

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JUNE 30, 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

CALL TO ORDER

The meeting was held at the Berlin Township Hall, 3271 Cheshire Road, Delaware, Ohio 43015.

The meeting was called to order by Chairperson Don Sutton at 7:00 PM.

Pledge of Allegiance.

BZA members present: Chairperson Don Sutton, Brad Cook, Michelle Cook, Larry Harmon, Quinn Machan (BZA first alternate member, seated).

Also present: Zoning Inspector David Loveless; Zoning Clerk Lisa Knapp; Zoning Secretary Cathy Rippel, Jessica Kenzli (BZA second alternate member).

Not present: Vice-Chairperson Jason Acevedo.

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

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

BZA case 21-001, request by Bruce Carter and Janet Lackey, 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.

Mr. Sutton noted that this application was tabled from the May 26, 2021 BZA hearing.

Applicant Presentation

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

Exhibits

Mr. Carter distributed a revised color map of the property, which Ms. Knapp marked as Exhibit 12.

Applicant Presentation (continued)

Mr. Carter apologized for having to hold a second hearing. He said he took the BZA's questions and comments under advisement, and met with the company who is building the garage. The garage was reoriented to parallel the property/fence line, and was able to cut 5' off of the requested variance, so that just 10' is requested.

Mr. Carter said he had looked at moving the garage farther north towards the pool, but there is power that runs around that corner to the pool, and that is the main access to get to the west side of the property. Also, the area shaded green in the exhibit is a 10' space in case he would like to add on a lean-to under it. There is also a septic sewer line that runs partially under the garage floor. If that were to be pushed farther to the north, that would be completely under the garage floor. This provides access in case he would need to repair it someday.

Mr. Machan asked what the yellow circle to the rear of the building was. Mr. Carter said that the small circle between the house and the pool is where the septic comes out of the house. It then slants to the center of the 20' circle, which is another septic receptacle. Delaware County requires that he keep 10' access around that so that in case it needs to be pulled and replaced, there would not be a problem with the garage.

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JUNE 30, 2021: 7:00 PM

60 Mr. Sutton said that in 1986, the Ohio Supreme Court set specific standards for the
61 BZA to use when deciding a request for an area variance. The standard expressed in
62 the Duncan vs. Middlefield case suggested 7 criteria for zoning appeal boards to
63 decide whether the owner has encountered practical difficulties. He reviewed the
64 criteria.

65
66 (i.) Whether the property in question will yield a reasonable return or whether there
67 can be any beneficial use of the property without the variance.

68
69 Mr. Sutton said a change has been made now so the requested variance is 5' less. He
70 asked whether Mr. Carter felt this would change the reasonable return on the property
71 without the variance. Mr. Carter said he feels the garage is necessary to store the
72 implements that he currently has parked outside, as well as pool maintenance. The
73 shed is too small at this point, and if he built a larger shed, that would probably be in
74 violation as well.

75
76 (ii.) Whether the variance is substantial.

77
78 Mr. Sutton said the Board really needs to consider this item. He noted that Mr.
79 Carter has come forward to try to help them on making this decision as he has
80 changed it from 15' to 10' encroachment into the setback.

81
82 (iii.) Whether the essential character of the neighborhood would be substantially
83 altered or whether adjoining properties or the comprehensive plan for the community
84 would suffer a substantial detriment as a result of the variance.

85
86 Mr. Sutton said the neighbors were notified of this hearing, and none have appeared
87 at either of the two hearings. Mr. Carter said the neighbor to the south gave him
88 permission to cut off a huge limb of their tree to make way for the garage.

89
90 Mr. Harmon asked what the nature of the easement was and whether there are power
91 lines. Mr. Carter said that is correct, and they are located at the bottom left of the
92 submitted drawing. That powerline runs clear above grade to where is yard
93 landscaping is and there is a power pole there, and the electric goes underground from
94 there to his home. There is already an encroachment; thus any utility work in that
95 area would be encroached upon. His transformer sits where the landscaping starts.

96
97 Mr. Harmon asked what the nature of the adjacent property was. Mr. Carter said it is
98 a farm field. Mr. Harmon asked whether that property could be developed. Mr.
99 Carter said he did not think so and that a substation was recently installed on that
100 property. Power requirements would come out of the substation.

101
102 Mrs. Cook asked why Mr. Carter could not put the lean-to for the addition on the
103 opposite side. Mr. Carter said he would be in the easement. Mrs. Cook asked if the
104 garage could be moved to where the green area ended. Mr. Carter said it would take
105 up the same square footage, and he would still be in the easement.

106
107 Mr. Harmon asked for clarification about the lean-to. Mr. Carter said it would be a
108 shelter for putting a vehicle or an outside trailer under it. Mr. Harmon asked whether
109 it would be a roof. Mr. Carter said that was correct, and it would provide shelter from
110 the sun. Mr. Harmon said it seemed like a no-brainer to slide the building up into that
111 area and it would be easier to move.

112
113 Mr. Carter said the garage floor would completely cover the underground septic line
114 in that case. Mrs. Cook asked whether he was stating that was because the green lines
115 go to the center. Mr. Carter said that was correct.

116
117 Mr. Sutton noted that any decisions made by the BZA would not override any
118 easement requirements.

119

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JUNE 30, 2021: 7:00 PM

120 (iv.) Whether the variance would adversely affect the delivery of governmental
121 services.

122

123 Mr. Sutton said this was answered at the last hearing.

124

125 (v.) Whether the property owner purchased the property with knowledge of the
126 zoning restriction.

127

128 Mr. Sutton said this was answered at the last hearing.

129

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

132

133 Mr. Sutton said some of the questions that came up were regarding whether the lean-
134 to could be placed in different areas, but it is ultimately the applicant's decision
135 regarding what he does on that side of the building. The BZA has to take into
136 consideration the substantial 10' into the setback and the inability to push the building
137 further to the north.

138

139 Mr. Carter said 15' seems to be a reasonable request versus 25' of full easement.

140

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

143

144 Mr. Carter said both he and his neighbor have fence lines in the easement and they
145 can easily be pulled out of the way, and there is enough room for a person to walk
146 through there. There is plenty of access, as his neighbor drives his off-road vehicles
147 to Mr. Carter's property, so there is access if somebody needed to be in there.

148

149 Mr. Harmon asked whether the building has a standardized dimension. Mr. Carter
150 said "yes" and that it is a 32' by 30' three car standard-sized 3-car garage plan from
151 Menards, and it was included in the package.

152

Board Consideration

153

154
155 Mr. Sutton said the three items that the Board is looking at include whether the
156 variance is substantial, and the applicant has reduced that by 5' so it is just a 10'
157 encroachment into the 25' setback. The second is whether the problem can be solved
158 by some other manner. The exhibits provided show that there are some natural
159 terrain issues including the existing pool and a leech field. The applicant has made an
160 effort to move it as much as possible, and the BZA should consider that.

161

162 Mr. Sutton said regarding the spirit and intent of the zoning requirement, the BZC
163 said this property and the surrounding properties are very rural and he said the request
164 would probably not harm the neighborhood.

165

166 Mr. Carter said that this past fall, he put in 8 large 3-4" maple trees in the front yard,
167 and there are honey locusts along the drive. He is trying to keep the property value
168 up. This is just another addition to help the property appreciate.

169

RESOLUTION 2021.06.30.#A: APPROVE BZA 21-001

170 Mr. Sutton made a motion to approve BZA 21-001 based on the new Exhibit 12 that
171 was provided, and the applicant's willingness to make adjustments so that the side
172 yard setback is not as substantial as the prior exhibits were. Mr. Harmon seconded
173 the motion.

174

175 Vote: Sutton, yes; Harmon, yes; Michelle Cook, yes; Brad Cook, yes; Machan, yes.
176 Motion carried, application was approved.

177

BERLIN TOWNSHIP BOARD OF ZONING APPEALS (BZA)

OF DELAWARE COUNTY, OHIO

HEARING

JUNE 30, 2021: 7:00 PM

178 Mr. Sutton noted that a new BZA application may be coming in soon.

179

180 Meeting was adjourned.

181

182

183

Don Sutton, Chairperson

184

185

186

Jason Acevedo, Vice-Chairperson

187

188

189

190

Bradley Cook, member

191

192

193

194

Michelle Cook, member

195

196

197

198

Larry Harmon, member

199

200

201

202

Quinn Machan, 1st alternate member

203

204

205

206

Jessica Kenzli, 2nd alternate member

207

208

209

210

211 Attest: _____

212

Berlin Township Zoning Clerk Lisa F. Knapp

213