

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60

CALL TO ORDER

The meeting was held at the Berlin Township Hall, and called to order by Chairperson Don Sutton at 7:00 PM.

Pledge of Allegiance.

BZA members present: Chairperson Don Sutton, Vice-Chairperson Jason Acevedo, Brad Cook, Michelle Cook, Larry Harmon, Quinn Machan (BZA first alternate member), Jessica Kenzli (BZA second alternate member).

Also present: Zoning Inspector David Loveless; Zoning Clerk Lisa Knapp; Zoning Secretary Cathy Rippel.

AGENDA ITEM: APPROVAL OF MINUTES

Mr. Cook made a motion to approve the meeting minutes from the 12/8/20 BZA meeting. Mr. Acevedo seconded the motion.

Vote: Mr. Cook, yes; Acevedo, yes; Mrs. Cook, yes; Harmon, yes; Sutton, yes.

Motion carried, minutes were approved.

Mr. Sutton introduced Jessica Kenzli, second BZA alternate.

**AGENDA ITEM: BZA 21-001 BRUCE CARTER & JANET WOLERY
912 LACKEY OLD STATE ROAD**

BZA case 21-001, request by Bruce Carter and Janet Wolerys, at 912 Lackey Old State Road, approximately 1.83 acres, requesting a variance for a 15' encroachment into the required 25' south side yard setback to build a garage.

Applicant Bruce Carter was sworn in by Court Reporter Sandy Kin from Runfola Reporters

Exhibits

Ms. Knapp read the exhibits into the record as follows:

Regular Exhibits

- 1) Application for variance at 912 Lackey Old State Road parcel 418-240-01-121-000, 3 pages dated 4/23/21 submitted 5/23/21.
- 2) Letter to appeals board members dated 4/23/21, 1 page submitted with application filed 5/3/21.
- 3) Property information for 912 Lackey Old State Road, parcel 418-240-01-121-000, 2 pages submitted with application filed 5/3/21.
- 4) Letter from Delaware County Health Department dated 4/22/21, 3 pages submitted with application filed 5/3/21.
- 5) 8 1/2 x11 color picture of parcel showing the placement of detached garage, one page submitted with application filed 5/3/21.
- 6) Floor plan elevation views and post frame building estimate for detached garage dated 4/9/21, 4 pages submitted with application filed 5/3/21.

Zoning Office Exhibits

- 7) Aerial view of 418-240-01-121-000, 912 Lackey Old State Road and surrounding property owners within 300' from Delaware County Auditor's GIS office, dated 5/12/21, and list of owner's addresses.
- 8) Request of publication in the Delaware Gazette via email, dated 5/12/21.
- 9) Notice of hearing to applicant, dated 5/14 of 2021.
- 10) Certified mail receipts, dated 5/14/21, and landowner letter dated 5/14/21.
- 11) Proof of publication in the Delaware Gazette, dated 5/15/21.

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

61 Ms. Rippel noted that Exhibit 1 had a typo; it was actually submitted 5/3/21.

62

63 Mr. Sutton said the BZA is here to consider a request for an area variance, and the
64 BZA is acting as a quasi-judicial board. Per the zoning resolution, Section 7.06
65 Development Standards, item f), a 25' side yard setback is required.

66 Mr. Sutton said in 1986, the Ohio Supreme Court set specific standards for the BZA
67 to use when deciding a request for an area variance. The standard expressed in the
68 Duncan vs. Middlefield case suggested 7 criteria for zoning appeal boards to decide
69 whether the owner has encountered practical difficulties. Those criteria, which are
70 not exclusive, are listed in Exhibit 1, and Mr. Carter has answered them. He asked the
71 BZA to keep those questions in mind when they are asking questions and trying to
72 reach a decision tonight.

73

74

Applicant Presentation

75

76 Bruce Carter, 912 Lackey Old State Road, presented the application and answered
77 questions from the Board.

78

79 Mr. Carter asked the BZA to turn to the aerial color photo included in the application.
80 He noted that his house is located one mile up the road on Lackey Old State Road.
81 His front yard and back yard slope to a ravine that leads into Alum Creek Lake. He
82 has a need for additional outbuildings, as he has outgrown his 12' by 16' temporary
83 shed. His father-in-law passed away and he has now received his yard implements,
84 in addition to those he already owned. He purchased a used mini-van to help their 15
85 year old dog. He has a trailer now for taking his lawn equipment to get serviced. He
86 needs the additional storage place, and the only place they can put it is the spot
87 marked.

88

89 Mr. Carter said along the southern border, there is a neighbor with a tree line that he
90 is not impeding. Along the driveway, AEP has a transformer, so it is already impeded
91 and nothing can go in there. To the west are neighbors who farm their property, and
92 the ravine is to the north. He needs extra storage space. He put in a swimming pool
93 in 2003 shortly after he moved in, and the extra storage space is needed as the 12' by
94 16' shed is just not big enough, and he is asking permission to build into the setback.

95

96 Mr. Sutton said the map appears to show that the southeast corner of the building it
97 what extends into the side yard setback. Mr. Carter said that is correct and that the
98 two yellow dots shown are the septic tanks. His septic system pumps the tank closest
99 to the house and the pool then it pumps to the south to the other tank, and from there
100 it goes out to the leach field. He has been advised that he cannot be within 10' of that
101 structure near where the garage is proposed. He has turned it to an angle for that
102 reason.

103

104 Mr. Sutton said one of the yellow dots is off of the southwest corner of the building,
105 and the other one is between the house and the swimming pool. Mr. Carter said that
106 is correct, and Delaware County informed him that they need to stay 10' away in case
107 there was a problem with the structure and it needed to be pulled.

108

109 Mr. Sutton asked whether there was a line that runs between the two yellow dots. Mr.
110 Carter said that was correct, but the woman told him she was not concerned because
111 they can easily replace that, and the structure was the potential issue. There is no
112 other place on the property he can put the outbuilding due to the pool and the existing
113 landscaping conditions where the property slopes to the ravine in the front.

114

115 Mr. Harmon asked whether the proposed building could be twisted 45 degrees so it is
116 parallel to the pool and the property line. He asked why it is diamond-shaped rather
117 than squared-off and what it would interfere with. Mr. Carter said he could pull it
118 forward to the east and square it off. He aligned it with the existing shed, but once he

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

119 obtains approval, he would have to have somebody lay it out properly and it may end
120 up being in a straight line with the easement.

121

122 Mr. Harmon asked whether there was a foundation on the existing building. Mr.
123 Carter said no, and that it is just a temporary structure. Mr. Harmon asked where the
124 utility lines are and whether they are between his property and his neighbor's
125 property. Mr. Carter said they are, and they are between his driveway and the trees to
126 the south.

127

128 Mr. Harmon said whether, if the tree line went away in the future for some reason, the
129 neighbor would object to looking at the proposed building. Mr. Carter said he would
130 not, and he checked with his neighbor in advance of the hearing. The neighbor even
131 allowed him to cut off a large branch of his tree that extended into this space because
132 it could interfere with the proposed garage.

133

134 Mr. Harmon asked where the utility lines were located. Mr. Carter pointed them out
135 and said they run from a pole underground to his house.

136

137 Mrs. Cook asked where the leach bed is located, and Mr. Carter pointed it out. Mrs.
138 Cook asked whether the leach bed was located south of the pool. Mr. Carter said it
139 was to the west.

140

141 Mr. Acevedo asked for more information about the slope. Mr. Carter said it runs
142 straight from 15-20' from his driveway straight to the ravine. Mr. Acevedo asked
143 what the grade was. Mr. Carter was not sure, but said it was steep. He would have to
144 backfill in that are, and then it would be sitting in the front of the house.

145

146 Mr. Machan said it would be more visible from the road if it were built in that area.
147 He said Exhibit 7 shows where the neighbor's house is compared to the subject
148 property, and the neighbor is located in front of the property.

149

150 Mrs. Cook asked Mr. Carter whether the gravel road shown in Exhibit 5 is his
151 driveway, and whether the line shown is where the ravine starts. Mr. Carter said that
152 was correct. Mrs. Cook said she drove by to verify it. Mr. Carter said his yard slopes
153 severely to the ravine, and his home sits back pretty far from Lacky Old State Road.
154 His vehicles are not visible from that road.

155

156 Mr. Acevedo said technically there are only two neighbors who would have concerns.

157

158 Mr. Sutton asked what is preventing him from moving the building closer to his
159 driveway area. Mr. Carter said he had considered the angle of vehicles turning into
160 his existing 3 car garage.

161

162 Mrs. Cook asked whether the opening to the new structure would come off of the
163 existing pad. Mr. Carter said it would. Mrs. Cook asked whether it was correct that
164 the other garage doors are denoted in black. Mr. Carter said that is his roof and there
165 are passive solar panels on the roof for the pool.

166

167 Mr. Acevedo asked whether Mr. Carter would install a pad for the proposed structure.
168 Mr. Carter said he would eventually put the pad in, but due to the cost of construction
169 currently, he plans to build a pole barn and install a pad possibly next year. The cost
170 is 20% higher than it was this past December.

171

172 Mr. Acevedo asked whether he would extend the driveway pad. Mr. Carter said no.

173

174 Mr. Harmon asked whether there were any plans for lighting. Mr. Carter said there
175 are no lights that are on currently at night, and there would be none with the proposed
176 plan.

177

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

178 Mr. Sutton said the Board would now review the provisions set forth by the 1986
179 Duncan vs. Middlefield case, from Article XXVIII, Section 28.04 B. 2. of the Berlin
180 Township Zoning Resolution.

181

182 (i.) Whether the property in question will yield a reasonable return or whether there
183 can be any beneficial use of the property without the variance.

184

185 Mr. Carter said the proposed addition replaces an existing 12 by 16' temporary
186 outbuilding, which currently houses all of his yard implements. The small intrusion of
187 the setback would allow him to store not just this equipment, but also vehicles that are
188 parked outside and it would enhance the beauty of the property. He will be able to fit
189 his yard trailer in the garage that currently sits outside.

190

191 Mr. Carter said the setback will never likely be used to its fullest extent as there are
192 already utilities in that easement. AEP recently put a power substation on the other
193 side of his neighbor's property, which he can see from his backyard. He thinks it
194 would be difficult to put a subdivision back there if that farmland were sold.

195

196 (ii.) Whether the variance is substantial.

197

198 Mr. Carter said he did not believe it was substantial; the setback is 25' and this would
199 encroach by just 15', leaving 10' for a setback along the property line. His neighbors
200 still have 25' along their property line, as well as the pine trees, so there is still 35'
201 available.

202

203 Mr. Sutton said the BZA considers that there is a 25' setback requirement, and the
204 applicant is requesting greater than a 50% reduction of it.

205

206 (iii.) Whether the essential character of the neighborhood would be substantially
207 altered or whether adjoining properties or the comprehensive plan for the community
208 would suffer a substantial detriment as a result of the variance.

209

210 Mr. Carter said it is a rural home and he believes a garage would enhance the
211 property. There are similar properties along Lackey Old State Road that have 2-3 car
212 garages on their properties. This structure would allow their trailer to be housed, as
213 well as their spare vehicle, and it would get all of that out of their driveway. It would
214 have no impact on the 3 adjoining property owners that he knows of. He is good
215 friends with the person who farms the property behind him, as well as the neighbor
216 next door, and they are fine with the request.

217

218 (iv.) Whether the variance would adversely affect the delivery of governmental
219 services.

220

221 Mr. Carter said it would have no effect on government services.

222

223 (v.) Whether the property owner purchased the property with knowledge of the
224 zoning restriction.

225

226 Mr. Carter said he was aware of the restrictions when he purchased his home, but his
227 needs have increased, and a pool was added. A combined 50' setback between his
228 property and his neighbor seems unreasonable, knowing that the setback will likely
229 never be used to access the property to the west as that is personal farmland.

230

231 (vi) Whether the problem can be solved by some other manner other than the granting
232 of a variance.

233

234 Mr. Carter said he cannot think of any practical solution that would allow him to
235 build a garage without a variance of some sort in that area. He said as the documents
236 show, there are permanent restrictions which prohibit the applicant from placing a
237 garage in any other configuration along the property.

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

238

239 (vii.) Whether the spirit and intent behind the zoning requirement would be observed
240 and substantial justice done by granting the variance.

241

242 Mr. Carter said the variance would still allow a setback along Lackey Old State Road,
243 as well as the farmland on the west. There is a very large setback to the north
244 because of the ravine, so it would only intrude on the line of sight on the south
245 neighbor, who he has spoken with and who has a tree line of conifers and deciduous
246 trees. They sit further in front of his home, so they cannot see his home from their
247 rear yard due to the trees. He believes granting the request is in the best interest of all
248 parties.

249

250

Board Consideration

251

252 Mrs. Cook asked what the height of the garage is and says it appears to be 10' as
253 shown on Exhibit 6. Mr. Carter said that was correct. Mrs. Cook asked whether it
254 was correct that there would be no denoted lights on the front or sides. Mr. Carter
255 said there will be a light out there so he can see, but there will be no permanent night
256 light on the outside of the building.

257

258 Mrs. Cook said any lighting would need to be downlighting.

259

260 Mr. Cook asked whether the road that goes off of Lackey Old State Road is a private
261 driveway or a county road. Mr. Carter said it was just his, and noted that there is a
262 split rail fence that runs along that tree line as well, so he will not encroach upon that
263 at all.

264

265 Mr. Harmon said the BZA's main concern is probably going from 25' down to 10'.
266 He asked what prevents the building from being twisted around so it does not
267 encroach so much. Mr. Carter said he was trying to stay out of the line of the septic
268 system, which extends between both yellow dots. Mr. Harmon asked whether there
269 was an issue with the line. Mr. Carter said he is trying to stay out of it in case there
270 ever was a problem with it. He could easily straighten that out to be parallel to the
271 fence line.

272

273 Mr. Harmon said it would seem that would be a maximum of 5-8' variance versus a
274 15' variance if the garage was turned. He said it is not really a concern as far as the
275 present circumstances, but in the future, somebody else may own the property and the
276 tree line no longer exists and they may not like it. He asked whether the building
277 could be tweaked in order to allow a less dramatic setback. Mr. Acevedo said it could
278 be more perpendicular to the road.

279

280 Mr. Harmon said if the garage was adjusted to be more parallel to the property line
281 and the pool, there may be a corner of it that would extend over the septic line by a
282 few feet, but if the septic line is easy to get to, that should not be a problem.

283

284 Mrs. Cook asked whether 10' would still need to be maintained from the septic
285 structure. Mr. Carter said yes, from just the structure. Mrs. Cook said if the garage
286 was squared, Mr. Carter may still potentially run into an issue, and the driveway pad
287 still needed to be taken into consideration. Mr. Harmon said the driveway is gravel.

288

289 Mr. Sutton said he goes back to (i.) Whether the property in question will yield a
290 reasonable return or whether there can be any beneficial use of the property without
291 the variance. He said he struggles with whether not granting the variance will result
292 in a reduction of the value of his property if he were to sell.

293

294 Mr. Carter said its about the yard implements and things he has sitting outside. Mr.
295 Sutton said that is not what the question is asking. Mr. Carter said having items
296 sitting outside takes away from the beauty of his property. When he first moved in,

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

297 he received an aerial photograph of his home, and it looked like an estate. He is
298 worried about having the trailer sitting outside.

299

300 Mr. Acevedo asked whether adding the garage would increase or decrease the value
301 of the subject property. Mr. Carter said he believed it would appreciate the value of
302 the property as it would allow the ability to have additional vehicles, yard and pool
303 implements, the chain saw for dead trees falling into the ravine, etc. He is doing
304 things to enhance the property and he believes that adding the garage is one way of
305 enhancing it.

306

307 Mr. Carter said it may not be necessary to stay with the 15'; he can talk to the builder
308 to see if he can minimize the impact. He is trying to find a happy medium between
309 the pool on one corner and the easement on the other corner.

310

311 Mr. Sutton said that takes him back to question 6, which is whether the problem can
312 be solved by some other manner other than the granting of a variance. He is still
313 wondering why the garage cannot pivot from its location as shown on Exhibit 5 so the
314 southeast corner of the garage could be removed from the setback and it would extend
315 into the driveway a bit.

316

317 Mr. Cook said he agreed and said that if the corner of the garage closest to the pool
318 could be pivoted even just 5 feet, he would feel better about it. Mr. Harmon said he
319 could figure out how many feet he could save by doing that. He said that could be a
320 good compromise. It seems the BZA feels that granting a variance over 50% sets a
321 bad precedent.

322

323 Mrs. Cook said the applicant did have a good point regarding that the township does
324 have restrictions regarding how many items are sitting in the driveway, and how long
325 they can sit without being moved. Some items cannot sit in front of the house.

326

327 Mr. Acevedo said an alternative would be to store the items in a storage facility. Mr.
328 Carter said if there was a breakdown, it is not convenient to have to run and get it out
329 of storage to use. Since the photo was taken, there are 3 honey locust trees that line
330 the driveway, which are a good size now, and in the open space at the east end there
331 are 8 large maple trees. North of Curve Road there are several homes with similar
332 garages to the one he has proposed. He said he can work with the builder to see what
333 he can do to keep the curve necessary to get into the garage and to minimize the
334 impact of the easement.

335

336 Mr. Harmon said it seemed that the garage could be turned a bit and not as much
337 driveway would need to be sacrificed. Mr. Carter said he extended the 10' requested
338 down to where the trailer was shown, for that very purpose. His parking area is
339 already in the 25' setback.

340

341 Mr. Sutton said the septic line that runs between the yellow dots as shown would go
342 right along the back edge of the building, and he asked how it would get around the
343 corner of the swimming pool. Mr. Carter said it runs between the two dots and it runs
344 along the fence line.

345

346 Mr. Acevedo said the easement is in front of the area where the trailer is shown, and
347 the driveway is along the easement. Mr. Carter said that was correct, and that all of
348 this was built before he bought the property. Ms. Cook said the driveway is not a
349 permanent structure and its gravel.

350

351 Mr. Acevedo asked when the original home was built. Mr. Carter said he moved here
352 in 2002 and the home was built in 2000.

353

354 Mr. Carter said he would like to enclose everything and it helps the implements from
355 rusting.

356

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

357 Mr. Harmon asked whether the Board needed to vote now, or whether the BZA could
358 wait until Mr. Carter consulted his builder in an attempt to rotate the garage and
359 minimize the variance request. Mr. Sutton said the BZA can table the application and
360 get additional information. Mrs. Cook said if the BZA denies the application, the
361 applicant would need to reapply.
362

363 Mr. Sutton said this application is difficult due to the circumstances of the property,
364 and the substantial nature of the variance requested. It helps that the house is far off
365 the road, but if somebody purchases the neighboring property in the future, they may
366 wonder why such a reduced setback was granted. He thought that some changes may
367 be made to the garage so the full 15' variance is not needed. The applicant can decide
368 whether he wants the BZA to table the application or vote tonight.
369

370 Mr. Carter asked whether it would have to be a unanimous vote. Mr. Sutton said it
371 would be approved or declined if the Board takes a vote on it. Mr. Carter said he
372 preferred to table the application so he can talk to the builder about the garage in
373 relation to the pool, the septic lines, etc. He said he did not know what could be built
374 in the area on the other side of the property.
375

376 Mr. Acevedo said the neighbors could chose to do something with their land, the
377 electric company could choose to purchase the property and there could be a different
378 use. Mr. Carter said on the west side of the farm property there is a street that already
379 dead-ends if he decided to sell it. It would not be possible to install a road in the 50'
380 area between the two properties, AEP already has a substation, and the properties are
381 all on septic system.
382

383 Ms. Knapp clarified that it would take 3 of the 5 votes to approve the application.
384 Mr. Acevedo said he could think about changing the request to see if there would be
385 less of an impact to the setback. Mr. Carter said he would not be able to meet the 25'
386 setback requirement. Mr. Harmon said the BZA seems willing to help and a
387 reduction in the request would help the decision.
388

Motion to Table

389
390
391 Mr. Acevedo made a motion to table to June 30, 2021 at 7:00 PM. Mr. Harmon
392 seconded the motion.

393 Vote: Acevedo, yes Harmon, yes; Mrs. Cook, yes; Mr. Cook, yes; Sutton, yes.
394

395 Motion carried, meeting was tabled to June 30, 2021 at 7:00 PM.
396
397
398

Don Sutton, Chairperson

Jason Acevedo, Vice-Chairperson

Bradley Cook, member

Michelle Cook, member

Larry Harmon, member

415
416
417
418

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

MAY 26, 2021: 7:00 PM

419

420

421

422

423

424

425

426

427

428

429

Attest: _____

430

Berlin Township Zoning Clerk Lisa F. Knapp

431

Quinn Machan, 1st alternate member

Jessica Kenzli, 2nd alternate member