

Case Number: 19-BZA-001

Type of Appeal: Non-Conformance Hearing

Applicant: Jordan Barnhart

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

Report Date: January 16, 2019

Hearing Date: February 12, 2019

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

Description of Property:

The address of the property is 9207 Bunnell Hill Road. The property is .516 acres in size. The property is identified by parcel id 04-03-476-001 and account number 0618648. The parcel is located in Section 3, Town 2 and Range 5 in Clearcreek Township. The property is zoned Residence Zone "R-1". The request is add a garage to the front of a legal non-conforming structure. The structure is classified as a 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-H, 2)

Nature of the Request:

Applicant states: "My wife Tina and I moved into this home in August of 2007 as "empty nesters". Since that time health issues have required that Tina's mother live with us 5-7 months of each year. To provide additional space for Tina's mother we want to covert our current garage into living space, while constructing a new garage directly in front of the current garage. The original construction of the home put the garage about 32' from the front property line. The addition of this new garage will put the garage within about 2' of the front property line." (See Exhibits: 2, 3, 4, 5, 6, 7A-C)

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 garage to the front of a legal non-conforming structure. The current front yard setback for the dwelling is 32.6' feet according to the submitted survey. The applicant is requesting a 30' x 25' garage. If approved, this would reduce the front yard setback to 2.6'. (See Exhibits: 2, 3, 4, 5)

The applicant's property is part of the Sycamore Park Subdivision. At the time of platting, the road right-of-way of Bunnell Hill Road was dedicated. In 2007 a road improvement that realigned the curve of Bunnell Hill Road adjacent to the Sycamore Park Subdivision was started. The new pavement for Bunnell Hill Road was pushed to the south and the east. (See Exhibits: 8, 9, 10, 11)

On January 1, 2013 account number 0660198 was created because the Tax Map Room found that a remainder parcel not associated with the road improvement, even though it contains pavement of Bunnell Hill Road now serving as the access road. (See Exhibits: 12A-H)

Because of the increased distance from the frontage of the lots to the new pavement, four lots (subject property account number 0618648, account number 0660198 to the east, as well as the two properties to the south: account 0613361 and 0607255) continue to use the old pavement, as an access road to the new pavement of Bunnell Hill Road. Street signage identifies the address range accessible by the access road. The access road continues to be maintained by Clearcreek Township. To the north and west of the new pavement, an earth mound was established as part of the road improvement. Clearcreek

Township is responsible for cutting the vegetation in the road right-of-way in this area. (See Exhibits: 11, 25A-B, 27A-M)

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: "The home will continue to be a single family, owner occupied residence. Our home is one of three homes located on the "side street" that was created in 2007/08 when Bunnell Hill was re-routed just north of Lytle-Five Points rd. The distance from our two neighbors' homes to the "side street" is about 70'. Our home is currently about 110' from the "side street", and with the garage addition we would still be about 80' back, which is similar to our neighbors." (See Exhibits: 3, 9, 10, 11, 12H)

The following issues need to be considered:

- In the 500 notice area: 20 properties are in the unincorporated Clearcreek Township, 58 properties are located in the City of Springboro. (See Exhibit: 13)

- Three (3) zoning classifications exist within 500 feet of the subject property in unincorporated Clearcreek Township: R-1, R-2 and SR-1 (See Exhibit: Location Map).
- The properties are identified by account number in Exhibits: 11, 12H, 13.
- See above “Background on the Nature of the Request” to understand more about the “side street’/access road/old pavement of Bunnell Hill Road.
- Zoning measures the front yard setback from the lot frontage/property line that is coincident with the road right-of-way. Because of the previous curve of Bunnell Hill, the subject property’s driveway extended a greater distance than other lots of the subdivision to connect to the pavement in the road right-of-way. After the road improvement, the distance to the access road remained the same, but the distance to the new Bunnell Hill Road pavement increased. (See Exhibits: 2, 3, 8, 9, 10, 11, 12H, 13, 14A, 15A)

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 0618648:
 - 9207 Bunnell Hill Road
 - .516 acres in size.
 - Construction year of house is 1970.
 - Total Living Area is 1,303 sq. ft.
 - Lot 1 Sycamore Park Subdivision.
 - Zoning classification is Residence Zone“R-1”.
 - Legal non-conforming because single family dwelling is approximately 32.6’ from Bunnell Hill Road Right-of-Way instead of the required 50’setback.
 - The house is approximately 90’ from the southern corner to the access road and approximately 113’ from the northern corner to the access road.
 - The house is approximately 193’ from the southern corner to the new pavement of Bunnell Hill Road and approximately 232’ from the northern corner to the new pavement of Bunnell Hill Road.
 - (See Exhibits: Location Map, 1A-H, 2, 14A, 15A)
- One Conditional Use permit Request has been approved in the 500’ notice area: Account 0122963.

- The Sycamore Park Subdivision was platted in November 1961. It contains lots with road frontage on Bunnell Hill Road and a lot with road frontage on Lytle Five Points Road. (See Exhibits: 8, 9)
- Three (3) lots in addition to the subject property of the seven (7) lots with road frontage on Bunnell Hill Road, within the 500 notice area are classified as legal non-conforming lots because of a reduced front yard setback. (See Exhibits: 14A-C, 15A-C, 16A-D, 18A-D, 20A-D)
- Account number 0613361:
 - 9191 Bunnell Hill Road
 - .516 acres in size.
 - Construction year of house is 1971.
 - Total Living Area is 1,793 sq. ft.
 - Lot 2 Sycamore Park Subdivision.
 - Zoning classification is Residence Zone“R-1”.
 - Legal non-conforming because single family dwelling is approximately 44’ from Bunnell Hill Road Right-of-Way instead of the required 50’setback.
 - The house is approximately 65’ from the access road.
 - The house is approximately 137’ from the new pavement of Bunnell Hill Road.
 - (See Exhibits: Location Map, 14A, 15A, 16A-D)
- Account number 0607255:
 - 9175 Bunnell Hill Road
 - .516 acres in size.
 - Construction year of house is 1971.
 - Total Living Area is 1,678 sq. ft.
 - Lot 3 Sycamore Park Subdivision.
 - Zoning classification is Residence Zone“R-1”.
 - Meets the minimum 50’setback.
 - The house is approximately 70’ from the access road.
 - The house is approximately 100’ from the new pavement of Bunnell Hill Road.
 - (See Exhibits: Location Map, 14A, 15B, 17A-D)
- Account number 0619822:
 - 9163 Bunnell Hill Road
 - .516 acres in size.
 - Construction year of house is 1962.
 - Total Living Area is 1,767 sq. ft.
 - Lot 4 Sycamore Park Subdivision.
 - Zoning classification is Residence Zone“R-1”.
 - Legal non-conforming because single family dwelling is approximately 43’ from Bunnell Hill Road Right-of-Way instead of the required 50’setback.
 - The house is approximately 65’ from the new pavement of Bunnell Hill Road.
 - (See Exhibits: Location Map, 14A, 15B, 18A-D)

- Account number 0614596:
 - 9129 Bunnell Hill Road
 - .516 acres in size.
 - Lot 5 Sycamore Park Subdivision.
 - Vacant, transfers with account 0614618
 - (See Exhibits: Location Map, 19A-B)
- Account number 0614618:
 - 9129 Bunnell Hill Road
 - .516 acres in size.
 - Construction year of house is 1962.
 - Total Living Area is 1,584 sq. ft.
 - Lot 6 Sycamore Park Subdivision.
 - Zoning classification is Residence Zone“R-1”.
 - Legal non-conforming because single family dwelling is approximately 49’ from Bunnell Hill Road Right-of-Way instead of the required 50’setback.
 - The house is approximately 63’ from the pavement of Bunnell Hill Road.
 - (See Exhibits: Location Map, 14B, 15C, 20A-D)
- Account number 0608936:
 - 9115 Bunnell Hill Road
 - .516 acres in size.
 - Construction year of house is 1962.
 - Total Living Area is 2,176 sq. ft.
 - Lot 7 Sycamore Park Subdivision.
 - Zoning classification is Residence Zone“R-1”.
 - Meets the minimum 50’setback.
 - The house is approximately 65’ from the pavement of Bunnell Hill Road.
 - (See Exhibits: Location Map, 14C, 15C, 21A-D)
- Account number 0660198:
 - Bunnell Hill Road
 - .30 acres in size.
 - Vacant land that is under the access road and is north and west of the access road.
 - See above “Background on the Nature of the Request” to understand more about the “side street’/access road/old pavement of Bunnell Hill Road.
 - (See Exhibits: Location Map, 12A-H)

2. Lot size:

The applicant states: “Lot is a total of .516 acres with rectangular dimension of 100’ x 225’.”

The following issues need to be considered:

- The lot was platted prior to the current lot size minimum of 1 acre.

- The nine (9) Sycamore Park Subdivision lots with frontage on Bunnell Hill Road are all the same size. (See Exhibits: 8, 9)

3. Set back lines:

The applicant states: “The distance between the front of my current garage and the property line is about 33’, however there is another approximately 80’ from the property line to the “side street” that my driveway is connected to. In other words, I have about 110’ of straight line driveway from the front of my current garage to “side street”. I believe this distance has increased significantly over the years as Bunnell Hill has been re-routed away from my house. The distance between the front of my current garage and the East edge of Bunnell Hill Rd “proper” is approximately 260’.” (See Exhibits: 2, 3, 14A, 15A)

The following issues need to be considered:

- Front yard setback is approximately 32.6’ from Bunnell Hill Road Right-of-Way instead of the required 50’ setback. (See Exhibit: 2)
- Applicant is seeking to use the road right-of-way to mitigate the reduced setback impact. See Number 1 above regarding measurements from the edge of road right-of-way, distance to the access road and distance to new Bunnell Hill Road pavement.
- The request is for a 25’ wide and 30’ deep garage. (See Exhibits: 3, 4, 5)
- Staff scaled the proposed setbacks for the garage in Exhibit 4:
 - Northern side yard setback is approximately 15’
 - Eastern front yard setback is approximately 2.6’ on the northern corner and approximately 9’ on the southern corner.
 - Southern side yard setback is approximately 52’
- Staff was unable to use Section 5.754 to average the front yards and issue a zoning permit for the garage. Only one adjoining property in unincorporated Clearcreek Township exists: account 0613361. A minimum of two lots is required to calculate an average. (See Exhibit: 14A)
- 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.

4. Traffic conditions:

The applicant states: "The house is currently located on a dead end "side street" off of Bunnell Hill Rd. This "side street" was created when Bunnell Hill was re-routed in 2007/08. My house is the furthest north home on this dead end. There is very little traffic on this "side street" since it is a dead end and only three homes, including ours, are located on this street. Bunnell Hill, which is our "side street" is located off of, is a busy road. Vehicles traveling North on Bunnell Hill could potentially see the garage addition from the road, but it is unlikely since drivers would be focusing on the right hand curve and looking away from the "side street" my home is located on. Vehicles traveling South on Bunnell Hill would not see the home because when Bunnell Hill was re-routed a mound was created that separates Bunnell Hill from the "side street". (See Exhibits: 27A-M)

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 garage addition.
- The through traffic that traveled along the frontage of the subject property has been pushed to the new pavement of Bunnell Hill Road. The traffic adjacent to the subject property is now destination traffic to and origin traffic from the three homes that connect to the access road. Secondary traffic would be Clearcreek Township maintenance and Police. (See Exhibits: 10, 11, 12H)
- 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 6th Edition of the Trip Generation, from the Institute of Transportation Engineers, 1987 would still be applicable. (See Exhibits: 22A-C)

5. Terrain:

The applicant states: "My home's lot is generally flat, although the driveway slopes slightly downward from the dead end "side street" to my garage. The dead end "side street" is flat. Between the "side street" and Bunnell Hill is an elevated grassy mound to obstruct the view between the two streets."

The following issues need to be considered:

- The topography runs from 994' to 1002' across the property. (See Exhibits: 23)
- The topography runs from 1000' to 1002' across the area where the proposed garage would be located. (See Exhibit: 23)
- The road right-of-way north of the new Bunnell Hill Road pavement and account 0660198 runs from 998' to 1012'. (See Exhibits: 24)

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

The applicant states: "See attached pictures of property to gain a perspective of the distance from my home to the "side street" and Bunnell Hill Road. In the pictures my orange Honda Element care is sitting "inside the proposed garage addition. The first option we explored was to add-on to the back of the house. However, in speaking with the Warren County Health Department and reviewing Ohio Revised Code 3701-29-06(G)(3)(a), I learned that I would have to relocate my septic system because the current tank would be less than 10' from the foundation of the proposed addition. ORC 3701-29-06(G)(3)(a) states "All components of a STS shall be at least ten feet from any building or other structure"

Currently, our septic tank is about 16 feet from the back of the house, but with a potential room addition on the back of the house of 12' in depth, we would be only 4' from the septic tank." (See Exhibits: 25A-B, 26A-C)

The following issues need to be considered:

- See Staff Photos. (See Exhibits: 27A-M)