

Case Number: 23-BZA-003

Request: Variance

Applicant: Tracy Miniard

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

Report Date: May 18, 2023

Hearing Date: June 13, 2023

Current Zoning of Properties: Open Space Rural Residence Zone “OSR-1”

Description of Properties:

The property is identified as 4301 Carnell Dr, parcel number 08-04-451-008, account 0420002 and 6.3741 acres in size. The parcel is located in Section 4, Town 3 and Range 4 in Clearcreek Township. The property is zoned Open Space Rural Residence Zone “OSR-1”. The request is to allow a covered porch addition to the single-family dwelling to encroach into the required front yard setback. The Zoning Department found the existence of a covered porch addition during a verification of an agricultural building zoning permit for the property. The front yard setback for the covered porch addition is 90’ instead of the required 100’ setback. The variance request is from Section 5.57(G) of the Clearcreek Township Zoning Resolution. (See Exhibits: Location Map, 1A-H, 2, 3)

Nature of the Request:

The applicant states: “Replaced existing structure that was poorly constructed, so it would match the existing home. did not know the side of home was infact the front of the home? The side allows 20 ft , I only was aware at a later time this was considered the front of the home, replaced with manufactured beams and matching shingles and replaced existing Concrete.” (See Exhibits: 2, 3, 4A-B, 5A-E)

Background on the Nature of the Request

Staff Comments:

The applicant is requesting a variance from Section 5.57 (G) of the Clearcreek Township Zoning Resolution. On January 6, 2023, while verifying Zoning Permit 11,313 an Exempt Agricultural Use Permit, Code Enforcement Officer Lori Burton noticed a porch addition to the eastern elevation and a porch addition to the northern elevation of the single-family dwelling. Ms. Burton also noticed a pavilion located north of the single-family dwelling. On January 17, 2023, a notice of zoning violation was issued to Mr. Miniard. (See Exhibits: 6A-H, 7A-C)

On January 27, 2023, Mr. Dennis Beatty architect for Mr. Miniard submitted a plot plan and drawings for the eastern porch addition and the picnic awning (pavilion). I responded by email to Mr. Beatty requesting drawings for the northern covered porch. Mr. Miniard contacted me. I discussed the need for the eastern property line setback to be added to the plot plan. Mr. Miniard stated the porch on northern side of house was pre-existing and he will draw it up since he replaced the roof and supports. Mr. Miniard stated he would update the plot plan. Mr. Miniard stated he would provide photos of the site before he started any work. (See Exhibits: 8A-C)

On January 30, 2023, Mr. Beatty submitted an updated plot plan and updated drawings for the northern and the eastern covered porches. I was able to issue a zoning permit 11,339 for the picnic shelter (pavilion) but was unable to issue a zoning permit for the covered porch additions because the eastern addition was declared to be 91’ instead of the required 100’ front yard setback requirement. I discussed the need for Mr. Miniard to have his property boundaries affirmed by a surveyor. (See Exhibits: 9A-D)

Mr. Miniard contacted a surveyor, and the eastern property line wooden stakes were still visible during my site visit on May 10, 2023. (See Exhibits: 46A-I)

On September 21, 2012, Survey Vol 138 Plat Number 84 was filed with the Warren County Engineer's Tax Map Office for what was to become parcel 08-04-451-008, a panhandle lot. This parcel was officially created on October 12, 2012. The survey shows the footprint of the house without the carport. The front yard setback for the house scales to the minimum setback of 100'. The frontage for this parcel is State Route 48. The width of the frontage is 40'. This property is also coincident with the road right-of-way of Carnell Dr. The width of Carnell Dr is 50', this is more than the maximum frontage allowed for a panhandle lot (40') and is less than what is required for a regular lot (140'). Clearcreek Township Zoning requires that lots created after 1973 meet the minimum amount of frontage. Clearcreek Township Zoning doesn't require that a property be accessed through the frontage of the parcel. Clearcreek Township Zoning doesn't require that the front of the house face the frontage of the property. (See Exhibits: 1H, 10A-B)

Setbacks for lots are determined by the definitions for front yard, side yard and rear yard. Section 3.74 defines a front yard as "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." The lot frontage for this parcel is the handle of the panhandle on State Route 48, even though the property is accessed by Carnell Dr. and has a Carnell Dr. address. Zoning requires a front yard setback along the eastern boundary of the body of the panhandle, a rear yard setback along the western boundary of the body of the panhandle and side yard setbacks along the northern and southern boundaries of the body of the panhandle.

Since October 12, 2012, the property has been sold four (4) times. February 10, 2010, Warren County Auditor's information for the 2009 tax card showed a 14'x22' carport to be located at the northeast corner of the single-family dwelling. Warren County Auditor Website photos from May 7, 2013, and June 15, 2017, confirm that a carport existed at the northeast corner of the single-family dwelling. The Warren County Auditor's Website 2022 Aerial shows the footprint of the carport. Mr. Miniard on January 30, 2023, provided a photo that was presented to him during the purchase of the property of the northern elevation. (See Exhibits: 1C-G, 4A-B, 5A, 9D, 11, 12A-B)

On May 8, 2023, I performed an internet search for 4301 Carnell Dr and found that the websites Vimeo, Realtor.com and Zillow all represented the carport as an enclosed area during the timeframe in which the property was advertised. The eastern porch addition wasn't present. (See Exhibits: 13A-D)

As part of Mr. Miniard's modification to the single-family dwelling: the walls of the enclosed carport have been removed, a 18'2"x21'6" (401.19 sq. ft) covered porch addition along the eastern elevation of the dwelling and the southern elevation of the carport has been established and a 7'6" x 27'8" (207.50 sq. ft.) covered porch addition has been established along the northern elevation of the dwelling. The 18'2"x21'6" covered porch addition encroaches approximately 10' into the required eastern front yard setback and is the reason for the variance request. (See Exhibits: 1C, 1E, 1F, 1H, 2, 3, 4A-B, 5A-E, 8B-C, 9B-C, 12A-B, 13A-D)

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. 3.69** **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.

**CHAPTER 5.5 OPEN SPACE RURAL RESIDENCE ZONE "OSR-1" REGULATIONS
SEC. 5.57 FOR LOTS OTHER THAN OSDOD, 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 twelve hundred (1200) feet.
- D.** The body of the lot shall have a minimum area that meets or exceeds the minimum lot size established in Section 5.55 (A) and is exclusive of the panhandle portion of the lot.
- E.** The body of the lot shall have a minimum width of two hundred ten (210) 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 one hundred (100) 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 one hundred (100) 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: "We simply removed the enclosed garage and opened it up to the original covered porch or carport to Enhance to look of the property." (See Exhibits: 1A-F, 1H, 2, 3, 4A-B, 5A-E)

The following issues need to be considered:

- The property has a 1,176 sq. ft. single-family dwelling on the property. (See Exhibit: 1A)
- Staff was able to confirm that between June 15, 2017 and January 6, 2023 the original 14'x22' carport footprint was enclosed with walls. (See Exhibits: 1F, 13A-D)
- During the January 6, 2023, zoning site visit, staff was able to document that the walls were removed and new lumber was installed for the original carport. (See Exhibits: 6E-H)

- The 18'2"x21'6" covered porch addition that has been added, encroaches approximately 10' into the required eastern front yard setback. This addition occurred after the 2022 Warren County Aerial and before January 6, 2023. (See Exhibits: 2, 3, 4A-B, 5A-E, 6E-H, 8B-C, 9B-C, 13A-D)
- On May 10, 2023, staff made a site visit to the property and confirmed the eastern front yard setback to be 90' instead of the required 100'. (See Exhibit: 14)

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: "The home is completely alone and not in any view of any neighborhood."

The following issues need to be considered:

- See Number 1 and background above.
- The Warren County Aerial that depicts the 500' notice area is labeled Exhibit 15.
- Sixteen (16) properties are zoned Residence Zone "R-1". (See Exhibits: Location Map, 15)
 - This classification totals 13.278 acres.
 - The smallest lot is .271 acres. (See Exhibits: 16, 17)
 - The largest lot is 5.4671 acres. (See Exhibits: 19, 20)
 - One lot was created by survey. (See Exhibit: 29)
 - This lot is 2.6191 acres in size. (See Exhibit: 30)
 - Two (2) lots are in the Ballard Subdivision. (See Exhibits: Location Map, 15, 16, 17, 18)
 - This subdivision totals .752 acres.
 - Lot size information:
 - The smallest lot is .271 acres. (See Exhibit: 17)
 - The largest lot is .481 acres. (See Exhibit: 18)
 - The average lot size is .376 acres.
 - One (1) lot is in the Pekin Corners Section Two Subdivision. (See Exhibits: Location Map, 15, 19, 20)
 - This subdivision totals 5.4671 acres.
 - Two (2) lots are in the Third Addition to Kendrick Subdivision. (See Exhibits: Location Map, 26, 27, 28)
 - This subdivision totals 4.229 acres.
 - Lot size information:
 - The smallest lot is 2.0964 acres. (See Exhibit: 28)
 - The largest lot is 2.1326 acres. (See Exhibit: 27)
 - The average lot size is 2.1145 acres.
 - Ten (10) lots are in the Kendrick Subdivision. (See Exhibits: Location Map, 15, 32-41A)
 - This subdivision totals 4.44 acres.
 - Lot size information:
 - The smallest lot is .29 acres. (See Exhibit: 41A)

- The largest lot is .57 acres. (See Exhibit: 36A)
 - The average lot size is .444 acres.
- Three (3) properties are zoned Light Industrial Zone “M-1”. (See Exhibits: Location Map, 15, 42-45A)
 - This classification totals 3.5652 acres.
 - The smallest lot is .5093 acres. (See Exhibit: 42)
 - The largest lot is 1.629 acres. (See Exhibits: 43)
- One (1) property is zoned Open Space Rural Residence Zone “OSR-1” and Residence Zone “R-1”. (See Exhibits: Location Map, 15, 1H)
 - This lot was also created by the Donald G. Slorp Survey Vol 138 Page 84. (See Exhibits: 1H, 22)
 - This lot is 6.3413 acres in size.
- Four (4) properties are zoned Open Space Rural Residence Zone “OSR-1”. (See Exhibits: Location Map, 15, 21, 23-25)
 - This classification totals 172.376 acres.
 - The smallest lot is 6.307 acres. (See Exhibit: 25)
 - The largest lot is 106.3741 acres. (See Exhibit: 21)
- Two (2) properties in the 500’ notice area are configured as panhandle lots. (See Exhibits: 20, 25)
- One (1) variance has been Approved in the notice area. (See Exhibits: 45B-D)
- One (1) variance has been Denied in the notice area. (See Exhibits: 36B-C)
- One (1) non-conformance hearing has been Approved in the notice area. (See Exhibits: 41B-C)

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

The applicant states: “This home is not located in a Neighborhood.”

The following issues need to be considered:

- See # 2 above.
- The pavement of Carnell Dr ends with a “T” turn around at the northern boundary of 4301 Carnell Dr. This is the start of the driveway for 4301 Carnell Dr. (See Exhibits: Location Map, 1H, 4A, 7C, 12A, 15, 31)
- See staff photos. (See Exhibits: 46A-I)

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 propperty line is 90 feet from covered porch and the closest home is approx 470 feet from property line.”

The following issues need to be considered:

- To the east, I scaled the closest single-family dwelling to be approximately 466’ away from the proposed addition. (See Exhibit: 47)

- To the north, I scaled the closest single-family dwelling to be approximately 525' away for the proposed addition. (See Exhibit: 47)
- The variance deals with the reduction of only the eastern front yard setback. The applicant will exceed the remaining setbacks. (See Exhibit: 2)
 - The applicant is requesting 90' instead of the required 100'.
 - The request is a 10' encroachment. (See Exhibit: 2)
 - The request meets 90% of the requirement, (90/100). (See Exhibit: 2)
- See proposed addition drawings. (See Exhibits: 3, 9C)
- See staff photos. (See Exhibits: 46A-I)

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

The applicant states: "The front of home is located 90ft from neighbors property line not the 100 ft as stated from zoning I had the property surveyed by bayer & becker to determine the correct line and distance." (See Exhibit: 2)

The following issues need to be considered:

- The eastern and northern porch additions were constructed without a zoning or building permit.
- 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.
- See background above.

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

The applicant states: "The house faces Camell Dr not Rt 48 the 20ft allowed by zoning would have been sufficient for the side of property was only told by zoning that it was in fact side of the porch would be the front of the property not the side thus the confusion."

The following issues need to be considered:

- Per the Warren County Auditor's Website, the owner purchased the property on June 8, 2022. (See Exhibit: 1G)
- The owner was issued a zoning permit for the agricultural pole barn on December 2, 2022. (See Exhibits: 7A-D)
- See background above.

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

The applicant states: "This home has no public interest picture enclosed."

The following issues need to be considered:

- See staff photos. (See Exhibits: 46A-I)
- 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: “Basically was correcting and updating the existing covered porch or carport to complete this home and make it more appealing, Was totally unaware that the side of this home was in fact the frontage since the mailing address is 4301 Camell Dr and listed in county records as 4301 Camell Dr the 20ft from side would have been more than sufficient it is not living space nor it would expand the square footage of the home.” (See Exhibits:1A-H)

The following issues need to be considered:

- See applicant’s submitted photos. (See Exhibits: 5A-E)
- The covered porch additions have added 608.69 sq. ft. to the footprint of the single-family dwelling. (See Exhibits: 1A, 1C, 1F, 3, 9C)
- **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.