

Case Numbers: 18-BZA-002

Request: Variance

Applicant: Jason "Scott" & Alana Young

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

Report Date: February 21, 2018

Hearing Date: March 13, 2018

Current Zoning of Property: Township Residence Zone "TR-1"

Description of Property:

The property is located at 6301 Township Line Rd. The property is 5.01 acres in size. The property is identified by parcel id 09-24-400-016 and account number 0311812. The parcel is located in Section 24, Town 4 and Range 4 in Clearcreek Township. The property is zoned Township Residence Zone "TR-1". (See Exhibits: Location Map, 1A-H)

Nature of the Request:

The applicant states: "We were notified of a 10 tree minimum requirement after moving into our newly built home. Our builder did not notify us beforehand. We planted 44 trees and were told after planting that the trees did not meet a minimum diameter requirement by the township zoning department. The initial paperwork we received from the township did not notify us of this minimum requirement. It was only after the trees were planted that we were notified that they were not large enough in diameter. The trees we planted are relatively fast growing and should meet the minimum requirement in less than two years. We would like an exception to the rule as it would be a significant additional cost to time and labor to replace the trees." (See Exhibits: Location Map, 2A-D, 3)

Background on the Nature of the Request

Staff Comments:

The applicant is requesting a variance to allow a reduced starting size for the streetscape buffer trees required as part zoning permit 2015-8760. (See Exhibits: 2A-D, 3)

Per 17.02 (A) when a single family dwelling zoning permit is applied for, on residentially zoned property with frontage on a collector or arterial street, a streetscape buffer is required.

As part of the permit process, the permit applicant is explained the streetscape requirement by staff. Staff developed a three page guide based upon the requirements found in Chapter 17 of the Clearcreek Township Zoning Resolution. This form documents the dimensional information about the property, the number of trees required for the streetscape buffer, zoning permit number and requires the permit applicant to select a manner in which the streetscape buffer will be satisfied as well as requires the permit applicant to sign the document. The permit applicant has one year from the date of issuance of the zoning permit to install the required trees (streetscape buffer). (See Exhibits: 4A-C)

As part of the zoning permit inspection process, the status of streetscape buffer is documented after installed or at the end of the year of the permit. A diagram is created by staff and a certificate of zoning compliance is sent to the permit holder if the requirement is satisfied. For properties that are not in compliance with the requirement, a site visit is performed and the requirements are discussed with the homeowner. The owner is issued a notice of zoning violation and staff discusses compliance options.

On December 29, 2015 zoning permit 2015-8760 was issued to Jody Amburgy of Amburgy Properties Inc for a single family dwelling located at 6301 Township Line Road. Mr. Amburgy was explained the streetscape requirement and given the tree page document that summarizes the requirements of Chapter 17 of the Clearcreek Township Zoning Resolution. Mr. Amburgy selected the option "I am building this home for the owner & I will give the owner this paper and explain the requirement." (See Exhibits: 2A-C)

On February 4, 2016 staff verified the location of the foundation and sent a multi inspection certificate to Amburgy Properties Inc. Stating a second inspection was required for the streetscape buffer. Staff rechecked the property on June 7, 2016 and December 7, 2016. The streetscape buffer hadn't been installed. The permit expired on December 28, 2016. (See Exhibit: 2A)

An adjoining property stopped by my office, and asked why the subject property hadn't installed their streetscape buffer. I looked at the inspection report and was unable to find the property listed. During my investigation into the issue, I found that a clerical error (a new inspection date wasn't entered) was the reason the permit was displaying for the 2017 inspection report. I discussed the issue with Lori Burton Clearcreek Township Code Enforcement Officer and assigned her to follow up with the property to address the zoning violation.

On June 12, 2017 Ms. Burton made a site visit and spoke with an individual "in-law" that answered the door and requested be contacted by the property owner regarding the streetscape buffer. (See Exhibits: 5A-C)

On September 12, 2017 Ms. Burton made contact with Mrs. Alana Young and was informed a landscaper would be contacted to address requirement. (See Exhibit: 5C)

On October 23rd, 27th and 30th Ms. Burton clarified location and quantity and sent copy of zoning permit, plot plan and two pages of the streetscape buffer document. (See Exhibit: 5C)

On November 8, 2017 Ms. Burton was informed that trees had been ordered and planted as soon as we get them. (See Exhibits: 5C, 6A-B)

On November 9th, 13th Ms. Burton requested a more definitive timeline for planting the trees. Ms. Burton was provided a copy of the quantity and tree sizes. The deciduous trees were represented as a height measurement instead of a caliper measurement (minimum deciduous tree size is 1 ½" caliper). A fourteen day business day ship date was projected by the vendor. (See Exhibits: 5C, 7A-D)

On November 30, 2017 I found out that the trees were described as a height instead of a caliper measurement. Ms. Burton made a site visit found the trees had not been planted. Ms. Burton issued a 30 day notice of zoning violation. (See Exhibits: 5C, 8A-D)

On December 1, 2017 I noticed holes had been dug perpendicular to Township Line Road. I made a copy of the zoning permit, plot plan and two pages of the streetscape buffer document. I spoke with Mr. Young, clarified placement of the streetscape buffer and discussed the pending 30 day notice of zoning violation. (See Exhibits: 5C, 2A-D)

On December 6, 2017 Ms. Burton measured the streetscape buffer trees and found one of the ten met the 1 ½” caliper requirement. The remaining nine trees failed to meet the caliper requirement. Within a week Ms. Burton’s discussed compliance options with Ms. Young. (See Exhibits: 5D, 23C)

On January 2, 2018 the property owner dropped off the first draft at a variance application. I worked with Mr. Young over next 22 days to finalize an application. (See Exhibit: 5D)

The following Sections: 17.02 (A), 17.06(C), 17.07(C) and 17.05 of the Clearcreek Township Zoning Resolution are involved with this request.

DEFINITIONS

- SEC. 3.152** **Buffer:** A combination of physical space and vertical elements, such as plants, berms, fences, and/or walls, for the purposes of separating and screening incompatible land uses of different types and/or intensities from each other.
- Sec. 3.1534** **Buffer, Streetscape:** Buffer that is parallel to the parcel frontage and which abuts all easements and/or right-of-way.
- SEC. 3.221** **Deciduous Plant:** A plant with foliage that is shed annually.
- SEC. 3.307** **Evergreen Plant:** A conifer tree or shrub, noted for perpetual foliage that always remains green throughout the life of such plants.
- SEC. 3.5609** **Ornamental Plant:** A deciduous or conifer tree or shrub planted primarily for its decorative characteristics, such as flowering and foliage color, and/or for screening purposes being smaller in height, width and foliage density at maturity compared to other plant varieties which would be inappropriate or undesirable to such regard in a constrained spacial allowance or a setting where blocking a view is not wanted for sight distance safety or other reasons.
- SEC: 3.642** **Right-of-Way:** A strip of land acquired by easement, reservation, dedication, road establishment, prescription, eminent domain, fee simple or condemnation for public access and intended to be comprised of road pavement, drainage elements and possible presence of utilities.
- SEC. 3.649** **Screen:** A method or devise for buffering the otherwise potentially greater impacts of noise and/or unsightly visual intrusions from one land use on another with more harmonious elements, such as plants, earth forms, fences, walls or any appropriate combination thereof to accomplish the desired degree of buffering.
- SEC. 3.64061** **Shade Tree:** A deciduous tree planted primarily for its high crown of foliage or overhead canopy.

- SEC. 3.64062 Shrub:** A deciduous or evergreen plant that is typically more woody and with denser foliage and smaller in size and height than a tree, consisting of numerous small branching stems at or near the ground, for decorative and/or buffer screening purposes.
- SEC. 3.682 Street, Major Arterial:** A public street, typically with multiple travel lanes, primarily intended to provide for vehicular through-traffic movement to and from other arterial class and/or collector class streets, preferably having no direct access to local streets and land, except for large-scale uses, with controlled access and channelized median-separated travel lanes where land access is permitted and at signalized intersections with other roads, and on which little or no parking is permitted.
- SEC. 3.683 Street, Major Collector:** A public street with typically two to three lanes that function or is intended to collect and convey vehicular traffic to and from local and minor collector class streets in providing linkage with arterial class streets and along which direct access to abutting property is discouraged and parking is not permitted.
- SEC. 3.684 Street, Minor Arterial:** A public street typically with three or more travel lanes at intersections with arterial class streets, that is primarily intended to provide for vehicular through-traffic movement to and from other arterial class and/or collector class streets, preferably having minimal direct access to local streets and land uses, unless with access control improvements where land access is permitted and having signalized intersections with other roads and on which little or no parking is permitted.
- SEC. 3.685 Street, Minor Collector:** A public street with typically two to three lanes that functions or intended to collect and convey vehicular traffic to and from local, collector class and arterial class streets and along which direct access to abutting property is provided and parking may be permitted.
- SEC. 3.72051 Tree:** A large, woody plant having one or several self-supporting stems or trunks and numerous branches. May be classified as deciduous or evergreen.

GENERAL PROVISIONS

- SEC. 5.02** No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used which does not comply with all of the regulations established by this Code for the zone in which the building or land is located.

BUFFER AND SCREENING

SEC. 17.02 Application

The provisions of this chapter apply to the following:

- A. New sites of Residence Zone "R-2", Residence Zone "R-3", Open Space Rural Residence Zone "OSR-1", Residence Zone "R-1", Residence Zone "R-1A", Township Residence Zone "TR-1", Suburban Residence Zone "SR-1" when a parcel has frontage on a collector or arterial street and an applicant applies for a single family dwelling zoning permit. New principal structures in the Office Zone "O", Neighborhood Business "B-1", General Business "B-2", Light Industry "M-1" and Heavy Industry "M-2" ZONES. A certificate of zoning compliance shall be issued hereafter for any site development or the construction or improvement of any building, structure or vehicular use area except where landscaping for development construction has been approved as required by the provisions of this chapter.

SEC. 17.05 Variations

The Board of Zoning Appeals (BZA) may modify buffer and landscaping standards where:

- A. There are special considerations of site design and/or topography.
- B. There exists a unique relationship to other properties.
- C. The plantings or planting area would conflict with utilities, easements, or overhead power lines.
- D. Proposed street widening not provided by the developer will consume the landscaping area.
- E. The additional screening or landscaping requirements of any other section warrant a variance, in which case, the approving authority may vary the requirements of this section so long as the intent of all sections are met.
- F. The approving authority may require alternative buffers of landscaping when a modification to the requirements of this section is warranted in order to meet the intent of the specified standards.
- G. The test to guide the BZA shall be that of Unnecessary Hardship.

SEC. 17.06 Buffer Areas

- A. To separate incompatible uses, perimeter and/or streetscape buffers shall be required.
- B. In calculating a buffer, the width of the property must be established. The following examples are based on a lot width of one (100) feet. The minimum buffer width, the number and type of vegetation as well as screening materials are based on this standard. If the width of the property is greater or less than the standard, a percentage shall be established based on the one hundred (100) feet standard. This derived percentage shall be used to compute the requirements for vegetation. The standard width and the maximum percentage of screening materials shall remain constant, regardless of the width. When the final number of required trees is not a whole number, the whole number will be rounded up if tenths is greater than or equal to five (5) or rounded down if less than five (5).

C. Streetscape buffer

If the zone listed in the first row of the streetscape interaction table has frontage on a public right-of way then a streetscape buffer is required. The designation of an “x” will require a streetscape buffer.

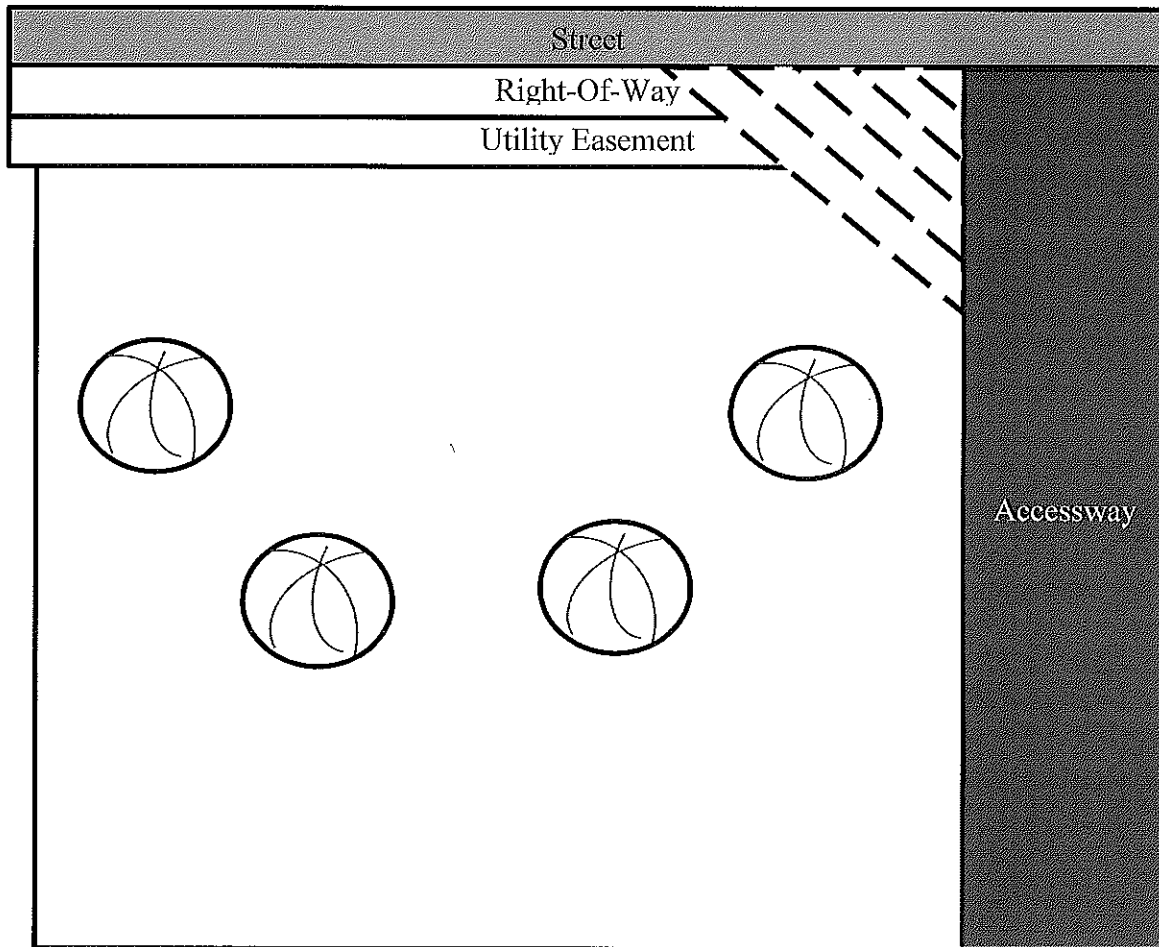
Streetscape Interaction Table

Open Space Rural Residence “OSR-1”, Residence “R-1”, Township Residence “TR-1”, Suburban Residence “SR-1” parcels with frontage on a street meeting criteria	Residence “R-1A” ZONE	Residence “R-2” Zone	Residence “R-3” Zone	Public Institutional “PI” zone	Office “O” Zone	Neighborhood Business “B-1” Zone	General Business “B-2” Zone	Light Industrial “M-1” Zone	Heavy Industrial “M-2” Zone
X	X	X	X	X	X	X	X	X	X

Option 2: Residential streetscape buffer per one hundred feet of road frontage, when the building is setback equal to or greater than one hundred (100) feet from the edge of the right-of-way.

Minimum number of trees	Minimum number of shrubs
4	0

Option 2: Example of Possible Design per Every One Hundred (100) Feet



SEC. 17.07 Landscape Requirements for Buffer Areas

A. Existing Vegetation

Buffers require provision of both physical separation and landscape elements to meet the intent of this chapter. Existing vegetation shall be used to meet all or part of the requirements of this section wherever possible, if it provided the same level of obscurity, as the planted buffer required below. Vegetation to be saved shall be identified on site plans along with protection measures to be used during grading and construction. See Section 17.10 for protection measures required and Section 17.09 for calculation of credits for existing trees.

B. Prohibited vegetation

Plants identified as noxious weeds in the Ohio Administrative Code Section 901:5-31-01, that is updated from time to time, shall be prohibited in all required landscape areas.

C. Planted vegetation

Required plantings allow for a mix of large shade trees, small trees/large shrubs, and smaller shrubs to provide variable height screening, and a variety of plantings and seasonal color. Evergreen trees are added to wider buffers to provide more opaque screen, as well as a more natural appearance to the

buffer. The mix is designed to create a buffer which will give a satisfactory screen within four (4) years of planting, under normal maintenance, while allowing room for various plants to grow.

Planting requirements for buffers include both trees and shrubs as described below. Buffers proposing new vegetation shall select deciduous and evergreen trees from table 17.13. Buffers proposing new vegetation shall select shrub species from table 17.14.

1. Tree standards for deciduous trees. This requirement shall be satisfied as follows:
 - a. Trees shall be balled and burlapped or in a container prior to installation.
 - b. Trees shall have a minimum caliper size of one and one half (1 1/2) inches for at least one trunk.
 - c. Trees under four (4) inches shall have the caliper measurement six (6) inches above the ground.
 - d. Trees equal to or greater than four (4) inches in diameter shall have the caliper measurement twelve (12) inches above the ground.
 - e. All trees shall be planted according to the following formula: maximum crown diameter minus five (5) feet equals the distance of the planting from the center of any other planting.
 - f. It is suggested that a minimum of three (3) tree species be planted in a landscape buffer to increase the resistance to diseases.
 - g. The height at the time of installation shall be measured from the level of the final surface grade to the most vertical height of the tree.
2. Tree standards for evergreen trees.
This requirement shall be satisfied as follows:
 - a. Trees shall be balled and burlapped or in a container prior to installation.
 - b. Trees shall be a minimum of four (4) feet in height at the time of installation.
 - c. The trees shall provide an effective, dense screen with an opacity of eighty (80) percent within four (4) years of planting.
 - d. All trees shall be planted according to the following formula: maximum crown diameter minus five (5) feet equals the distance of the planting from the center of any other planting.
 - e. It is suggested that a minimum of three (3) tree species be planted in a landscape buffer to increase the resistance to disease.
 - f. The height at the time of installation shall be measured from the level of the final surface grade to the most vertical height of the tree.
3. Shrubs, hedges and ground cover standards
 - a. Shrubs, hedges, as well as vines can be bare roots, balled and burlapped or from containers prior to installation.
 - b. Shrubs and hedges shall be a minimum of twenty-four (24) inches in height at the time of planting.

- c. Shrubs and hedges shall provide an effective, dense screen with an opacity of eighty (80) percent, a mature height of five (5) feet within four (4) years of planting.
- d. The height at the time of installation shall be measured from the level of the final surface grade to the most vertical height of the majority of the branches.

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 property is currently unsuitable according to clearcreek township zoning regulations and we went above the minimum standard to fulfill the requirement. We just were unaware of the minimum diameter of the trees. If even a 2 year continuance could be given the trees could be remeasured then they would surly meet the requirement.”

The following issues need to be considered:

- On July 20, 2015 the lot was recorded via Volume 142, Plat No. 44. (See Exhibit: 9)
- A 4,159 sq. ft. living space single family dwelling has been built on the property. (See Exhibit: 1A)
- The topography for the property:
 - At Township Line Road it is approximately 886’.
 - The streetscape buffer is planted between 886’ and 890’.
 - The house is located on the hill at least at 910’. (See Exhibits: 2B, 10)

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: “We are on 5 acres and not near a neighborhood, our property looks on par with surrounding properties even before planting trees. The properties to the north of ours are similar in size and once our trees mature our property will have the same look as theirs. In fact, our property will have approximately four times the trees on it as theirs.”

The following issues need to be considered:

- Township Line Road is the division between Clearcreek Township on the western side and Wayne Township on the eastern side of the Warren County maintained road. (See Exhibits: 500’ Notice, Location Map, 1H, 9)

- The streetscape requirement was first approved by Trustee Resolution 2237 on December 14, 2000. (See Exhibits: 11A-O)
- Four parcels have been subdivided from the original 59.3 acre parcel that was owned by Delores Delaine Meece: (See Exhibits: 12A-C)
 - On June 30, 2011, Volume 137 Plat 67 created a 5.0001 acre parcel. (See Exhibits: 12C, 13, 14A-B)
 - Account 0311715 was issued a zoning permit on November 23, 2011. Nine trees were required for the streetscape buffer. (See Exhibits: 15A-C)
 - The diagram for the completed buffer was drawn on October 11, 2012. (See Exhibits: 16, 23L)
 - On March 3, 2015, Volume 137 Plat 67 created a 5.0001 acre parcel. (See Exhibits: 12C, 17, 18A-B)
 - Account 0311782 was issued a zoning permit on April 13, 2015. Nine trees were required for the streetscape buffer. (See Exhibits: 19A-C)
 - The diagram for the completed buffer was drawn on December 7, 2016. (See Exhibits: 20, 23K)
 - On July 20, 2015, Volume 142 Plat 44 created a 5.001 acre parcel. (See Exhibits: 12C, 9, 21A-B)
 - Account 0311804 at the time of this staff report, hasn't been issued a zoning permit for a single family dwelling. A streetscape buffer will be required as part of the zoning permit process.
 - On July 20, 2015, Volume 142 Plat 44 created a 5.001 acre parcel. (See Exhibits 12C, 9, 1A-H)
 - Subject property, Account 0311812 was issued a zoning permit on December 29, 2015. Ten trees were required for the streetscape buffer. Ten trees have been installed. (See Exhibits: 2A-D)
 - Nine of the trees fail to meet the minimum caliper size of 1 ½". Applicant has provided a diagram of all the trees planted on the subject property. The streetscape trees are a minimum of 1" caliper. (See Exhibits: 3, 5D, 23A-E)
 - According to the invoice, the Cleveland Select Flowering Pear purchased were 5-6' tall or 60"-72". Eight of the trees were found to be within this height range. (See Exhibits: 7C, 23A-E)
 - According to the www.willisorchards.com a 7-8' tree has a 1.25" caliper. (See Exhibit: 22)
- See staff photos. (See Exhibits:23A-L)

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

The applicant states: "We do not live in a neighborhood. We are on 5 acres on the edge of the township and our property will look similar to the adjacent properties which have had more time for the trees to mature."

The following issues need to be considered:

- In the five hundred (500) foot notification area, there are 7 properties. (See Exhibits: 500 Notice Map)
- Five properties are located in Clearcreek Township.
 - Four properties are 5.00 acres in size. (See Exhibits: 1A-H, 14A-B, 18A-B, 21A-B)
 - One property is 39.3018 acres in size. (See Exhibits: 12A-C)
 - No variances have been requested in the five hundred (500) foot notification area.
- Three properties are located in Wayne Township. (See Exhibits: 24A-B)
 - One property is 116.65 acres in size. (See Exhibits: 25A-B)
 - One property is 17.74 acres in size. (See Exhibits: 26A-B)
 - One property is 10.002 acres in size. (See Exhibits:)
- See response to question 2.

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 hardship we would realize is that we would either be forced to plant an additional 10 trees at a significant cost bringing out total to 54 trees or remove and plant 10 slightly larger diameter trees at a similar cost but more labor. The difference in the end result is one that would barely be noticed.”

The following issues need to be considered:

- The applicant has provided a diagram that depicts the streetscape buffer trees to be a minimum of 1” caliper. (See Exhibits: 3, 23A-E)
- At the minimum starting size of 1 ½” deciduous or 4’ evergreen , the streetscape buffer meets the findings and intent requirements of Chapter 17.

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

The applicant states: “We fulfilled the zoning requirements as we were told. There was no mention of minimum diameter when we were told of our 10 tree requirement. We were only notified of that minimum after the trees were planted. Attached to this form is the initial notice we received on the requirement and we truly believed we were following the rules set in place when we planted our trees.”

The following issues need to be considered:

- On December 29, 2015 zoning permit 2015-8760 was issued to Jody Amburgy of Amburgy Properties Inc for a single family dwelling located at 6301 Township Line Road. Mr. Amburgy was explained the streetscape requirement and given the tree page document that summarizes the requirements of Chapter 17 of the Clearcreek Township Zoning Resolution. Mr. Amburgy selected the option “I am building this home for the owner & I will give the owner this paper and explain the requirement.” (See Exhibits: 2A-D, 4C)

- The applicant is correct that the document doesn't specifically identify the minimum standards for the trees at the time of planting. The minimums were summarized on a third page that didn't get transmitted to the property owner. However, the document does reference Chapter 17 of the Clearcreek Township Zoning Resolution. Chapter 17 is twenty-five pages in length. The zoning resolution is available on the Clearcreek Township website as a PDF file or a copy can be requested by contacting the zoning staff.
- The notice of zoning violation identifies the requirements of Chapter 17. In the Code Enforcement Officer's attempt to "work with" the applicant, the notice was not issued until November 30, 2017. (See Exhibits: 8A-D)
- As a result of this case, staff has the document into a two page document that identifies the minimum tree requirements. The Code Enforcement Officer has been instructed to issue a notice of zoning violation as soon as a violation has been discovered. (See Exhibits: 27A-B)

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

The applicant states: "I was unaware of the minimum diameter until after trees were planted, had I been aware we would of adjusted and planted fewer trees at a similar total cost. The builder included the initial notice of 10 trees with our paperwork but I do not recall ever being told specifically about the requirement."

The following issues need to be considered:

- Chapter 17 Buffer and Screen has part of the zoning resolution since the approval Trustee Resolution 2237 on December 14, 2000. (See Exhibits: 11A-O)
- According to Warren County Auditor's webpage, the Mr. & Mrs. Young purchased the property on December 29, 2015. (See Exhibit: 1D)
- Jody Amburgy of Amburgy Properties was the builder and was issued the zoning permit and signed the streetscape document on December 29, 2015. (See Exhibit: 2C)
- The tree page document that summarizes the requirements of Chapter 17 of the Clearcreek Township Zoning Resolution does outline that the trees are to be planted within one year of the issuance of the zoning permit. The permit was issued on December 29, 2015. The trees were required to be installed by December 28, 2016. (See Exhibit: 2C)
- According to a phone call discussion with the Warren County Building Department, the final inspection for occupancy of the dwelling was performed on July 26, 2016.
- The first contact zoning had with the property owner was on September 12, 2017. (See Exhibit: 5C)

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

The applicant states: "I can not see how anyone in the public would mind a smaller diameter tree that will grow to meet the minimum requirement within a couple of years. The

intent of the requirement will still be met in excess of the minimum requirement, it just will take a little time for the trees to grow to the minimum required diameter.”

The following issues need to be considered:

- At the minimum starting size of 1 ½” deciduous or 4’ evergreen , the streetscape buffer meets the findings and intent requirements of Chapter 17.

Consider whether the spirit and intent as identified in the Clearcreek Township Zoning Resolution 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: “This is our first home we have built and there were numerous things we have learned along the way which increased our costs during the build. This requirement is on we tried to fulfill and chose to plant extra at the same time which is something we had planned on doing in the future when finances become available. However we were trying to be as frugal about this as possible while trying to meet the township requirements and did not know of the minimum diameter necessary to fulfill that requirement. We believe, based on the types of trees that we planted, that we will meet the requirement within 2 years and would like this variance approved based on that happening. Should there be an issue at that time we will make it right and purchase larger diameter trees to fulfill whatever remaining trees are not of the minimum size.”

The following issues need to be considered:

- See response to #2 above.

SEC. 17.05 Variations

The Board of Zoning Appeals (BZA) may modify buffer and landscaping standards where:

- There are special considerations of site design and/or topography.

- There exists a unique relationship to other properties.
- The plantings or planting area would conflict with utilities, easements, or overhead power lines.
- Proposed street widening not provided by the developer will consume the landscaping area.
- The additional screening or landscaping requirements of any other section warrant a variance, in which case, the approving authority may vary the requirements of this section so long as the intent of all sections are met.
- The approving authority may require alternative buffers of landscaping when a modification to the requirements of this section is warranted in order to meet the intent of the specified standards.
- The test to guide the BZA shall be that of Unnecessary Hardship.

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 condition or limitation shall be a violation of this resolution.