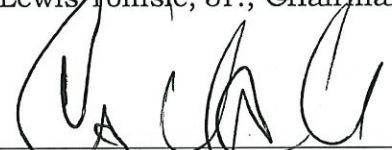
Tomsic adjourned the meeting at 7:40 p.m.



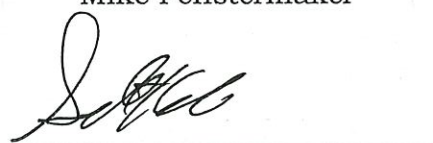
Lewis Tomsic, Jr., Chairman



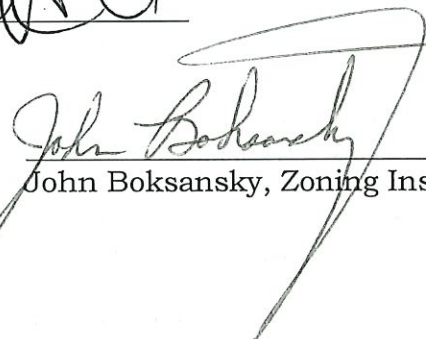
Mike Fenstermaker



Chris Yaecker



Scott Koller



As Recorded by: John Boksansky, Zoning Inspector