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Newbury Township

14899 Auburn Road
Newbury, OH 44065
Phone: 440 564 5997
Fax: 440 564 7512

Board of Zoning Appeals Meeting

Record of Proceedings

May 2, 2023

Members Present: Lewis Tomsic Jr., Ed Meyers, Mary Lee Brezina, Chris Yaecker,
Mike Fenstermaker

Members Absent: Scott Koller

Other Officials: John Boksansky – Zoning Inspector
Lorraine Sevich, Zoning Secretary

Guests:

Jeremy Sustar – 11631 Pekin Road, Newbury, OH 44065

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

“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, if they wanted to speak - to raise their right hand. Tomsic swore in Sustar. Tomsic noted everyone had been sworn in.

Tomsic asked the Board Secretary if all of the interested parties were notified and the Board Secretary said yes. The Board Secretary conducted a roll call.

Tomsic said the hearing tonight was for an application, submitted by Jeremy Sustar, who was requesting a side yard variance as well as a variance for an extension of a non-conforming building structure. The property is located at 11631 Pekin Road in Newbury, OH 44065, in an R-1 residential district.

Sustar informed the BZA that he would like to build an addition, which would be a small garage with the second floor being modified for a larger bedroom with a master bath. It would conform to the same idea, 3 bedrooms, little more space for storage. Right now, he said, the house doesn't have much storage and by doing the addition, he would have room for storage.

Tomsic noted the variance was for.....it was oversized compared to the size of the house - and said it had nothing to do with property lines setbacks.

Newbury Township Zoning Inspector John Boksansky, said it was a side yard variance as well as the square footage variance. Tomsic said it was over 40% and Boksansky agreed. Boksansky said they compared it to the living space, there was a family room on the west side of the house. Sustar said yes. Boksansky said that was what he used as the living space and it came up to 63% where according to zoning, it should be 40%, so it was a non-conforming category.

BZA Mike Fenstermaker asked Sustar if his house was a raised ranch. Tomsic thought it was, and Fenstermaker asked if it was a split level house. Sustar said split level; bi-level. Fenstermaker didn't think it was a split level, and asked Sustar if he walked upstairs. Sustar said you walk downstairs, and walk upstairs. Fenstermaker explained that a raised ranch had all one floor upstairs, and all one floor downstairs. Fenstermaker said when you enter, you can go each way when you enter, but that was not a main floor. BZA member Chris Yaecker noted the lower level was below ground a little bit. Fenstermaker thought it was probably lined up with the garage - the floor on the lower level and garage were the same elevation. Sustar said it was one foot up. Fenstermaker clarified with Sustar the levels were not even, and Sustar said yes.

Tomsic clarified with Sustar that he was adding an extra garage and a story above it, on the left side. Sustar said correct. Sustar said, "Currently, above the main - the existing house, it's those 2 windows over the garage - are 2 bedrooms, and then there was a third bedroom on the opposite side. Then a bathroom, kind of directly across from the right hand window; on angle. So, the architect drew it so that the addition would be a master bedroom and a master closet and a master bath with that closet. And the 2 other existing bedrooms would kind of be just a little bit bigger."

Yaecker said existing addition. Sustar said correct. Fenstermaker said from reading the information he received, he clarified with Sustar that he wanted to extend the driveway right on the property line. Sustar said no, he wasn't doing anything with the existing driveway. Fenstermaker asked if the driveway

was already there. Sustar said in the drawing, it showed going up to the addition, the extension of the driveway. Boksansky said the extension of the driveway was to accommodate the new garage. Fenstermaker asked if it was within 10 feet of the property line. Boksansky explained the driveway was already there, and Fenstermaker stated it wasn't a new driveway.

Sustar said he had a drone and took a picture above. Sustar went on to explain part of his issue was his septic system was in the back. He passed around a picture to the BZA from the drone, and said the blue area was his idea of where the line was from the house to the septic fields and the red area was distances from the house to the first septic tank. The BZA looked at his picture. Sustar said it was 24.5 feet from the edge of the house to the first tank. He said from the spigot where it would leave the house out to the tank, it was on 'that type of angle' it was about 26.5 feet. Sustar said he was trying to stay away from the septic. Sustar said the well was to the north side of the house and he wanted to stay away from that.

The Board Secretary suggested Sustar show what he was talking about on the whiteboard on the wall, so all of the BZA could see. Tomsic said he could probably show what he was trying to explain on the GIS map on the wall. Sustar went to the map on the whiteboard on the wall, and showed the approximate location of his first septic tank, and stated he did not know what the orientation was in the way of the inlet for the septic tank. He showed where the right angle was on his septic system. He said he did not know which way the tanks were situated and said if he tried to build out in the back, he was not too sure how far away from the septic tanks he would be. Sustar said he did not want to build over top of the existing outlet from the house to the first septic tank. Tomsic asked Sustar if he had a pump on his system. Sustar stated maybe one of the tanks; maybe from the tank to the first distribution box, he thought. Tomsic asked if that was where the pump was and Sustar said he believed so. Tomsic pointed out where the pump chamber was.

Tomsic said he liked the drawing and felt if Sustar added on in any other direction, it would look goofy. Sustar said he kind of threw ideas out, and said if he were to try to build out the existing garage, it would look odd from the road, and he would have a wall between the two existing garages and would have to move stuff out to be able to get something in the back.

Tomsic asked Sustar if his well was in the front and Sustar said yes. Sustar pointed to the map on the wall and showed where his well was located.

Fenstermaker asked Sustar what the dimensions were they were looking at, how far off the property line did he want to go. Boksansky said 14.5 feet off the east property line. Sustar said yes, 15 feet east and then same distance north/south. Fenstermaker asked Sustar if he was basically asking for 15 feet, and Sustar said correct. BZA Vice Chairman Ed Meyers asked if it was a 50% variance.

Yaecker addressed Boksansky and asked him if he was basing that 60% - adding to the GLA (gross living area), based on that lower level, just the lower level. Boksansky responded yes, it just qualified it as the living space, so he couldn't count the garage. Yaecker stated Boksansky was counting that as the first floor. Yaecker asked Boksansky if the lower level might really be classified as a basement, since it was

halfway in the ground, kind of like an English basement. Boksansky said the family room was living space. Yaecker agreed that it was living space, but questioned a finished lower level, a finished basement. Sustar said the basement was finished.

Yaecker explained he was trying to find some kind of definition in Newbury Township zoning, but it didn't quite explain. The Zoning manual listed a split level, but it was not very clear. Yaecker said the manual talked about split level and multi-level, but it was not really clear. Fenstermaker thought it described a raised ranch. Yaecker noted that in the mortgage business, Fanny Mae and Freddie Mac, they don't include the basement; it was all above ground. Yaecker said that in the appraisal world and the mortgage world, it would include the top level as the first floor and the lower level as the basement. Yaecker said he did not see a clear definition the Newbury Township Zoning manual – it mentioned above grade and below grade. Yaecker asked if there was anything in the Zoning that explained it.

Tomsic asked Yaecker what he was getting at – if the thought perhaps Sustar did not need a variance if they count the second floor as the first floor. Fenstermaker noted Sustar would still need a side yard variance. Yaecker said side yard variance, but a variance from and Fenstermaker said he was going 60% over the 40% that they recommend in the Zoning manual. Yaecker said split levels and bi levels were harder to find. Boksansky said that issue was in the non-conforming part of the Zoning Resolution. Yaecker said if you go by that you would include the lower level is what Boksansky was basing it on. Tomsic said it was currently non-conforming because Fenstermaker thought he was too close to the west property line. Boksansky said it was currently non-confirming because Sustar had less than 3 acres. Fenstermaker asked if the west was 20 some feet and Sustar said he thought it was actually at 30 feet. Yaecker questioned if Sustar was talking about the west line – he thought it was 20 some feet. Fenstermaker said he thought the west side was the non-conforming side.

Boksansky explained that when the house was first built, the owners got a variance for 30 feet on one side and 29 feet on the side that Sustar was asking for an additional variance. Fenstermaker said that according to the survey, it was 24 feet. Yaecker said basically 30 feet on the east side – 29.6 feet – rounded up.

Yaecker said Sustar was conforming on the east side right now and asked if this really should be a variance for 15 feet for the garage and the living area. Boksansky said those 2 items – that was it. Yaecker said he didn't see where that applied. Boksansky asked where what applied. Yaecker said, "Applies where with the 60% of the non-conformity of the first floor area." Boksansky said Sustar was building too big of a building for the addition, and that was why it was a variance.

Fenstermaker said using that as the first floor, Sustar was going 60% instead of 40% of the little finished area. Yaecker said OK, and he thought the first floor was the above grade area – not the family room area – he would count that as the basement. Yaecker thought it could be semantics, as it was not really well defined in the Zoning manual. Boksansky said it was not below grade; it was not a basement. Yaecker thought it was 3 to 4 feet below grade, somewhere in that range.

Boksansky asked Sustar if, when he walked in house, he walked down steps and Sustar said correct. Yaecker clarified Sustar walked down steps. Boksansky said it was still first floor living. Yaecker said, "OK – I guess it depends on how you define it. Either way." Boksansky asked Yaecker if he wanted to dismiss this variance; it was up to him.

Tomsic asked Sustar if his second floor was nothing more than bedrooms, bathrooms and a kitchen. Sustar said yes, living room, kitchen, dining room and bathroom and 3 bedrooms. Tomsic asked if there was a living room on both floors. Yaecker said living room / family room. Sustar said, "It could. Yea." Tomsic said he saw it the way Boksansky saw it; it was kind of underground, but not really. Yaecker asked Sustar if any of the lower level was unfinished, and Yaecker confirmed with Sustar that it was all finished – Sustar said there was a washer and dryer. Fenstermaker noted that all of the mechanicals were basically in the basement of the first floor, and Tomsic agreed. Fenstermaker didn't know quite how it was defined in the zoning, and he didn't feel the BZA should worry about that. Tomsic didn't feel a zoning definition changed anything.

Yaecker and Fenstermaker noted no one was there to oppose the requested variance.

Yaecker clarified the BZA was ruling on a variance for the garage as well; the new garage. Fenstermaker said yes, because it was too close to the side yard; the east side. Meyers agreed. Fenstermaker thought that was the main variance.

Boksansky noted it was about 14 or 15 feet where 29 feet was permitted, given that there was a variance previously. Meyers said a 50% variance and Boksansky concurred. Tomsic said a 50% variance on the side yard and a 20% increase on the overall size. Yaecker said Sustar had 100 feet of frontage, and Yaecker noted the Newbury zoning was written for 3 acres, with 200 feet of frontage. Fenstermaker and Tomsic said they did not have any more questions.

Tomsic made a motion to accept the variance as proposed, for a 50% side yard setback variance (14.6 feet where 30 feet is required) and a 23% variance on the first floor living area (living quarters), where 40% is permitted. Meyers seconded the motion.

The Board Secretary conducted a voice vote roll call.

**Tomsic – yes; Meyers – yes; Brezina – yes; Yaecker – yes; Fenstermaker – yes.
Motion passed 5-0.**

Tomsic addressed Sustar and said his variance was good. Sustar thanked the BZA. Tomsic said the minutes would be signed when they were done. The Board Secretary noted she was behind on minutes. Sustar said he did not have a builder lined up yet, not to worry. Tomsic said after the minutes were signed, Sustar would be able to come in and get his permit. Tomsic asked Boksansky if all of the drawings were in order, and Boksansky said what Sustar submitted is what he needed. Boksansky said the architect would probably have to refine the drawings a little bit, because the drawings say 'Not for Construction'; for the drawings to go to the building department.

Fenstermaker told Sustar he would need some typicals, which he could get at the Building Department.

The Board Secretary said that at the request of Ellie Gatto for The Gatto Group, Inc., and Johnny's Pizzeria (AV 23-004), they wanted a continuance for their hearing. They were scheduled to be at the BZA meeting today. Ellie Gatto requested that their hearing be postponed, and continue to May 16, 2023, as they were still working with their architect to come up with more plans for their proposal.

Boksansky felt it was not really a continuance, because the hearing was not started. Yaecker thought it was a delay. Tomsic asked how this would work, the BZA was hoping to give them a continuance, so they did not have to readvertise and do all of the other steps required.

Tomsic thought the BZA should ask for a continuance and Meyers, Yaecker and Boksansky agreed. Meyers wondered how the public would know if it was not readvertised. Tomsic said no one knew it was cancelled tonight, because no one showed up. Meyers said it didn't answer the question. Yaecker wondered if the meeting could be advertised again to say the hearing was continued. Meyers wondered if they needed to do that. Yaecker didn't know if advertising again was legally required, but they could still do that. Meyers wondered if it was the obligation of the public to come to the meeting. Tomsic noted that at the beginning of every meeting he reads: "*Both the Board and the applicant may request to continue a matter to a future date.*"

Fenstermaker recommended Johnny's Pizzeria go to the Geauga County Building department first, and throw out what they want to do, to see what they say. He felt their current plan would be shut down, as you can't put a roof over a foundation – it was illegal in Geauga County. Fenstermaker said they wanted to put posts on a pad and put a top on. Boksansky thought that structure would blow away. Tomsic noted they could use hurricane ties. Fenstermaker said the Building Department would want to see some kind of footing – be it a footer, or a pole, or something. Tomsic agreed. Fenstermaker said any builder or architect should advise them on that.

Tomsic said, "This hearing is for Johnny's Pizzeria at 12375 Kinsman Road, with a mailing address of 12399 Kinsman Road. They are requesting a side yard and rear setback variance as well as a variance for an extension of a non-conforming building structure."

Tomsic said the BZA has received notice that The Gatto Group Inc and Johnny's Pizzeria could not attend tonight, because they wanted to get more information for the BZA.

Tomsic made a motion that the BZA continue the hearing for The Gatto Group, Inc., and Johnny's Pizzeria, to a future date, specifically May 16, 2023. Yaecker seconded the motion. The Board Secretary explained she double checked that date – she contacted Ellie Gatto and asked her if that would be enough time (for the May 16, 2023 meeting), and Gatto said yes.

The Board Secretary conducted a roll call.

**Tomsic – yes; Yaecker – yes; Meyers – yes; Brezina – yes; Fenstermaker – yes.
Motion passed 5-0.**

Tomsic asked the Board Secretary if there was any upcoming advertising for future hearings. The Board Secretary said no, not to her knowledge. Tomsic said Meyers brought up a good point – how would anyone know if there was another meeting for Johnny's. The Board Secretary said they would to have been at tonight's meeting. Tomsic repeated that they would have had to be at the meeting tonight and the Board Secretary said correct.

Yaecker asked if the BZA had ever advertised a continuance, and the Board Secretary said no, the BZA does not have to advertise again, if the hearing is continued. Yaecker asked if anyone called about the meeting and the Board Secretary said no – they received no calls or questions from anyone.

Yaecker asked the Board Secretary to read the motion again – the one made for the Sustar variance, and she did. Tomsic said a 50% variance on the side yard setback, and a 20% variance on the living quarters. Yaecker said it was different, completely different than what was written, but he thought pretty much the motion was correct, although it didn't really follow what the variance was for. Boksansky said it was 14.6 feet or roughly 15 feet and it was half of the 29 feet, 14.6 feet, roughly. Boksansky said by saying 50%, they were correct. Yaecker said he didn't think it applied to this at all – in terms ofand Fenstermaker said they added 20% on to the 40%, so he thought it covered the variance. Yaecker said he thought it didn't apply to Sustar at all, but they passed the motion, and no one was in the audience to object to the variance. Yaecker thought if there were audience members, the BZA would have to clarify between what was on the variance and what they just passed. Boksansky said he thought they should assign some numbers to the motion. Tomsic asked the Board Secretary to feel free to insert the numbers to the motion, for the minutes.

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

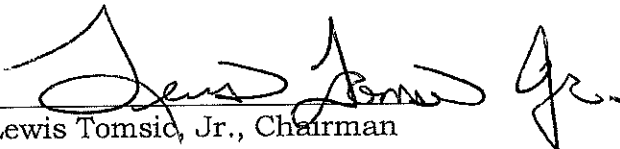
1. Whether the lot in question will yield a reasonable return or whether there can be any beneficial use of the lot without the variance? Sustar answered, "More appealing if it were to be sold and possible tax increase on property tax." Tomsic said it was a residential property now and it was going to stay that way. Tomsic agreed with Sustar, and said when the taxman drove by, his taxes would go up.
2. Whether the variance is substantial. Sustar answered, "Yes, property line measurements already at minimum, well is on the north side of the house, septic system to the south." Tomsic said nobody responds that way. Meyers said he noticed that as well. Tomsic said the BZA considered that a substantial variance because both variances were greater than 20%.
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as

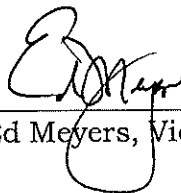
a result of the variance? Sustar answered, "No." Tomsic said he would agree with that and thought the addition would look good, and it tied right into the house.

4. Whether the variance would adversely affect the delivery of governmental services? Sustar answered, "No." Tomsic said he did not see how it would.
5. Whether the lot owner purchased the property with the knowledge of the zoning restriction? Sustar answered, "No." Tomsic asked Sustar if he was the property owner and Sustar said he was. Tomsic thought he saw a Power of Attorney in the file for Sustar. Sustar said his mom went to the Sheriff's sale for him and she ended up putting a down payment in. He said they just haven't changed names; the deed has both Sustar and his mom's name on the deed. Tomsic said Sustar responded he did not know about the zoning restriction. Sustar said he kind of had a feeling, but didn't know.
6. Whether the lot owner's predicament feasibly can be obviated through some method other than a variance? Sustar answered, "Most likely not. Any other options would include a variance or completely rearranging the inside and possibly moving the existing well and driveway due to incline the driveway has to the flat area." Tomsic said, to him, that was the most logical place for an addition and for what Sustar wanted to do.
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance? Sustar answered, "Yes." Tomsic noted the BZA granted the variance, so that was a Yes on their part.

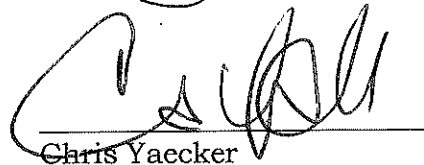
Yaecker added that there was no one in the audience who was against the variance; no one in the audience, period.

Tomsic adjourned the meeting at 7:30 p.m.

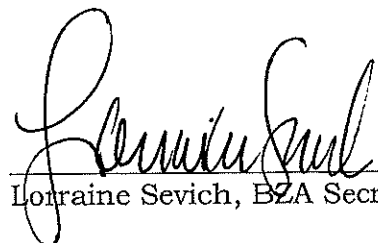

 Lewis Tomsic, Jr., Chairman


 Ed Meyers, Vice-Chairman


 Mary Lee Brezina


 Chris Yaecker


 Mike Fenstermaker


 Lorraine Sevich, BZA Secretary