

Case Number: 24-BZA-003

Type of Appeal: Non-Conformance Hearing

Applicant: Matthew Centers

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

Report Date: March 22, 2024

Hearing Date: April 9, 2024

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

Description of Property:

The address of the property is 5385 N SR 48. The property is 6.094 acres in size. The property is identified by parcel id 09-35-327-001 and account number 0203173. The parcel is located in Section 35, Town 4 and Range 4 in Clearcreek Township. The property is zoned Open Space Rural Residence Zone “OSR-1”. The request is to allow an addition to the existing single-family dwelling that is located on a parcel that doesn’t have lot frontage on public road right-of-way. The parcel is accessed via an access easement. The existing structure and parcel are classified as legal non-conforming uses, Sections 5.02, 5.10, and 21.01(D) of the Clearcreek Township Zoning Resolution. (See Exhibits: Location Map, 1A-O, 2)

Nature of the Request:

Applicant states: “Seeking approval to pursue an addition to existing footprint of the house, which will consist of 2 bedrooms, a full bath, a walk-in closet and a laundry room.” (See Exhibits: 3A-D)

Background on the Nature of the Request

Staff Comments:

The request is to allow a 26’4”x32’4” addition to the existing single-family dwelling that is located on a parcel that doesn’t have lot frontage on a public road right-of-way. The property is accessed through parcel 09-35-327-0020. The parcel was purchased on March 30, 2018 (See Exhibits: Location Map, 1C, 1H, 1K, 4C, 4E).

The Clearcreek Township Zoning Resolution was voted into its current format on November 6, 1973. Sections 5.02 and 5.10 have existed in this form and content since that time. (See Exhibits: 5A-B)

In 1955 the parcel was 8.944 acres in size, see Survey 8 Page 259, Deed Vol. 242 Pages 115-117. The 50’ wide private access easement was established at this time to provide access to adjoining parcels to the north and west. (See Exhibits: 1K-N)

In 1985 Survey 13 Page 33 was filed, that eliminated the road frontage for the subject parcel and created Tract I (1.78 acres) and Tract II (1.07 acres). (See Exhibit: 4C) In 1988, Deed Vol. 463 Pages 645-647 described Tract I and Tract II as being separate from the 8.944 acre parcel and reduced the size to 6.094 acres. (See Exhibits: 4D-F) A review of the Warren County Regional Planning’s files failed to provide lot split application for Tract I and Tract II. Since the subject property’s remaining acreage was above five (5) acres it was not required to be reviewed by the Warren County Regional Planning Commission.

Part of the subject parcel contains the privately held identified right-of-way (access easement). The remaining access easement is contained on parcel 09-35-327-002. According to Deed Survey Record 8 Page 259, recorded May 7, 1955, a fifty (50) foot wide right-of-way runs from State Route 48 across the through the subject property. (See Exhibits: 1K, 4C). The right-of-way was privately transferred and isn’t

a dedicated public road. Thus, the property has access but not road frontage. This easement can also be found on Survey Record Vol 13 Plat No 33 and Vol 29 Plat No 53. (See Exhibits: 4C, 23E)

On December 14, 2020, via Trustee Resolution 5275 the zoning resolution was updated to better address non-conforming uses. The first update was a modification to the Residence Zone “R-1”: Section 5.754(A). The second update established Section 27.02 Non-Conforming Uses. (See Exhibits: 6A-C)

The house is oriented with the front door toward the access easement. Staff is unable to declare which boundary should be classified as front, side and rear since no lot frontage exists. The proposed addition will be located further away from the eastern boundary than the current eastern setback. Staff was unable to use Sections 5.754 or 27.02 to address the requirements of Sections 5.02, 5.10 of the Clearcreek Township Zoning Resolution. Therefore, the applicant is seeking Board of Zoning Appeals Review as identified in Section 21.01(D) of the Clearcreek Township Zoning Resolution. If this request is approved by the Board of Zoning Appeals, staff would then be able to issue a zoning permit for the proposed addition.

DEFINITIONS

- 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. 3.16** **Building, Permanent:** Any structure designed or intended for support, enclosure, shelter or protection of persons, animals, chattels, or property.
- SEC. 3.18** **Build Setback Line:** A line across the width of a lot or tract of ground, said line drawn concentric with, in the case of a curve, or parallel with the frontage line. It shall be set back from the frontage line, the minimum distance required in the regulations pertaining to the zone in which the lot or tract is located.
- SEC. 3.25** **Dwelling:** A building or portion thereof designed, constructed or intended for human habitation, but not including a tent, cabin, trailer or trailer coach or camper on truck.
- SEC. 3.29** **Dwelling, Single Family:** A building designed to provide a dwelling unit exclusively for use and occupancy by one (1) family.
- SEC. 3.44** **Lot:** A parcel of land having its frontage upon a public street or road.
- SEC. 3.442** **Lot, Building:** A lot or parcel of land, occupied or intended to be occupied by a principal structure that has been lawfully created and meets all criteria required by the underlying zoning classification.
- SEC. 3.48** **Lot, Frontage:** The frontage of a lot is the length of the boundary of a lot that is coincident and in common with that of the road right-of-way of a public street, road or highway that it abuts.
- SEC. 3.54** **Non-Conforming Lot:** A lot of record existing at the date of the passage of this Code which does not have the minimum width or contain the minimum area for the zone in which it is located.

- SEC. 3.55** **Non-Conforming Structure:** Lawful structure which exists upon the adoption or amendments of this Code that could not be built under the terms of this Code by reason of restrictions on area, lot coverage, height, yards or other characteristics of the structure, or its location on the lot.
- SEC. 3.56** **Non-Conforming Use:** The use of any structure or land lawfully occupied and maintained, which does not conform with the use regulation or required conditions for the district in which it is located, by reason of adoption of this Code or amendments thereto.
- SEC: 3.642** **Right-of-Way:** A strip of land acquired by easement, reservation, dedication, road establishment, prescription, eminent domain, fee simple or condemnation for public access and intended to be comprised of road pavement, drainage elements and possible presence of utilities.
- SEC. 3.69** **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
GENERAL PROVISIONS**

- SEC. 5.02** No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used which does not comply with all of the regulations established by this Code for the zone in which the building or land is located.
- SEC. 5.10** In every zone, any structure erected or structure altered, or any permitted use, shall be located on a lot or tract having the frontage required by this Code on a dedicated, improved street or road.

**CHAPTER 5.5
OPEN SPACE RURAL RESIDENCE ZONE "OSR-1" REGULATIONS**

SEC. 5.54 PRINCIPAL STRUCTURE, REQUIRED YARDS FOR LOTS EXCEPT PANHANDLE LOTS:

- A.** There shall be a front yard having a depth of not less than one hundred (100) feet except for Open Space Dedication Option Development (OSDOD) lots which shall have a minimum front yard of fifty (50) 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 Open Space Dedication Option Development (OSDOD) lots which shall have a minimum side yard of ten (10) feet on each side.
- 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. 5.55 INTENSITY OF USE: Every lot or tract, except Open Space Dedication Option Development (OSDOD) and a panhandle lot, shall have a minimum continuous frontage and width of not less than one hundred forty (140) 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 seventy (70) feet, and a minimum width of one hundred forty (140) feet at the minimum building setback line and:

- A. Every lot or tract, except Open Space Dedication Option Development (OSDOD)** 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 two (2) acres 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 rail-road easements.

BOARD OF ZONING APPEALS

SEC. 21.01 (D) *NON-CONFORMING USES:*

The Board shall have the power to authorize the completion, restoration, reconstruction, in whole or in part, extension, or substitution of non-conforming uses; taking into consideration the nature of such uses in relationship to the character of adjacent uses, lot size, set back lines, traffic conditions, terrain and all other factors which, in the opinion of the Board, are pertinent to such completion, restoration, reconstruction, extension or substitution.

ENFORCEMENT

SEC. 27.02 *Non-Conforming Uses:*

The zoning inspector shall have the power to authorize the completion, restoration, reconstruction, in whole or in part, extension, or substitution of non-conforming uses, when the location of a proposed building does not encroach any further into a required setback.

Review of Application:

Expansion of Non-Conforming Use Hearing:

1. Nature of such use in relationship to the character of adjacent uses:

The applicant states: "Seeking approval to pursue an addition to existing footprint of the house, which will consist of 2 bedrooms, a full bath, a walk-in closet and a laundry room." (See Exhibits: 2, 3A-D)

The following issues need to be considered:

- Zoning Classifications for Adjoining Properties in the 500' notice area:
 - North of the property the zoning classifications are:
 - Open Space Rural Residence Zone "OSR-1". (Vacant) (See Exhibits: Location Map, 7, 24A)
 - Residence Zone "R-1" (Single-family dwelling that uses access easement). (See Exhibits: Location Map, 7, 23A, 25A)
 - Residence Zone "R-1" (Orchard Meadows Subdivision, single-family dwellings) (See Exhibits: Location Map, 7, 19A, 20A, 21A, 22A, 26A, 27A, 28A)
 - West of the property the zoning classifications are:
 - Open Space Rural Residence Zone "OSR-1" (Agricultural land, a single-family dwelling without lot frontage). (See Exhibits: Location Map, 7, 29A, 30)
 - South of the property the zoning classification is:
 - Open Space Rural Residence Zone "OSR-1" (Single-family dwellings). (See Exhibits: Location Map, 7, 11A, 14A)
 - Residence Zone "R-1" (Single-family dwellings). (See Exhibits: Location Map, 7, 12A, 13A)
 - East of the property the zoning classifications are:

- Residence Zone “R-1” (Single-family dwellings that uses access easement). (See Exhibits: Location Map, 7, 4A)
 - Residence Zone “R-1” (A single-family dwellings). (See Exhibits: Location Map, 7, 8A, 9A, 10A)
 - Open Space Rural Residence Zone “OSR-1” (Agriculture, single-family dwellings). (See Exhibits: Location Map, 7, 15A, 16, 18A)
 - Residence Zone “R-1” (Warren County Commissioner utility parcel) (See Exhibits: Location Map, 7, 17)
- In the 500’ notice area, three (3) types of property exist:
 - Properties described to the center of the public road right-of-way.
 - The road right-of-way is in the form of an easement across the front of the property. (See Exhibits: 7, 4A, 8A, 9A, 10A, 11A, 12A, 13A, 14A, 15A, 16, 17, 18A)
 - Property described to the edge of the public road right-of-way.
 - The road right-of-way is coincident to the property but held independent of the property. (See Exhibits: 7, 19A, 20A, 21A, 22A, 26A, 27A, 28A)
 - Property described without lot frontage on a public right-of-way.
 - The State Route 48 private access easement provides access to several properties. (See Exhibits: 7, 23A, 24A, 25A, 29A)
 - An adjacent property is accessed through another property on Bunnell Hill Road. (See Exhibits: 7, 30)
- For lots that have lot frontage, zoning measures the front yard setback from the closest vertical support for the building to the lot frontage/road right-of-way, not the front of the property or the edge of pavement.
- For lots that do not have lot frontage, the Board of Zoning Appeals will classify the location of the front, side(s) and rear yard at the time of the requested non-conformance hearing.
- Subject property is account number 0203173:
 - The lot size is 6.0940 acres. (See Exhibits: 1A, 1G, 1H)
 - The total living area for the dwelling is 1,770 sq. ft. (See Exhibits: 1A-B)
 - The total area for the dwelling footprint is 2,558 sq. ft. [1,770 sq. ft. (house) + 128 sq. ft. (open porch), + 440 sq. ft. (garage) + 220 sq. ft. (enclosed porch)] (See Exhibit: 1B)
 - The applicant is requesting a 26’4”x32’4” (851.44 sq. ft.) master bedroom, master bath, master closet, bedroom and laundry be added to the southwestern corner of the house. (See Exhibits: 2, 3A-D, 31)
 - An existing bedroom will be converted into an office. (See Exhibit: 3B)
 - If approved, the total living area for the dwelling would increase to 2,621.44 sq. ft. [1,770 (house) + 851.44 (proposed addition)] (See Exhibits: 1A-B, 3A-D)

- The exterior of the house is classified as combination (brick and siding). (See Exhibits: 1A-B)
 - The drawings depict the addition to be board-n-batten siding. It is unclear if the exterior of the existing home will be updated or if only the addition will have this exterior. (See Exhibit: 3C)
 - See staff photos for existing exterior materials. (See Exhibits: 35A-D)
- Five (5) parcels in addition to the subject parcel use the private access easement: (See Exhibits:)
 - The average single-family dwelling setback along the private accesses easement is 85.67' (257/3) The average house size is 1,668.67 sq. ft. (5,006/3). (See Exhibits: 32, 4A, 23A, 24A, 25A, 29A)
 - Account 0202118, N SR 48 is 5.387 acres in size, barn is approximately 116' from the private access easement. (See Exhibits: 32, 24A)
 - Account 0202088, 5387 N SR 48 is .6010 acres in size, house is 1,740 sq. ft. in size and is approximately 38' from the private access easement. (See Exhibits: 32, 25A, 25E)
 - Account 0202096, 5383 N SR 48 is .83 acres in size, house is 1,294 sq. ft. in size and is approximately 73' from the private access easement. (See Exhibits: 32, 23A)
 - Account 0200913, 5381 N SR 48 is 2.85 acres in size, house is 1,972 sq. ft. in size and is approximately 146' from the private access easement and approximately 362' from the lot frontage on SR 48. (See Exhibits: 32, 4A)
 - Account 0201618, 5389 N SR 48 is 35.233 acres in size, house is 2,100 sq. ft. in size and is approximately 755' from the private access easement. (See Exhibits: 32, 29A)
 - One (1) parcel is without road frontage but doesn't use the private access easement for access:
 - Account 0204188, Bunnell Hill Rd is 20.548 acres in size, no dwelling. (See Exhibits: 32, 30)
 - Nine (9) parcels are unplatted with single-family dwellings:
 - The average single-family dwelling front yard setback is 474' (4,270/9). The average house size is 2,227.67 sq. ft. (20,049/9). (See Exhibits: 32, 8A, 9A, 10A, 11A, 12A, 13A, 14A, 15A, 18A)
 - Account 0200174, 5305 N SR 48 is .9018 acres in size, house is 1,200 sq. ft. in size and the front yard setback from SR 48 is approximately 340'. (See Exhibits: 32, 8A)
 - Account 0200921, 5327 N SR 48 is .851 acres in size, house is 1,919 sq. ft. in size and the front yard setback from SR 48 is approximately 144'. (See Exhibits: 32, 9A)
 - Account 0200905, 5309 N SR 48 is .92 acres in size, house is 1,674 sq. ft. in size and the front yard setback from SR 48 is approximately 254'. (See Exhibits: 32, 10A)
 - Account 0210137, 5267 N SR 48 is 5.001 acres in size, house is 1,793 sq. ft. in size and the front yard setback from SR 48 is approximately 749'. (See Exhibits: 32, 11A)
 - Account 0215099, 5257 N SR 48 is 3.4758 acres in size, house is 3,869 sq. ft. in size and the front yard setback from SR 48 is approximately 819'. (See Exhibits: 32, 12A)
 - Account 0211443, 5253 N SR 48 is 1.5253 acres in size, house is 2,360 sq. ft. in size and the front yard setback from SR 48 is approximately 170'. (See Exhibits: 32, 13A)
 - Account 0210404, 5223 N SR 48 is 5.001 acres in size, house is 3,098 sq. ft. in size and the front yard setback from SR 48 is approximately 673'. (See Exhibits: 32, 14A)

- Account 0215159, 5162 N SR 48 is 2.8170 acres in size, house is 1,884 sq. ft. in size and the front yard setback from SR 48 is approximately 0'. (See Exhibits: 32, 15A)
- Account 0215161, 5460 N SR 48 is 30.6058 acres in size, house is 2,252 sq. ft. in size and the front yard setback from SR 48 is approximately 1,121'. (See Exhibits: 32, 18A)
- Seven (7) parcels are platted in the Orchard Meadows Subdivision:
 - The average single-family dwelling front yard setback is 53' (370/7) The average house size is 2,390.57 sq. ft. (16,734/7). (See Exhibits: 32, 19A, 20A, 21A, 22A, 26A, 27A, 28A)
 - Account 215138, 5477 Spring Blossom Dr is 1.5887 acres in size, house is 2,610 sq. ft. in size and the front yard setback on SR 48 is approximately 52', the front yard setback from Spring Blossom Dr is approximately 68'. (See Exhibits: 32, 19A)
 - Account 215137, 5491 Spring Blossom Dr is 1.0733 acres in size, house is 2754 sq. ft. in size and the front yard setback from Spring Blossom Dr is approximately 50'. (See Exhibits: 32, 20A)
 - Account 215136, 5505 Spring Blossom Dr is 1.0718 acres in size, house is 2,185 sq. ft. in size and the front yard setback from Spring Blossom Dr is approximately 50'. (See Exhibits: 32, 21A)
 - Account 215135, 5525 Spring Blossom Dr is 1.0722 acres in size, house is 2,262 sq. ft. in size and the front yard setback from Spring Blossom Dr is approximately 50'. (See Exhibits: 32, 22A)
 - Account 215134, 5547 Spring Blossom Dr is 1.3645 acres in size, house is 2,150 sq. ft. in size and the front yard setback from Spring Blossom Dr is approximately 50'. (See Exhibits: 32, 26A)
 - Account 215133, 5561 Spring Blossom Dr is 1.0842 acres in size, house is 2,533 sq. ft. in size and the front yard setback from Spring Blossom Dr is approximately 52'. (See Exhibits: 32, 27A)
 - Account 215132, 5579 Spring Blossom Dr is 1.3292 acres in size, house is 2,240 sq. ft. in size and the front yard setback from Spring Blossom Dr is approximately 50'. (See Exhibits: 32, 28A)
- Three (3) Non-Conformance Hearings have been considered in the 500' notice area and located along the private access easement.
 - Account 0202088 had a request to allow an addition to the existing single-family dwelling, 22-BZA-008. The request was approved. (See Exhibits: 25C-D)
 - Accounts 0202088 and 0202118 had a request to designate Spring Blossom as meeting the definition of lot frontage and intensity of use provision, 09-BZA-004. The request was denied. (See Exhibits: 24B-C)
 - Account 0202096 had a request to establish an accessory structure, 07-BZA-005. The request was approved. (See Exhibits: 23C-D)

2. Lot size:

The applicant states: “Current lot size is 6.094 acres which allows sufficient space for the proposed addition.” (See Exhibits: 1A, 2, 31)

The following issues need to be considered:

- The minimum lot size for the Open Space Rural Residence Zone “OSR-1” Zone with on-lot septic is two (2) acres. See 5.55 (A) above.
- See # 1 above.

3. Set back lines:

The applicant states: “The proposed addition will not encroach on any set back lines identified in the Clearcreek Township zoning code.” (See Exhibits: 2, 31)

The following issues need to be considered:

- The Open Space Rural Residence Zone “OSR-1” minimum front yard setback is 100’, side yard setback is 25’ and rear yard setback is 40’. See 5.54 above.
- The front yard setback is the distance from the lot frontage to the closest vertical support for the building. See Section 3.74 above. Since the lot frontage doesn’t exist, the front, side and rear yard will need to be designated by the Board of Zoning Appeals.
- The applicant provided a site plan: (See Exhibit: 2)
 - The location of the addition is identified.
 - The scale of plan is 1:2,257’.
 - The area between the eastern property line and the house is labeled front yard.
 - The area between the western property line and the house is labeled rear yard.
 - The area south of the house is labeled leach field.
- Staff updated an aerial with a scale of 1’=100’: (See Exhibit: 31)
 - The existing home:
 - Northern boundary setback is approximately 242’ to the property line or 192’ from the 50’ access easement.
 - Southern boundary setback is approximately 400’.
 - Eastern boundary setback is approximately 150’.
 - Western boundary setback is approximately 170’.
 - Addition:
 - Western boundary setback is approximately 370’.
 - Southern boundary setback is approximately 155’.
- See staff photos. (See Exhibits: 35A-D)

4. Traffic conditions:

The applicant states: "Traffic condition will not be influenced, harmed, or interrupted in any way as a result of the proposed addition."

The following issues need to be considered:

- The single-family dwelling use remains the primary use for the property.
- Thus the 10.062 Average Trip Rate for a Weekday, as per the 6th Edition of the Trip Generation, from the Institute of Transportation Engineers, 1987 would still be applicable. (See Exhibits: 33A-B)

5. Terrain:

The applicant states: "Terrain is largely unaffected. The current structure has an exterior stairwell which will be removed as a result of the addition. Furthermore, the proposed addition has egress windows in lieu of an exterior stairwell, as recommended by the architect, due to grade restrictions." (See Exhibits:)

The following issues need to be considered:

- The topography of the lot ranges from 904' to 930'. (See Exhibit: 34)
- The topography at the location of the proposed addition ranges from 924 to 926'. (See Exhibit: 34)

6. Other factors you consider important to the judgment of your case:

The applicant states: "We purchased this property almost six years ago with the hope of someday pursuing an addition as our kids got older. We absolutely love the property, but would very much like to expand the overall square footage of our home to allow our daughter her own bathroom, and allow the boys to have their own rooms. In addition, we would love to have an office to have a dedicated space for homework and any virtual work that my wife and I should have to accomplish. In summary, we believe the areas addressed above would be unaffected by the proposed addition, and would be of great value to our family as we continue to raise our kids in this home."

The following issues need to be considered:

- See building drawings. (See Exhibits: 3A-D)