

Case Number: 23-BZA-005

Request: Variance

Applicant: Agent Zach St. Jean of Lebanon Lawn & Landscape DBA Outdoor Experts for Rodney Litteral, First Property Group LTD

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

Report Date: May 24, 2023

Hearing Date: June 13, 2023

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

Description of Property:

The property is identified as 7866 Country Brook Ct, Lot 43 Country Brook 1 RP, parcel 05-31-205-043, account 0142667 and 1.5033 acres in size. The parcel is located in Section 31, Town 3 and Range 5 in Clearcreek Township. The property is zoned Residence Zone “R-1”. (See Exhibits: 1A-D, 2, 3)

Nature of the Request:

The applicant states: “The Reason for this variance application is to be able to put an in-ground pool in the backyard closer to the property line than the current set backs allow.” (See Exhibits: 3, 4)

Background on the Nature of the Request

Staff Comments:

The applicant is requesting a variance from Section 22.01 (B) of the Clearcreek Township Zoning Resolution. The applicant is requesting that one (1) of the pool setbacks be ten (10) feet instead of the required distance of twenty (20) feet from water’s edge of the pool to a property line. (See Exhibit: 3, 4)

Since the 1973 Zoning Resolution was voted into existence on November 6, 1973, the Special Provisions Chapter has regulated the placement of swimming pools the same regardless of the zoning classification. In 1973, Special Provision was Chapter 21. The Section that regulated the location of a swimming pool was 21.02 (B): It may not be located, closer than twenty (20) feet to any property line on which it is located. (See Exhibits: 5A-B)

On November 22, 1974, Chapter 21 was changed to Chapter 22. (See Exhibits: 6A-D)

On February 8, 2016, via Trustee Resolution 4797, Section 22.01 was updated. Section 22.01(B): It may not be located closer than twenty (20) feet from water’s edge to any property line of the property on which it is located. (See Exhibits: 7A-E)

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. 3.69** **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. 3.7022** **Swimming Pool, In-ground**
A structure that is constructed in a manner that it cannot be readily disassembled for storage. This structure is able to retain a minimum water depth of 18 inches. This structure is installed entirely below grade. This pool requires water filtration, circulation and purification. This structure is to be used for recreation purposes.
- 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.

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.

SPECIAL PROVISIONS

SEC. 22.01 Swimming Pools:

No swimming pool shall be allowed in any residence zone except as an accessory use and unless it complies with the following conditions and requirements:

- A. The pool is intended and is to be used solely for the enjoyment of the occupants of the principal use of the property on which it is located.
- B. It may not be located closer than twenty (20) feet from water's edge to any property line of the property on which it is located.
- C. In-ground swimming pools shall have a barrier installed to prevent uncontrolled access by children from the street or from adjacent properties.

1. Fence/wall barrier

- a. Fence/wall shall be not less than four (4) feet in height.
- b. Fence/wall height shall be measured on the side of the fence/wall that faces away from the pool.
- c. The maximum vertical clearance between the bottom of the fence/wall and the ground shall be four (4) inches.
- d. Fence/wall shall be maintained in good condition.
- e. Fences that are composed of horizontal and vertical components shall conform to the following standards:
 - i. When the fence design has horizontal components that establish a frame upon which the vertical components are attached, the horizontal components shall be located on the swimming pool side of the fence.
 - ii. When the fence design has vertical components that intersect the horizontal components, the horizontal components shall equally straddle the vertical components.
 - iii. Maximum spacing between all vertical components shall be four (4) inches.
- f. Fences that are composed of wire mesh and vertical components shall conform to the following standard:
 - i. The maximum spacing between all vertical components of the wire shall be two and one quarter (2 ¼) inches.
- g. Pedestrian access gates:
 - i. Shall conform to the design standards identified in Section 22.01 (c) (1) (e) or Section 22.01 (c) (1) (f).
 - ii. Shall be self closing.
 - iii. Shall be self latching.
 - iv. Shall have the opening mechanism mounted at a height of at least forty-five (45) inches.
 - v. Shall open outward away from the pool.
- h. Utility access gates:
 - i. Shall conform to the design standards identified in Section 22.01 (c) (1) (e) or Section 22.01 (c) (1) (f).

- ii. Are not required to have a self-closing device.
 - iii. Are not required to have a self-latching device.
 - iv. Shall have a means to secure the gate when not in use.
 - i. Temporary construction fencing shall be installed after the in-ground pool area is excavated.
 - j. Final fencing and gate assemblies from this chapter must be installed within sixty (60) days of the pool holding any water.
 - k. All fences and gates shall be located so as to prohibit permanent structures, equipment or other objects from being used to climb the fence or gate.
2. A power safety pool cover barrier that meets the performance standards of the most recently amended American Society For Testing And Materials (ASTM) F1346-91:
- a. May be used independent of Section 22.01(c)(1).
 - b. The cover must be locked when the pool is not in actual use and/or when the pool is unattended.

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: “Due to the layout of the land and house, The proposed location of the pool is the only suitable location. The right side of the property backs up to a creek and does not allow for enough room or proper grade for the pool.” (See Exhibits: 1D, 3, 4, 12)

The following issues need to be considered:

- On November 12, 2003, zoning permit number 4860-03 was issued for a single-family dwelling with a front yard setback of 100’, rear yard setback of 44.5’. The site plan also depicted a future pool. (See Exhibits: 8A-B)
- On May 10, 2004, the Clearcreek Township Zoning Department affirmed the location of the structure. Deputy Zoning Inspector Linda Rike found the front yard setback to be 122’ and the rear yard setback to be 40’. Since a deck was expected to be extended an additional 15’ to the east, Ms. Rike sent a letter to Mr. Rod Litteral regarding the situation. (See Exhibit: 9)
- On May 12, 2004, Mr. Litteral responded back to Ms. Rike via email stating that “Due to the slope of the lot we had to move the house back and eliminate the deck.” (See Exhibit: 10)
- Retaining walls, concrete patios, paver patios, sidewalks (concrete, asphalt or pavers), driveways (concrete, asphalt, pavers or gravel) are not considered structures per Section 3.69

of the Clearcreek Township Zoning Resolution and are therefore not required to meet zoning setbacks. (See Section 3.69 above)

- The Country Brook Section One Subdivision has a Residence Zone “R-1” zoning classification. (See Location Map).
 - The minimum lot size for this zoning classification is one (1) acre. (See Section 5.755 (B) above)
- Country Brook Section One was recorded on August 22, 2002. (See Exhibits: 11A-B)
- A Replat of Lots 21, 22 and 23 Country Brook Section One was recorded on November 20, 2003. (See Exhibit: 2)
- A topography aerial for 7866 Country Brook Ct has been provided. (See Exhibit: 12)
- See staff photos. (See Exhibits: 47A-M)

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 rear property line in reference to the back of the house (47.7 feet) is significantly closer than the majority of homes in this neighborhood. With the exception of one other, all on Country brook have at least 60 feet.”

The following issues need to be considered:

- See Number 1 above.
- The minimum front yard setback for the Residence Zone “R-1” classification is 50’, the minimum rear yard setback is 40’. See Clearcreek Township Zoning Resolution SEC. 5.754 above.
- The minimum lot size for the Residence Zone “R-1” classification is one (1) acre. See Clearcreek Township Zoning Resolution SEC 5.755(B) above.
- The 500’ notice area is Exhibit 13.
- A topography aerial has been provided for properties in the 500’ notice area. (See Exhibit: 14)
- The subject property is 1.503 acres in size. (See Exhibits: 1A, 2, 3)
- In Country Brook Section One, in the 500’ notice area, there are ten (10) lots. (See Exhibits: 13, 15A-26B)
 - The average lot size is 1.54343 acres (15.4343/10). (See Exhibits: 13, 15A-26A)
 - Six (6) lots range between 1.00 acres and 1.10 acres in size. (See Exhibits: 13, 16A, - 19A, 23A, 26A)
 - Two (2) lots are between 1.5313 and 1.5793 acres in size. (See Exhibits: 2, 12, 13, 15A, 20A)
 - One (1) lot is 2.8848 acres in size. (See Exhibits: 13, 24, 25)
 - One (1) lot is 3.1905 acres in size. (See Exhibits: 13, 21, 22A)
- In Country Brook North Section One, in the 500’ notice area, there are four (4) lots. (See Exhibits: 13, 27A-32A)
 - The average lot size is 3.4669 acres in size (13.8676 acres/4). (See Exhibits: 13, 28A, 29A, 31A, 32A)

- One (1) lot is 1.2815 acres in size. (See Exhibits: 13, 32A)
- Three (3) lots range from 2.1667 acres to 6.8368 acres in size. (See Exhibits: 13, 28A, 29A, 30, 31A)
- In Center Springs Estates Section 1, in the 500' notice area, there are thirteen (13) lots. (See Exhibits: 13, 33, 34A-46A)
 - The average lot size is 1.2177 acres in size (15.830/13). (See Exhibits: 13, 34A-46A)
 - The lots range from 1.02 acres to 1.54 acres in size. (See Exhibits: 13, 34A-46A)
- See staff photos. (See Exhibits: 47A-M)

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

The applicant states: "The proposed plan of the pool, spa, and patio space are a common feature amongst the neighborhood and an improvement to the property."

The following issues need to be considered:

- In the five hundred (500) foot notice area, zero (0) variance request applications were found.
- In Country Brook Section One:
 - Zero (0) lots in the 500' notice area have an inground swimming pool. (See Exhibits: 13, 15A-26B)
- In Country Brook North Section One:
 - Two (2) lots in the 500' notice area have an inground swimming pool. (See Exhibits: 13, 28A-B, 32A-B)
- In Center Spring Estates First Addition:
 - One (1) lot in the 500' notice area has an above ground swimming pool. (See Exhibits: 13, 44A-C)

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 larger side yard of the property is not suitable for a pool, the set backs from the house and the property line leave too small of a space for the pool in the back yard, leaving no other option than to have an approved variance to be closer to the property line." (See Exhibits: 1D, 2, 3, 12)

The following issues need to be considered:

- The proposed pool is 20'6" x 33'11&1/4" See pool schematics. (See Exhibits: 48A-C)
- See submitted site plan. (See Exhibits: 3, 4)
- See aerial of property. (See Exhibit: 1D)
- See topography aerial for 7866 Country Brook Court. (See Exhibit: 12)
- The variance deals with the reduction of only the eastern swimming pool setback. Applicant will exceed the remaining swimming pool setbacks. (See Exhibit: 3, 4)
 - The applicant is requesting 10' instead of the required 20'.
 - The request meets 50% of the requirement, (10/20). (See Exhibit: 3,4)
- See staff photos. (See Exhibits: 47A-M)

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

The applicant states: "The homeowner has not altered the property in any fashion to prevent the pool from being put in another location, it is strictly a set-back issue."

The following issues need to be considered:

- See Background above.
- See Number 1 above.

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

The applicant states: "The Homeowner was unaware of the 20' set back for pools when they purchased the property."

The following issues need to be considered:

- Per the Warren County Auditor's Website, the applicant purchased the property on November 20, 2003. Reference date of plat, no deed. (See Exhibit: 1C, 2)
- Per the Warren County Auditor's Website, the deed transferred on December 11, 2003. Deed (See Exhibit: 1C, 49A-B)
- Per the Warren County Auditor's Website, the property was transferred on November 20, 2007 from the applicant to First Property Group Ltd. Mr. Rodney Litteral was the agent of record for the Ohio Secretary of State Business Form 521. (See Exhibit: 1C, 50A-C, 51A-D)
- On November 12, 2003, Mr. Rod Litteral was issued zoning permit 4860-03 for a single-family dwelling. The submitted site plan identified the northeast corner of the property as "future pool". The pool setbacks were not reviewed as part of the single-family dwelling permit. The pool size was not indicated on the site plan. The site plan was drawn to a 1" = 20' scale. (See Exhibits: 8A-B)
- See background above.

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

The applicant states: "The positioning of the pool closer to the property line will not alter the drainage of the property, be an eye sore, or cause harm of any sort to another property"

The following issues need to be considered:

- The proposed pool location has a topography range from 962' to 960'. (See Exhibit: 12)
- The rear yard has a topography range from 964' at the northeastern corner of the property, 950' at the southeast corner of the house to 962' at the southeastern corner of the property. (See Exhibit: 12)
- The southern side yard of the property has a topography range from 938' at the road right-of-way of Country Brook Ct. to 962' at the southeastern corner of the property. (See Exhibit: 12)
- According to the Replat of Lots 21, 22 and 23 Country Brook Section One: a 30' drainage easement bisects the property along the former property lines of Lot 21 and Lot 22. This area is south of the existing home. (See Exhibits: 2, 12)

- See staff photos. (See Exhibits: 47A-M)

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: "None."

The following issues need to be considered:

- **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.