

**Case Number:** 21-BZA-003

**Request:** Variance

**Applicant:** John Grier agent for the Red Lion United Methodist Church

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

**Report Date:** April 19, 2021

**Hearing Date:** May 11, 2021

**Current Zoning of Property:** Residence Zone “R-1”

**Description of Property:**

The property is identified as 3375 Old Route 123. The property is identified by parcel id 08-15-328-006 and account number 0601796. The property is .512 acres in size. The property is zoned Residence Zone “R-1”. (See Exhibits: Location Map, 1A-F)

**Nature of the Request:**

The applicant states: “(a.) Future Expansion for benefit of Red Lion United Methodist Church. (b.) Step 1: Lot 3 contains the residence, the leach field and replacement leach field a portion of this lot would be sold. The sale of the residence would return funds to the church building fund. Step 2: If the lot split is approved lot 4 will be combined with the church property (lot 2) to facilitate future expansion. At the same time as consolidation the R-1 zoning of Lot 4 would be changed to B-1 as is the present church property. Step 3: The present parsonage would be demolished to make way for a multi-purpose community hall which will be built in phases, connected by a corridor to the south side of the present church. The first phase will use the parsonage septic tank and leach field. Additional phases will need to await the installation of Red Lion public sewer.” (See Exhibits: Location Map, 2, 3, 4, 5)

**Background on the Nature of the Request**

Staff Comments:

The applicant is requesting the first step in a multi-step application request. This request is to split a lot into two sections (Lot 3 with a house & Lot 4 a future buffer, road access and space for future expansion). If this request is successful: Lot 3 would be .33 gross acres in size. Lot 4 would be .182 gross acres in size but required to be combined with Lot 2. The area identified as Lot 4 will need to be rezoned to Neighborhood Business Zone “B-1 to be consistent with the rest of the Church’s property or a Conditional Use Permit would be required for this area. (See Exhibits: 3, 4)

The 1973 zoning resolution required a minimum of ½ acre of land for the Rural Residence Zone “R-1”, Neighborhood Business Zone “B-1” and the General Business Zone “B-2” zoning classifications. (See Exhibits: 6A-D)

In 1987 the minimum lot size was increased from ½ acre to 1 acre exclusive of any road or street right-of-way as shown on the Warren County, Ohio, Thoroughfare Plan. (See Exhibits: 7A-B)

In 1988, the Conditional Use Permit Designation was created. Then the religious and institutional uses were moved from a permitted use to a conditional use within the residential zoning classifications. (See Exhibits: 8A-B)

On December 12, 2015, .7809 gross acres of land controlled by the Red Lion Methodist Church was rezoned from Residence Zone “R-1” to Neighborhood Business Zone “B-1”. (See Exhibits: 32C, 33C, 37B)

In the Red Lion area, there are many lots that predate the 1973 zoning resolution. There are also many lots that have acreage reduced by road improvements. These lots have been considered legal non-conforming lots. If an existing structure doesn’t meet the required setback, then approval by the Zoning Inspector or Board of Zoning Appeals is necessary for the property owner to expand

a use on the site. If the site is vacant and the required setbacks can be met, then the Zoning Inspector could issue a permit. In either situation, the Warren County Combined Health Department has the power to approve or deny the expansion/use if the required waste water system can't be installed.

The applicant is requesting a variance from Section 5.755 (B) of the Clearcreek Township Zoning Resolution. The minimum parcel size for the Residence Zone "R-1" is one (1) acre exclusive of all the lot size reductions. The subject property has .512 gross acres of land. The request is reduce the parcel to .33 gross acres of land. (See Exhibits: 3, 4)

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. 3.48**     **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. 3.54**     **Non-Conforming Lot**: A lot of record existing at the date of the passage of this Code which does not have the minimum width or contain the minimum area for the zone in which it is located.
- SEC. 3.60**     **Public Street or Road**: One that has been dedicated whether or not it had been constructed to county standards as approved by the County Engineer and accepted by the County Commissioners.
- 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. 3.73**     **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.

## RESIDENCE ZONE "R-1" REGULATIONS

**SEC. 5.755 INTENSITY OF USE:** Every lot or tract, except a panhandle lot, shall have a minimum continuous frontage and width of not less than one hundred (100) feet at any point, except on a cul-de-sac, in which case it shall have a minimum continuous frontage and width at any point of at least fifty (50) feet, and a minimum width of one hundred (100) feet at the minimum building setback line and:

- B.** Lots or parcels proposed as building sites that are not connected to a central sanitary sewage system and are otherwise approved by the Warren County Combined Health District and/or the Ohio Environmental Protection Agency for individual onsite wastewater disposal system shall contain not less than one (1) acre exclusive of: 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 other than the required side and rear lot line drainage easements required in the Warren County Subdivision Regulations for a plat, high pressure gas pipeline easements, and railroad easements.

*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 lot split creating lot 4 is necessary as was the 2014 lot split at 3400 State Route 741. This required lot split to create lot 4, which, when added to lot 2 shall provide adequate space for out multi-purpose community hall. Plans are presently in the design concept stage.” (See Exhibits: 3, 4, 5)

The following issues need to be considered:

- The Warren County Auditor’s Website shows a construction year of 1850 for the single family home. (See Exhibit: 1A)
- The parcel was created on June 10, 1959 from a four (4) acre parcel that was transferred on September 15, 1952. (See Exhibits: 9A-B, 10A-C)
- In 1973 the property was zoned Residence Zone “R-1” and met the acreage requirements applicable at that time. (See Exhibit: 6D)

- In 1973, the house was classified as a legal non-conforming structure due to the front yard setback not meeting the required fifty (50) feet minimum. (See Exhibit: 6D)
- On August 3, 1987, the Trustees approved Text Amendment 87-05. After the 30 day referendum, the subject parcel became an existing lot of record/legal non-conforming because it was unable to meet the new minimum lot size standard of one (1) acre, exclusive of road or street right-of-way. (See Exhibits: 7A-B)
- John Grier acted as agent for the Red Lion United Methodist Church for Case 14-BZA-004. In this case a .726 acre parcel was subdivided into a .4062 acre (gross acreage with road right-of-way), with a house and a .3198 acre (gross acreage with road right-of-way) parcel that was intended to be combined with adjoining Church owned property. (See Exhibits: 5, 31C-D)

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: “Lot 3, requested to become lots 3 and 4 is the only available piece of land abutting the church. Fortunately, lots 3 and 4, if split, will permit the continued use of this historic home as well as expansion of our historic church after rezoning and consolidation of lot 4 with lot 2.” (See Exhibits: 3, 4)

The following issues need to be considered:

- The subject parcel is identified as 3375 Old Route 123. The parcel id is 08-15-328-006. The Warren County Auditor’s Account Number is 0601796. The parcel is .512 acres (gross acres) in size. The single family dwelling is 2,706 square feet in size. (See Exhibits: 1A-F)
- In the five hundred (500) foot notification area, there are thirty nine (39) parcels. (See Exhibit: 11)
  - Five (5) zoning classifications exist in the area:
    - Open Space Rural Residence Zone “OSR-1”:
      - Two (2) parcels have dedicated road right-of-way. (See Exhibits: location map, 11, 12A-B, 13)
        - The parcels size ranges from 4.578 acres to 20.3624 acres.
        - The average parcel size is 12.4702 acres.
        - One parcel has a home that is 1,969 square feet in size.
      - One (1) parcel has a frontage with dedicated road right-of-way and a second frontage with an easement for road right-of-way. (See Exhibits: location map, 11, 14)
        - The parcel is 18.524 acres.
        - The parcel is vacant.
    - Residence Zone “R-1”:
      - Two (2) parcels have dedicated road right-of-way. (See Exhibits: location map, 11, 15A-B, 16A-B)
        - The parcels size ranges from .5 acres to .806 acres.
        - The average parcel size is .653 acres.

- The average structure size is 1,482 square feet.
- Twelve (12) parcels have an easement for road right-of-way. (See Exhibits: location map, 11, 17A-B, 18A-B, 19A-D, 20A-B, 21A-B, 22A-B, 23A-B, 24A-B, 25 A-B, 26A-B, 27, 28A-B)
  - The parcels size ranges from .249 acres to 1.479 acres.
  - The average parcel size is .6021 acres.
  - The average structure size is 1,120 square feet.
- One (1) parcel has no road frontage. (See Exhibits: location map, 11, 29)
  - The parcel size is .364 acres.
  - The parcel is vacant.
- One (1) parcel has dedicated road right-of-way, but the use is for a public utility electric sub-station. (See Exhibits: location map, 11, 30)
  - The parcel size is 1.267 acres.
- Office Zone “O”:
- One (1) parcel has an easement for road right-of-way. (See Exhibits: location map, 11, 31A-H)
    - The parcel is .4062 acres.
    - The office is 1,390 square feet in size.
- Neighborhood Business Zone “B-1”:
- Four (4) parcels have dedicated road right-of-way. (See Exhibits: location map, 11, 32A-C, 33A-C, 34A-B, 35A-J)
    - The parcels size ranges from .267 acres to .942 acres.
    - The average parcel size is .543 acres.
    - The average structure size is 1,833 square feet.
  - Four (4) parcels have an easement for road right-of-way. (See Exhibits: location map, 11, 36A-B, 37A-B, 38, 39A-B)
    - The parcels size ranges from .3198 acres to .466 acres.
    - The average parcel size is .37595 acres.
    - The average structure size is 1,231 square feet.
  - Three (3) parcels have dedicated road right-of-way, but the use is residential legal non-conforming. (See Exhibits: location map, 11, 40A-C, 41A-B, 42)
    - The parcels size ranges from .13 acres to .242 acres.
    - The average parcel size is .183 acres.
    - The average structure size is 1,163 square feet.
  - Three (3) parcels have an easement for road right-of-way, but the use is residential legal non-conforming. (See Exhibits: location map, 11, 43A-B, 44A-B, 45A-B)
    - The parcels size ranges from .227 acres to .46 acres.
    - The average parcel size is .355 acres.

- The average structure size is 1,231 square feet.
- General Business Zone “B-2”:
- Four (4) parcels have dedicated road right-of-way. (See Exhibits: location map, 11, 46A-B, 47, 48A-D, 49A-B)
  - The parcels size ranges from .163 acres to 1.634 acres.
  - The average parcel size is 1.309 acres.
  - The average structure size is 2,362 square feet.
- One (1) parcel has no road frontage. (See Exhibits: location map, 11, 50)
  - The parcel size is .432 acres.
  - The parcel is vacant.
- Per the Warren County Auditor’s Recorders the lot size (net acreage dedicated road right-of-way or gross acreage easement) are documented as:
  - Thirteen (13) parcels are below .33 acres. (See Exhibits: 11, 18A, 19A, 20A, 21A, 32A, 33A, 37A, 38, 40A, 41A, 42, 43A, 49A)
  - Ten (10) parcels are between .331 and .52 acres. (See Exhibits: 11, 16A, 27, 29, 31A, 36A, 39A, 44A, 45A, 47, 50)
  - Nine (9) parcels are between .521 acres and 1 acre. (See Exhibits: 11, 15A, 22A, 23A, 24A, 25A, 26A, 28A, 34A, 35A)
  - Seven (7) parcels are greater than 1.01 acres. (See Exhibits: 11, 12A, 13, 14, 17A, 30, 46A, 48A)

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

The applicant states: “The request will not alter the essential character of the neighborhood. Lot 3 containing the historic residence that is being repaired shall meet this zoning code requirement 100’ frontage for lot 3 being 111’. The lot area will be 13720 square feet or .31 acres. That is not the required 22000 square feet for a half-acre lot. Existing lots in the neighborhood are also less than half-acre lots. It is my opinion this historic home on the smaller than permitted lot will not be detrimental to the consistency of our neighborhood.” (See Exhibits: 3, 4)

The following issues need to be considered:

- In the five hundred (500) foot notice area, five (5) variance request applications were found.
  - Case 14-BZA-004, 3400 SR 741, Creation of lot with less than required acreage. (See Exhibits: 11, 31C-D)
  - Case 16-BZA-001-A, 3400 SR 741, Reduction of landscape. (See Exhibits: 11, 31E-F)
  - Case 16-BZA-001-B, 3400 SR 741, Reduction of setback for sign. (See Exhibits: 11, 31G-H)
  - Case 16-BZA-002, 2585 SR 122, Reduce signage setback, increase signage height and square footage. (See Exhibits: 11, 48C-D)
  - Case 17-BZA-004, 3494 SR 741, Reduction of setback for fuel canopy and signage. (See Exhibits: 11, 35C-D)
- In the five hundred (500) foot notice area, two (2) non-conforming use hearing applications were found.

- Case 02-BZA-007, 2479 Route 122, Expand size of home. (See Exhibits: 11, 40C)
- Case 15-BZA-007, 3335 Old Route 123, Expand size of home. (See Exhibits: 11, 19C-D)
- In the five hundred (500) foot notice area, two (2) Conditional Use Permit Request applications were found.
  - Case 17-BZA-008, 3494 SR 741, Drive through facility. (See Exhibits: 11, 35E-G)
  - Case 17-BZA-008 Updated Request 2018, 3494 SR 741, Request for previous approval for drive through facility on a build be applied to the existing structure. (See Exhibits: 11, 35H-J)
- See staff comments to number 2 above.

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 real unnecessary hardship is as described under item 3. The property, proposed lot 3, with the residence is saleable as a smaller lot and we have a committed buyer. The funds from the proposed sale and the remaining lot 4 are both necessary to permit our church to physically grow as an improvement to the Red Lion community. Please notice on sheet C 1.2 the proposed dedicated open space between lot 3 and our area of expansion permits a driveway connection between Old State Route 123 and the west portion of Lot 2.” (See Exhibits: 3, 4)

The following issues need to be considered:

- The variance request is from Section 5.755 (B) of the Clearcreek Township Zoning Resolution. The minimum parcel size for the Residence Zone “R-1” is one (1) acre exclusive of all the lot size reductions. (See Section 5.755 (B) above)
  - The subject property prior to this request is .512 gross acres (includes road right-of-way) in size. (See Exhibits: 1A, 2)
  - Staff calculated the road right-of-way to be .11 acres. (See Exhibits: 3, 4, 51)
  - The subject property has a net acreage size of .402 acres. (.512-.11=.402)
    - The request with gross acreage is 51% of the requirement. (.512/1) (See Exhibits: 3, 4, 51)
      - or
      - The request with net acreage is 40% of the requirement. (.402/1) (.512-.11 ROW=.402) (See Exhibits: 3, 4, 51,)
  - The applicant is requesting the subject property (identified as Lot #3) be reduced to .33 gross acres (includes road right-of-way) instead of the required one (1) acre size.
    - The request with gross acreage is 33% of the requirement. (.33/1) (See Exhibits: 3, 4, 52A, 52C-E)
      - or
      - The request with net acreage is 26% of the requirement. (.26/1) (.33-.07 ROW=.26) (See Exhibits: 3, 4, 51, 52A-C)
  - If the variance is successful, the applicant would join the parcel identified as Lot#4 .182 gross acre or .142 net acre (.182-.04 ROW=.142) with the rest of the Church

holdings, Lot#2 (.7809 gross acres) to have a single parcel that is .9629 gross acres in size. (See Exhibits: 3, 4, 51)

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

The applicant states: "This hardship does result from the requirements of the code and not from our actions. The zoning code requires that we cannot create a lot split without a zoning appeal. If we met the half-acre requirement for the lot, we could not subdivide part of the lot 3 to become lot 4 for church expansion. The sustaining of the historic home and its sale will provide funds which will go a long way toward our intended multi-purpose addition."

The following issues need to be considered:

- See staff responses to number 1 above.

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

The applicant states: "Yes, we knew of the restriction that a lot split required an appeal. We saw then and continue to see now that the historic home and its reduced lot size can serve a useful purpose as a single-family home. Lot 4 can serve to benefit Red Lion Methodist Church. We intended to consolidate lot 4 with lot 2. We also intend to change lot 4 zoning designation to B-1 via a straight zone change request."

The following issues need to be considered:

- The current zoning resolution format has been effective since November 6, 1973. (See Exhibit: 6A)
- The Red Lion United Methodist Church acquired the property on December 7, 2016. (See Exhibit: 1C)

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

The applicant states: "The subdivided lot 3 with the present residence would be similar in size to other lots in the neighborhood. The footprint of the residence being repaired is similar in size to nearby homes. For these reasons the variance would not be contrary to public interest. Lot 4 will be consolidated with lot 2 and maintained as church land."

The following issues need to be considered:

- See staff responses to number 2 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: “Hopefully a clear picture and succinct answers to the above 7 questions are judged to be acceptable reasons for granting this appeal.”

The following issues need to be considered:

- The applicant has provided a drawing that identifies the location of the existing and the replacement leach field. No documentation has been provided by the Warren County Combined Health Department regarding the proposed lot split and if that department would approve it as drawn if a variance is granted. (See Exhibit 2)
- See staff photos. (See Exhibits: 52A-E)
- **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.