

Case Numbers: 21-BZA-001

Request: Variance

Applicant: Michelle Conner, agent for Ronald Biggs

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

Report Date: January 25, 2021

Hearing Date: February 9, 2021

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

Description of Property:

The address of the property is 4696 N State Route 48. The owner controls three parcels that total to 2.957 acres. The first parcel is .699 acres in size. Two homes are situated on this parcel (northern home is 4696 N SR 48 & southern home is 4672 N SR 48). The parcel is identified by parcel id 09-34-152-0021 and account number 0200344. The second parcel is 2.19 acres in size. This parcel lacks road frontage. Eight (8) accessory structures are located on the property. Two (2) of the accessory structures are listed on the Warren County Auditor's Website. The parcel is identified by parcel id 09-34-152-003 and account number 0200352. The third parcel is .068 acres in size. This parcel has road frontage and squares off the property. The parcel is identified by parcel id 09-34-152-0022 and account number 0200336.

The parcels are located in Section 34, Town 4 and Range 4 in Clearcreek Township. The properties are zoned Residence "R-1" Zone. (See Exhibits: Location Map, 1A-D, 2A-B, 3A-B, 4A-B, 5A-B)

Nature of the Request:

The applicant states: "Currently both the homes at 4672 and 4696 North State Route 48 are connection on the same piece of land. They are connected this way due to being build by the original owners (Martha and Carl Biggs by in the 1950s and 1960s). They had one son who is in his upper 70s now and currently lives in Arkansas and would like to sell the property in order to be able to move on from the ownership of the property. But due to how the properties are connected together a bank will not deal with creating a loan for the property in its current state. So this Variance Request Application is submitted in order to split the two addresses into two properties in order for us to move forward with the additional plans of purchasing the property from Ronnie Biggs.

We are asking for the property to split in the way that is shown on the map provided. The leach lines from home 4696 go into the front yard of 4672 home. These were most likely placed there due to the 4672 home not being there when the 4696 home was built. According to the current owner, Ronnie Biggs, those lines are 10 feet from the current property line that is shared by the church. I am not sure what the regulations were when the home was built compare to what the regulations were when the second home was built, compared to now.

We would like the line placed at 8 feet from the southern line.

The new property line should go along the southern line that is shared with the Church property next door to the back property. The leachfield for the 4672 home goes towards the back yard. There is a metal pole in the back yard that shows where the leachfield goes out to. That was put up by the owner in order.

On the front (West direction) of the 4672 home the will go along the front of the sidewalk that is outside of the home. On the north side of the home the property line will go along the side of the driveway and all the way back to meet the line at the back property.

The rest of the property will go to the 4696 home.

Both properties will stay under the same ownership and the center driveway will continue to be a shared driveway." (See Exhibits: 6, 7)

Background on the Nature of the Request

Staff Comments:

The request is to combine the three parcels (09-34-152-0021, 09-34-152-0030 and 09-34-152-0022) together and then subdivide the property into two lots, each with a home. (See Exhibits: 1A, 2A, 3A, 6, 7)

The property at 4696 N SR 48 (northern lot) would have approximately 189' of road frontage and a net acreage of 2.4039 acres. The existing house and Warren County Auditor identified accessory structure would conform to the setback requirements of the Residence "R-1" Zone. (See Exhibits: 6, 7)

The property at 4672 N SR 48 (southern lot) is proposed as a panhandle lot. The applicant has requested five (5) variances:

1. The first variance deals with the width of panhandle frontage.
 - a. This variance request is from Section 5.757 (B) which requires a minimum frontage and continuous width of 20' and a maximum of 40' for the handle element of the lot.
 - b. The applicant is requesting the width of the handle to be eight (8) feet.
 - c. (See Exhibits: 6, 7, 8B-C)
2. The second variance deals with the width of the panhandle body.
 - a. This variance request is from Section 5.757 (E) which requires the body to have a minimum width of 125'.
 - b. The applicant is requesting the width to be approximately 92' at the western width of the body.
 - c. (See Exhibits: 6, 7, 8D, 8I)
3. The third variance deals with the depth of the panhandle body.
 - a. This variance request is from Section 5.757 (E) which requires the body to have a minimum depth of 200'.
 - b. The applicant is requesting the depth to be approximately 190'.
 - c. (See Exhibits: 6, 7, 8H)
4. The fourth variance deals with a reduction in lot size.
 - a. This variance request is from Section 5.757 (D) which requires a minimum lot size for the body of a panhandle to be one and one half (1 ½) acres.
 - b. The applicant is requesting the acreage for the body of the panhandle to be approximately .4173 acres.
 - c. (See Exhibits: 6, 7)
5. The fifth variance deals with the reduction of the front yard setback.
 - a. This variance request is from Section 5.757 (G) which requires the principal structure have a minimum front yard of fifty (50) feet.
 - b. The applicant is requesting the setback to be approximately seventeen (17) feet.
 - c. (See Exhibits: 6, 7, 8D)

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

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. 3.47** **Lot, Depth**: The mean horizontal distance between the front and rear lot lines of a lot measured within the lot boundaries.
- SEC. 3.48** **Lot, Frontage**: The frontage of a lot is the length of the boundary of a lot that is coincident and in common with that of the road right-of-way of a public street, road or highway that it abuts.
- SEC. 3.51** **Lot, Width**: The mean horizontal distance between the side lot lines measured within the lot boundaries, or the minimum distance between the side lot lines within the buildable area.
- SEC. 3.561** **Panhandle Lot**: A lot whose only frontage on a public street is through a narrow strip of land which is wide enough to accommodate a driveway, but too narrow to accommodate any structures. The narrow strip of land is referred to as the panhandle and the balance of the lot is referred to as the body.
- SEC. 3.73** **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.

GENERAL PROVISIONS

SEC. 5.06 Every building hereafter erected or structurally altered shall be located on a lot as herein defined, and in no case shall there be more than one main residential building on a lot, except as specifically provided hereinafter. A plat of survey or plot plan, showing stakes on lot corners and at building setback shall accompany a request for permission to erect or add to any structure.

RESIDENCE ZONE "R-1" REGULATIONS

SEC. 5.757 **PANHANDLE LOTS** are permitted subject to the following regulations:

- A.** Panhandle lots shall not be "stacked" one behind the other relative to a street or road.
- B.** The panhandle portion of the lots shall have a minimum frontage and continuous width of twenty (20) feet and a maximum frontage and width of forty (40) feet.
- C.** The panhandle portion of the lots shall have a maximum length of five hundred (500) feet.
- D.** The body of the lot shall have a minimum area of one and one-half (1 1/2) acre exclusive of the panhandle portion of the lot, any road or street right-of-way as shown on the Warren County, Ohio, Official Thoroughfare Plan, waterways, wetlands, one hundred (100) year flood plain, drainage easements, high pressure gas pipeline easements and railroad easements.
- E.** The body of the lot shall have a minimum width of one hundred twenty five (125) feet and a minimum depth of two hundred (200) feet.
- F.** All structures shall be built within the body of the panhandle lot.
- G.** The principal structure shall have a minimum front yard of fifty (50) feet, rear yard of fifty (50) feet and a side yard of twenty (20) feet minimum each side.
- H.** Any accessory structure shall have a minimum front yard of fifty (50) feet, rear yard of twenty (20) feet and a side yard of twenty (20) feet minimum each side.

The standard for approval of a variance is “Unnecessary Hardship”. In determining whether or not unnecessary hardship exists, the Board of Zoning Appeals will consider the following factors. Please indicate below how this variance meets each standard.

Review of Application:

Evaluation of the Variance:

1. The hardship must remove all profitable use from the land. It is not a sufficient hardship if the land would be more valuable with the variance, or less valuable without the variance. Instead, there must be evidence that the property is unsuitable to any of the permitted uses as zoned:

The applicant states: “Martha and Carl Biggs build both the homes in the 1950s and the 1960s. Since they have passed their son, Ronnie, has owned the property. The Conner family moved into 4672 in 1995 and has lived there since. Ronnie has provided them with the opportunity to purchase the land. Due to being build directly by Carl there was no mortgage on the second home when build so it was built directly on the same land that is occupied by the original home (4696). The properties need to be split so there are two pieces of land for the two addresses that are present.” (See Exhibits: 1A-C)

The following issues need to be considered:

- In 1973 Section 5.06 was established in the Zoning Resolution. This section required one (1) single family home per parcel. Since two (2) homes exist on this property it can be classified as a legal non-conforming use. (See Exhibit: 9)
- Parcels 09-34-152-0021 and 09-34-152-003 were purchased by Carl Biggs on October 2, 1954. (See Exhibits: 4A-B)
- Parcel 09-34-152-0022 was purchased by Martha Jane Biggs on August 11, 1956. (See Exhibits: 5A-B)
- The Warren County Auditor’s Website shows a construction year of 1951 for the home associated with address 4696 N SR 48. (See Exhibit: 1B)
- The Warren County Auditor’s Website shows a construction year of 1960 for the home associated with address 4672 N SR 48. (See Exhibits: 1C)
- The transfers of land, construction of homes and accessory structures predate the 1973 zoning resolution. The lots and structures are classified as a legal non-conforming uses. (See Exhibits: 1A-D, 2A-B, 3A-B, 4A-B, 5A-B)
- The request is to create new lot lines and separate the legal non-conforming uses into a lot that meets the requirements for the Residence “R-1” Zone (4696 N SR 48) and a lot (4672 N SR 48) that is allowed by variance but still retains a legal non-conforming side yard setback. (See Exhibits: 6, 7)

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 is a unique situation due to how the homes were built together on the same piece of land. Carl Biggs built the original home (4696) in the 1950s it was then decided to build the second home (4672) in the 1960s. Since there was no mortgage for the second home and it was built on property they had already owned. The second home was built for them to supplement their income with other additional things they completed.” (See Exhibits: 1A-C)

The following issues need to be considered:

- It was not uncommon to have multiple homes per parcel, prior to the 1973 zoning resolution update.
- This is the only lot in the 500' notice area to have two (2) homes on a single parcel. (See Exhibits: 10, 11A-53B)
- Collectively, the subject properties have approximately 197' of road frontage. The minimum amount of road frontage for a regular lot in the Residence "R-1" Zone is 100'. The creation of two (2) lots is further constrained by the leach field of 4696 N SR 48 being in the front yard of 4672 N SR 48. (See Exhibits: 6, 7, 8B-C)
- Staff frequently receive questions from property owners asking if s/he is able to establish a second home on her/his property. If the property owner has enough lot frontage and acreage, staff directs her/him to subdivide the property.
- See staff photos. (See Exhibits: 8A-J)

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

The applicant states: "The actual boundaries will not be changed in the request so there will be no alteration of the character of the neighborhood. The only thing that will change is the actual lines as seen on paperwork through the county. But no structures are being changed or built currently." (See Exhibits: 6, 7)

The following issues need to be considered:

- In the 500 notice area a conditional use permit was found to exist at 4660 N SR 48. The file is incomplete but since the addition exists, staff can only assume that the application was approved. (See Exhibits: 11A-E)
- In the 500 notice area a variance request was found at 4633 Wayne BLVD for a reduced front yard setback for a deck. The request was denied. (See Exhibits: 24A-D)
- Per the Warren County Auditor's Website, the subject property is held in three (3) accounts:
 - Parcel 09-34-152-0021, Account number 0200344:
 - The parcel that has road frontage and both homes.
 - This parcel is .699 acres in size.
 - Construction year of house at 4696 N SR 48 is 1951.
 - Total Living Area is 936 sq. ft.
 - Construction year of house at 4672 N SR 48 is 1960.
 - Total Living Area is 1,364 sq. ft.
 - Parcel 09-34-152-0030, Account number 0200352:
 - The parcel that no road frontage.
 - Eight (8) accessory structures are located on the property. Two (2) of the accessory structures are listed on the Warren County Auditor's Website.
 - This parcel is 2.19 acres in size.
 - Construction year of the listed accessory utilized by 4696 N SR 48 is 1901.
 - The size is 23'x32' or 736 sq. ft.
 - Construction year of the listed accessory utilized by 4672 N SR 48 is 1960.
 - The size is 23'x24' or 552 sq. ft.

- Parcel 09-34-152-0022, Account number 0200336:
 - The parcel has road frontage and is vacant.
 - This parcel is .068 acres in size.
 (See Exhibits: Location Map, 1A-D, 2A-B, 3A-B, 6, 7)
- In the five hundred (500) foot notification area, there are 37 properties. (See Exhibits: 10, 11A-53A)
- Four (4) subdivisions are located in the notice area:
 - Eighteen (18) lots are in the Pekin Road Subdivision. (See Exhibits: 15, 16A-33B)
 - Two (2) are in the Earnhart Estates Subdivision. (See Exhibits: 34-37B)
 - Four (4) are in the Magnolia Farms Subdivision. (See Exhibits: 41-45B)
 - Three (3) are in the Watkins Glen Subdivision. (See Exhibits: 46-49B)
- Ten (10) lots were created with frontage on State Route 48 and/or Bunnell Hill Rd:
 - Three (3) lots are exclusive of road right-of-way in the acreage calculations. (See Exhibits: 10, 14A, 52A, 53A)
 - Five (5) lots were created that include road right-of-way in the acreage calculations. (See Exhibits: 10, 11A, 12A, 13A, 39A, 40A)
 - Two (2) lots are held by the State of Ohio as part of the road improvement of Bunnell Hill Rd. (See Exhibits: 10, 50A, 51A)
- Lot size comparisons:
 - One (1) panhandle lot exists, with a lot size of 4.6503 acres. (See Exhibits: 36, 37A)
 - Eighteen (18) lots are between .4889 acres and one (1) acre in lot size. (See Exhibits: 10, 16A-33A)
 - Thirteen (13) lots are between one (1) acre and two (2) acres in lot size. (See Exhibits: 10, 12A-14A, 35A, 42A-45A, 47A-48A, 52A-53A)
 - Four (4) lots are between two (2) acres and four (4) acres in lot size. (See Exhibits: 10, 11A, 39A, 40A, 49A)
 - Two (2) lots are held completely by the State of Ohio as road right-of-way with a lot size of .518 and .932 acres. (See Exhibits: 10, 50A, 51A)

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: “It is currently impossible to have a band finance the purchase of the homes as they are due to sharing the same piece of land. So in order to allow a band to finance the property they need to be split apart first.” (See Exhibits: 6, 7)

The following issues need to be considered:

- See Background and # 3 above.
- The first variance deals with the width of panhandle frontage.
 - The applicant is requesting 8’ instead of a minimum of 20’.
 - The request is 40 % of the requirement. (8/20) (See Exhibits: 6,7,8B-C)
- The second variance deals with the width of the panhandle body.
 - The applicant is requesting 92’ instead of 125’.
 - The request is 73.60 % of the requirement. (92/125) (See Exhibits: 6,7,8D)

- The third variance deals with the depth of the panhandle body.
 - The applicant is requesting 190' instead of 200'.
 - The request is 95% of the requirement. (190/200) (See Exhibits: 6,7,8H)
- The fourth variance deals with a reduction in lot size.
 - The applicant is requesting .4173 instead of 1.5 acres.
 - The request is 27.82% of the requirement. (.4173/1.5) (See Exhibits: 6,7)
- The fifth variance deals with the reduction of the front yard setback.
 - The applicant is requesting 17' instead of 50'.
 - The request is 34% of the requirement. (17/50) (See Exhibits: 6,7,8D)

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

The applicant states: "Due to both homes that have different address are on the same piece of property to fiance the purchase of the property the homes need to be split from one another."

The following issues need to be considered:

- Starting in 1973, the Zoning Resolution prohibited multiple single family homes on a single parcel of land. Any lot that had multiple homes was classified as a legal non-conforming use.
- Since the southern property boundary of the property isn't going to change. The home at address 4972 N SR 48 would remain classified as a legal non-conforming use because the southern setback for the home is unable to meet the required 20' side yard setback for a panhandle lot. (See Exhibits: 6,7,8B)
- The zoning resolution doesn't dictate the location of leach fields that is a requirement of the Warren County Combined Health District.
- The total combined acreage for the parcels is 2.957 gross acres. The current road right-of-way is .1358 acres. This equates to a starting size of 2.8212 net acres. (See Exhibits: 1A, 2A, 3A, 6, 7)

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

The applicant states: "Carl Biggs (original owner) built the homes as they currently sit on the same piece of property. So yes Ronnie Biggs (their son, and current owner) did know about this property how it currently is."

The following issues need to be considered:

- The applicant is trying to purchase the properties and is having an issue with the financing, because multiple single family homes exist on the property. The applicant has not provided any documentation from their financial institution.
- Since 1954 the Biggs family has controlled and developed the subject properties. (See Exhibits: 4A-B, 5A-B)

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

The applicant states: “No changes are being made to the overall property so I do not believe there would be any issues with the public interest in this part. And it would actually make paperwork at the county level easier I assume.”

The following issues need to be considered:

- See # 4 above
- The applicant has shown the general location of the leach fields for both homes. However, documentation has not been provided by the Warren County Health District regarding the proposed new lot size for the address of 4672 N SR 48. (See Exhibits: 6,7)
- The geometry of the lot is partially based upon the leach field for 4696 N SR 48 being located in front of 4972 N SR 48. The applicant has not provided documentation on the current status and continued viability of the leach field for 4696 N SR 48 system. (See Exhibits: 6,7,8B-C)
- The Residence “R-1” Zone requires a minimum of one (1) acre for regular frontage lots and one and one half (1½) acres for panhandle lots. The Warren County Health District has the authority to increase the zoning minimums because of site specific soil limitations.
- The applicant is requesting a split of the properties into a configuration that requires five (5) variances to achieve. If approved, the property be surveyed and split into the approved configuration. After the new lots are recorded, each would be able to be transferred independently of each other.

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: “The homes were built by the original owner in the 1950s and 1960s. The second home was built to supplement their income and help pay their taxes. They very much worked off their land. From what I have learned over the last few months is that the original property was actually a chicken coop. And the actual property that is currently the church was a chicken farm. There was also many other various things that Martha and Carl Biggs did on the land, such as sold dropped apples from their trees, sold pears, Carl build furniture, and other things.

Jon Conner (father of Michelle Conner) and family (parents and three siblings) moved into the home in the 1970s and lived for several years. The Conner family (Jon and Kim and two daughters moved into the home in 1995 after living in downtown Lebanon for several years. So there are many memories that are with the home. I went to all 13 years of school Kindergarten to 12th Grade) from that home and there are many other memories that we share there.

I want the opportunity to continue these memories in the future with my own family.

And possibly many years from now remove both of the homes and build one home in the back of the lot to allow my family to have their own memories in.”

The following issues need to be considered:

- The applicant ends the application with the statement of a possibility that the homes would be razed and a new single family home would be constructed. It is unclear if it is the applicant's desire to replat all lots together to achieve this or just utilize the lot associated with 4696 N SR 48.
- The current conditions and functionality of the current homes have not been addressed by the applicant.
- The issue of two (2) homes on a single parcel has been discussed, but the reason for not razing a home prior to the purchase of the properties has not been addressed.
- See staff photos. (See Exhibits: 8A-J)

SEC 21.01 (B) (4) Conditions For Variances:

The Board of Zoning Appeals may impose such specific conditions and limitations concerning character, location, buffer & screening and other matters relating to the purposes, objectives and standards of this resolution. Conditions and limitations shall be imposed upon the premises benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject property or upon public facilities and services. Such conditions and limitations shall be expressly set forth in the decision granting the variance. Violation of any such conditions or limitation shall be a violation of this resolution.

Violatioviolatiion of this resolution.