

Case Number: 26-BZA-001

Request: Variance

Applicant: Scott Weger

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

Report Date: May 22, 2026

Hearing Date: June 9, 2026

Current Zoning of Properties: Open Space Rural Residence Zone “OSR-1”

Description of Properties:

The property is identified as 4301 Carnell Dr, parcel number 08-04-451-008, account 0420002 and 6.3741 acres in size. The parcel is located in Section 4, Town 3 and Range 4 in Clearcreek Township. The property is zoned Open Space Rural Residence Zone “OSR-1”. The request is to reduce the required 20’ side yard setback for an accessory structure to 10’. The variance request is from Section 5.57(H) of the Clearcreek Township Zoning Resolution. (See Exhibits: Location Map, Exhibits: 1A-G, 2A-B, 3A-G)

Nature of the Request:

The applicant states: “I am formally requesting a variance to reduce the minimum building setback from 20 feet to 10 feet along the south and west boundaries of our property. The purpose of this request is to construct a pole barn to preserve a personal collection of 60 micro-cars inherited from my late father. To maintain functional site access, we intend to align the new structure with an existing 40x48 foot pole barn, which was previously permitted at a 10-foot setback. Aligning these buildings allows for a direct internal drive path; increasing the setback to 20 feet would necessitate a sharp curve in the driveway, creating significant logistical difficulty for maneuvering vehicles. In addition to the logistical challenges, the 20-foot setback would force us to cut down two mature oak trees. To remain environmentally friendly and preserve the natural landscape of our lot, we are requesting the 10-foot variance to build around these trees rather than removing them.” (See Exhibits: 4, 5A-B, 6A-B, 7A-D, 8A-B, 9A-C, 10A-H)

Background on the Nature of the Request

Staff Comments:

The referenced 40’x48’ pole barn was established by the previous owner, who declared the pole barn to be an agricultural structure not a residential structure. Agricultural structures are not required to meet the minimum required zoning setbacks. This structure was established with a 10’ side yard setback from the southern property line. (See Exhibits: 3A-C)

This parcel is configured as a panhandle lot. The applicant is requesting a variance from Section 5.57 (H) of the Clearcreek Township Zoning Resolution. The applicant is requesting the new residential structure be established with a 10’ side yard setback instead of the required 20’ side yard setback in order to line up with the agricultural structure and avoid removing two (2) mature oak trees. (See Exhibits: 5A-B, 6A-B, 10A-H)

This is the second variance request for the placement of a structure on this parcel. On June 20, 2023 the Board of Zoning Appeals held a public hearing to consider case 23-BZA-003. The request was to allow a covered porch addition to the single-family dwelling to encroach into the required front yard setback. The Zoning Department found the existence of a covered porch addition during a verification of an agricultural structure zoning permit for the property. The front yard setback for the covered porch addition was 90’ instead of the required 100’ setback. The variance request was from Section 5.57(G) of the Clearcreek Township Zoning Resolution. The variance request was approved and the decision was filed on July 11, 2023. (See Exhibits: 2A-B)

On September 21, 2012, Survey Vol 138 Plat Number 84 was filed with the Warren County Engineer's Tax Map Office for what was to become parcel 08-04-451-008, a panhandle lot. This parcel was officially created on October 12, 2012. The survey shows the footprint of the house without the carport. The front yard setback for the house scales to the minimum setback of 100'. The frontage for this parcel is State Route 48. The width of the frontage is 40'. This property is also coincident with the road right-of-way of Carnell Dr. The width of Carnell Dr is 50', this is more than the maximum frontage allowed for a panhandle lot (40') and is less than what is required for a regular lot (140'). Clearcreek Township Zoning requires that lots created after 1973 meet the minimum amount of frontage. Clearcreek Township Zoning doesn't require that a property be accessed through the frontage of the parcel. Clearcreek Township Zoning doesn't require that the front of the house face the frontage of the property. (See Exhibits: 4, 17A, 19)

Setbacks for lots are determined by the definitions for front yard, side yard and rear yard. Section 3.74 defines a front yard as "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." The lot frontage for this parcel is the handle of the panhandle on State Route 48, even though the property is accessed by Carnell Dr. and has a Carnell Dr. address. Zoning requires a front yard setback along the eastern boundary of the body of the panhandle, a rear yard setback along the western boundary of the body of the panhandle, side yard setbacks along the northern and southern boundaries of the body of the panhandle. (See Exhibit: 19)

To help clarify the proposed location, the applicant has placed stakes at the corners of the proposed structure to represent the location of the variance request. The western elevation of the existing agricultural structure has a garage door that is located 13' north of the southwest corner of the structure. If the proposed structure was established with a 20' setback, the southern boundary of the proposed structure would be approximately three (3) feet south of the garage door. The submitted plot plan for the proposed structure provides overall size dimensions, but the elevation drawings do not provide any additional dimensions. The Clearcreek Township Zoning Resolution doesn't establish a maximum size for structures. Structure square footage is limited by the required setbacks, leachfield location and natural site limitations. Clearcreek Township Zoning Resolution Section 5.53 limits the maximum height for the structure to be 35'. (See Exhibits: Location Map, 4, 5A-B, 6A-B, 7A-D, 10A-H, 19)

As part of the submittal review process, staff noted that the applicant was requesting a reduction in the southern side yard and western rear yard setbacks. I spoke with the applicant and requested that he update the application responses to include the rationale for the western rear yard setback reduction. After that discussion, the applicant decided to only seek the southern side yard setback reduction. Due to the electronic submittal process, the applicant needed staff assistance to remove the original drawings once the updated drawings were uploaded. In this back and forth process, the application was not updated to reflect the clarification of the drawings.

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

DEFINITIONS

SEC. 3.02 **Accessory Building, Use or Structure:** A building, use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal building use or structure.

- 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. 3.561** **Panhandle Lot**: A lot whose only frontage on a public street is through a narrow strip of land which is wide enough to accommodate a driveway, but too narrow to accommodate any structures. The narrow strip of land is referred to as the panhandle and the balance of the lot is referred to as the body.
- 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. 3.73** **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 5.5 OPEN SPACE RURAL RESIDENCE ZONE "OSR-1" REGULATIONS

SEC. 5.52 PERMITTED USES: A building or lot shall be used only for the following purposes:

K. Accessory buildings defined as either temporary or permanent and uses customarily incidental to any permitted uses, provided the primary use or structure has been established or constructed on the same lot.

SEC. 5.55 INTENSITY OF USE: Every lot or tract, except Open Space Dedication Option Development (OSDOD) and a panhandle lot, shall have a minimum continuous frontage and width of not less than one hundred forty (140) feet at any point, except on a cul-de-sac, in which case it shall have a minimum continuous frontage and width at any point of at least seventy (70) feet, and a minimum width of one hundred forty (140) feet at the minimum building setback line and:

A. Every lot or tract, except Open Space Dedication Option Development (OSDOD) proposed as building sites that are not connected to a central sanitary sewage system and are otherwise approved by the Warren County Combined Health District And/Or The Ohio Environmental Protection Agency for individual onsite wastewater disposal system shall contain not less than two (2) acres exclusive of: any road or street right-of-way as shown on the Warren County, Ohio, Official Thoroughfare Plan, waterways, wetlands, one hundred (100) year flood plain, drainage easements other than the required side and rear lot line drainage easements required in the Warren County Subdivision Regulations for a plat, high pressure gas pipeline easements, and railroad easements.

SEC. 5.57 FOR LOTS OTHER THAN OSDOD, PANHANDLE LOTS ARE PERMITTED SUBJECT TO THE FOLLOWING REGULATIONS:

- A.** Panhandle lots shall not be "stacked" one behind the other relative to a street or road.
- B.** The panhandle portion of the lots shall have a minimum frontage and continuous width of twenty (20) feet and a maximum frontage and width of forty (40) feet.
- C.** The panhandle portion of the lots shall have a maximum length of twelve hundred (1200) feet.
- D.** The body of the lot shall have a minimum area that meets or exceeds the minimum lot size established in Section 5.55 (A) and is exclusive of the panhandle portion of the lot.
- E.** The body of the lot shall have a minimum width of two hundred ten (210) feet and a minimum depth of two hundred (200) feet.
- F.** All structures shall be built within the body of the panhandle lot.

- G. The principal structure shall have a minimum front yard of one hundred (100) feet, rear yard of fifty (50) feet and a side yard of twenty (20) feet minimum each side.
- H. Any accessory structure shall have a minimum front yard of one hundred (100) feet, rear yard of twenty (20) feet and a side yard of twenty (20) feet minimum each side.

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: “I would like to apply for a setback variance based on the existing plot configuration. I am not requesting a change to the zoning, instead, I am looking for a minor deviation from the minimum setback rules along the south and west property from 20' to 10' setback.” (See Exhibits: 5A-B, 6A-B)

The following issues need to be considered:

- See background above.
- The property has:
 - A 1,176 sq. ft. single-family dwelling on the property. (See Exhibit: 1A)
 - The 18’2”x21’6” covered porch addition has received a variance that allows an encroachment of approximately 10’ into the required eastern front yard setback. (See Exhibits: 2A-B, 3F-G)
 - The property has a 40’x48’ agricultural structure. (See Exhibits: 3A-C)
 - The property has a 14’x14’ picnic structure. (See Exhibits: 3D-E)
- See proposed structure location at the required zoning setback and at the proposed location for the variance request. (See Exhibits: 5A-B, 6A-B)
- The applicant has not provided any rationale for why the geometrics of the structure and the total square footage can’t be modified to meet both the required setback and not impact the tree. (See Exhibits: 5A-B, 6A-B, 7A-D)
- See staff photos (Exhibits: 10A-H)

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 property was originally developed with the structures set back to provide a buffer from the road. Given these existing site constraints, the proposed barn placement is the most environmentally sound option and preserves the cohesive layout of the property. This request will have no adverse effects on nearby properties.”

The following issues need to be considered:

- See # 1 and background above.

- The Warren County Aerial that depicts the 500' notice area are labeled Exhibits 11A& B.
 - A total of eighteen (18) parcels are in the notice area.
- Ten (10) properties are zoned Residence Zone “R-1”. (See Exhibits: Location Map, 11B)
 - This classification totals 13.278 acres.
 - The smallest lot is .271 acres. (See Exhibits:13A-B)
 - The largest lot is 5.4671 acres. (See Exhibit: 14B)
 - One (1) lot was created by survey. (See Exhibit: 12A-B)
 - This lot is 2.6191 acres in size.
 - Two (2) lots are in the Ballard Subdivision. (See Exhibits: Location Map, 11B, 13A-C)
 - Lot size information:
 - The smallest lot is .271 acres. (See Exhibit: 13B)
 - The largest lot is .481 acres. (See Exhibit:13C)
 - The average lot size is .376 acres.
 - One (1) lot is in the Pekin Corners Section Two Subdivision. (See Exhibits: Location Map, 11B, 14A-B)
 - This subdivision totals 5.4671 acres.
 - Six (6) lots are in the Kendrick Subdivision. (See Exhibits: Location Map, 11B, 15A-G)
 - Lot size information:
 - The smallest lot is .29 acres. (See Exhibit: 15G)
 - The largest lot is .57 acres. (See Exhibit: 15B)
 - The average lot size is .47 acres.
- Three (3) properties are zoned Light Industrial Zone “M-1”. (See Exhibits: Location Map, 11B, 16A-G)
 - This classification totals 3.5652 acres.
 - The smallest lot is .5093 acres. (See Exhibit: 16G)
 - The largest lot is 1.629 acres. (See Exhibits: 16F)
- One (1) property is zoned Open Space Rural Residence Zone “OSR-1” and Residence Zone “R-1”. (See Exhibits: Location Map, 11B, 17A-B)
 - This lot was also created by the Donald G. Slorp Survey Vol 138 Page 84. (See Exhibits: 17A-B)
 - This lot is 6.3413 acres in size.
- Four (4) properties are zoned Open Space Rural Residence Zone “OSR-1”. (See Exhibits: Location Map, 11B, 18A-D)
 - This classification totals 173.20 acres.
 - The smallest lot is 6.307 acres. (See Exhibit: 18C)
 - The largest lot is 107.20 acres. (See Exhibit: 18D)
- Two (2) properties in the 500' notice area are configured as panhandle lots. (See Exhibits: 11B, 14A-B, 18C)
- Two (2) variances have been Approved in the notice area. (See Exhibits: 2A-B, 16B-D)

- One (1) variance has been Denied in the notice area. (See Exhibits: 12C-D)
- One (1) non-conformance hearing has been Approved in the notice area. (See Exhibits: 15H-I)

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

The applicant states: “We have identified two possible sites for the pole barn, but only one is truly viable from a layout perspective. The Southwest location is our primary choice because it is tucked away from view and would be in direct line with the existing house and pole barn. In contrast, the North side of the property, next to the Carnell Drive entrance, is poorly suited for the site. It would necessitate clearing a significant number of trees and would back up directly to the neighbors on Carnell Drive. To minimize the visual impact on the neighborhood and preserve the existing canopy, the Southwest corner is the only logical placement.”

The following issues need to be considered:

- See # 2 above.
- The pavement of Carnell Dr ends with a “T” turn around at the northern boundary of 4301 Carnell Dr. This is the start of the driveway for 4301 Carnell Dr. (See Exhibits: Location Map, 4, 5A, 6A, 11B, 19, 20)
- Staff has identified the setbacks for this “OSR-1” panhandle lot on Exhibit 19.
- See staff photos. (See Exhibits: 10A-H)

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: “The existing building will offer the only direct drive path to the new building. Reducing the setback from 20 to 10 feet prevents the unnecessary loss of two mature oaks.” (See Exhibits 5B, 6B)

The following issues need to be considered:

- Based upon the submitted drawings, vehicles will need to travel through the existing agricultural structure to access the proposed residential accessory. No additional driveway has been identified to access the proposed residential accessory. (See Exhibits: 5A-B, 6A-B)
- It appears the offset of the garage doors is a contributing issue to the applicant’s request.
 - It is unclear why an approximate 40’ of travel distance between the structures cannot allow for a directional change of travel for a vehicle. (See Exhibits: 5A-B, 6A-B)
- Based upon the site visit and the applicant’s drawings, a smaller diameter tree will be removed to allow the 50’x56’ section of the proposed structure. (See Exhibit: 10F)
- Based upon the site visit and the applicant’s drawings, a mature tree will be removed to allow the 32’x118’ section of the proposed structure if built to the required setback. (See Exhibits: 5A-B, 6A-B)
 - It is unclear how close a building can be established next to a mature tree and not impact the viability of tree.
- Based upon the application, a second mature tree will be removed to allow the 32’x118’ section of the proposed structure if built to the required setback. (See Exhibits: 5A-B, 6A-B)

- The location of this tree has not been identified.
- Parcels are cleared of existing vegetation on a regular basis to provide the necessary access, building area and septic area. Outside of a required buffer area, the Zoning Resolution doesn't have standards concerning the preservation of tree credits.
- Staff prepared a map to show the setbacks from the proposed structure to the closest single-family dwellings on Exhibit 20:
 - To the north approximately 610'.
 - To the east approximately 664'.
 - To the south approximately 939'.
 - To the west approximately 1668'.
- The variance deals with the reduction of only the southern side yard setback. The applicant will meet and/or exceed the remaining setbacks. (See Exhibits: 6A-B)
 - The applicant is requesting 10' instead of the required 20'.
 - The request is a 10' encroachment.
 - The request meets 50% of the requirement, (10/20).
- See proposed drawings/elevations. (See Exhibits: 7B-D)
- See staff photos. (See Exhibits: 10A-H)

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

The applicant states: "Strict compliance with the 20-foot setback requirement presents a significant hardship, as it would require the destruction of two established oak trees and a compromise of the site's functional and logical layout." (See Exhibits: 5A-B)

The following issues need to be considered:

- The parcel to the south has the same zoning classification as the subject property, Open Space Rural Residence Zone "OSR-1". This adjoining parcel is currently being used for agricultural cropland without any structures. (See Exhibits: Location Map, 3C, 4, 5A, 6A, 10B-H, 11B, 19, 20)
- The applicant is requesting a side yard setback that is found for regular lots in the Residence Zone "R-1".
- See #1, 3 & 4 above.
- The functional layout appears to be based on the utilization of a pre-existing agricultural structure. It is unclear why the driveway would cut through this structure instead of routing around the structure.
 - If this structure fails to store a minimum of 51% agricultural vehicles, implements, animals or products, then it no longer qualifies as an exempt agricultural structure.
 - If the applicant intends to change the use from agricultural to residential and doesn't want the legal non-conforming status to be applied to the structure, then this structure should also be added to the variance request application, if the Board's decision to approve the request.
- See background above.

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

The applicant states: "I met with Jeff Palmer, the Director of Planning and Zoning for Clearcreek Township, prior to purchasing the property. Jeff made sure that I was aware of the zoning set backs and the process needed to request for a variance. We knew it was worth the effort to try and save the mature oak trees and have the buildings flow together without the extra setback."

The following issues need to be considered:

- Per the Warren County Auditor's Website, the owner purchased the property on April 13, 2026. (See Exhibits: 1A, 1C-D)
- When we met, I outlined that a variance had been approved for the principal structure. I explained that each variance is judged upon the merits of the request and that the unnecessary hardship standards would be used to judge the case. I also asked the applicant to talk with the adjoining property owner to the south, to see if an opportunity exists to increase his lot size by at least 10' along the common boundary. If additional acreage were acquired then the setback at the proposed location could meet the required zoning setback and a variance request would not be required before the Board of Zoning Appeals.
- See background above.

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

The applicant states: "The proposed 10-foot setback for the new barn optimizes the spatial flow between the existing residence, barn and the new structure. This location was chosen to maintain privacy and shelter for the neighbors while providing the most visually appealing layout for the property."

The following issues need to be considered:

- See staff photos. (See Exhibits: 10A-H)
- The adjoining parcel to the south would be impacted the most by the proposed location.
 - It is unclear how privacy along this boundary will be maintained if the setback is reduced to 10'. (See Exhibits: 5A-B, 6A-B, 10A-H, 11B, 19, 20)
 - If the applicant intends to establish a privacy buffer along the southern property line the required setback of 20' provides a greater distance to maintain vegetation wholly on this parcel.
 - The southern parcel has the ability to be developed into a subdivision with the potential to have multiple lots share the common boundary of the subject parcel.
- It is unclear other than the removal of a mature tree, how the required location for the structure would be visually different on the property. (See Exhibits: 5A-B, 6A-B, 10A-H, 11B, 19)
- The existing site conditions and structures were established by previous owners.
 - The subject parcel has a 531' distance from the northern property line to the southern property line.
 - All existing structures are located within 120' of the southern property line. (See Exhibit: 19)

- At the time of this report, the 2022 agricultural structure was not identified on the Warren County Auditor’s Website files with a designation or a value. (See Exhibits: 1F-G)
- 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: “My family is fully vested in maintaining the natural beauty of this property. We would like to build this with the least environmental impact as possible, while keeping the front part of the new building looking as similar as possible to the existing barn to make it as aesthetically pleasing as possible. Thank you for your consideration!” (See Exhibits: 7A-D)

The following issues need to be considered:

- **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 26-BZA-001 VARIANCE HEARING

Staff recommends DENIAL of Case 26-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, a picnic pavilion and an agricultural structure currently exist on the parcel. Clearcreek Township Zoning Resolution Section 5.55 (A) establishes the minimum lot size exclusive of waterways to be two (2) acres. This lot is 6.3741 acres in size.

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

In the 500' notice area, there are eighteen (18) parcels with various lot size, zoning classifications and required setbacks. In this notice area, both approved variances involved a reduction of a required setback. One of the approvals involved this parcel as the subject property. The other approval was with an adjacent parcel along the handle portion of the subject property. Of the eighteen (18) parcels in the notice area, two (2) are classified as panhandle lots with comparable acreage. Neither panhandle parcel has requested a variance to establish an accessory structure.

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

The applicant identifies two (2) locations on the subject parcel that could meet the zoning requirements, but each has vegetation that needs to be cleared. Zoning doesn't require a buffer to be maintained between the subject property and the adjoining parcels because of development on the subject property. However, the greatest impact is to the southern parcel. The southern parcel is currently being used for agriculture, but the zoning classification allows for the adjoining parcel to be developed into a residential subdivision.

- 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 issue of direct access through an existing agricultural structure has not been fully explained by the applicant at the time of the staff report. Zoning doesn't require driveways to meet zoning setbacks. Staff was only able to identify one (1) mature tree that would be impacted if the proposed structure was built to the required zoning setbacks. Zoning doesn't require the preservation of tree credits outside of required buffers.

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

The zoning setbacks are not limiting the proposed size of the structure. This structure or a larger structure could be built on the parcel at the required zoning setbacks. Trees would have to be cleared from the site.

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

Prior to purchase, the required setbacks were represented to the applicant. The variance process and standards were also discussed.

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

The proposed structure would meet 50% of the required setback. The applicant wants the proposed structure to match the pre-existing agricultural structure setback of 10'. The agricultural structure was not required to meet the zoning setback because it was issued as an exempt agricultural structure. The previous owner decided the location for the structure, not the Zoning Department. Zoning requires a minimum setback to separate structures and uses from the property line. The tree that the applicant wants to preserve is viewable from the driveway. The tree is currently viewable from the southern property line, if the structure is built to the required zoning setback, the tree would be removed. If the variance is approved, southern parcel's view of the majority of the tree would be blocked by the proposed structure.

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

Nothing additional.