

Case Number: 21-BZA-002

Request: Variance

Applicant: Michael Harris

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

Report Date: February 18, 2021

Hearing Date: March 9, 2021

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

Description of Property:

The property is identified as 3421 Crestview Ave. The property is also identified as Lot 10 McGill Meadows Section 2 Subdivision. The property is identified by parcel id 09-33-326-004 and account number 0200671. The property is .61 acres in size. The property is zoned Residence "R-1" Zone. (See Exhibits: Location Map, 1A-J, 6A-B)

Nature of the Request:

The applicant states: "To bring the property up to code and in line with an legality of which the homeowners may be unaware."

Background on the Nature of the Request

Staff Comments:

The applicant is requesting three (3) variances from Sections 5.7545 (B) & (C) of the Clearcreek Township Zoning Resolution to allow a built accessory structure, a built "lean to" addition and an "under construction" "lean to" addition to remain as established on his property. On December 4, 2020, the Zoning Department noticed the construction of two (2) "lean to" additions to an accessory structure. The Zoning Inspector was unable to find a permit for the additions or for the existing accessory structure. On December 7, 2020 via a phone call, Mr. Harris stated that he constructed the pole barn about 14 years ago without a permit. Mr. Harris stated he doesn't have a permit for the additions. On December 14, 2020, the property owner was issued a notice of zoning violation. (See Exhibits: 4A-D)

According to the Warren County Auditor's website the accessory was constructed in 2009. On February 12, 2021, I spoke with the Warren County Auditor's Office to understand the process by which the date of 2009 was determined. I was informed that as part of their re-valuation of the property for the 2007 room addition. This process was finalized in 2009, at that time, the accessory structure was identified to exist and was added to the property valuation file. (See Exhibits: 1F-G, 5C)

On July 3, 2007 a zoning permit was issued to Harris Heating & Cooling at 3421 Crestview Ave for a 19'x33' rear room addition to the single family home. At the time I verified the house addition, I noted the existence of the accessory structure in question. I don't remember the specifics of who I spoke with or their representation other than when I asked about the accessory structure, I was told it had been there for some time. Back at the office, I was unable to determine a date of construction from the Warren County and Clearcreek Township resources available to me at the time. Since I lacked evidence to dispute the representation, I stopped looking into the matter. (See Exhibits: 5A-C)

Per the applicant's plot plan, the 29'x29' structure was built with a 5' rear yard setback instead of the required 10' setback. The northern addition is in the process of being constructed with a 3' side yard setback instead of the required 10' setback. The southern addition was constructed with a 5' setback instead the required 10' setback. (See Exhibit: 2)

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. 3.73** **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.

RESIDENCE ZONE "R-1" REGULATIONS

SEC. 5.754 PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT 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 the building under consideration. If an average can not be mathematically determined based upon the above process, then the zoning inspector shall expand the area under review. The expanded area shall include the front yard setbacks of the building(s) across the street and within one hundred (100) feet of the building under consideration.
- 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.

SEC. 5.7545 ACCESSORY STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:

- A.** Front yard shall conform to 5.754 (A) and 5.754 (B).
- B.** Side yard shall conform to 5.754 (C).
- C.** Rear yard shall be a minimum of ten (10) feet.

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 location of the barn was placed back farther to avoid the 10 feet allowance needed between structures and leech lines. In addition, moving the barn closer would have blocked access to power lines which run through the back of the property.” (See Exhibits: 1J, 2, 3)

The following issues need to be considered:

- The Warren County Auditor’s Website shows a construction year of 1962 for the single family home. (See Exhibit: 1A)
- The Warren County Auditor’s Website shows a construction year of 2009 for the accessory building. (See Exhibits: 1F-G)
- The first request is to bless the existing accessory. This structure was constructed without obtaining a Clearcreek Township Zoning Permit or a Warren County Building Permit. This structure encroaches five (5) feet into the required rear yard setback. (See Exhibit: 2)
- The second request is to bless the existing southern addition to the accessory structure. This “lean to” has been constructed and encroaches five (5) feet into the required side yard setback. (See Exhibit: 2)
- The third request is to allow the continued construction of a northern addition to the accessory structure. This “lean to” encroaches seven (7) feet into the required side yard setback. (See Exhibit: 2)
- Per McGill Meadows Section 2 Subdivision Final Plat, two utility easements are recorded in the rear yard. The first easement runs parallel along the southern boundary of the property with a varied width of 15’-20’. The second easement bisects the rear yard with a width a 15’. (See Exhibits: 6A-B)
- Staff updated the McGill Meadows Section 2 Subdivision Final Plat, to more clearly show the utility easements and the zoning setbacks. (See Exhibit: 6B)
- The applicant has provided a leach field diagram, showing the leach field in the rear yard. (See Exhibit: 3)

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: “3421 Crestview avenue is shorter than its surrounding properties. 3443, for example is 103 ft longer.” (See Exhibits: 6A-B, 8A-B, 12A)

The following issues need to be considered:

- The McGill Meadows Section 2 Subdivision Final Plat was recorded in 1961. (See Exhibit: 6A)
- The utility easement that bisects the subject property also bisects 3443 Crestview Ave (Lot 11), 3465 Crestview Ave (Lot 12), and 3487 Crestview Ave (Lot 13). (See Exhibits: 6A-B, 8A-B, 12A, 13A, 14A)

- Due to the platting configuration of McGill Meadows Section 1 Subdivision and the road configurations for this subdivision, the lots vary in width and depth. (See Exhibits: 6A, 11)
- When staff performed the site visit and took photos, the only property boundary that was readily visible was the southern fence. This fence measured 68” from the southwestern “lean to” post. (See Exhibits: 1J, 2, 3, 7G, 7I, 7J)
- See staff photos. (See Exhibits: 7A-M)

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

The applicant states: “The barn would not alter the neighborhood. An informal survey was conducted and no neighbors were at odds with the structure.”

The following issues need to be considered:

- In the five hundred (500) foot notice area, no variance request applications were found.
- In the five hundred (500) foot notice area, one (1) conditional use permit was found to exist at 495 Old Route 122. The application was approved to expand the school. (See Exhibits: 8A-B, 35A-I)
- In the five hundred (500) foot notification area, there are 50 properties. (See Exhibits: 8A-B, 12A-61A)
- Four (4) subdivisions are located in the notice area:
 - Nine (9) lots are in the McGills Meadows Section 1 Subdivision. (See Exhibits: 8A-B, 11, 29A-33B, 58A-61B)
 - Sixteen (16) lots are in the McGills Meadows Section 2 Subdivision. (See Exhibits: 8A-B, 6A, 12A-28B)
 - Ten (10) lots are in the Country Home Section 1 Subdivision. (See Exhibits: 8A-B, 9, 36A-40B, 43A-47B)
 - Three (3) lots are in the Country Home Section 2 Subdivision. (See Exhibits: 8A-B, 10, 41A-42B, 48A-B)
- The subject property is .61 acres in size. (See Exhibits: 1A, 6A-B)
- Lot size comparisons:
 - Twenty-seven (27) lots are between .50 acres and .74 acres in lot size. (See Exhibits: 8A-B, 12A, 16A-24A, 26A-33A, 38A-40A, 44A-47A, 60A-61A)
 - Nine (9) lots are between .75 acres and .99 acres in lot size. (See Exhibits: 8A-B, 13A-15A, 25A, 36A-37A, 43A, 58A-59A)
 - Four (4) lots are between 1 acre and 1.99 acres in lot size. (See Exhibits: 8A-B, 49A-52A)
 - Seven (7) lots are between 2 acres and 2.99 acres in lot size. (See Exhibits: 8A-B, 35A, 41A-42A, 48A, 53A-55A)
 - Three (3) lots are between 7 acres and 21 acres in lot size. (See Exhibits: 8A-B, 34A, 56A-57A)
- The applicant is requesting a 29’x29’ or 841 sq. ft. accessory with two (2) 14’x29’ “lean to” additions (806 sq. ft.) for a total request size of 1,653 sq. ft. (See Exhibit: 2)

- Accessory count and size comparisons:
 - Twenty-one (21) accessory structures over 200 sq. ft. were found in the 500 ft. notice area.
 - Five (5) accessory structures were between 200 sq. ft. and 399 sq. ft. (See Exhibits: 8A-B, 24B, 37B, 48B, 49B, 55B)
 - Seven (7) accessory structures were between 400 sq. ft. and 999 sq. ft. in size. (See Exhibits: 8A-B, 25B, 27B, 37B, 42B, 47B, 51B, 60C)
 - Six (6) accessory structures were between 1,000 sq. ft. and 1,999 sq. ft. in size. (See Exhibits: 8A-B, 34B, 41B, 46B, 53B, 54B, 57B)
 - Three (3) accessory structures were over 2,000 sq. ft. in size. (See Exhibits: 8A-B, 34B, 56B, 57B)

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: “Once more, moving the barn further onto the back of the property would infringe upon the leach lines and power line access.” (See Exhibits: 1J, 2, 3, 6A-B)

The following issues need to be considered:

- See Background and # 1 above.
- The first variance deals with the reduction of the rear yard setback.
 - The applicant is requesting 5’ instead of 10’.
 - The request is 50% of the requirement. (5/10) (See Exhibits: 2, 6B, 7G, 7J, 7K)
- The second variance deals with the reduction of the southern side yard setback.
 - The applicant is requesting 5’ instead of 10’.
 - The request is 50% of the requirement. (5/10) (See Exhibits: 2, 6B, 7B-D, 7F-G, 7 I, 7J)
 - The southern addition “lean to” is located inside the 15’ recorded utility easement. (See Exhibits: 2, 6A-B, 7D, 7G, 7I)
- The third variance deals with the reduction of the northern side yard setback.
 - The applicant is requesting 3’ instead of 10’.
 - The request is 30% of the requirement. (3/10) (See Exhibits: 2, 6B, 7B-F, 7K-M)

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

The applicant states: “Leach lines and power were in place when applicants purchased 3421 Crestview Ave.”

The following issues need to be considered:

- The zoning resolution doesn’t regulate the location of leach fields or the location of public utility easements.
- The McGill Meadows Section 2 Subdivision Final Plat was recorded in 1961. (See Exhibit: 6A)
- With the adoption of the November 6, 1973 Zoning Resolution, accessory structures were required to meet the same setbacks as the principal structure. (See Exhibits: 62A-B)

- With the adoption of the June 9, 2005, Trustee Resolution 2890 Text Amendment, the rear yard setbacks for accessory structures were reduced to the same setback as the applicable zoning classification for a side yard. (See Exhibits: 63A-B)
- During the zoning inquiry I conducted in December 2020, over the phone Mr. Harris stated that he constructed the pole barn about 14 years ago without a permit. Mr. Harris stated he doesn't have a permit for the additions. (See Exhibits: 4A-D)

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

The applicant states: “No.”

The following issues need to be considered:

- The current zoning format resolution has been effective since November 6, 1973. (See Exhibit: 62A)
- Per the Warren County Auditor’s Website, the applicant purchased the property on May 16, 2005. (See Exhibit: 1D)
- On July 3, 2007 a zoning permit was issued to Harris Heating & Cooling for an addition to the single family dwelling. (See Exhibits: 5A-B)

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

The applicant states: “Once more, the neighbors of 3421 avenue are without complaint for the structure as is presently stands.”

The following issues need to be considered:

- See #1 & #4 above

Consider whether the spirit and intent as identified in the Clearcreek Township Zoning Resolution Chapter 1 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 barn was constructed for the benefit of one owner’s small business, for heating and cooling supply storage. The structure was erected at the back of the property line for access to power lines, which is to be the benefit of the neighborhood. Additionally, the structure had to be at least ten feet away from the leech field which sits in the middle of the property’s back yard.”

The following issues need to be considered:

- The applicant is unable to acquire property to the west (338 Old Route 122, Lot 2 McGill Meadows Section 1 Subdivision) to the south (356 Old Route 122, Lot 3 McGill Meadows Section 1 Subdivision) or to the north (3443 Crestview Ave, Lot 11 McGill Meadows Section 2 Subdivision) without an approved variance for the transfer, because all adjacent properties are under the updated one (1) acre minimum lot size for the Residence “R-1” Zone. (See Exhibits: 6A-B, 8A-B, 11, 12A, 59A, 60A, 60C)

- See staff photos. (See Exhibits: 7A-M)

- **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.