

**Case Number:** 18-BZA-003

**Type of Appeal:** Non-Conformance Hearing

**Applicant:** Antonio Trejo

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

**Report Date:** February 26, 2018

**Hearing Date:** March 13, 2018

**Current Zoning of Property:** Residence Zone "R-1"

**Description of Property:**

The address of the property is 4361 State Route 48. The property is .29 acres in size. The property is identified by parcel id 08-04-427-019 and account number 0402576. The parcel is located in Section 4, Town 3 and Range 4 in Clearcreek Township. The property is zoned Residence Zone "R-1". The request is add a porch to the front of a legal non-conforming structure. The structure is classified as legal non-conforming structure since it fails to meet the minimum 50' front yard setback required by Section 5.754 (A) of the Clearcreek Township Zoning Resolution. (See Exhibits: Location Map, 1A-E, 2)

**Nature of the Request:**

Applicant states: "I would like to make a porch that is 5 feet long, at the moment I can only build up to 3 feet and that is not how I would like it." (See Exhibits: 2, 3)

**Background on the Nature of the Request**

**Staff Comments:**

The structure is classified as legal non-conforming structure since it fails to meet the minimum 50' front yard setback required by Section 5.754 (A) of the Clearcreek Township Zoning Resolution. (See Exhibit: 2)

The request is add a front porch to a legal non-conforming structure. The current front yard setback for the dwelling is approximately five (5) feet. A canopy overhang for front entrances can extend a maximum of three (3) feet into a required setback. Zoning allows an overhang constructed as a cantilever design without post or column support, thus the closest vertical element to measure the setback remains the dwelling wall. Since the porch is currently constructed in a manner that post supports are needed to structurally support the roof, the former exception isn't an option. (See Exhibits: 2, 3, 4A)

On February 1, 2018, staff noticed a front porch with columns being constructed on the subject property. The porch was measured and staff found it had a nine (9) foot depth. A door hanger was left for the owner to contact staff regarding the construction that lacked zoning approval. Upon returning to the office, staff found that a building permit had not been obtained. Warren County Building Department was put on notice of the construction. Staff reviewed the aerial of the property from the Warren County Auditor's Website and found the setback from the house to the road right-of-way to measure approximately five (5) feet. The porch as currently constructed extends four (4) feet into the road right-of-way. On February 2, options were discussed with the property owner ranging from total demolition, reconfiguration to three (3) foot cantilever roof, as well as pros and cons for variance and non-conformance applications. The property owner was informed that the porch as built, couldn't receive zoning approval because it encroaches into the road right-of-way. The owner has a maximum of five (5) feet in which to structurally modify the porch. The owner has chosen this application and if approved would reduce the depth of the porch from nine (9) feet to five (5) feet. (See Exhibits: 2, 4A, 5, 6A-F)

Based upon the above findings, Sections 5.02, 5.754(A), 15.03, and 21.01 (D) of the Clearcreek Township Zoning Resolution force the applicant to request a non-conformance hearing.

**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.

**SEC. 5.754 PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS EXPECT 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 building.

**SEC. 15.03** No existing building or premises devoted to use not permitted by this Code in the zone in which such building or premises is located, except when required to do so by law or order, shall be enlarged, extended, reconstructed or structurally altered, unless the use thereof is changed to a use permitted in the zone in which such building or premises is located.

**SEC. 21.01 (D) NON-CONFORMING USES:**

The Board shall have the power to authorize the completion, restoration, reconstruction, in whole or in part, extension, or substitution of non-conforming uses; taking into consideration the nature of such uses in relationship to the character of adjacent uses, lot size, set back lines, traffic conditions, terrain and all other factors which, in the opinion of the Board, are pertinent to such completion, restoration, reconstruction, extension or substitution.

**Review of Application:**

**Expansion of non-conforming use hearing:**

**1. Nature of such use in relationship to the character of adjacent uses:**

The applicant states: "I wanted to improve my property, want to make it look better and think that the porch I added on the house and would love to finish would improve how my property looks."

The following issues need to be considered:

- In the 500 notice area, two types of properties exist: 1. Properties described to the center of the road right-of-way. The road right-of-way is in the form of an easement across the front of the properties. 2. Properties described to the edge of the road right-of-way. The road right-of-way is coincident to the property but held independent of the property. (See Exhibits: 4A-F, 7)
- Regardless of how the property is described, zoning measures the front yard setback from the lot frontage not the front of the property. During my consultation with the applicant, I incorrectly assumed the road right-of-way had been modified with the 2005 Pekin Rd/Bunnell Hill Rd/State Route 48 intersection improvement. When I compared Survey Record 126-48 with the Kendrick

Subdivision drawing, I found that the depth of the subject property and the half section width of State Route 48 had not changed. (See Exhibits: 2, 4A, 5, 8, 9)

**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: 3.642 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. 3.74 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.

- Subject property is account number 0402576:
  - 4361 N State Route 48
  - .29 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 29 Kendrick Subdivision.
  - Previously had a canopy over the front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 5’from State Route 48 Road Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 1A-E, 2, 4A)
- Four (4) zoning classifications exist within 500 feet of the subject property: OSR-1, R-1, B-1 and M-1 (See Exhibit: Location Map).
- Exhibit 10 identifies properties by account number.
- Two variances were approved that involved five (5) properties. (See Exhibits:29C-I, 41A-B)
- Seventeen (17) properties are classified as legal non-conforming in the 500 foot notice area. (See Exhibits: 4A-F, 16A, 17A, 18A, 19A, 20A, 21A, 22A, 23A, 24A, 25A, 26A, 27A, 40A, 42A, 44A, 43A, 44A, 46A)
- The Kendrick Subdivision was platted in May 1964, with a total of 29 lots. (See Exhibit: 8)
  - The Kendrick Subdivision is divided into lots with road frontage on State Route 48 and lots with road frontage on Carnell Dr. (See Exhibit: 8)
  - Lots 8, 9 and 10 of Kendrick Subdivision were replatted into Livia-James Lot 1 in 2014. (See Exhibit: 11)
- Seven (7) of the seven (7) lots with road frontage on State Route 48, within the 500 notice area are classified as legal non-conforming lots because of a reduced front yard setback. (See Exhibits: 16A, 17A, 18A, 19A, 20A, 21A, 22A)

- Six (6) lots have a canopy overhang. (See Exhibits: 16A, 17A, 18A, 20A, 21A, 22A )
- One (1) lot has a porch. (See Exhibit: 19A)
- Fourteen (14) of the seventeen (17) lots with road frontage on Carnell Dr., are within the 500 notice area.
  - Five (5) lots are classified as legal non-conforming lots because of a reduced front yard setback. (See Exhibits: 23A, 24A, 25A, 26A, 27A)
  - Nine (9) lots meet the minimum front yard setback of 50'. (See Exhibits: 28A, 30A, 31A, 32A, 33A, 34A, 35A, 36A, 37A)
  - Seven (7) lots have a porch. (See Exhibits: 31A-B, 32A-B, 33A-B, 34A-B, 35A-B, 36A-B, 37A-B)
  - Three (3) lots have a deck. (See Exhibits: 23A-B, 26A-B, 28A-B)
  - Four (4) lots only have a front stoop. (See Exhibits: 24A, 25A, 27A, 30A)
- Account number 0404137:
  - 4219 N State Route 48
  - 6.3413 acres in size.
  - Construction year of house is 1830.
  - Total Living Area is 2,376 sq. ft.
  - Zoning classification is Open Space Rural Residence Zone“OSR-1”.
  - (See Exhibits: Location Map, 4F, 10 12A-C)
- Account number 0420002:
  - 4301 Carnell Dr.
  - 6.3741 acres in size.
  - Construction year of house is 1960.
  - Total Living Area is 1,176 sq. ft.
  - Zoning classification is Open Space Rural Residence Zone “OSR-1”.
  - (See Exhibits: Location Map, 4F, 10, 13A-C)
- Account number 0402649:
  - 4317 N State Route 48
  - 1.6289 acres in size.
  - Construction year of warehouse is 1964.
  - Zoning classification is Light Industrial Zone “M-1”.
  - (See Exhibits: Location Map, 4F, 10, 14A-B)
- Account number 0402584:
  - 4317 N State Route 48
  - .5093 acres in size.
  - Construction year of office is 1952.
  - Total Area of office is 2,354 sq. ft.
  - Zoning classification is Light Industrial Zone “M-1”.
  - (See Exhibits: Location Map, 4A, 10, 15A-B)

- Account number 0402568:
  - 4375 N State Route 48
  - .33 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 808 sq. ft.
  - Lot 28 Kendrick Subdivision.
  - Canopy over front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 7’ from State Route 48 Road Right-of-Way instead of the required 50’ setback.
  - (See Exhibits: Location Map, 4A, 10, 16A-B)
- Account number 0402541:
  - 4387 N State Route 48
  - .33 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 27 Kendrick Subdivision
  - Canopy over front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 7’ from State Route 48 Road Right-of-Way instead of the required 50’ setback.
  - (See Exhibits: Location Map, 4A, 10, 17A-B)
- Account number 040533:
  - 4401 N State Route 48
  - .33 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 26 Kendrick Subdivision
  - Canopy over front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 7’ from State Route 48 Road Right-of-Way instead of the required 50’ setback.
  - (See Exhibits: Location Map, 4B, 10, 18A-B)
- Account number 0402525:
  - 4415 N State Route 48
  - .33 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 25 Kendrick Subdivision
  - Front porch.

- Zoning classification is Residence Zone“R-1”.
- Legal non-conforming because single family dwelling is approximately 3’from State Route 48 Road Right-of-Way instead of the required 50’setback.
- (See Exhibits: Location Map, 4B, 10, 19A-C)
- Account number 0402517:
  - 4425 N State Route 48
  - .33 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 24 Kendrick Subdivision
  - Canopy over front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 10’from State Route 48 Road Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4B, 10, 20A-B)
- Account number 0402509:
  - 4441 N State Route 48
  - .33 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 23 Kendrick Subdivision
  - Canopy over front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 11’from State Route 48 Road Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4B, 10, 21A-B)
- Account number 0402495:
  - 4455 N State Route 48
  - .33 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 22 Kendrick Subdivision
  - Canopy over front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 11’from State Route 48 Road Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4B, 10, 22A-B)

- Account number 0402282:
  - 4458 Carnell Dr.
  - .46 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 2 Kendrick Subdivision
  - Front Deck.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 47’from Carnell Dr. Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4C, 10, 23A-C)
- Account number 0402291:
  - 4440 Carnell Dr.
  - .46 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 3 Kendrick Subdivision
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 47’from Carnell Dr. Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4C, 10, 25A-B)
- Account number 0402304:
  - 4422 Carnell Dr.
  - .46 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 4 Kendrick Subdivision
  - Canopy over front stoop.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 47’from Carnell Dr. Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4C, 10, 25A-B)
- Account number 0402312:
  - 4404 Carnell Dr.
  - .46 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 776 sq. ft.
  - Lot 5 Kendrick Subdivision
  - Front Deck.
  - Zoning classification is Residence Zone“R-1”.

- Legal non-conforming because single family dwelling is approximately 42' from Carnell Dr. Right-of-Way instead of the required 50' setback.
  - (See Exhibits: Location Map, 4C, 10, 26A-C)
- Account number 0402321:
  - 4386 Carnell Dr.
  - .46 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 856 sq. ft.
  - Lot 6 Kendrick Subdivision
  - Zoning classification is Residence Zone "R-1".
  - Legal non-conforming because single family dwelling is approximately 47' from Carnell Dr. Right-of-Way instead of the required 50' setback.
  - (See Exhibits: Location Map, 4D, 10, 27A-B)
- Account number 0402339:
  - 4366 Carnell Dr.
  - .46 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 792 sq. ft.
  - Lot 7 Kendrick Subdivision
  - Front Deck.
  - Zoning classification is Residence Zone "R-1".
  - (See Exhibits: Location Map, 4D, 10, 28A-C)
- Account number 0420003:
  - 4306 Carnell Dr.
  - 1.4269 acres in size.
  - Construction year of storage units 2014.
  - Total of 12,500 sq. ft.
  - Case 13-BZA-003 Approved Variance to reduce side yard setbacks and buffer requirements.
  - Zoning classification is Light Industrial Zone "M-1".
  - (See Exhibits: Location Map, 10, 29A-I)
- Account number 0402371:
  - 4311 Carnell Dr.
  - .57 acres in size.
  - Construction year of house is 1952.
  - Total Living Area is 728 sq. ft.
  - Lot 11 Kendrick Subdivision
  - Zoning classification is Residence Zone "R-1".
  - (See Exhibits: Location Map, 4E, 10, 30A-B)



- Account number 0402398:
  - 4325 Carnell Dr.
  - .5 acres in size.
  - Construction year of house is 1964.
  - Total Living Area is 960 sq. ft.
  - Lot 12 Kendrick Subdivision
  - Front porch.
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 4D, 10, 31A-C)
- Account number 0402401:
  - 4343 Carnell Dr.
  - .5 acres in size.
  - Construction year of house is 1964.
  - Total Living Area is 960 sq. ft.
  - Lot 13 Kendrick Subdivision
  - Front porch.
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 4D, 10, 32A-C)
- Account number 0402428:
  - 4361 Carnell Dr.
  - .5 acres in size.
  - Construction year of house is 1964.
  - Total Living Area is 960 sq. ft.
  - Lot 14 Kendrick Subdivision
  - Front porch.
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 4D, 10, 33A-C)
- Account number 0402436:
  - 4381 Carnell Dr.
  - .5 acres in size.
  - Construction year of house is 1964.
  - Total Living Area is 960 sq. ft.
  - Lot 15 Kendrick Subdivision
  - Front porch.
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 4D, 10, 34A-C)
- Account number 0402444:
  - 4397 Carnell Dr.
  - .5 acres in size.
  - Construction year of house is 1964.

- Total Living Area is 960 sq. ft.
- Lot 16 Kendrick Subdivision
- Front porch.
- Zoning classification is Residence Zone“R-1”.
- (See Exhibits: Location Map, 4C, 10, 35A-C)
- Account number 0402452:
  - 4417 Carnell Dr.
  - .5 acres in size.
  - Construction year of house is 1964.
  - Total Living Area is 960 sq. ft.
  - Lot 17 Kendrick Subdivision
  - Front porch.
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 4C, 10, 36A-C)
- Account number 0402461:
  - 4435 Carnell Dr.
  - .5 acres in size.
  - Construction year of house is 1964.
  - Total Living Area is 960 sq. ft.
  - Lot 18 Kendrick Subdivision
  - Front porch.
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 4C, 10, 37A-C)
- Account number 0415048:
  - Pekin Rd
  - 2.6191 acres in size.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because parcel doesn't have road frontage.
  - (See Exhibits: Location Map, 10, 38A-B)
- Account number 0201111:
  - 4098 N State Route 48
  - 119.89 acres in size.
  - Construction year of house is 1972.
  - Total Living Area is 3,036 sq. ft.
  - Zoning classification is Open Space Rural Residence Zone“OSR-1”.
  - (See Exhibits: Location Map, 4F, 10, 39A-B)

- Account number 0210684:
  - 4354 N State Route 48
  - .271 acres in size.
  - Construction year of first house is 1920, 807 sq. ft.
  - Construction year of second house is 1952, 965 sq. ft.
  - Lot 2 Ballard Subdivision
  - Zoning classification is Residence Zone“R-1”.
  - Variance to allow the reduced lot size in 1984.
  - Legal non-conforming because two dwellings are on a parcel. One single family dwelling is approximately 2’from State Route 48 Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4A, 10, 40A-D, 41A-B)
- Account number 0210676:
  - 4370 N State Route 48
  - .481 acres in size.
  - Construction year of house is 1954.
  - Total Living Area is 1,226 sq. ft.
  - Lot 1 Ballard Subdivision
  - Zoning classification is Residence Zone“R-1”.
  - Variance to allow the reduced lot size in 1984.
  - Legal non-conforming because single family dwelling is approximately 20’from State Route 48. Right-of-Way instead of the required 50’setback.
  - On May 31, 2016, a front porch was approved by averaging Zoning Inspector Determination.
  - (See Exhibits: Location Map, 4A, 10, 41A-B, 42A-E)
- Account number 0200191:
  - N State Route 48
  - .053 acres in size.
  - Tied with account number 0200204.
  - (See Exhibits: Location Map, 4A, 10, 43A-B)
- Account number 0200204:
  - 4394 N State Route 48
  - .28 acres in size.
  - Construction year of house is 1953.
  - Total Living Area is 912 sq. ft.
  - Zoning classification is Residence Zone“R-1”.
  - Legal non-conforming because single family dwelling is approximately 30’from State Route 48. Right-of-Way instead of the required 50’setback.
  - (See Exhibits: Location Map, 4A, 10, 44A-C)

- Account number 0211206:
  - 4412 N State Route 48
  - 5.4671 acres in size.
  - Construction year of house is 1990.
  - Total Living Area is 1,667 sq. ft.
  - Lot 5 Pekin Corners 2 Subdivision
  - Zoning classification is Residence Zone“R-1” and Neighborhood Business “B-1”.
  - (See Exhibits: Location Map, 4F, 10, 45A-B)
- Account number 0211192:
  - 4424 N State Route 48
  - 1.1042 acres in size.
  - Construction year of house is 1991.
  - Total Living Area is 1,223 sq. ft.
  - Lot 4 Pekin Corners 2 Subdivision
  - Zoning classification is Residence Zone“R-1” and Neighborhood Business “B-1”.
  - Legal non-conforming because single family dwelling is in the Neighborhood Business “B-1” Zone instead of the Residence “R-1” Zone.
  - (See Exhibits: Location Map, 4B, 10, 46A-C)
- Account number 0211052:
  - E Pekin Rd
  - 1.25 acres in size.
  - House was razed during 2005 intersection improvement.
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 10, 47A-B)
- Account number 0215108:
  - E Pekin Rd.
  - .469 acres in size.
  - Road Right-of-Way parcel.
  - (See Exhibits: Location Map, 10, 48A-B)
- Account number 0211095:
  - 63 E. Pekin Rd
  - 1.0271 acres in size.
  - Construction year of house is 1990.
  - Total Living Area is 1,710 sq. ft.
  - Lot 1 Pekin Corners 1 Subdivision
  - Zoning classification is Residence Zone“R-1”.
  - (See Exhibits: Location Map, 10, 49A-B)

## **2. Lot size:**

The applicant states: "0.28 acres of land."

The following issues need to be considered:

- The subject parcel is .29 acres in size. (See Exhibit: 1A)
- The minimum lot size for the Residence Zone "R-1" is 1 acre.
- See Exhibits 7 and 10 which identify properties within the 500' Notice area:
  - Eighteen (18) parcels are below one half (½) acre. (See Exhibits: 16A, 17A, 18A, 19A, 20A, 21A, 22A, 23A, 24A, 25A, 26A, 27A, 28A, 40A, 42A, 43A, 44A, 48A)
  - Nine (9) parcels are equal to or greater than one half (½) acre but less than one (1) acre. (See Exhibits: 15A, 30A, 31A, 32A, 33A, 34A, 35A, 36A, 37A)
  - Six (6) parcels are equal to or greater than one (1) acre but less than five (5) acres. (See Exhibits: 14A, 29A, 38A, 46A, 47A, 49A)
  - Three (3) parcels are equal to or greater than five (5) acres but less than ten (10) acres. (See Exhibits: 12A, 13A, 45A)
  - One (1) parcel is one hundred and nineteen (119) acres. (See Exhibit: 39A)

## **3. Set back lines:**

The applicant states: "I would like a zero setback from the 5 feet, a five foot porch would make my home look better." (See Exhibits: 2, 5)

### ***The following issues need to be considered:***

- The front yard setback for the single family dwelling is approximately 5' from the State Route 48 right-of-way. (See Exhibits: 2, 5)
- The proposed setbacks for porch:
  - Northern side yard setback is approximately 31'
  - Eastern front yard setback is approximately 0'
  - Southern side yard setback is approximately 11'
  - See Exhibit: 5
- Staff was unable to use Section 5.754 to average the front yards and issue a zoning permit for the porch addition.
- The two parcels to the north have a single family structure with an approximate seven (7) foot front yard setback. (See Exhibit: 4A)
- The parcel to the south has an office structure with an approximate fifty-seven (57) foot front yard setback. (See Exhibit: 4A)
- $(7'+7'+57')/3 = 23.66'$ , this is greater existing front yard setback for the subject house. (See Exhibits: 2, 5)

- Here are the regulations for Single Family Dwellings and Accessories for the R-1 Zone:

**SEC. 5.754 PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS  
EXPECT 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 building.
  - 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.
- The average single family dwelling front yard setback the Kendrick Subdivision within the 500 notice area is  
 $(7'+7'+7'+3'+10'+11'+11'+47'+47'+47'+42'+47'+52'+50'+52'+50'+50'+50'+50'+50')/21 = 32.85'$ . (See Exhibits: 4A-F)
  - This is still greater than the existing setback for the subject property. (See Exhibits: 2, 5)
  - The average single family dwelling front yard setback the Kendrick Subdivision within the 500 notice area with frontage only on State Route 48 and zoned Residence "R-1" Zone is  
 $(7'+7'+7'+3'+10'+11'+11')/7 = 8'$ . (See Exhibits: 4A-B)
  - This is still greater than the existing setback for the subject property. (See Exhibits: 2, 5)
  - The average front yard setback the within the 500 notice area with frontage only on the east side of State Route 48, and zoned Residence "R-1" Zone is  $(2'+20'+30'+95'+50')/5 = 39.4'$ . (See Exhibits: 4A-F)
  - If the zoning minimum is used instead of the exceeded dimension  $(2'+20'+30'+50'+50')/5 = 30.4'$ . This is still greater than the existing setback for the subject property. (See Exhibits: 2, 5)

**4. Traffic conditions:**

The applicant states: "The overall conditions around my home do not involve much traffic. It is very calm, which is one of the reasons I want a porch in the front. Having the porch won't affect traffic or cause any other problems, the porch is for the benefit of us."

The following issues need to be considered:

- The single family dwelling use is the primary use for the property. The use will not change with the establishment the porch addition.
- Thus the 10.062 Average Trip Rate for a Weekday, 10.149 Average Trip Rate for a Saturday and 8.733 Average Trip Rate for a Sunday, as per the 6<sup>th</sup> Edition of the Trip Generation, from the Institute of Transportation Engineers, 1987 would still be applicable.

### **5. Terrain:**

The applicant states: "My house in comparison to the road is lower than the road."

The following issues need to be considered:

- The topography runs from 959' to 956' across the property. (See Exhibit: 50)
- The topography runs from 960' to 958' across the road right-of-way coincident with the lot frontage. (See Exhibit: 50).

### **6. Other factors you consider important to the judgment of your case:**

The applicant states: "This house is one of my investments for the future of my kids. I have been working on the house and improving it to turn out how I would like it to be. But I messed up by not getting a permit to build the porch. The reason for building the porch is to spend more time there and just for the appearance of my home. I did not however know there was a boundary line where I could not build, and I respect that, I would just like to build my porch up to the boundary line."

The following issues need to be considered:

- In the process of updating the exterior of the house with a new facade a new roof was installed. The property owner changed the roof design and pitch to create a porch. A zoning permit was not needed for the facade change or for the roof replacement. A zoning permit was needed at the time the porch roof projected more than three (3) feet from the dwelling
- The cross section of the State Route 48 road right-of-way is 60'. (See Exhibits: 2, 5, 8, 50, 51)
- The distance from white line on State Route 48 to the interior edge of road right-of-way, coincident with the subject property is approximately 48'. (See Exhibit: 51).
- Accounts 0402649 and 0402584 are immediately to the south of the parcel and not part of the Kendrick Subdivision:
  - The cross section of the State Route 48 road right-of-way for these properties is approximately 30'. (See Exhibit: 51).
  - The distance from white line on State Route 48 to the interior edge of road right-of-way, coincident with these properties is approximately 19'. (See Exhibit: 51).
- Accounts 0210676 and 0210684 are directly across the street, along the eastern side of State Route 48, the cross section of the road right-of-way is approximately 43'. (See Exhibit: 51).
  - The distance from white line on State Route 48 to the interior edge of road right-of-way, coincident with these properties is approximately 30'. (See Exhibit: 51).
  - See Staff Photos. (See Exhibits: 6A-F).

