Newbury Township

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Board of Zoning Appeals Meeting Record of Proceedings

Date

September 15, 2026

7:00pm

Zoning Hearing regarding: CASE NO. BZA 2026-16

Zoning Certificate Application No.

Property Address: 12490 Kinsman Rd Newbury Oh 44065

Board of Zoning Appeals Members present:

Mike Fenstermaker- Vice chair

Albert Hehr

Dave Fabig

Jay Jones (alternate)

Board of Zoning Appeals Members absent:

Scott Koller

Lewis Tomsic Jr. Chairman

Staff / other officials

Nick Bellas- Zoning Inspector

Greg Tropf- Trustee Liaison

Amy Lydan- Zoning secretary

Applicant/Guests Present:

Scott Laing

David Leichtman

David M. King

Cynthia Teague

Tammy Teague

Mary Sayre

Christine Kozlowski

Dianne Nickel

Roll was taken and attendance is reflected as stated above

Mr. Fenstermaker called the meeting to order at 7:00 p.m. and began with the pledge of allegiance

Mr. Fenstermaker

"Good evening. This is a meeting of the Newbury Township Board of Zoning Appeals. Before proceeding I will read a brief overview of tonight's hearing. 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. As a quasi-judicial body, we keep our procedures relatively informal. However, in order to conduct an orderly meeting and allow all interested parties an opportunity to present the evidence necessary to assist us in making our decision, certain procedures will be followed.

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, any 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."

Mr. Fenstermaker asked that any audience member(s) present who want to speak - to raise their right hand. Mr. Fenstermaker swore in:

Scott Laing

David Leichtman

David M. King

Cynthia Teague

Tammy Teague

Mary Sayre

Christine Kozlowski

Dianne Nickel

Mr. Fenstermaker noted everyone had been sworn in.

Mr. Fenstermaker asked if all of the interested parties were notified and the Board Secretary and stated that yes, all interested parties were notified.

Notable minutes as to what transpired at the hearing.

Mr. Fenstermaker- We are here to hear an appeal filed by Capital LLC. David Leichtman regarding property at 12490 Kinsman Rd Burton Ohio 44021

Mr. Lichtman- Here.

Mr. Fenstermaker- The floor is yours.

Mr. King -Yes, sir. Okay. So my name is David King. I am an attorney in law. My mailing address is PO Box 644. I will actually be testifying because I have reviewed the auditors and county land records as it relates to this matter. I've been practicing since 1985. I started in Chardon, where I worked for 14 years. Moved to Willoughby, then Willoughby Hills, back to Chardon. I'm still now practicing in in Geauga and Lake Counties primarily. In that entire span from 1985 to 2026, 41 years, I have practiced in the area of real estate law and zoning. So we are here because basically, and I'm going to start, I believe that you have this plan of the lot split and consolidation. I think Mr. Lightman dropped several off. So I've marked all my exhibits by letter. So I just want to make sure this part of the record as Applicant's Exhibit A. And this a plat of the survey that was done, basically just to describe the portion of the property. I'll set this here on that. This is exhibit A. So this this parcel right here, okay, is as you can see. We don't have the number. That's it. No, it's not 600. It's 300. In any event, there's no parcel number on it. But this property, since 1944, was described by starting a bounding description by starting at this southeast corner, going north, and then east to the, and it references the Newbury Township line, north, then east, south. And then along the center line of Kinsman Road back to the point of beginning.

Mr. Fenstermaker- Can you show Newbury's Township line again?

Mr. King- This is the Township line right here. And so in 1944, and I'll give you the deed in a minute here. In 1944, it was transferred to an individual or individuals as a seven - plus acre parcel. 4.7, and it's described, and it says containing 2.39 acres in Newbury Township, and 4.79 in Burton. Okay, so on this map here, this the portion in Newbury Township, and then this the portion in Burton. Okay, those are two separate deeds. Described as one seven point eight nine parcel.

Mr. Fenstermaker- So it's one parcel, just half.

Mr. King- - By metes and bounds, yes. Okay. But it said 2.39in Newbury, 4.79 in Burton. And the reason is that things were completely different in 1944. You had no subdivision regulations. Pretty sure you didn't have zoning. Okay. And there would have been no issue with it. And ironically, at any time. And up until a certain point, when they tightened up the conveyance standards in Geauga County, could have could have conveyed the part in Burton as a separate

parcel by just simply saying we convey all of this, but except out the portion in Burton, and wouldn't have had to have done a survey and a legal description. Could have done it that way. Then he could have done it again, and then at some point the conveyance standards change and they would have told us, well, okay, you can do it one last time, but next time you're going to have to do a legal description. So we're just doing what could have been done long time.

Mr. Fenstermaker- So you're writing a new legal description for that property?

Mr. King- Yeah, and so we're creating so that nobody questions two lots a record, the portion in Newbury, and then the portion of Burton being a separate lot. Okay, and we tried to. We submitted the deed, but the auditor sent it to the planning commission, and the planning commission said you have to have approvals from the board. So we're not changing anything. Okay, the parcel in Newbury, there is a duplex on that property, which there has been since it was built in 1955, and that's continuing. The portion in Burton I'll hand you now. I was going to hold off on this, but and I'm sorry, I only have one copy. But here, this is applicant's exhibit C. So the portion that of this described property that is in Burton Township has already been recognized by Burton as always having been part of Deer Lake Manufactured Home Park, and the zoning inspector has. Given written acknowledgement that it is a nonconforming use, may be continue to be used as a manufactured home park, and then DNL Capital has consequently received approval from the Department of Commerce Industrial Commission that regulates manufactured home parks in the state of Ohio. Now has been given approval for all of that, and in fact, there's another parcel where Burton gave a variance to add on to the manufactured home park because they like what we're doing and if you've been out there it's you know a hundred and ten percent improvement of what was there and that's probably an understatement. So nothing changes. That's the ironic thing about this. So when I'm preparing for this, I'm like, I mean, why do why do we need to change it? Well, so I came at it from the reverse. All right. What if we don't change it? Okay. If we don't get this recorded, then this 2.39 acres is completely unsellable, unmarketable. Because they won't let us transfer it now without a variance. Okay. So we wanted to just transfer it so in the future there won't be any problem. It's already recognized as a separate parcel for taxing purposes. Has been since the very beginning , and I'll provide you an email from the archives department, but I looked into that and they said it'll go back to whenever the parcel was created, which was 1944. Okay, so if this variance isn't granted, then we have a 2.39 acre piece of land in Newbury Township that can never be sold. And if it can't be sold, then there's only two options, and one is. The government took our property because we can't sell it, so it's a taking. Or two, we come in and ask for some other variance, such as we use it in connection with the manufactured home park. Like if it's part of that larger 4.79 acres, then we either use it for that, or you know, the entire value of that property has been taken. So, I'm coming at this from like I just want to make sure you understand because it's to me it's silly that we're here. All right, now you know I've had communications with Mr. Bellas now, and I will tell you on the application just for clarification, the Planning Commission said we just need a variance for minimum lot size and frontage. Okay. And for the record, I think

it was originally referred to as an R1 parcel. It's actually B1. It's zone B1. Okay, but I also ask for setback because once it's recognized that this is what it's been all along, which is a 2.39 acre parcel in Newbury, the setbacks on the side probably are in noncompliance. So I ask for those. But Mr. Bellas, in his one communication, acknowledged that as a duplex, it's a non-conforming use. Okay, so what we're trying to create is a lot of record that satisfies the planning commission. Okay, the definitions of a lot of record state that it's taxed separately, which this is, and then it's described in a metes and bounds description, which this is, but it's not described as just 2.39 acres. It's described as part of a larger parcel. Okay, and again, I would you know I hate to repeat myself, but not that long ago we could have transferred it and just said we want to accept out the portion in Burton, and they would have accepted that. And so the problem we have is now the definition of a lot of record in the subdivision regulations just didn't take into account this situation, didn't anticipate this ever becoming an issue, and there's no grandfathering provision in the subdivision regulations like there is in the township, in the township zone. So what I wanted to do is just make sure you understand where I'm coming from because I kind of feel silly that we're here, to be honest with you. It seems like unnecessary exercise to me, but it's certainly our path of least resistance. So I want to make sure. If you have any questions, if I need to explain this better, fire away. But nothing changes, okay. But when it comes to the Duncan factors, which you know are what govern an area variance, the you know the seven plus factors. I mean, they all weigh in our favor. You go right down the list. Okay, it's not going to affect government services because nothing's changing. The uses remain the same as they have been before zoning. Duplex adjoining manufactured home park in a different township. They maintain their same tax of taxation parcels, so the taxes stay the same. No change in government services. Okay, not a thing changes. And then the question is, can this be obviated with anything other than a variance? According to the Planning Commission, no. Because without the variance, we cannot transfer this property at a future date. And again, that makes it unsellable, which is not just the definition of practical difficulties, but the definition of unnecessary hardship, because it would have zero value to its owner at that and I don't know. I don't know what the county does when you know we say, well, we want this to be a separate parcel, and they say no. Well, we've already got a use on there. What do you do with it? I mean, what can we do if we can't sell it? Does that make sense? Hey, am not everybody good on that?

Mr. Hehr- No, The definitions are easy. Okay, I only have 20 years of real estate experience, so you got me beat there. But I'm pretty comfortable. It wouldn't be a taking, but I understand .That's not that's not our purpose here. We're trying to look at whether or not there's a current value on that property, whether the value substantially changes on a seven acres, even though it's split between two cities. I mean, Mayfield Village and Mayfield Heights had the same fight right across the property line on Som Center Road. So I'm very comfortable with the discussion that you're having. So I think, as just like before, you need three of us to vote yes. If there's only four of us, so you can only afford one off. If you think there might be two off, then

you can also say, listen, we need to have three out of five so that you can come back to a full meeting.

Mr. King- We're going to proceed. Correct. I do want for the record. I do so I'm not sure how whether this is part of the record. So I've created, you know, I've just done a printout of the GIS map, which is pretty similar to that as Exhibit B, and then Exhibit D is an email that I received from Claire Wilson in the archives. I asked her when was it assigned its own parcel number, and she said at least since 1973. Trace it back to the owners. When the 2.39 acres first appears, and that's the year it began, so that takes us back to 1944. Exhibit E is our deed of record. Okay, that's the deed by which DNL Capital acquired title.

Mr. Bellas- Just so they don't get confused, his exhibits are different than mine

Mr. King- Mine are marked the applicants, and they're marked with letters. Yours are. Is there a corresponding number? I just want to make sure the board is aware who's seeing exhibits and you're trying to look and it's not following. Right, mine are all letter, and his are not. So which document are you looking at? So I'm just describing what they are.

Mr. Hehr- so we have the deeds.

Mr. King- Yeah, that was submitted with the application. But I'm just making sure that everything's all in one package with the record.

Mr. Hehr- So DNL Capital purchased the property in 2021. Yes. So they had ample opportunity to know what the zoning was, ample opportunity to know what the parcel was, and ample opportunity to know that it was split.

Mr. King- Actually, not.

Mr. Hehr- So they have a title claim.

Mr. King- We did. Okay, that's. Been resolved. Title company did not pick up some of the litigation that involved the health department, which we resolved. Okay, but there was no requirement because it was being purchased with the other acreage. There was no requirement that it be, you know, a separate legal description be created.

Mr. Hehr--So it could be sold with the other acres then?

Mr. King- Not really, not unless it's part of a manufactured home park or vice versa. I mean, because you'll see the manufactured home park, including the water facility, water well, are all on the acres in Burton, as are some of the homes. Some of the infrastructure.

Mr. Hehr- So, was there an easement put in on that property,

Mr. King- On the Burton property? Yeah. No, no need to. Plus, the use of it as manufactured home park predated Burton zoning, which is why it's nonconforming.

Mr. Fabig- So, there's structures on that property right now.

Mr. King- There are.

Mr. Fabig- And what are they utilized for? I mean, the one that's on Newbury property.

Mr. King- the only thing on the new bury property is that existing duplex,

Mr. Fenstermaker- And that's two residents live in that.

Mr. King- Right now it's vacant.

Mr. Leichtman- It's vacant. Yeah, the house is empty. My intent is to sell the duplex. I only want to own the manufactured home community.

Mr. Fabig- Okay. So you're not going to tear it down.

Mr. Leichtman - I want to clean it up and then put it up for sale, but I don't want to do that until I can. Have two separate deeds, so I could give clean title to whoever would be the next owner, and they have to understand they're Newbury Township.

Mr. King- Okay, and then you know as this issue is thought about, and I asked Mr. Bellas, and I agree with his answer wholeheartedly. I mean, for us to comply with your minimum lot size requirement, we cannot consider property in Burton anyhow. So, in answer, you know the question: Can we sell it or the other? It still doesn't make it, you know, compliant, because property in Burton can't be regulated by Newbury, and property in Newbury can't be regulated by Burton, and so we still don't comply with the minimum lot size requirement, and we don't comply with the frontage because you can't include property in another township to reach those minimum requirements, and so essentially, since 1944, just how it's on the GIS map is how it's existed. The duplex on 2. 93 acres in Newbury, and a manufactured home park on the 4.79 in Burton, plus the parcel next to it to the east of it.

Mr. Fenstermaker- You're splitting that right down the driveway to get to that duplex.

Mr. King - No, we're splitting it right down the Newbury Township line.

Mr. Fenstermaker - That's not a driveway to get to that duplex?

Mr. Leichtman - That that driveway is that has actually been moved onto the Newbury property.

Mr. Bellas- The blue one is correct.

Mr. Fenstermaker- Looks like the. Driveway runs on that blue line.

Mr. Leichtman - Well, no, it's been moved over. It's been moved over next to the duplex.

Mr. Fenstermaker- All right. So the driveway is not in compliance either.

Mr. Bellas- Right. Well, yeah. It should. Our current code requires ten feet off the property line. Right. The duplex is not permitted either.

Mr. Fenstermaker- But can it can it be sold as a duplex.

Speaker 9- Not now, no, because it's not permitted. It's right. It could be, It would be a single family residence.

Mr. King- I have to disagree. I mean, it's a nonconforming use. It's only vacant right now while it's under while this process is pending, and while repairs are made to the.

Mr. Fenstermaker- We're not allowed to have two residents on one property in Newbury.

Mr. King- Well, I understand that, and you're not allowed a duplex in a business district either. But it's nonconforming because it predates zoning. Now and you've given me that that opinion in writing, which is why I didn't ask for that. I mean, it's in your materials. You acknowledge it's as a duplex. It's a non - conforming use, which it is since 1944. It's been there since the inception. Right. And while there's nobody presently there, that's not a discontinuation for two years.

Mr. Fenstermaker- And that goes with the property when you sell it.

Mr. Bellas- I have to I have to research, but all right. I can tell you it does. That the main the main reason he's here is exhibit four. He's asking about a parcel number. My exhibit four does show the parcel number give . Okay. I did talk with the planning commission also. They required the variance because this was deeded as one parcel, and it was like I said in the introduction, it's an aberration of you don't see this very often, if at all. So, in order for them to proceed with their future development, they're trying to acquiesce to the planning commission's desire for appearance, and just for the record.

Mr. King- The planning commission has made it clear they will not record the deed for that two point three nine acres without variance. Right, that is correct. Yes. So if you don't disagree, it would be solvable, right? Yes, sir.

Mr. Fenstermaker- Any other questions? Oh, yes, somebody in the back.

Ms. Kozlowski - Christy Kozlowski, homeowner, 1446 Ravenna Road. I got a note to come here, and just asking how is this affecting me? How does it affect my property?

Mr. King- She's on Ravenna road. If you can zoom out, she touches the very corner of it. See up there. That's you right there.

Ms. Kozlowski- That's me up there. Yes.

Zoning Secretary Ms. Lydan- So, by law, we're required to notify anyone whose border touches their property borders.

Mr. King- Nothing is changing in terms of the existing uses of those properties.

Ms. Kozlowski- Thank you very much. That's all, Thank you

Mr. Bellas- You don't even want to see how it ends. You've come this far.

Ms. Kozlowski- I vote yes.

Mr. Fenstermaker- Do you have any opposition to this at all?

Ms. Kozlowski- Is it going to be used for like septic or anything?

Mr. King- Everything already exists.

Ms. Kozlowski- Very good. We're good. We're fine. Y'all have a great night. Okay. I hope yes. All right. Thank you. Thank you.

Mr. Fenstermaker- Any questions all before we vote.

Mr. Hehr- Do we have the survey itself, the new survey? Because you said you were going to get a new survey out.

Mr. King- You, I believe, you have that. That big plat.. Schwartz, I'm putting it here.

Mr. Hehr made a motion to accept the variance of a reduced frontage and. And overall lot size according to the submitted survey.

Mr. Fabig Seconded

Mr. Fenstermaker called for a roll call vote regarding the motion on the table.

The Board Secretary conducted a voice vote roll call.

Mr. Hehr- yes

Mr. Fabig- yes

Mr. Jones- yes

Mr. Fenstermaker – yes

Motion Passed

All were in favor, and the Motion for the area variance was approved

Mr. Fenstermaker- Thank you, everybody. Have a good evening

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

Area Variance

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- No

BZA Review: true

B. **Whether the variance is substantial?**

Applicant- No

BZA Review: it is . Half the frontage and not enough acreage. This is an unusual circumstance

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- No

BZA Review: nothing changes

D. Whether the variance would adversely affect the delivery of governmental services

Applicant- No

BZA Review:

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

Applicant-No

BZA Review:

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

Applicant- Not according to the Geauga County Planning Commission and the Newbury Township Zoning Inspector

BZA Review: he is going through the right steps

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

Applicant-Yes

BZA Review:

Mr. Hehr Made a motion to Adjourn

Seconded By Mr. Fabig

Meeting adjourned by Mr. Fenstermaker at 8:15pm

Lewis Tomsic, Jr., Chairman

Mike Fenstermaker

Scott Koller

Albert Hehr

Dave Fabig

Jay Jones (alternate)

As approved by: Amy Lydan, BZA Secretary