

Case Numbers: 18-BZA-004

Request: Variance

Applicant: David Tyler & Megan Hughes

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

Report Date: October 16, 2018

Hearing Date: November 13, 2018

Current Zoning of Property: Residence Zone with a Planned Unit Development
“R-1APUD”

Description of Property:

The address of the property is 9545 Whispering Stream Court. The property is .1794 acres in size. The property is identified as Lot 499 Villages of Winding Creek, The Boulevards at Winding Creek, Section Six, Subdivision. The property is identified by parcel id 05-21-320-001 and account 0315063. The parcel is located in Section 21, Town 3 and Range 5 in Clearcreek Township. The property is zoned Residence Zone with a Planned Unit Development “R-1APUD”. (See Exhibits: Location Map, 1A-C)

Nature of the Request:

The applicant states: “Zoning code requires 25’ rear yard distance from structure to property line. We will have 21’ rear yard distance and are asking for a 4’ variance.” (See Exhibits: Location Map, 2A-J, 3)

Background on the Nature of the Request

Staff Comments:

The applicant’s property is located in the Villages of Winding Creek Subdivision. This subdivision is a Planned Unit Development with three lot sizes. Trustee Resolution 3632 established the modified conditions that approved the preliminary site plan for the subdivision. The property in question is a 55’ width lot. The other lot sizes for the subdivision are 70’ and 90’ width lots. The minimum lot size for the 55’ lot size is 6,600 sq. ft. or .1515 acres. The minimum front yard setback is 28’. The minimum side yard setback is 5’. The minimum rear yard setback is 25’. (See Exhibits: 2A-J, 4)

The request is to establish a sunroom off the rear of the house where the existing sliding glass door of the dining room is located. The northwest corner of the house is approximately 32’ from the northwestern property corner. The rear of the lot angles to the west as it connects to the southwestern corner. As a result the distance from the house to the rear property line increases as one travels from the northern property line to the southern property line. (See Exhibits: 3, 5B, 5E, 5H)

The applicant is requesting a 4’ encroachment into the rear setback to establish a sunroom that extends the northern boundary of the house at the dining area westward. The proposed sunroom would meet the required setback at its southern boundary. Thus the encroachment varies in distance from 4’ to 0’. (See Exhibits: 3, 5B)

Trustee Resolution 3632 Condition 23(d)(5)(iii) is the section from which the application is seeking a variance:

23. Minimum lot size, required setbacks and frontage requirements shall be approved in conformance with the Villages of Winding Creek, Warren County Ohio Cover Page, and corresponding sub pages of the Preliminary

Plat and Lot Size Exhibit received October 13, 2009 with the following clarifications:

- a. Lot Number 200 and 201 shall be relocated away from the property identified as parcel number 05274780020. The space that Lots 200 and 201 occupied shall become open space.
- b. On November 5, 2009, the applicant provided a typical neighborhood section that illustrates the averaging of frontage width concept. This will serve as the guide for determining plat compliance.
- c. The subdivision shall be organized into neighborhoods based upon minimum lot size.
 1. The total number of lots shall not exceed 746.
 2. Existing lots of record will meet the design parameters outlined in Trustee Resolution 2851.
 3. In the event that the developer desires to vary the lot size mix and deviates from Lot Size Exhibit dated October 13, 2009, a new Lot Size Exhibit shall be submitted as a part of the Stage 3 request and be subject to Zoning Commission Approval.
 4. A maximum of ten (10) percent deviation from the median of each lot size count is allowable, with a proportional reduction occurring in other lot sizes.
- d. Lots designated as an average 55' frontage:
 1. Within neighborhoods classified as 55' lots, the median number of lots shall be 288.
 2. Typical lots:
 - i. May vary in lot frontage width but will always be equal to or greater than 50'.
 - ii. At the minimum front yard setback, the lot shall have a minimum width of 50'.
 3. Cul-de-sac lots:
 - i. May vary in lot frontage width but will always be equal to or greater than 27.5'.
 - ii. At the minimum front yard setback, the lot shall have a minimum width of 50'.
 4. Irregular lots:
 - i. Defined as lots in a neighborhood classification that due to road curvature design fall below the minimum lot frontage for the neighborhood.
 - ii. May vary in lot frontage but will always be equal to or greater than 45'.

- iii. At the minimum front yard setback, the lot shall have a minimum width of 50’.
5. Setbacks:
- i. Front Yard shall be a minimum of 28’.
 - ii. Each Side Yard shall be a minimum of 5’.
 - iii. **Rear Yard shall be a minimum of 25’.**
(See Exhibit: 2D)

CHAPTER 3 DEFINITIONS

- SEC. 3.44** **Lot**: A parcel of land having its frontage upon a public street or road.
- SEC. 3.442** **Lot, Building**: A lot or parcel of land, occupied or intended to be occupied by a principal structure that has been lawfully created and meets all criteria required by the underlying zoning classification.
- SEC. 3.46** **Lot, Coverage**: The area of a zoning lot occupied by the principal building or buildings and accessory buildings.
- 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. 3.73** **Yard**: An open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except eaves, balconies and unenclosed steps leading to a first floor or basement. In measuring a yard the minimum horizontal distance between the lot line and the nearest portion of the building shall be calculated, starting at the lot line and ending at the nearest portion of the building foundation.
- SEC. 3.74** **Yard, Front**: The open space extending across the front of a lot between the lot frontage and the closest vertical support for the building, other than the projection of the usual eaves and overhangs not to exceed three (3) feet, steps, wheelchair ramp. For a lot that has frontage on more than one street, the required front yard shall be provided on all streets.
- SEC. 3.75** **Yard, Rear**: The open space extending across the rear of a lot between the side lot lines and the being the minimum horizontal distance between the rear lot line and the building other than the projection of the usual eaves and overhangs not to exceed three (3) feet, steps, unenclosed balconies or

unenclosed porches. The lot line is most distant from, and is, or is most nearly parallel to, the lot frontage. If a rear lot line is less than fifteen (15) feet long, or if the lot line comes to a point at the rear, the rear lot line shall be a line at least fifteen (15) feet long lying wholly within the lot, parallel to the lot frontage. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots the rear yard shall in all cases be the opposite end of the lot from the front yard. On lots fronting on three (3) streets, the remaining dimension shall be termed the rear yard, but shall be at least the minimum established for any side yard in the respective zone.

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

CHAPTER 5 GENERAL PROVISIONS

SEC. 5.02 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.

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 profitable use from the land is not at issue as the hardship for this variance. The hardship lies with the fact that this homeowner is not able to add a sunroom as others in their neighborhood are able to do.”

The following issues need to be considered:

- A single family dwelling currently exists on the parcel. (See Exhibits: 3, 5B, 6, 7A-F)
- Additions must meet the minimum setbacks for the principle structure.

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: “This lot is unique in its shape and size. This is the only interior lot with a depth of 132’. The majority of the lots in this subdivision are at least 150’ and longer. The right edge of the proposed sunroom will have the required 25’ rear yard distance.”

The following issues need to be considered:

- On February 28, 2018 The Villages of Winding Creek, The Boulevards at Winding Creek, Section Six was recorded. (See Exhibits: 8A-C)
- In the five hundred (500) foot notification area there are thirty-seven (37) properties. (See Exhibits: 500’ Notice Map, 8B)
 - For comparison purposes:
 - No variances have been requested in the five hundred (500) foot notification area.
 - Three (3) properties are not part of the subdivision.
 - Eleven (11) lots are classified as 55’ width lots.
 - Twenty (20) lots are classified as 70’ width lots.
 - One (1) lot is classified as a 90’ lot. (See Exhibits: 500’ Notice Map, 8B, 9)
- The minimum acreage of 6,600 sq. ft. for the 55’ lots was established by Trustee Resolution 3632 and the October 3, 2009 Preliminary Plat. Since square footage is a function of the calculation of length times width, the minimum width of 55’ times 120’ length equals the minimum lot size of 6,600 sq. ft. (See Exhibit: 4)
- The minimum depth of a 55’ lot in the 500’ notice area is 132.42’ (Lot 499, subject property). (See Exhibit: 8B)
- The maximum depth of a 55’ lot in the 500’ notice area is 179.77’ (Lot 509). (See Exhibit: 8B)
- The minimum depth of a 55’ lot in The Boulevards at Winding Creek Section Six is 123.50’ (Lot 510). (See Exhibit: 8B)
- The maximum depth of a 55’ lot in The Boulevards at Winding Creek Section Six is 195.50’ (Lot 513). (See Exhibit: 8B)

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

The applicant states: “The character of the neighborhood will not be altered in any way.”

The following issues need to be considered:

- The subject property was issued a zoning permit on March 26, 2018. (See Exhibits: 5A-H)
- At the time of this report, here is the count of zoning permits issued within the 500’ notice area:
 - Seven (7) permits on a 55’ width lot: 499, 501-504, 506, 507.

- Twelve (12) permits on a 70' width lot: 468, 469, 476, 482, 484, 490-498.
 - One (1) permit on a 90' lot: 470. (See Exhibit: 8B)
- The applicant has provided elevation drawings of the proposed sunroom addition. The materials have not been called out. The subdivision requires brick or stone for the first floor on the side and rear elevations of the house. (See Exhibits: 6, 10B)

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 fact that this lot is an irregular shape/size in relation to all the others in the neighborhood creates a hardship on these homeowners that others won't have to deal with. These homeowners deserve to be able to have the use of their rear yard as others are able to do."

The following issues need to be considered:

- See Response to Questions 3 & 4.

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

The applicant states: "The homeowners did not create this hardship."

The following issues need to be considered:

- Based upon the façade signatures, the applicants were involved with the selection of the house design and placement on the lot at the time the zoning permit was issued on March 26, 2018. (See Exhibits: 5B, 5D)
- According to the Warren County Auditor's Website, the property owners purchased the house from NVR INC (Ryan Homes) on August 24, 2018. (See Exhibit: 1B)
- It is unclear why the house was built at a 40' front yard setback, instead of the minimum 28' front yard setback. (See Exhibits: 2D, 3, 5B, 8B)
- If the house was built in reverse, there would have been room for the addition without needing a variance. (See Exhibits: 3, 5B)

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

The applicant states: "The homeowners were not made aware that they could not add to their home when purchased."

The following issues need to be considered:

- See Response to Question 5.

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

The applicant states: "Public interest will not be harmed by granting this variance."

The following issues need to be considered:

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: “We would like to add a three season sunroom off the rear of our home. We have kept the projection into the rear yard at a minimum of 11’. Our rear yard distance now is at 32’ and the minimum rear yard distance is 25’. By projecting 11’ with our sunroom, that would leave 21’ rear yard distance. We are requesting a 4’ variance to add the sunroom. Both of us have had back surgeries with the possibility of more to come. It is imperative that we have easy access out of our home to the sunroom. We have designed it so the floor of the sunroom will be the same level as our home’s floor. We must also protect ourselves from over exposure to the sun’s UV rays. We feel that a sunroom would allow us to enjoy our backyard as others in the neighborhood do now. The granting of this variance will do no harm to our neighbors or their properties.”

The following issues need to be considered:

- An accessory structure such as a deck, covered deck, pergola, gazebo, not attached to the house would be required to meet the accessory setbacks: 5’ per side, 5’ rear.
- See staff photos for reference of the site. (See Exhibits: 7A-F)

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.