

Case Number: 23-BZA-009

Request: Variance

Applicant: Armando Moore

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

Report Date: December 19, 2023

Hearing Date: January 9, 2024

Current Zoning of Property: Residence Zone Planned Unit Development “R-1APUD”

Description of Property:

The property is identified as 1807 Winding Run BLVD, Lot 588 Villages of Winding Creek, The Boulevards at Winding Creek Section Seven Subdivision. The property is further identified by parcel number 05-21-365-015 and account number 0315132. The property is .1724 acres in size. The parcel is located in Section 21, Town 3 and Range 5 in Clearcreek Township. The property is zoned Residence Zone Planned Unit Development “R-1APUD”. (See Exhibits: Location Map, Exhibits: 1A-C, 2)

Nature of the Request:

The applicant states: “Seeking variance for attached back porch roof. 2 of 3 pillars that support the roof are currently encroaching on the rear property line. 1 by 2.48 ft, the 2nd by .95 ft and the 3rd is acceptable at 25.26 ft.” (See Exhibits: 3, 4A-F)

Background on the Nature of the Request

Staff Comments:

The request deals with a lot in the Villages of Winding Creek “R-1A PUD”. The constructed patio roof (addition) fails to meet the minimum 25’ rear yard required setback per Clearcreek Township Trustee Resolution 3632, Condition 23(d)(5)(iii). (See Exhibits: 2, 3, 5D)

On November 7, 2022, while performed an inspection on an adjacent property, Code Enforcement Officer Lori Burton noticed a covered patio (addition) that had been constructed at 1807 Winding Run Blvd. Ms. Burton searched the zoning software and didn’t locate a permit for the addition. Mr. Moore was outside at the time and spoke with Ms. Burton. Mr. Moore stated that he had turned in paperwork to the HOA and was approved. He did not realize that he needed to obtain a zoning permit also. Ms. Burton explained to him that he would need to get a zoning permit from Clearcreek Township and a building permit from Warren County. Mr. Moore stated that he would be in to get a zoning permit. As of November 16, 2022, Mr. Moore had not obtained a zoning permit for the patio roof (addition), so a 30-day notice of zoning violation was written and sent to Mr. Moore. (See Exhibits: 6A-D)

On November 28, 2022, Mr. Moore submitted a plot plan and drawing for a 17’x35’ patio roof (addition). A zoning permit was unable to be issued because the addition encroached into the rear yard setback by 2.27’ (staff calculation). (See Exhibits: 7A-D)

On November 30, 2022, Mr. & Mrs. Moore met with Mr. Palmer to discuss options to resolve the violation: relocate the posts, acquire additional property from the adjacent open space lot, variance request or remove the structure. (See Exhibit: 8)

In a December 20, 2022 email, Mr. Moore identified that they would be submitting the plans for a zoning permit that modified the placement of the posts. On December 30, 2022 via email, Mr. Moore submitted drawings and a plot plan. On January 3, 2023, Mr. Palmer responded via email to Mr. Moore’s submittal and requested clarification on the drawings and setback. Mr. Moore responded that the vertical measurement for the structure was the beginning of the 25’ from the back of the property. (See Exhibits: 9A-D)

On January 3, 2023, Zoning Permit 11,322 was issued for an addition, 17.5'x24' roof over an existing patio. (See Exhibits: 10A-C)

Code Enforcement Officer Lori Burton made site visits to verify the status of the reconfiguration: February 15, 2023, March 7, 2023, April 26, 2023, May 22, 2023, June 12, 2023, July 14, 2023, September 6, 2023 and October 2, 2023. (See Exhibits: 11A-B)

On July 20, 2023 Mr. Palmer was contacted by email by Mr. Moore and was informed that they decided to pursue a variance request. (See Exhibits: 12A-D, 14E)

On August 7, 2023 Mr. Palmer met with Mr. Moore to review the variance request application. Mr. Moore had prepared responses to the Warren County Rural Zoning Variance Request. Mr. Palmer asked if a survey had been performed to determine if the encroachment distance was different or agreed with the zoning measurement. Mr. Moore decided to have the property affirmed by a surveyor. After the survey was complete, Mr. Moore would contact zoning. If the survey revealed that a variance was still needed to bless the location, then an application would be submitted. (See Exhibit: 13)

On October 18, 2023 Mr. Moore contacted Mr. Palmer via email and provided the updated survey that showed two (2) of the posts of the patio roof (addition) encroach into the required rear yard setback. Mr. Palmer provided the next variance application deadline to be November 8, 2023. (See Exhibits: 13, 14A-E)

The November 8, 2023 application deadline had been missed. The issue was forwarded to the Law Director to issue a Notice of Zoning Violation requesting the matter be addressed within ten days. Law Director Bryan Pacheco issued his notice on November 28, 2023. (See Exhibits: 15A-D)

On December 7, 2023 Mr. and Mrs. Moore met with Mr. Palmer via a zoom meeting to review the variance request application. On December 8, 2023 Mr. Moore emailed the variance request application but failed to provide attachments or the required fee. (See Exhibits: 16A-C)

On December 13, 2023 Mr. Moore met with Mr. Palmer to submit his complete application.

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. 3.021: **Addition:** Any construction that increases the size of the structure in terms of site coverage, height, length, width or gross floor area.

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.

CLEARCREEK TOWNSHIP TRUSTEE RESOLUTION 3632, APPROVED DECEMBRE 9, 2009, VILLAGES OF WINDING CREEK R-1A PUD REGULATIONS FOR 55' WIDTH LOTS

23. Minimum lot size, required setbacks and frontage requirements shall be approved in conformance with the Villages of Winding Creek, Warren County Ohio Cover Page, and corresponding sub pages of the Preliminary Plat and Lot Size Exhibit received October 13, 2009 with the following clarifications:

- d. Lots designated as an average 55' frontage:
 - 1. Within neighborhoods classified as 55' lots, the median number of lots shall be 288.
 - 2. Typical lots:
 - i. May vary in lot frontage width but will always be equal to or greater than 50'.
 - ii. At the minimum front yard setback, the lot shall have a minimum width of 50'.
 - 3. Cul-de-sac lots:
 - i. May vary in lot frontage width but will always be equal to or greater than 27.5'.
 - ii. At the minimum front yard setback, the lot shall have a minimum width of 50'.
 - 4. Irregular lots:
 - i. Defined as lots in a neighborhood classification that due to road curvature design fall below the minimum lot frontage for the neighborhood.
 - ii. May vary in lot frontage but will always be equal to or greater than 45'.
 - iii. At the minimum front yard setback, the lot shall have a minimum width of 50'.
 - 5. Setbacks:
 - i. Front Yard shall be a minimum of 28'.
 - ii. Each Side Yard shall be a minimum of 5'.
 - iii. Rear Yard shall be a minimum of 25'.

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 rear of the property is backed by a neighborhood created storm drain and the neighborhoods "green space". The developer informed us of where our property line was located. Our recent site survey informed us otherwise." (See Exhibits: 3, 17B)

The following issues need to be considered:

- A zoning permit for a single-family dwelling was issued on January 22, 2020. (See Exhibits: 18A-B)
- The applicant purchased the property on June 15, 2020. (See Exhibit: 1C)
- A zoning permit for an (addition) 17.5'x24' roof over existing patio was issued on January 3, 2023. (See Exhibits: 10A-C)

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: "Initially we were informed that the storm drain was not included as part of our property. We have a storm grate located on the rear left corner of the property that was not supposed to be a part of our property and the site survey now shows it is part of our property. According to our site surveyor, our property does not sit parallel to the road. That is why 1 of the pillars meet the requirement and the others do not. Due the property sitting askew, the site surveyor was unable to locate one of the corner property pins and had to manually place one." (See Exhibits: 2, 3, 4D, 10B, 17B, 18B)

The following issues need to be considered:

- The final plat for The Villages of Winding Creek, The Boulevards at Winding Creek Section Seven was recorded February 19, 2019. (See Exhibit: 17A)
- A stormwater drainage easement has been recorded along the entire depth of the eastern property line. This drainage easement has a total width of 20' and is bisected by the property line at width of 10'. (See Exhibits: 3, 10B, 17B, 18B)
- The Winding Run BLVD road design is curvilinear. Multiple lots, most notably Lots 579-589, have rear lot lines that are not parallel with the lot frontage. (See Exhibits: 17B-C, 19, 20)
- The Villages of Winding Creek "R-1APUD" has three frontage width lot types: 55', 70' and 90'. (See Exhibit: 19)
- The subject property:
 - Is identified by account number 0315132: (See Exhibits: 1A-B)
 - Is .1724 acres in size. (See Exhibits: 1A, 3, 17B)
 - The house is 2,518 sq. ft. in size. (See Exhibits: 1A-B)
 - This lot is classified as a 55'lot. (See Exhibit: 19)
 - The lot frontage is 64.96'. (See Exhibits: 3, 10B, 17B, 18B)
 - The minimum required front yard setback is 28'. The single-family dwelling has a front yard setback of 39.57' (40'). (See Exhibits: 3, 10B, 17B, 18B)
 - The minimum required rear yard setback is 25'. The single-family dwelling has a rear yard setback of 39.73'. (See Exhibits: 10B, 18B)
 - The constructed patio roof (addition) is required to meet the same setbacks as the principal structure because it is attached to principal structure. The constructed patio roof (addition) has two posts that encroach into the required 25' rear yard setback: the western post is 22.52' & the center post is 24.05'. (See Exhibit: 3)

- If the structure were not attached to the principal structure, then it would be classified as an accessory structure. Rear yard setbacks for an accessory structure mimic the minimum required side yard setback. The side yard setback for this lot is 5’.
- Seventy (70) properties are within the 500’ notice area. All the properties are located in the Villages of Winding Creek Subdivision “R-1APUD”. (See Location Map, Exhibits: 17A-C, 19, 20, 21A-C, 22A-91B)
 - Lot frontage comparisons:
 - For all lots in the 500’ notice area:
 - The smallest lot frontage is 50.51’. (See Exhibits: 38A-B)
 - The largest lot frontage is 107.75’. (See Exhibits: 74A-B)
 - The average lot frontage is 62.81’ (4,396.75/70). (See Exhibits: 22A-91B)
 - For only the 55’ lots (52 lots):
 - The smallest lot frontage is 50.51’. (See Exhibits: 38A-B)
 - The largest lot frontage is 97.95’. (See Exhibits: 49A-B)
 - The average lot frontage is 58.32’. (See Exhibits: 22A-73B)
 - Lot size comparisons:
 - For all lots in the 500’ notice area:
 - The smallest lot size is .1518 acres. (See Exhibits: 30A-B)
 - The largest lot size is .4275 acres. (See Exhibits: 74A-B)
 - The average lot size is .2168 acres (15.1766/70). (See Exhibits: 22A-91B)
 - For only the 55’ lots (52 lots):
 - The smallest lot size is .1518 acres. (See Exhibits: 30A-B)
 - The largest lot size is .3882 acres. (See Exhibits: 41A-B)
 - The average lot size is .1961 acres (10.1972/52). (See Exhibits: 22A-73B)
 - Minimum lot depth comparisons:
 - For all lots in the 500’ notice area:
 - The smallest lot depth is 119.27’ (one and two lots west). (See Exhibits: 31A-B, 32A-B)
 - The largest lot depth is 242.21’ (four lots west). (See Exhibits: 29A-B)
 - The average lot depth is 148.06’ (10,364.2/70). (See Exhibits: 22A-91B)
 - For only the 55’ lots (52 lots):
 - The smallest lot depth is 119.27’ (one and two lots west). (See Exhibits: 31A-B, 32A-B)

- The largest lot depth is 242.21' (four lots west). (See Exhibits: 29A-B)
 - The average lot depth is 144.91' (7,535.32/52). (See Exhibits: 22A-73B)
 - House size comparisons:
 - For all lots in the 500' notice area:
 - The smallest house size is 1,812 sq. ft. (See Exhibits: 64A-B)
 - The largest house size is 4,029 sq. ft. (See Exhibits: 78A-B)
 - The average house size is 2,803.59 sq. ft. (196,251/70) (See Exhibits: 22A-91B)
 - For only the 55' lots (52 lots):
 - The smallest house size is 1,812 sq. ft. (See Exhibits: 64A-B)
 - The largest house size is 3,424 sq. ft. (See Exhibits: 51A-B)
 - The average house size is 2,702.92 sq. ft. (140,551.84/52). (See Exhibits: 22A-73B)
 - Dwelling front yard setback comparisons:
 - For all lots in the 500' notice area:
 - The minimum required front yard setback is 28'. (See Exhibits: 17A-C, 21A-C)
 - The minimum built front yard setback is 33.39'. (See Exhibits: 48A-B, 84A-C)
 - The maximum built front yard setback is 40'. (See Exhibits: 22A-30B, 33A-47B, 50A-83B, 85A-91B)
 - The average built front yard setback is 39.67' (2,777/70). (See Exhibits: 22A-91B)
 - For only the 55' lots (52 lots):
 - The minimum built front yard setback is 33.39'. (See Exhibits: 48A-B)
 - The maximum built front yard setback is 40'. (See Exhibits: 22A-30B, 33A-47B, 50A-73B)
 - The average built front yard setback is 39.67' (2,062.84/52). (See Exhibits: 22A-73B)
 - Dwelling rear yard setback comparisons:
 - For all lots in the 500' notice area:
 - The minimum required rear yard setback for 55' lots is 25'. (See Exhibits: 17A-C, 21A-C)
 - The minimum required rear yard setback for 70' lots is 32'. (See Exhibits: 17A-C, 21A-C)
 - The minimum built rear yard setback is 26' (one lot west). (See Exhibits: 32A-B)

- The maximum built rear yard setback is 156.22' (four lots west). (See Exhibits: 29A-B)
- The average built rear yard setback is 59.57' (4,169.69/70). (See Exhibits: 22A-91B)
- For only the 55' lots (52 lots):
 - The minimum built rear yard setback is 26' (one lot west). (See Exhibits: 32A-B)
 - The maximum built rear yard setback is 156.22' (four lots west). (See Exhibits: 29A-B)
 - The average built rear yard setback is 57.45' (2,987.40/52). (See Exhibits: 22A-73B)
- Decks and covered porch rear yard setback comparisons:
 - For all the lots in the 500' notice area:
 - Thirteen (13) lots were issued a zoning permit for an attached deck or covered porch. (See Exhibits: 33A-B, 39A-C, 45A-B, 46A-C, 49A-B, 63A-C, 75A-B, 76A-B, 80A-C, 81A-C, 82A-B, 84 A-C, 89A-B)
 - The deck that was approved on Exhibit 33B has been removed. (See Exhibits: 4E, 33A-B, 95C, 95I, 95J). This Exhibit will be removed from the rest of the calculations.
 - The minimum required rear yard setback for 55' lots is 25'. (See Exhibits: 17A-C, 21A-C)
 - The minimum required rear yard setback for 70' lots is 32'. (See Exhibits: 17A-C, 21A-C)
 - The minimum built rear yard setback is 32.11'. (See Exhibits: 49A-B)
 - The maximum built rear yard setback is 68'. (See Exhibits: 63A-C)
 - The average built rear yard setback is 54.26' (651.07/12). (See Exhibits: 39A-C, 45A-B, 46A-C, 49A-B, 63A-C, 75A-B, 76A-B, 80A-C, 81A-C, 82A-B, 84 A-C, 89A-B)
 - For only the 55' lots (6 lots):
 - The minimum built rear yard setback is 32.11'. (See Exhibits: 49A-B)
 - The maximum built rear yard setback is 68'. (See Exhibits: 63A-C)
 - The average built rear yard setback is 50.32' (251.6/5). (See Exhibits: 33A-B, 39A-C, 45A-B, 46A-C, 49A-B, 63A-C)
- No variance requests have been considered in the notice area.
- See staff photos. (See Exhibits: 95A-J)

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

The applicant states: *"We have an HOA approval already in place for the roof."*

The following issues need to be considered:

- See # 2 above.

- The applicant made the initial application to the Villages of Winding Creek HOA on September 27, 2022. The applicant received approval from Towne Properties (HOA management company) on October 19, 2022. On November 20, 2022 the applicant submitted an updated application to the HOA. (See Exhibits: 92A-K, 93, 94)
- November 7, 2022 the Zoning Department found the addition had been constructed. (See Exhibits: 6A-D)
- The applicant has provided a copy of the email thread from Towne Properties from August 10, 2022 to September 27, 2022. (See Exhibits: 92A-K)
- See applicant's photos. (See Exhibits: 4A-F)
- See staff photos. (See Exhibits: 95A-J)

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 encroachment does not affect either neighbor, it only affects the rear property line. 2 out of 3 of the pillars are out of compliance (reference box 1 for exact measurements). The roof is attached to the house, any modification would be very costly and time consuming." (See Exhibit: 3)

The following issues need to be considered:

- See construction drawings. (See Exhibits: 10C, 92C)
- Exhibit 92K is the drawing submitted to the HOA. This drawing shows the posts resting on the patio and located at the edge of the roof.
- Exhibit 7C is the drawing that was initially submitted for a zoning permit. This drawing shows the posts located south of the patio and located just interior to the edge of the roof.
- Exhibit 10C is the revised drawing that was submitted for a zoning permit. This drawing shows the posts resting on the patio and located interior to the edge of the roof.
- The applicant has not provided construction documentation that outlines why the posts are unable to be relocated to meet Exhibit 10C.
- See staff photos. (See Exhibits: 95A-J)
- The Zoning Inspector can allow up to a six (6) inch (or .5') encroachment per Section 5.07 of the Clearcreek Township Zoning Resolution: The accuracy standard used to determine compliance with setback shall be that of a mortgage survey as outlined in the Ohio Administrative Code.
- The variance deals with the reduction of only the rear yard setback for two of the three posts. The eastern post will exceed the required rear yard setback. (See Exhibit: 3)
 - The request for the western post is 22.52' instead of the required 25'.
 - The request is a 2.48' encroachment. (See Exhibit: 3)
 - The request meets 90.08% of the requirement, (22.52/25).
 - The request failed to meet 9.92% of the requirement, (2.48/25).
 - The request for the center post is 24.05' instead of the required 25'.
 - The request is a .95' encroachment. (See Exhibit: 3)
 - The request meets 96.2% of the requirement, (24.05/25).
 - The request failed to meet 3.8% of the requirement, (.95/25).

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

The applicant states: "The developers marked where our property line was when we initially purchased the house. According to the county measurements and the site survey, performed by CESO, the property lines laid out by the developer were inaccurate. We submitted all plans to our residential HOA and they were approved so we proceeded with the build." (See Exhibits: 92A-94)

The following issues need to be considered:

- The September 25, 2023 "as built survey", the Warren County GIS aerial of the property, the Record Plat for The Villages of Winding Creek, The Boulevards at Winding Creek Section Seven, the plot plan submitted as part of the zoning permit process for the single-family dwelling and plot plan submitted as part of the zoning permit process for the addition are geometrically identical. (See Exhibits: 2, 3, 17A-C, 10B, 18B, 92J)
- The plot plan submitted as part of the zoning permit process for the single-family dwelling, the plot plan submitted with The Villages of Winding Creek Architectural Improvement Application and the plot plan submitted as part of the zoning process for the addition all show the drainage easements along the sides and rear of the parcel. (See Exhibits: 10B, 17A-C, 18B, 92J)
- See # 3 & #4 above.

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

The applicant states: "We are a military family so we have moved around quite a bit. We have never encountered any zoning rules such as the ones that exist here in Clearcreek Township. The last property (Ryan Homes) that we owned in Warner Robins, GA had a back porch that was attached to the house. The property was also backed by a storm drain with green space and the property line was about 15ft from the back porch."

The following issues need to be considered:

- Trustee Resolution 3632, a modification to the Stage 2 Approval for The Villages of Winding Creek "R-1APUD" was approved on December 9, 2009. (See Exhibits 5A-J)
- The zoning permit for the single-family dwelling was issued on January 22, 2020 to Ryan Homes. (See Exhibits: 18A-B)
- Per the Warren County Auditor's Website, the owner purchased the property on June 15, 2020. (See Exhibit: 1C)
- The plot plan submitted to The Villages of Winding Creek HOA and the plot plan submitted as part of the zoning process for the addition clearly identify the minimum required setbacks for the front yard, rear yard and side yards. (See Exhibits: 10B, 92J)
 - The drawing submitted with The Villages of Winding Creek HOA fails to call out the proposed rear yard setback from the southern boundary of the addition to the rear property line. (See Exhibit: 92J)
 - Staff updated the rear yard setback dimension on the plot plan that was submitted for the addition zoning permit, based upon the email interaction with the applicant. (See Exhibits: 9A-F, 10B)
- 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 roof does not impede on any other property line than the rear. The rear property line is back by a storm drain and green space owned and maintained by the neighborhood. The roof does not block access to anything. The whole property and its surroundings are accessible.” (See Exhibits: 3, 4A-F, 17A-C)

The following issues need to be considered:

- The Drainage Statement on The Villages of Winding Creek, The Boulevards at Winding Creek Section Seven Record Plat states: “Unless otherwise designated on this plat, a fifteen (15) foot wide drainage easement shall exist along all common rear lot lines and a ten (10) foot wide drainage easement shall exist along all common side lot lines, with the common line being the centerline of the said easement.” (See Exhibits: 3, 17A)
 - The subject property:
 - The western property line has a 5’ drainage easement. (See Exhibits: 3, 10B, 17B)
 - The southern property line has a 7.5’ drainage easement. (See Exhibits: 3, 10B, 17B, 92J)
 - The eastern property line has a 10’ drainage easement (20’ recorded total width). (See Exhibits: 3, 10B, 17B, 92J)
 - The catch basin for the stormwater is located at the southeastern property corner. (See Exhibits: 3, 10B, 17B, 92J)
- The patio roof (addition) is located along the western boundary of the dwelling and does not encroach into any recorded drainage easement. (See Exhibit: 3)
- The patio roof (addition) is located along the western boundary of the dwelling and exceeds the minimum side yard setback. (See Exhibit: 3)
- See construction drawings. (See Exhibits: 10C, 92C)
- See applicant photos. (Exhibits: 4A-F)
- See staff photos. (Exhibits: 95A-J)

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: “My wife and I are both disabled USAF veterans that suffer for severe PTSD. Both of us still serve in a civilian capacity at Wright Patterson AFB. We built this structure with the intent that it would be our place of peace. When we initially moved in, the land developers marked where our property line was so we built accordingly. Our neighbor even had a fence built where the proposed property line is located. After the site survey was performed, we have found that their fence is encroaching on our property by a foot. This structure was built during COVID lockdown times, materials and labor were incredibly high priced and communication with anyone was challenging or restricted. We have inquired on how much it would cost us to alter the build of this structure and it would be a minimum of \$5K. We followed the rules that were put in place by the neighborhood HOA, once we were approved by the HOA, they told us that we could proceed with building. We had 0 intent of breaking any rules or regulations enforced by anyone. This structure has been in place since July 2021. We were not made aware that we were breaking any rules/regulations till Nov 2022. We apologize for any hardship/headache that this has caused anyone.” (See Exhibits: 92A-94)

The following issues need to be considered:

- See # 3 above.
- The applicant has provided the October 2023 updated application to the HOA that has been updated from the 2022 application to include contact information for Clearcreek Township Zoning and “zoning permit”. (See Exhibits: 96A-C)
- **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.