

**Case Number:** 23-BZA-001

**Request:** Variance

**Applicant:** Rob Fickert agent for owner Darren Keith Fickert

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

**Report Date:** February 21, 2023

**Hearing Date:** March 14, 2023

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

### **Description of Property:**

The property is identified as 8616 N SR 48. The property is identified by parcel number 05-26-200-0140 and account number 0115495. The property is 8.017 acres in size. The parcel is located in Section 26, Town 3 and Range 5 in Clearcreek Township. The property is zoned Township Residence Zone “TR-1”. (See Exhibits: Location Map, 1A-E, 2, 3A-D)

### **Nature of the Request:**

The applicant states: “The reason for the variance request is the hardship that exist because Clearcreek Township zoning changed the side yard setback requirements after the first barn was built. At the time of the first barn building, the side yard setback was 10 feet. Because of the lot and natural characteristic (house, trees, hedge rows, fences, and the pond), I build the barn with a side yard setback of 17 feet. I did this so that if I needed additional storage and decided to build another barn in the future, I could build it aligning with the first and not interfering with any of the natural landscape components.” (See Exhibits: 4A-B)

### **Background on the Nature of the Request**

Staff Comments:

The applicant is requesting a variance from Section 6.045(B) of the Clearcreek Township Zoning Resolution. The applicant is requesting that the side yard setback for an accessory structure be reduced from the required 25’ to 17’. (See Exhibit: 4A)

Darren Keith Fickert purchased 9.016 acres (parcel 05-26-200-003) zoned Rural Residence Zone “R-1” on June 18, 1987. The property had an existing home that per the Warren County Auditor’s Website has a 1949 construction date. Per the Warren County Auditor’s Website, a barn was constructed in 1990. (See Exhibits: 1D, 1E, 5A-B, 6)

Prior to August 1996, zoning permits were filled out by hand. I searched the files for 1989 and 1990 and wasn’t able to find a zoning permit for the barn. It is unclear if the permit has been misfiled, if the barn was not issued a zoning permit or if an exempt agricultural building has evolved into a residential use.

On June 12, 1996, via Survey Vol 97 Plat 38, the 9.016 acre parcel (05-26-200-003) was split into two (2) parcels. The first was a 1.003 gross acre parcel (05-26-200-013) with the existing house. Per the Warren County Auditor’s Website, this parcel isn’t identified with a street address. The second was an 8.013 gross acre parcel (05-26-200-014) with an existing barn. This parcel is identified as 8616 N SR 48. Both parcels share a driveway. I reached out to the Warren County Engineer’s Office and spoke with Tabitha Ryan, she stated that their records anticipated parcel 05-26-200-013 to be identified as 8618 N SR 48. It is unclear why this update has not occurred on the Warren County Auditor’s Website. During my site visit, I found a property sign “Dusty Trail Farm 8616” and a rural address reflector with 8616. Two (2) mailboxes were positioned at the entrance of the shared driveway, but both lacked address identification. The first house along the shared

driveway is parcel 05-26-200-013. The variance request deals with the second house accessed via the shared driveway. Darren Keith Fickert owns both parcels. On February 17, 2023, via a phone call with owner Darren Keith Fickert, I was informed that the properties (05-26-200-013 and 05-26-200-014) have always been referenced as 8616 N SR 48. Mr. Fickert also stated that when dealing with deliveries, they indicate front or rear house to ensure proper delivery. (See Exhibits: 2, 3A-D, 4A, 6)

On June 13, 1996 the new parcels were recorded with the Warren County Recorder's Office. On June 7, 1996 in anticipation of the lot split being recorded, zoning permit 2499-96 was issued for a single family dwelling for parcel 05-26-200-014, (8616 N SR 48) to Zengel Enterprises Custom Homes & Remodeling. (See Exhibits: 3A-D, 7A-B)

This property was rezoned from Residence Zone "R-1" to Township Residence Zone "TR-1" on September 1, 2005, via Trustee Resolution 2947. This property was part of the 2,869.40-acre rezoning request initiated by the Clearcreek Township Board of Trustees to bring properties into the new zoning classification Township Residence Zone "TR-1" which was an action item from the 2005 Master Land Use Plan. (See Exhibits: 8A-B)

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

#### **DEFINITIONS**

- SEC. 3.02**     **Accessory Building, Use or Structure:** A building, use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal building use or structure.
- 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. 3.69**     **Structure:** Anything constructed or erected, the use of which requires fixed location on the ground or attached to something having a fixed location on the ground, including permanent buildings, signs, pergolas, swimming pools and telecommunication towers.
- 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.

#### **TOWNSHIP RESIDENCE ZONE "TR-1" REGULATIONS**

**SEC. 6.04** **PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:**

- A.** There shall be a front yard having a depth of not less than seventy-five (75) feet.
- 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 twenty-five (25) feet minimum on each side, except for lots with more than one (1) front yard, in which case the minimum side yard shall be twenty-five (25) 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 twenty-five (25) feet.

**SEC. 6.045** **ACCESSORY STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:**

- A.** Front yard shall conform to 6.04 (A) and 6.04 (B).
- B.** Side yard shall conform to 6.04 (C).
- C.** Rear yard shall be a minimum of twenty-five (25) 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: “When I purchased this property, I viewed it as my forever, dream property in which I would build our home and live the rest of lives in. After building our home I built a barn for the storage of vehicles, trailers, equipment and toys. My intention is to maintain our vehicles and toys properly, keeping them out of the weather and out of sight. I do not like properties with trucks, trailers, cars and misc. equipment sitting outside and around the house or outbuildings. We have come to love this property and wish to maintain it in a pristine way. We love the rural setting, the privacy and the pond on the property. We also enjoy seeing the deer and other wild animals in our back yard. Our intention is to maintain the character of the neighborhood, and the natural beauty of the grounds, trees and pond. I am asking for a variance to build a second barn to the rear of the existing barn. The new barn would match the existing roofing, siding and exterior of the existing barn and the architectural styling of the house. The new barn would be used to store vehicles, trailers, toys and equipment indoors where they out of the weather and out of sight. The variance is requested to build the new barn in alignment, and to the rear of the existing bar. The property currently has a swale running from the neighbor’s property, across our property to the creek on the north side of my parcel. A variance is requested so we can build a second barn and maintain the swale and pond as they currently exist.” (See Exhibits: 4A-B)

The following issues need to be considered:

- On June 7, 1996, zoning permit number 2499-96 was issued for a single-family dwelling. (See Exhibits: 7A-B)
- I wasn’t able to find a zoning permit for the existing barn (see history above). The existing barn was established during the time that the property was zoned Rural Residence Zone “R-1”. The “R-1” minimum required side yard setback was 10’. The structure was established with a 17’ side yard setback. (See Exhibits: 9A-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: “My property is 8.17 acres. A pond exist in the center or the parcel with a spring supplying it with fresh water. My intention is maintain the pond in its natural state and not alter the size or banks of the pond. As I love the rural setting of this property, I want to maintain that look, its classification and not impede upon the neighbors. My neighbor to the south also has out buildings on his property.” (See Exhibit: 4A, 10)*

The following issues need to be considered:

- See Number 1 above.
- The Warren County Aerial that depicts the 500’ notice area is labeled Exhibit 10.

- The subject property is identified by account number 0115495: (See Exhibit: 1A)
  - 8.017 acres in size.
  - The existing accessory structure is 50’x64’ (3,200 sq. ft.). (See Exhibits: 1D, 4A, 7B, 10)
  - The proposed accessory structure is 48’x64’ (3,072 sq. ft.).
    - The center section is enclosed and measures 40’x48’ (1920 sq. ft.).
    - The eastern section is a “lean to” and measures 12’x48’ (576 sq. ft.).
    - The western section is a “lean to” and measures 12’x48’ lean to (576 sq. ft.).
    - (See Exhibits: 4A-B)
- Ten (10) properties are zoned Residence Zone “R-1”. (See Location Map, 10)
  - This classification totals 21.9892 acres:
    - The smallest lot is .12 acres. (See Exhibits: 10, 16)
    - The largest lot is 7.021 acres. (See Exhibits: 10, 19A)
  - A total of five (5) accessory structures were identified from the Warren County Auditor’s Website:
    - The smallest structure is 77 sq. ft. in size. (See Exhibits: 10, 12B)
    - The largest structure is 1,800 sq. ft. in size. (See Exhibits: 10, 13B)
    - The average structure is 634.50 sq. ft. in size (3,807/6). (See Exhibits: 10, 12B, 13B, 14B, 19B)
  - Account 014696:
    - The property is vacant. (See Exhibits: 10, 11)
  - Account 0141163:
    - The property has a single-family dwelling. (See Exhibits: 10, 6)
  - Account 0121592:
    - The property has a single-family dwelling. (See Exhibits: 10, 12A)
    - The property has a 77 sq. ft. accessory structure. (See Exhibits: 10, 12B)
    - The property has a 190 sq. ft. accessory structure. (See Exhibits: 10, 12B)
  - Account 0110906:
    - The property has a single-family dwelling. (See Exhibits: 10, 13A)
    - The property has a 600 sq. ft accessory structure. (See Exhibits: 10, 13B)
    - The property has an 1,800 sq. ft accessory structure. (See Exhibits: 10, 13B)
  - Account 0115401:
    - The property has a single-family dwelling. (See Exhibits: 10, 14A)
    - The property has a 180 sq. ft. accessory structure. (See Exhibits: 10, 14B)
  - Accounts 0141387, 014388 and 0141381:
    - Held for public road right-of-way. (See Exhibits: 10, 15, 16, 17, 18A-B)
  - Account 0106542:
    - The property has a single-family dwelling. (See Exhibits: 10, 19A)
    - The property has a 960 sq. ft. accessory structure. (See Exhibits: 10, 19B)
  - Account 0141694:

- The property is vacant, future access to proposed funeral home. (See Exhibits: 10, 22, 23B-D)
- Two (2) properties have a split zoning classification of Neighborhood Business Zone “B-1” and Residence Zone “R-1”. (See Location Map, 10)
  - This classification totals 14.638 acres:
    - The smallest lot is 4.665 acres. (See Exhibits: 10, 20A)
    - The largest lot is 9.973 acres. (See Exhibits: 10, 21A)
  - A total of four (4) accessory structures were identified from the Warren County Auditor’s Website:
    - The smallest structure is 432 sq. ft. in size. (See Exhibits: 10, 21B)
    - The largest structure is 1,080 sq. ft. in size. (See Exhibits: 10, 21B)
    - The average structure is 789 sq. ft. in size (3,156/4). (See Exhibits: 10, 20B, 21B)
  - Account 0118028:
    - The single-family dwelling is located in the “B-1” section of the property. (See Exhibits: Location Map, 10, 20A)
  - Account 0112054:
    - The single-family dwelling and a 432 sq. ft. accessory structure are located in the “B-1” section of the property. (See Exhibits: Location Map, 10, 21A-B)
    - The property has two (2) accessory structures located in the “R-1” section of the property.
      - The property has a 624 sq. ft. accessory structure. (See Exhibits: Location Map, 10, 21B)
      - The property has a 1080 sq. ft. accessory structure. (See Exhibits: Location Map, 10, 21B)
- One (1) property is zoned Rural Residence Zone with a Planned Unit Development “R-1PUD”. (See Location Map, 10)
  - This classification totals 4.0507 acres:
  - Account 0141695:
    - The property is vacant, proposed funeral home. (See Exhibits: 10, 23A-D)
- Five (5) properties are zoned Township Residence Zone “TR-1”. (See Location Map, 10)
  - This classification totals 92.989 acres:
    - The smallest lot is 5.214 acres. (See Exhibits: 10, 27)
    - The largest lot is 38.775 acres. (See Exhibits: 10, 24A)
    - Zero (0) accessory structures were identified from the Warren County Auditor’s Website.
  - Accounts 0122556, 0141261 and 011856 are being used as a cemetery. (See Exhibits: 10, 24A-B, 25A-C, 26)
  - Account 0112461:
    - The property is vacant. (See Exhibits: 10, 27)

- Account 0114201:
  - The property has a single-family dwelling. (See Exhibits: 10, 28)
- The applicant has provided a drawing that shows the existing pond, existing creek and an existing drainage swale that are located north and west of the proposed location for the accessory structure. (See Exhibit: 4A)
- The plot plan submitted for the single-family dwelling shows a proposed yard drain between the house and the pond. It is unclear if this drain was installed or not. (See Exhibit: 7B)
- Two (2) Conditional Use Permit Requests have been Approved in the notice area. (See Exhibits: 24B, 25B)
- See Staff Photos. (See Exhibits: 29A-H)

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

The applicant states: “The requested variance will not alter the character of the neighborhood as surrounding properties also have barns and storage buildings. A shared driveway will be maintained and only extended to the overhead door of the newly built barn.” (See Exhibit: 4A)

The following issues need to be considered:

- See # 2 above.
- Access to 8616 N SR 48 (parcel 05-26-200-014) is through parcel 05-26-200-013 via an access easement. (See Exhibits: 2, 3D, 4A, 7B)
- See Staff Photos. (See Exhibits: 29A-H)

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 second barn will be used to house and store vehicles, trailers, and equipment indoors (some power and electrical) keeping all out of the weather and rain. The set back of the original barn was 10 feet and it was built in with a setback of 17 feet off the side property line in accordance to the zoning and building requirement of that date. Following the building of the barn, the zoning set back requirements were changed to 25 feet. There is currently a swale running from the neighbor’s property across my property at the rear of the existing barn. The swale permits rain water from the neighbor’s property to flow across my property to the creek on the north side. Building the new barn next, to the rear, of the existing would place in directly over the swale. Building the new barn with a setback of 25 feet off the side property line would place it too close to the existing pond to permit vehicle access. I am requesting a variance to build the second (new) barn with a side yard setback of 17 feet, matching that of the existing barn.” (See Exhibits: 4A, 7B)

The following issues need to be considered:

- See proposed construction drawings. (See Exhibits: 4A-B)
- See Staff photos. (See Exhibits: 29A-H)
- The variance deals with the reduction of only the southern accessory setback. The applicant will exceed the remaining accessory setbacks. (See Exhibit: 4A)
  - The applicant is requesting 17’ instead of the required 25’.
    - The request is an 8’ encroachment. (See Exhibit: 4A)

- The request meets 68% of the requirement, (17/25). (See Exhibit: 4A)
- The request fails to meet 32% of the requirement, (8/25). (See Exhibit: 4A)

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

The applicant states: "If the new barn is built in accordance with the current side yard setback boundaries, the barn will be placed too close to the pond and turning radius of vehicles entering the barn is too small and not navigable. We are asking for release of the 25 foot side yard setback to match the side yard setback of the existing barn of 17 feet. This will place the new barn in direct alignment with the existing barn." (See Exhibits: 4A, 29A-H)

The following issues need to be considered:

- The applicant has sought a variance to address this setback issue. If approved, the applicant would have the ability to have a reduced setback for only this structure.
- The existing residential accessory is classified as a legal non-conforming structure because it doesn't meet the minimum side yard setback.
  - If the applicant wanted to expand the structure and maintain the current side yard encroachment, only zoning staff approval would be required before a zoning permit could be issued.
  - If the applicant wanted to expand the structure and encroach further into the current side yard encroachment, the Board of Zoning Appeals would need to approve the request either as an expansion of a legal non-conforming structure or a variance before a zoning permit could be issued.
- The applicant has the right to apply for a zone change request and seek another residential zoning classification. If the applicant applied for a zone change for the Residence Zone "R-1" classification and the request was approved, the existing and proposed structures would exceed the required minimum setbacks.

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

The applicant states: "The zoning regulations were changed after I purchased the property." (See Exhibits: 8A-B)

The following issues need to be considered:

- Per the Warren County Auditor's Website, the owner purchased the property on June 18, 1987. (See Exhibits: 1E, 5A-B)
- See background above.
- The zoning resolution is a dynamic document and always subject to update and modification. The "R-1" setbacks have remained constant since the 1973 adoption of the zoning resolution. The minimum lot size, lot configurations, permitted uses and condition uses have changed numerous times since 1973. (See Exhibits: 9A-D, 30F-H)
- Prior to the adoption of the 2005 Master Land Use Plan, the Rural Residence Zone "R-1" was the most widespread zoning classification in the Township. (See Exhibit: 8B)
- Three (3) new zoning classifications were created from the Planning Areas discussed in 2005 Master Land Use Plan. (See Exhibits: 30B-M)
  - Open Space Rural Residence Zone "OSR-1" was established as the new "rural lot size".



- The Rural Residence Zone “R-1” was reclassified as the Residence Zone “R-1”. This maintained the zoning setbacks, acreages and uses for existing lots that were part of a plat or were lots that were unable to be further subdivided if reclassified.
- Suburban Residence Zone “SR-1” was established as the new lot classification adjacent to the City of Springboro. This classification is identical to the “R-1” zoning classification but also allows a smaller panhandle lot.
- Township Residence Zone “TR-1” was established as a stair step zoning classification in-between the “rural and suburban” zoning classifications. These lots were placed at a minimum lot size of 1.5 acres, the setbacks were increased and density credit for the utilization of sanitary sewer was removed.

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

The applicant states: “The requested variance will not be contrary to public interest, but instead will be more desirable as the new barn will be constructed in alignment with the existing barn.” (See Exhibits: 4A-B)

The following issues need to be considered:

- See construction drawings and materials. (See Exhibits: 4A-B)
- See Staff Photos. (See Exhibits: 29A-H)

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: “I purchased this property and built our dream home, planning to retiring and living the remainder of our lives here. This is our paradise. We enjoy watching the deer in the yard, squirrels and birds. We wish to store our vehicles (cars, trucks and trailers) indoors. The equipment and toys we have will become damaged if left outside. We need the sized of the barn

submitted to property store the vehicles. For safety reasons, we need the turning radius to enter the barn without falling into the pond.” (See Exhibits: 4A, 7B)

The following issues need to be considered:

- From the Warren County Aerial of the property, the pond is closer to the southern property line than what is represented on the submitted site plan. (See Exhibits: 4A, 31)
- From the site plan, I scaled the proposed stone drive north of the proposed structure (enclosed area and two “lean to” areas) to be approximately 26’ in depth. (See Exhibit: 32)
- The western “lean to” section of the proposed structure:
  - From the site plan, I scaled approximately 125’ as the distance from the pond to the southern property line at the western boundary of the “lean to” section of the proposed structure. (See Exhibit: 32)
    - During my site visit, I measured a distance of 100’ from the pond to the southern property line at the western boundary of the “lean to” section of the proposed structure. (See Exhibit: 32)
  - From the site plan, I scaled approximately 64’ as the distance from the pond to the northwest corner of the “lean to” section of the proposed structure. (See Exhibit: 33)
    - During my site visit, I measured a distance of 35’ from the pond to the northwest corner stake of the “lean to” section of the proposed structure. (See Exhibit: 33)
- The eastern “lean to” section of the proposed structure:
  - From the site plan, I scaled approximately 116’ as the distance from the pond to the southern property line at the eastern boundary of the “lean to” section of the proposed structure. (See Exhibit: 32)
    - During my site visit, I measured a distance of 90’ from the pond to the southern property line at the eastern boundary of the “lean to” section of the proposed structure. (See Exhibit: 32)
  - From the site plan, I scaled approximately 53’ from the pond to the northeast corner of the “lean to” section of the proposed structure. (See Exhibit: 33)
    - During my site visit, I measured a distance of 25’ from the pond to the northeast corner of the “lean to” section of the proposed structure. (See Exhibit: 33)
- Driveways are not required to meet zoning setbacks.
- If the variance is approved as submitted, the applicant would not have the ability to construct a 26’ driveway, to achieve the desired turning radius, north of the proposed structure without altering the pond. (See Exhibits: 4A, 7B, 31, 32, 33)
- I emailed the applicant regarding the measurement discrepancies. (See Exhibit: 34)

- On February 17, 2023, via a phone call with owner Darren Keith Fickert, I was informed that the site plan was based upon the original plan submitted for the single-family dwelling.
- I asked if he anticipated modifying the variance request to increase the encroachment because of my measurements. We discussed the minimum side yard setback for the Residence Zone “R-1”. At the time of the phone call, Mr. Fickert maintained the request as submitted.
- **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.