

**Case Numbers:** 17-BZA-003

**Request:** Variance

**Applicant:** James & Tara Luers

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

**Report Date:** March 21, 2017

**Hearing Date:** April 11, 2017

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

**Description of Property:**

The address of the property is located at 1668 W. Pekin Rd. The property is 16.305 acres in size. The property is identified by parcel id 08-10-100-021 and account number 0660194. The parcel is located in Section 10, Town 3 and Range 4 in Clearcreek Township. The property is zoned Open Space Rural Residence Zone “OSR-1”. (See Exhibits: Location Map, 1A-F, 2A-F)

**Nature of the Request:**

The applicant states: “We (James and Tara Luers) propose to build a retirement house, to be occupied by us, on the property we own adjacent to our present dwelling. We plan to build the house on the road side of the pond which is the only feasible and desirable place for the house. Presently the zoning regulations for this property require a house setback of 100 ft from the 20 ft easement that extends from the edge of Pekin road. With the existing pond and barn structures, a 100 ft. setback is impossible, since it would place the house in the pond. We request a variance for this property to permit a house to be built with a 50 ft. setback from the easement boundary which would result in a 70 ft. setback from the edge of Pekin road.” (See Exhibits: Location Map, 3)

**Background on the Nature of the Request**

Staff Comments:

The applicant is requesting a variance to allow a single family dwelling to have a 50’ front yard setback instead of the required 100’ front yard. In the OSR-1 Zone there are two standards for development: 1. Regular development (meet the minimum lot size and setback when creating a subdivision). This has a 100’ front yard setback and 2. Open Space Dedication Option Development (OSDOD) (owner dedicates open space as part of the subdivision creation and then is able to meet a smaller lot size and setback when creating a subdivision). This has a 50’ front yard setback. The applicant is not seeking to further subdivide the property. The applicant is seeking to establish one home on the parcel.

The following Sections: 3.74, 5.02, 5.54 (A) 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. 3.46** **Lot, Coverage:** The area of a zoning lot occupied by the principal building or buildings and accessory buildings.
- 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. 3.73** **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.

## **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.

## **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.

*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: “A house could not be placed on the other side of the pond without serious modifications. It is not possible to but a driveway around either side of the pond.”

The following issues need to be considered:

- The applicant has illustrated the location of the proposed dwelling. (See Exhibit: 3)
- The parcel has two agricultural barns, a pond and fields of pine trees. (See Exhibits: 1E, 3, 30A-H)
- The applicant is requesting to use the OSR-1 OSDOD or the R-1 zone 50’ front yard setback in order to construct a house between the pond and the road right-of-way.
- The road right-of-way comprises the first 28’ of the property. (See Exhibits: 3, 4)
- The eastern boundary of the pond at the dock to the eastern property line is a little over 1’. (See Exhibit: 4)
- The western boundary of the pond to the western property line per the aerial and topography map is approximately 61’. However during the site visit staff found that the pond narrows to a drainage swale between the western boundary of the pond and the western property line. (See Exhibits: 4, 5, 30C-E)
- The pond has a varied setback from the road right-of-way. The range is 71’ to 126’. (See Exhibit 4)
- The topography for the western side of the pond starts at 890’ at the road right-of-way, falls to 880’ at the pond and rises to 890’ at the barn. (See Exhibits: 5,6)

*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: “We have owned the land since 1969. The pond was built in the 1970’s and the barn in the 1800’s. The hardship results because the zoning regulations were changed after the pond and barn were already in existence.”

The following issues need to be considered:

- On November 6, 1973 the property was zoned Rural Residence Zone “R-1”. The minimum front yard setback was 50’. (See Exhibits: 7A-D)
- On November 10, 2005 the property was zoned Open Space Rural Residence Zone “OSR-1”. In the OSR-1 Zone there are two standards for development: 1. Regular development (meet the minimum lot size and setback when creating a subdivision). This has a 100’ front yard setback and 2. Open Space Dedication Option Development (OSDOD) (owner dedicates open space as part of the subdivision

creation and then is able to meet a smaller lot size and setback when creating a subdivision). This has a 50' front yard setback. (See Exhibits: 8A-J)

- The applicant has not applied for a zone change to the Residence Zone “R-1” which has a 50' front yard setback.
- The applicant is not dedicating 30% of the acreage as open space and is not seeking to create a subdivision with the reduced 50' front yard setback.

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

The applicant states: “This is a rural neighborhood with houses unevenly spaced. For example our present home sites back 300 ft while our immediate neighbor’s home to the east sits back about 100 ft.”

The following issues need to be considered:

- In the five hundred (500) foot notification area, there are 21 properties. (See Exhibits: 500 Notice Map, 9-29)
  - For comparison purposes:
    - Seventeen (17) properties have frontage on Pekin Road (See Exhibits 9-11, 16-29)
      - Average house size is 2,649.06 sq. ft. (42,385/16)
      - One (1) property is vacant.
      - Setbacks:
        - Under 100': 1 property.
        - Over 100' but less than 500': 6 properties.
        - Over 500': 9 properties.
      - Acreage:
        - Under 5 acres: 7 properties.
        - Five acres but less than 15 acres: 8 properties.
        - Fifteen acres and above: 2 properties.
    - Two (2) properties have frontage on Music Place. (See Exhibits: 12-13)
      - Average house size is 3,294 sq. ft. (5,188/2)
      - Setbacks:
        - Under 100': 2 properties.
      - Acreage:
        - Under 5 acres: 2 properties.
    - Two (2) properties have frontage on State Route 741.(See Exhibits: 14-15)
      - Average house size is 960 sq. ft. (960/1)
      - One property is vacant.
      - Setbacks:
        - Under 100': 1 property.
      - Acreage:

- Fifteen (15) acres and above: 2 properties.
  - No variances have been requested in the five hundred (500) foot notification area.
- See staff photos for reference of the site. (See Exhibits: 30A-H)

*4. It is not enough to show that the effects of a variance would be harmless. Real, unnecessary hardship must still be established by the applicant:*

The applicant states: “Putting a driveway bridge over the pond for building on the other side of the pond is not practical due to the topography of the land and the extent of the pond. Placing the house on the other side of the pond could result in difficulties for emergency vehicles to enter in severe weather.”

The following issues need to be considered:

- See staff response to Question 1 regarding topography.
- It appears that the gravel drive from account 0611147 has been used to access the barns and the area behind the pond. It also appears that the applicant has used his driveway to access the parcel. (See Exhibits: 3, 5, 30H)
- The zoning resolution requires a minimum amount of road frontage, but doesn’t require that the parcel be accessed only by the road frontage. Owners are allowed to access their property via an access easement.
- Front yard setback is a 50% encroachment (100’-50’).

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

The applicant states: “Building of pond in the 1970’s and the barn in the 1800’s was prior to new zoning regulations.”

The following issues need to be considered:

- The applicant has over sixteen (16) acres on which he could build a single family dwelling after meeting the required setbacks for the Open Space Rural Residence Zone “OSR-1”.
- See staff response to Question 4 regarding access.
- See staff response to Question 2 regarding zoning history.

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

The applicant states: “Property was acquired in the 1969-prior to zoning regulations. The property is CAUV agriculture and is used to grow Christmas Trees (Timberwind Tree Farm).”

The following issues need to be considered:

- Agriculture can occur in any of the zoning classifications, because it is exempt from zoning.
- According to the Warren County Auditor's Website there is sales history for the parcel that is dated 3-4-2013. This because the applicant since 2005 surveyed the property several times. The March 1, 2013 survey consolidated acreage back to the original parcel and then he subdivided the parcel. (See Exhibits: 1D, 31-34)
- On October 14, 2005 the applicant filed a survey to subdivide the house at 1650 Pekin Road (Account 0643414) and a panhandle property (re-surveyed by Volume 139 Page 45 on March 1, 2013, account 0611147) from the subject property. Since this filed survey predated the final action by the Trustees and the required referendum period, it was able to be processed as a Residence Zone "R-1" request for lot size. (See Exhibits: 500' Notice Area, 9, 17, 18, 31-34)
- Since October 14, 2005 the subject property has had two points of road frontage: 1. The 77.62' is contained between account number 0611147 and account number 0643414. 2. The 337.60' is contained between account number 0643414 and account number 0643415. (See Exhibits: 500' Notice Area, 3, 9, 17, 18, 31-33)

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

The applicant states: "A variance would not affect the ambiance of the neighborhood."

The following issues need to be considered:

Consider whether the spirit and intent as identified in the Clearcreek Township Zoning Resolution 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: “James and Tara Luers are a retired couple that plan to build a senior friendly, single story home adjacent to their existing two-story home. The planned home (see attachment) would be about 1500 sq. ft. with an attached garage and basement. Presently two of their son’s families live on properties adjacent to this property and a third son’s family lives immediately across the street. It is James and Tara’s desire to spend the rest of their lives living in close proximity to children of theirs.” (See Exhibits: 3, 35A-D)

The following issues need to be considered:

- See conceptual drawings of proposed dwelling:
  - 1,540 sq. ft living area.
  - House is 52’ wide.
  - House is 57’ deep. (See Exhibits: 35A-D)

**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 condition or limitation shall be a violation of this resolution.