

Case Number: 25-BZA-001

Request: Variance

Applicant: Kristina Collini Holland (Beard)

Staff Report: Completed by Jeff Palmer, Director of Planning & Zoning

Hearing Date: December 9, 2025

Report Date: November 24, 2025

Current Zoning of Property: Residence Zone “R-1”

Description of Property:

The property is identified as 3657 Mary Ann Dr. The property is also identified as Lot 51 in the McGill Meadows Section Two subdivision. The property is identified by parcel id 09-33-178-018 and account number 0201316. The property is .50 acres in size. The property is zoned Residence Zone “R-1”. (See Exhibits: Location Map, 1A-J, 2)

Nature of the Request:

The applicant states: “The variance request of 14” to accommodate the pool's current location. The property owner, a first-time homeowner and single parent, purchased the pool and installation from a local pool and patio retailer who subcontracts installations. She was not aware of permit requirements and expected the contractor to pull any legally required documents. It was brought to the homeowner's attention of a possible setback but was not aware that this was code. The homeowner out of courtesy spoke to the neighbor to the south that there may be some type of encroachment and the property owner at 3639 Mary Ann Dr. Lebanon, Ohio stated that he had no problem with any encroachment.” (See Exhibits: 3A-F, 20A)

Background on the Nature of the Request

Staff Comments:

This application was originally filed on October 13, 2025. I started the staff report, and on October 16, 2025 I learned about the Warren County Health Department’s additional setback requirements that would also impact the location of the pool. I then emailed Ms. Beard, and provided her the background information on the newly found information and requested direction on how she wanted to proceed with the request. On October 20, 2025 Ms. Beard requested the variance application be paused while she looked into the requirements from the Health Department. On November 7, 2025 Ms. Beard requested to move forward with pending variance request. I responded to Ms. Beard’s email request on November 10, 2025. (See Exhibits: 4, 5)

The applicant is requesting a reduction to the southern side yard setback for an above ground pool. The request is for the side yard setback to be eighteen (18) feet and ten (10) inches instead of the required twenty (20) feet from the water’s edge to the property line, which is required in Section 22.01(B) of the Clearcreek Township Zoning Resolution. (See Exhibits: 3A-F)

On September 8, 2025 Code Enforcement Officer Lori Burton made a site visit to investigate a complaint that a swimming pool had been established without a zoning permit. Ms. Burton made contact with the applicant and discussed the complaint. Ms. Burton found that an above ground swimming pool had been established on the property and no zoning permit was found for the structure. Ms. Beard stated she had the pool for three years. Ms. Burton outlined the required information that needed to be submitted for a zoning permit along with the required setbacks. (See Exhibits 6A-B)

On September 9, 2025 Ms. Beard came to the Zoning Office and declared the pool was less than the 20’ requirement and requested information regarding the variance process. Later that morning, Ms. Beard and Mr. Scott Beard met with me to discuss the situation and the variance

process. Mr. Beard outlined that the setback was found to be 18'10" from the southern property line. Section 5.07 of the Clearcreek Township Zoning Resolution gives the Zoning Inspector an accuracy standard of six (6) inches when determining compliance with setbacks. (See below) Since the encroachment exceeded that standard, it is being brought forward as a variance request. (See Exhibits: 7A-B)

The Warren County GIS aerial from 2020 shows a tree in the rear yard, west of the southwest corner of the house. In the 2022 aerial, the tree has been removed. In the 2023 aerial a swimming pool has been established in the area where the tree had been removed and grass has not yet been established around the pool. In the 2024 aerial, the grass has been established around the pool. (See Exhibits: 8A-D)

The Google Earth aerials from October 8, 2020 and September 24, 2021, show the tree is in the rear yard. The June 24, 2022 aerial is blurry but a swimming pool and disturbed soil are identifiable in the rear yard. On the August 28, 2023 aerial, the grass has been established around the pool. (See Exhibits: 9A-D)

Based upon the Warren County GIS and Google Earth aerials that I found, the pool was established during the calendar year of 2022 no later than June 24, 2022. (See Exhibits: 8A-D, 9A-D)

Since the 1973 Zoning Resolution was voted into existence on November 6, 1973, the Special Provisions Chapter has regulated the placement of swimming pools with the same setback regardless of the zoning classification. In 1973, Special Provision was Chapter 21. The Section that regulated the location of a swimming pool was 21.02 (B): It may not be located, closer than twenty (20) feet to any property line on which it is located. (See Exhibits: 10A-B)

On November 22, 1974, Chapter 21 was changed to Chapter 22. (See Exhibits: 11A-D)

On February 8, 2016, via Trustee Resolution 4797, Section 22.01 was updated. Section 22.01(B): It may not be located closer than twenty (20) feet from water's edge to any property line of the property on which it is located. (See Exhibits: 12A-E)

The following Sections of the Clearcreek Township Zoning Resolution are involved with this request.

CHAPTER 3 DEFINITIONS

SEC. 3.44 Lot: A parcel of land having its frontage upon a public street or road.

SEC. 3.442 Lot, Building: A lot or parcel of land, occupied or intended to be occupied by a principal structure that has been lawfully created and meets all criteria required by the underlying zoning classification.

SEC. 3.47 Lot, Depth: The mean horizontal distance between the front and rear lot lines of a lot measured within the lot boundaries.

SEC. 3.48 Lot, Frontage: The frontage of a lot is the length of the boundary of a lot that is coincident and in common with that of the road right-of-way of a public street, road or highway that it abuts.

SEC. 3.51 Lot, Width: The mean horizontal distance between the side lot lines measured within the lot boundaries, or the minimum distance between the side lot lines within the buildable area.

SEC. 3.69 **Structure:** Anything constructed or erected, the use of which requires fixed location on the ground or attached to something having a fixed location on the ground, including permanent buildings, signs, pergolas, swimming pools and telecommunication towers.

SEC. 3.7021 **Swimming Pool, Above Ground**

A structure that is comprised of support wall units and a liner. This structure is able to retain a minimum water depth of 18 inches and a maximum water depth of 48 inches, as measured at the support wall. This support wall is located on grade or partially below grade. This pool requires water filtration, circulation and purification. This structure is to be used for recreation purposes.

SEC. 3.73 **Yard:** An open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except eaves, balconies and unenclosed steps leading to a first floor or basement. In measuring a yard the minimum horizontal distance between the lot line and the nearest portion of the building shall be calculated, starting at the lot line and ending at the nearest portion of the building foundation.

SEC. 3.74 **Yard, Front:** The open space extending across the front of a lot between the lot frontage and the closest vertical support for the building, other than the projection of the usual eaves and overhangs not to exceed three (3) feet, steps, wheelchair ramp. For a lot that has frontage on more than one street, the required front yard shall be provided on all streets.

SEC. 3.75 **Yard, Rear:** The open space extending across the rear of a lot between the side lot lines and the being the minimum horizontal distance between the rear lot line and the building other than the projection of the usual eaves and overhangs not to exceed three (3) feet, steps, unenclosed balconies or unenclosed porches. The lot line is most distant from, and is, or is most nearly parallel to, the lot frontage. If a rear lot line is less than fifteen (15) feet long, or if the lot line comes to a point at the rear, the rear lot line shall be a line at least fifteen (15) feet long lying wholly within the lot, parallel to the lot frontage. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots the rear yard shall in all cases be the opposite end of the lot from the front yard. On lots fronting on three (3) streets, the remaining dimension shall be termed the rear yard, but shall be at least the minimum established for any side yard in the respective zone.

SEC. 3.76 **Yard, Side:** The open space between the building and the side line of the lot and extending from the front yard to the rear yard. Unenclosed steps, wheelchair ramps and balconies may extend into the side yard no more than one-half (1/2) of the required side yard width. Side yard lot lines connect lot frontage to rear yard lot lines.

CHAPTER 5

GENERAL PROVISIONS

SEC. 5.07 The accuracy standard used to determine compliance with setbacks shall be that of a mortgage survey as outlined in the Ohio Administrative Code.

CHAPTER 5.75

RESIDENCE ZONE "R-1" REGULATIONS

SEC. 5.754 PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:

- A.** There shall be front yard having a depth of not less than fifty (50) feet, provided, however, no front yard depth shall be required to exceed the average of the minimum depths of the existing front yards on the lots adjacent on each side, if each of such lots are within the same block and within one hundred (100) feet of a the building under consideration. If an average can not be mathematically determined based upon the above process, then the zoning inspector shall expand the area under review. The expanded area shall include the front yard setbacks of the building(s) across the street and within one hundred (100) feet of the building under consideration.
- B.** For a lot that has frontage on more than one street, the required front yard shall be provided on all streets.
- C.** Side yard: There shall be a side yard of ten (10) feet minimum on each side, except for lots with more than one (1) front yard, in which case the minimum side yard shall be ten (10) feet on the side, if any, not fronting on a street.
- D.** Rear yard: There shall be a rear yard having a depth of not less than forty (40) feet, except for lots with three (3) front yards, in which case the minimum rear yard shall be ten (10) feet.

SEC. 5.7545 ACCESSORY STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:

- A.** Front yard shall conform to 5.754 (A) and 5.754 (B).
- B.** Side yard shall conform to 5.754 (C).
- C.** Rear yard shall be a minimum of ten (10) feet.

CHAPTER 22

SPECIAL PROVISIONS

SEC. 22.01 Swimming Pools:

No swimming pool shall be allowed in any residence zone except as an accessory use and unless it complies with the following conditions and requirements:

- A.** The pool is intended and is to be used solely for the enjoyment of the occupants of the principal use of the property on which it is located.
- B.** It may not be located closer than twenty (20) feet from water's edge to any property line of the property on which it is located.
- C.** In-ground swimming pools shall have a barrier installed to prevent uncontrolled access by children from the street or from adjacent properties.
 - 1.** Fence/wall barrier
 - a.** Fence/wall shall be not less than four (4) feet in height.
 - b.** Fence/wall height shall be measured on the side of the fence/wall that faces away from the pool.
 - c.** The maximum vertical clearance between the bottom of the fence/wall and the ground shall be four (4) inches.
 - d.** Fence/wall shall be maintained in good condition.
 - e.** Fences that are composed of horizontal and vertical components shall conform to the following standards:

- i. When the fence design has horizontal components that establish a frame upon which the vertical components are attached, the horizontal components shall be located on the swimming pool side of the fence.
 - ii. When the fence design has vertical components that intersect the horizontal components, the horizontal components shall equally straddle the vertical components.
 - iii. Maximum spacing between all vertical components shall be four (4) inches.
 - f. Fences that are composed of wire mesh and vertical components shall conform to the following standard:
 - i. The maximum spacing between all vertical components of the wire shall be two and one quarter (2 ¼) inches.
 - g. Pedestrian access gates:
 - i. Shall conform to the design standards identified in Section 22.01 (c) (1) (e) or Section 22.01 (c) (1) (f).
 - ii. Shall be self closing.
 - iii. Shall be self latching.
 - iv. Shall have the opening mechanism mounted at a height of at least forty-five (45) inches.
 - v. Shall open outward away from the pool.
 - h. Utility access gates:
 - i. Shall conform to the design standards identified in Section 22.01 (c) (1) (e) or Section 22.01 (c) (1) (f).
 - ii. Are not required to have a self-closing device.
 - iii. Are not required to have a self-latching device.
 - iv. Shall have a means to secure the gate when not in use.
 - i. Temporary construction fencing shall be installed after the in-ground pool area is excavated.
 - j. Final fencing and gate assemblies from this chapter must be installed within sixty (60) days of the pool holding any water.
 - k. All fences and gates shall be located so as to prohibit permanent structures, equipment or other objects from being used to climb the fence or gate.
- 2. A power safety pool cover barrier that meets the performance standards of the most recently amended American Society For Testing And Materials (ASTM) F1346-91:
 - a. May be used independent of Section 22.01(c)(1).
 - b. The cover must be locked when the pool is not in actual use and/or when the pool is unattended.

- D. Any pool for the use of occupants of multiple family buildings containing over three (3) apartments shall meet the structural and sanitary requirements of the Ohio Department of Health.
- E. Above-ground swimming pools in compliance with all the following regulations are not required to have a separate barrier. Above-ground pools not in compliance with the following shall comply with all the requirements of Section 22.01(c).
1. The side walls shall be not less than four (4) feet in height at every point around the exterior perimeter of the pool after installation is completed. The height is measured from grade to the top of the pool wall.
 2. The pool shall be equipped with a removable ladder or a ladder that swivels and latches in a position so that all parts of the ladder are above four (4) feet in height and capable of being locked. The ladder must be locked if it is located inside the pool or removed if located outside of the pool, when the pool is not in actual use and/or when the pool is unattended.
 3. Permanent structures, equipment, other objects or grade greater than six (6) inches as measured in relation to the height at the pool wall shall be located at least four (4) feet from the pool wall to prevent their usage to climb into the pool.
 4. If the floor of a deck is less than four (4) feet from grade and is used to access an above ground pool, then all components of the deck (railings, gates and stairs) shall conform to Section 22.01 (c) (1).
 5. If the floor of a deck is greater than or equal to four (4) feet from grade and is used to access an above ground pool, then the applicable components of the deck that are coincident with a foothold (railings, gates and stairs) shall conform to the following regulations:
 - a. Height measurements to determine conformance with the regulations will occur at the location where a horizontal plane (grade, top of stairs, top of floor of a deck) allows a user to establish a foothold.
 - b. The location of the highest foothold will dictate the starting height of the measurement.
 - c. If a gate is placed at the grade height (bottom) of the stairs, the gate and sides of the stairs must conform to Section 22.01 (c) (1).
 - d. If a gate is placed at the deck height (top) of the stairs:
 - i. The gate must conform to Section 22.01 (c) (1).
 - ii. The railings for a minimum of four (4) feet in width from each side of the gate must conform to section 22.01 (c) (1).

The standard for approval of a variance is “Unnecessary Hardship”. In determining whether or not unnecessary hardship exists, the Board of Zoning Appeals will consider the following factors. Please indicate below how this variance meets each standard.

Review of Application:

Evaluation of the Variance:

1. The hardship must remove all profitable use from the land. It is not a sufficient hardship if the land would be more valuable with the variance, or less valuable without the variance. Instead, there must be evidence that the property is unsuitable to any of the permitted uses as zoned:

The applicant states: “The subject property (3657 Mary Ann Dr. Lebanon, Ohio) is constrained by an existing septic system containment tank occupying the right side of the property and existing leach bed to the rear of the property. These conditions uniquely restrict available space to place the pool without violating setback requirements. Compliance with the current zoning ordinance would deprive the owner of reasonable use of the property for residential recreation purposes, constituting an unnecessary hardship. The proposed variance seeks the minimum setback adjustment required to allow siting of the pool while preserving all natural features and without any impact on adjacent properties. The pool is currently set back 18 feet 10 inches from the southern property line, falling 14 inches short of the required 20-foot setback.” (See Exhibits: 3A-F)

The following issues need to be considered:

- The subject parcel is .50 acres in size. This lot size is no longer the minimum for parcels that rely on a septic tank and leachfield. The Residence “R-1” zone now requires a minimum of one (1) acre for onsite waste disposal, though the Warren County Health District may increase the lot size based upon the quality of the soil. (See Exhibits: 1A, 2)
- The subject parcel is currently being used for a single-family dwelling. (See Exhibit: 1A)
- The subject parcel was created in 1960 with the recording of the McGill Meadows Section Two subdivision. (See Exhibits: 2, 13, 14, 18)
 - Subject parcel: (See Exhibits: 1A, 2, 13, 14)
 - Lot 51 McGill Meadows Section Two
 - Lot is .50 acres in size.
 - Lot is 100’ wide.
 - Lot is 217.80’ in length.
 - A five (5) foot utility easement is recorded along the rear property line.
 - A five (5) foot utility easement is recorded along the northern property line.
 - This section of McGill Meadows is comprised of 67 lots. (See Exhibits: 2, 13, 14)
 - Lot size range: (See Exhibit: 13)
 - .50-.55 acres: 41 lots
 - .56-.60 acres: 8 lots
 - .61-.70 acres: 10 lots
 - .71-.80 acres: 5 lots
 - .81 acres and greater: 3 lots
 - Eight (8) lots have the exact lot geometrics as the subject property: Lots 47, 48, 49, 50, 52, 53, 54, 55. (See Exhibits: 2, 13, 14, 18)
 - Rear Yard Utility Location:
 - Sixty-three (63) lots, have a utility easement along the rear property line just like the subject parcel: Lots 12-76. (See Exhibit: 14)

- Lot 12 and Lot 13 have a utility easement along the rear property line and a utility easement that bisects the lot. (See Exhibit: 14)
- Lot 10 and Lot 11 have a utility easement utility easement that bisects the lot. (See Exhibit: 14)
- Side Yard Utility Location:
 - Thirty-six (36) lots have a utility easement along one (1) side property line: Lots 10-16, 20-21, 24-25, 29-30, 31-32, 35-36, 40-41, 43-46, 52, 57-58, 59-60, 64-65, 68-69, 72-76. (See Exhibit: 14)
 - Lot 12 and Lot 13 have a utility easement along the rear property line and a utility easement that bisects the lot. (See Exhibit: 14)
 - Lot 10 and Lot 11 have a utility easement utility easement that bisects the lot. (See Exhibit: 14)

2. The hardship must result from circumstances affecting a particular and unique piece of land, and not from a general condition throughout the neighborhood:

The applicant states: “The proposed pool encroachment of 14 inches into the southern setback arises from unique physical constraints specific to this property: Septic tank location to the north prevents placement in that direction. Leach beds to the west further restrict usable space. Low-hanging electrical lines to the north pose safety risks and limit vertical clearance. These conditions do not reflect a general hardship shared by neighboring properties but rather stem from site-specific infrastructure and utility placements. The hardship can be viewed as self-created because of installation of pool by installer, however the homeowner did not knowing choose placement that may encroach on property line. The septic system and electrical lines were pre-existing and mandated by health and utility codes. Septic systems and utilities are not unique to this property but the placement of them vary in comparison to others with pools on the surrounding properties, forcing the current and existing placement. Utilities on many of the properties come in from the front of the property and not from the side as in this case. The septic system in many cases are located to the left or right of the property allowing ample room for pool placement.” (See Exhibits: 3A-F, 20A-F)

The following issues need to be considered:

- See staff response to number 1 above.
- See Background above.
- The applicant has provided several aerals of the property which depict:
 - An overhead electric line that runs northwest from the center of the western wall of the house. This utility is north of the swimming pool. (See Exhibits: 3C, 3D, 3F)
 - The septic tank that is located north of the swimming pool. The applicant has specified that the center of the tank is four (4) feet from the pool. It is unclear how large the tank is in dimensions and how close the tank is to the wall of the pool. (See Exhibits: 3B-F)
 - The leachfield is located west of the pool. The distance from the pool has not been specified. (See Exhibits: 3C, 3E)

- On October 16, 2025, I contacted the Warren County Health District to get additional information regarding the septic system. I spoke with Ms. Vanessa Moore.
 - A permit to upgrade the existing sewage treatment system was approved on January 29, 2007. This updated system was installed between the existing lines of the system. (See Exhibits: 15A-H)
 - The dimensions (length, width, depth) of the septic tank were not specified in the paperwork I received.
 - It is unclear based upon the supplied and found information to determine an accurate distance from the edge of the septic tank to the edge of the swimming pool.
 - It is unclear based upon the supplied and found information to determine an accurate elevation for the top of the septic tank and for the bottom of the swimming pool.
 - During the course of the discussion, I was informed that per Ohio Administrative Code 3701-29-06 Section (G)(3)(A) no structure is allowed to be constructed within 10' of **ALL** components of the sewage treatment system (STS). (See Exhibits: 16A-G)
 - If the Clearcreek Township Board of Zoning Appeals approved the variance, the Warren County Health District would prohibit the location next to the septic tank, unless an additional variance is approved by their department.
- Per the Warren County GIS arials and the Google Earth arials. A tree was removed where the swimming pool is now located. It is unclear if the tree was removed to allow for the location of the pool or if the tree was damaged and was removed. Either way the property owner removed an obstacle/limiting factor for development from the property and then proceeded to utilize the reclaimed area with a swimming pool. In this subdivision, the zoning resolution doesn't require streetscape or perimeter buffers as a condition for development. (See Exhibits: 8A-C, 9A-C)
- The Warren County Aerial that depicts the 500' notice area is labeled Exhibit 17.
- According to the Warren County Auditor's GIS aerial of McGill Meadows Section Two, there are eleven (11) lots that have a swimming pool. (See Exhibit: 18)
 - Five (5) lots are outside of the 500' notice area. (See Exhibit: 18)
 - One (1) lot has a validly issued zoning permit. (See Exhibit: 18)
 - Six (6) lots are within the 500' notice area. (See Exhibit: 18)
 - Two (2) lot have a validly issued zoning permit. (See Exhibit: 18)

3. A variance must not alter the essential character of the neighborhood:

The applicant states: "The requested 14-inch setback variance for the proposed above-ground pool will not alter the essential character of the neighborhood. The pool is located entirely within the backyard, screened by existing residence and landscaping, and is not visible from the street. Similar pools exist on 15 other properties in the neighborhood, and the proposed location maintains the overall rhythm and spacing of backyard amenities in the area. The modest nature of the variance—just over one foot—does not materially impact setbacks or privacy. Furthermore, the pool will be used solely for residential purposes, consistent with the single-family character of the

neighborhood. Granting this variance would allow reasonable use of the property without compromising public safety, aesthetics, or the intent of the zoning ordinance”

The following issues need to be considered:

- See staff response to numbers 1 & 2 above.
- Swimming pools are regulated with the same setbacks regardless of the zoning classification. Clearcreek Township Zoning Resolution Section 22.01 (B) (See above) requires the pool to not be located closer than twenty (20) feet from water’s edge to any property line.
- If the structure in question was an accessory structure without special provisions, such as a detached garage, shed (over 200 sq. ft. or if attached to the ground) or deck the side yard setback would be ten (10) feet as identified in Section 5.7545 (B) (See above).
- Driveways, patios (concrete or pavers), swing sets, trampolines, sheds (under 200 sq. ft. and not attached to the ground) are not considered permanent structures and are not required to meet zoning setbacks.
- Clearcreek Township Zoning Resolution Section 22.01 (A) requires: the pool is intended and is to be used solely for the enjoyment of the occupants of the principal use of the property on which it is located. (See above)
- Setbacks for swimming pools have been established with a 20’ minimum setback since 1973. (See Exhibits: 10A-B)
- The intent of the zoning resolution is to gain compliance with the minimum standards for the community.
- In the five hundred (500) foot notice area, one (1) variance request was found. This parcel is identified as “Parcel B”. This request was to allow the access easement to the property to function as road frontage in order for a single family dwelling to be constructed. (See Exhibits: 2, 13, 14, 17, 18, 19A-B)
- See staff photos. (See Exhibits: 20A-F)

4. It is not enough to show that the effects of a variance would be harmless. Real, unnecessary hardship must still be established by the applicant:

The applicant states: “Grounds for Variance: 1) Site-Specific Hardship: The hardship arises from infrastructure mandated by health and utility codes—not from any action by the property owner. These constraints are unique to this parcel and not shared by neighboring properties. 2) Minimum Necessary Adjustment: The requested 14-inch variance represents the least deviation required to allow reasonable residential use of the backyard for recreation. 3) Preservation of Neighborhood Character: The pool is fully screened by the residence and landscaping It is not visible from the street 15 other properties in the neighborhood feature similar backyard pools The proposed location maintains consistent spacing and rhythm of amenities The encroachment is minor and does not compromise public safety, it preserves natural features and avoids impact on adjacent properties, it supports the residential character and recreational use of the property”

The following issues need to be considered:

- See staff response to numbers 1-3 above. The leachfield and the electric line are two vital infrastructure components that support the continued use of the principal structure. The former were both established on the property prior to the applicant’s purchase of the property. (See Exhibits: 1B, 1E-J)

- No zoning permit was requested for the swimming pool. If an application had been submitted, I would have discussed the required setback requirement.
- Pool schematics have not been provided.
- See staff photos. (See Exhibits: 20A-F)
- The variance deals with the reduction of only the southern swimming pool setback. The applicant will exceed the remaining swimming pool setbacks. (See Exhibits: 3B-C)
 - The applicant is requesting 18'10" instead of the required 20'.
 - The request meets 94% of the requirement, (18.833/20).
 - The request fails to meet 5.8% of the requirement, (1.167/20).
 - The maximum encroachment allowed by Zoning Inspector authority based upon Section 5.07 of the Clearcreek Township Zoning Resolution is six (6) inches. (See above)
 - If the pool were established with a setback of 19'6" instead of the required 20'.
 - The request would meet 97.5% of the requirement, (19.5/20).
 - The request would fail to meet 2.5% of the requirement, (.5/20).

5. Any hardship must result from the requirements of the zoning resolution and not from the applicant's own actions:

The applicant states: "The hardship can be viewed as self-created because of insulation of pool by installer and knowing that placement may encroach on property line. However, the septic system and electrical lines were pre-existing and mandated by health and utility codes. Septic systems and utilities are not unique to this property but the placement of them vary in comparison to others with pools on the surrounding properties, forcing the existing placement."

The following issues need to be considered:

- See Background above.
- See staff response to numbers 1-4 above.
- The applicant selected a pool size and had it installed without applying for a zoning permit. Only after the Clearcreek Township Zoning Department received a complaint about the swimming pool, did the applicant have any known contact with the Zoning Department.

6. Whether the property owner purchased or acquired the property with the knowledge of the zoning restriction:

The applicant states: "First-time homeowner: This status implies limited experience with zoning codes and permitting processes. Reliance on contractor: The homeowner assumed the pool contractor would handle all necessary permits, which suggests she was unaware of the specific legal requirements herself. No awareness of code: Although she was informed of a "possible setback," she did not understand that this was a codified zoning regulation. Neighbor consultation: Her proactive communication with the adjacent neighbor showed good faith, but also reinforces that she was navigating the situation informally rather than through official channels"

The following issues need to be considered:

- See staff response to numbers 1-5 above.
- It is unclear what is meant by the "she was informed of a possible setback".

- Per the Warren County Auditor’s Website, the applicant purchased the property on June 1, 2021 with Jordan KC Holland (unmarried) and then on October 21, 2024 the property was transfer to her. (See Exhibits: 1B, 1E-J)

7. *A variance must not be contrary to the public interest, even if a hardship can be established:*

The applicant states: “Public Interest Considerations The proposed variance is not to be contrary to public interest, for following reasons: Minimal encroachment: The 14-inch deviation is modest and does not materially affect neighboring properties or the overall zoning intent. No adverse impact: The pool is screened, not visible from the street, and does not affect drainage, safety, or aesthetics. Neighbor support: At time of installation adjacent property owner expressed no objection, which supports the argument that the variance does not harm community interests. Consistency with neighborhood character: With 15 similar pools in the area, the proposed installation aligns with established residential use patterns.”

The following issues need to be considered:

- See staff response to numbers 1-6 above.
- The swimming pool was viewable from the road right-of-way (ROW) and the side yard at the time of the staff visit. It is unclear what “screen” the applicant is referencing. During the original site visit, ornamental grass was visible blocking the deck area from the southern property owner. During my site visit, ornamental grass remained only on the southern property owner’s side of the fence. A three (3) foot chain link fence encloses the rear yard. (See Exhibits: 3C-D, 6B, 9D, 20A)

Consider whether the spirit and intent as identified in the Clearcreek Township Zoning Resolution Chapter 1 are upheld during this request for a variance:

- **SEC. 1.01** To provide for the citizens of Clearcreek Township adequate light, pure air and safety from fire and other dangers, to conserve the value of land and buildings, to lessen or avoid congestion of traffic in the public streets and to promote the public health, safety, morals, comforts, conveniences and general welfare, all in accordance with the provision of Section 519 of the Ohio Revised Code.
- **SEC. 1.02** To protect the character and the stability of the residential, business and industrial areas within Clearcreek Township and to promote the orderly and beneficial development of such areas.
- **SEC. 1.03** To establish restrictions in order to attain these objectives by adopting a zoning code which will revise the districts into which the township is divided, the restrictions upon the uses to which land and buildings may be devoted, the restrictions upon the location and height of buildings, the restrictions upon the intensity of the use of land and buildings, the requirements for yards, the requirements for off-street parking facilities, the provisions for administration and enforcement of the Code, the penalties for violation of the Code, and the procedures, powers and duties of the Board of Appeals.

8. *Other factors that the applicant considers important to the judgment of the case:*

The applicant states: “To further minimize any perceived impact of the proposed 14-inch setback variance, the homeowner would be willing to install a privacy fence along the southern property line, adjacent to the pool location. This measure is intended to: Enhance visual screening between properties, ensuring the pool remains discreet and unobtrusive. Preserve neighbor privacy and comfort, reinforcing the residential character of the area. Support public interest and zoning intent by adding a physical buffer that complements existing landscaping and maintains neighborhood aesthetics. Demonstrate good faith and responsiveness to potential concerns, even though the adjacent neighbor had expressed no objection to the encroachment. The fence will be constructed in accordance with local code requirements and will not interfere with any natural features, drainage patterns, or utility access” (See Exhibits: 20A-F)

The following issues need to be considered:

- During the site visit I documented that access to the pool can occur via the deck. (See Exhibit: 20E)
 - The existing chain link fence doesn’t meet the minimum height requirement for a barrier. (See Exhibits: 20A, 20B, 20F)
 - The existing deck doesn’t have a gate to prohibit access from the yard to the pool. (See Exhibit: 20E)
 - If the variance is granted for the reduction of the pool setback, the issue regarding the required barrier for the above ground pool will need to be addressed as part of the zoning permit application.
 - The barrier requirements for an above ground swimming pool were updated on February 8, 2016.
 - Section 22.01 (E) establishes (See above):
 - Minimum height of the pool wall to be four (4) feet measured from grade. This option requires a removable or lockable ladder.
 - Or
 - If the pool is accessed by a deck, the deck can function as a barrier if it meets the regulations of this section and a gate is established to prohibit access to the pool.
 - Or
 - A fence that meets the requirements for an inground pool.
- During the site visit I documented that ornamental grass was present on the neighbor’s side of the fence at the southwestern corner of the fence. It was unclear what vegetation exists during the summer on the applicant’s side of the fence. At the time of the site visit, the applicant’s side of the fence was void of vegetation along the area adjacent to the pool. (See Exhibits: 6B, 20A, 20B, 20E)
- See staff response to numbers 1-3 above.
- **SEC 21.01 (B) (4) Conditions For Variances:**

The Board of Zoning Appeals may impose such specific conditions and limitations concerning character, location, buffer & screening and other matters relating to the purposes, objectives and standards of this resolution. Conditions and limitations shall be imposed upon the premises benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject property or upon public facilities and services. Such conditions

and limitations shall be expressly set forth in the decision granting the variance. Violation of any such conditions or limitation shall be a violation of this resolution.

CASE 25-BZA-001 VARIANCE HEARING

Staff recommends DENIAL of Case 25-BZA-001. Staff's rationale is outlined below:

The standard for approval of a variance is “Unnecessary Hardship”.

1. ***The hardship must remove all profitable use from the land. It is not a sufficient hardship if the land would be more valuable with the variance, or less valuable without the variance. Instead, there must be evidence that the property is unsuitable to any of the permitted uses as zoned:***

A single-family dwelling currently exists on the parcel. The minimum lot size has been established per zoning classification to take into consideration the minimum size necessary to accommodate the principal structure and the minimum area necessary for Warren County Health District approval for an on-site waste disposal system. The location of utilities sometimes limits the location or opportunity for accessory structures to be placed on the property.

2. ***The hardship must result from circumstances affecting a particular and unique piece of land, and not from a general condition throughout the neighborhood:***

Thirty-four (34) other lots in the McGill Meadows Section Two Subdivision have a rear yard and a side yard utility easement. Sixty-three (63) other lots have a rear yard utility easement. Thirty-six (36) other lots have a side yard utility easement. Forty (40) other lots are comparable in lot size to the subject parcel. Eight (8) other lots have the exact geometric dimensions. Lot 52 has the identical lot size, and utility easements as the subject parcel.

3. ***A variance must not alter the essential character of the neighborhood:***

From the road right-of-way, it is difficult to visually determine that the pool encroaches fourteen (14) inches into the required setback. If the entire fence were upgraded to a privacy fence, then the view from the ROW would be obstructed. However, the greatest impact remains to the southern property owner.

4. ***It is not enough to show that the effects of a variance would be harmless. Real, unnecessary hardship must still be established by the applicant:***

The leachfield and the electric line are two vital infrastructure components that support the continued use of the principal structure. The former were both established on the property prior to the applicant's purchase of the property.

5. ***Any hardship must result from the requirements of the zoning resolution and not from the applicant's own actions:***
The applicant selected a pool size and installed the pool without obtaining a zoning permit. If an application had been submitted, zoning staff would have discussed the setback requirements.
6. ***Whether the property owner purchased or acquired the property with the knowledge of the zoning restriction:***
The owner purchased the property on June 1, 2021 with Jordan KC Holland (unmarried) and then on October 21, 2024 the property was transfer to Ms. Kristina Collini Holland (Beard). Minimum setback of 20' for swimming pools has not changed since 1973.
7. ***A variance must not be contrary to the public interest, even if a hardship can be established:***
The proposed reduced setback meets 94% of the required setback.
8. ***Other factors that the applicant considers important to the judgment of the case:***
Nothing additional.