

Case Numbers: 17-BZA-010

Request: Variance

Applicant: Roger Eckert

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

Report Date: September 26, 2017

Hearing Date: October 10, 2017

Current Zoning of Property: Suburban Residence Zone "SR-1"

Description of Property:

The address of the property is 2850 Beal Rd. The property is 31.9745 acres in size. The property is identified by parcel id 08-18-151-007 and account number 0604957. The parcel is located in Section 18, Town 3 and Range 4 in Clearcreek Township. The property is zoned Suburban Residence Zone "SR-1". (See Exhibits: Location Map, 1A-E)

Nature of the Request:

The applicant states: "To obtain for two legal connections between Beal Road and a 13.03 acre tract of old growth woods along the shore of Clear Creek. These connections also facilitate a shared vehicular access to the woods and 3 future parcels. This variance is request to reduce the financial hardship created by 1. conforming to the essential character of the neighborhood, and 2. maintaining access to a spectacular tract of old growth woods near Clear Creek for possible future conveyance to the Township or another public agency as a preserve for biological study, and 3. meeting the County Engineer's curb cut limitations. The greater parcel is very deep and landlocked, and minor variances from the zoning resolution are necessary for its logical development. The variance requested is 1. to allow the first 500 feet of the lot to be 50' in width, which is in excess of the 40' limitation, 2. to allow the narrow portion of the lot to be approximately 1400' long overall, as shown, and 3. to find that the access to the eastern lot is not "stacking." (See Exhibits: Location Map, 1E, 2)

Background on the Nature of the Request

Staff Comments:

The applicant is requesting multiple variances to allow the creation of two panhandle lots along the northern and northeastern boundaries of his property. The request is to create two panhandle lots with greater than the maximum amount of road frontage, greater than the maximum handle length and to not classify the panhandle lots as stacked. If approved the lots would be able to be used as single family home sites.

The following Sections: 3.48, 5.02, 5.10, 6.57 (A), 6.57 (B) and 6.57 (C) 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. 3.561** **Panhandle Lot:** A lot whose only frontage on a public street is through a narrow strip of land which is wide enough to accommodate a driveway, but too narrow to accommodate any structures. The narrow strip of land is referred to as the panhandle and the balance of the lot is referred to as the body.
- SEC. 3.60** **Public Street or Road:** One that has been dedicated whether or not it had been constructed to county standards as approved by the County Engineer and accepted by the County Commissioners.
- 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. 3.73** **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.

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.

SUBURBAN RESIDENCE ZONE "SR-1" REGULATIONS

SEC. 6.57 PANHANDLE LOTS ARE PERMITTED SUBJECT TO THE FOLLOWING REGULATIONS:

- A. Panhandle lots shall not be "stacked" one behind the other relative to a street or road.
- B. The panhandle portion of the lots shall have a minimum frontage and continuous width of twenty (20) feet and a maximum frontage and width of forty (40) feet.
- C. The panhandle portion of the lots shall have a maximum length of five hundred (500) feet.
- D. The body of the lot shall have a minimum area that meets the minimum lot size established in Section 6.55 (A) or 6.55 (B) and is exclusive of the panhandle portion of the lot.
- E. The body shall have a minimum width of one hundred twenty-five (125) feet and a minimum depth of two hundred (200) feet.
- F. All structures shall be built only within the body of the panhandle lot.
- G. The principal structure shall have a minimum front yard of fifty (50) feet, rear yard of fifty (50) feet and a side yard of twenty (20) feet minimum each side.
- H. Any accessory structure shall have a minimum front yard of fifty (50) feet, rear yard of twenty (20) feet and a side yard of twenty (20) feet minimum each side.

The standard for approval of a variance is "Unnecessary Hardship". In determining whether or not unnecessary hardship exists, the Board of Zoning Appeals will consider the following factors. Please indicate below how this variance meets each standard.

Review of Application:

Evaluation of the Variance:

1. The hardship must remove all profitable use from the land. It is not a sufficient hardship if the land would be more valuable with the variance, or less valuable without the variance. Instead, there must be evidence that the property is unsuitable to any of the permitted uses as zoned:

The applicant states: "It is nearly impossible to remove all profitable use from land. The Eckerts have lived on this farm for 48 years, restoring the original 1825 quaker farmhouse and raising three children. This variance request must be considered in the context of the owners' intention to maintain the low-density character of the neighborhood despite zoning that allows for one-acre lot development. The owners intend to transfer the two parcels of old growth woods to a public agency for perpetual use as a biological reserve at

such time that they determine that they will not need to sell them during their lifetimes. The property from which these parcels are to be subdivided extends for approximately 2000 feet from Beal Road. Maintaining two legal connections to Beal Road is necessary to make the sale of the old growth woods feasible in the event that the Eckerts cannot afford to give it away. All vehicular access to Beal Road will follow a shared easement that will include the narrow portions of the two lots for which this variance is sought.”

The following issues need to be considered:

- The subject parcel is one of the parcels owned by the Eckert Family. In 1969 the subject parcel was 61.282 acres. (See Exhibits: 1E, 2, 3)
- In 1987 the parcel was reduced to 50.727 acres. (See Exhibits: 1E, 2, 4)
- In 1991 the parcel was affirmed to be 50.728 acres. (See Exhibits: 1E, 2, 5)
- In October 2013 the parcel was reduced by 16.635 acres. Staff calculates the parcel to be 34.092 acres. (See Exhibits: 1E, 2, 6, 9)
- In November 2013 the parcel was reduced by 2.1185 acres. Staff calculates the parcel to be 31.9735 acres. (See Exhibits: 1E, 2, 7, 9)
- In 2016 the parcel was reduced by 4.0139 acres. Staff calculates the parcel to be 27.9596 acres. (See Exhibits: 1E, 2, 8, 9)
- The subject property is the remaining acreage of the Eckert holding located in Clearcreek Township. The applicant has provided a conceptual development that incorporates the variances as approved. (See Exhibits: 1A, 3, 4, 5, 6, 7, 8, 9)
- Staff has updated the conceptual development plan to illustrate the parcels that have been subdivided from the property as well as future parcels that planned to be created. (See Exhibit: 9)
- The 1825 Quaker Farmhouse is located on an adjacent parcel 31.1330 acre parcel at 3000 Beal Road in Franklin Township. (See Exhibits: 2, 9, 10)
- On the subject parcel, a home was built in 1978. (See Exhibits: 1A-B)
- The 5.0026 and the 6.9560 acre parcels are the parcels that requesting variances.
 - The proposed 5.0026 acre parcel:
 - Would have an approximate handle depth of 1,949’ instead of 500’.
 - Handle would have a width of 50’ instead of width that has a minimum width of 20’ and maximum width of 40’.
 - After a depth of 396’ the handle complies with panhandle width requirements.
 - The proposed 6.9560 acre parcel:
 - Would have an approximate handle depth of 1,597’ instead of 500’.
 - Handle would have a width of 50’ instead of width that has a minimum width of 20’ and maximum width of 40’.
 - After a depth of 421’ the handle complies with panhandle width requirements.
 - The handle of this parcel is stacked in front of the 5.0026 acre proposed parcel.

- (See Exhibits: 2, 9)
- On the subject parcel, a home was built in 1978. (See Exhibits: 1A-B)
- The 5.0026 and the 6.9560 acre parcels are the parcels that requesting a variance.
 - The 5.0026 acre parcel would have an approximate handle depth of 1,949’.
 - The 6.9560 acre parcel would have an approximate handle depth of 1,597’.
 - (See Exhibits: 2, 9)
- The proposed panhandle lots, requesting a variance are over five acres in size. Each could be created as proposed and utilized for only agriculture. Agricultural parcels are not required to meet the zoning requirements for frontage. Listed permitted uses for the zoning classification are required to meet the zoning requirements.
- The Clearcreek Township Zoning Resolution establishes a minimum lot size (acreage), a minimum and maximum frontage width for panhandle lots, and maximum depth for handles of panhandle lots (based upon the minimum acreage for the zoning classification). (See Exhibits: 11A-D)
- On the conceptual drawing, the 3.4885 acre parcel would meet the requirements for a panhandle lot. (See Exhibits: 2, 9)
- On the conceptual drawing, the 7.6249 acre parcel functions like a panhandle lot, but is really a regular lot, because it meets the frontage and acreage requirements for a regular lot (100’ frontage, 1 acre minimum lot size) before it reduces the lot width to a handle and then opens up to “second body”. (See Exhibits: 2, 9)
- The panhandle design allows acreage behind a regular lot to be accessed and built upon without requiring a sub-divider to build a public road.
- A public road would require a minimum of 70’ of road Right-of-Way, with 24’ width of pavement.

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 parcel which includes the old growth woods is landlocked by Clear Creek to the North, Beal Road to the South, the Eckert residence and grounds to the West and established residential development along Weidner Road to the East. The development plan is specifically intended to preserve the character of the neighborhood, including the Eckerts’ homestead.”

The following issues need to be considered:

- The applicant desires to subdivide the property as frontage lots and not establish a public road, to access the northern proposed parcels. (See Exhibits: 2, 9)
- The 5.0026 acre and the 6.9560 acre parcel could be subdivided as the 7.6249 acre parcel is proposed. This option separates the user’s yard into two areas into a dumbbell design. This design consumes more road frontage than a panhandle lot. (See Exhibits: 2, 9)
- The topography and vegetation along the Clear Creek are identified by the applicant to be unique features for the subject property. (See Exhibits: 12D-K)

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

The applicant states: "The Development plan is intentionally designed to preserve and enhance the essential character of the neighborhood."

The following issues need to be considered:

- In the five hundred (500) foot notification area, there are 25 properties. (See Exhibit:13)
 - For comparison purposes:
 - Clearcreek Township Parcels:
 - Ten (10) properties have acreage greater than 1 acre but less than five acres. (See Exhibits: 14, 16, 18, 19, 21, 22, 23, 26, 27, 28)
 - Five (5) properties have acreage greater than five acres but less than ten acres. (See Exhibits:15, 17, 20, 24 34)
 - Four (4) properties have acreage greater than ten acres. (See Exhibits: 25, 29, 36, 37)
 - Five (5) properties are panhandle lots. (See Exhibits: 20, 22, 25, 26, 29)
 - One (1) variance has been issued for a reduced front yard setback for a panhandle lot. (See Exhibits: 29, 38A-B)
 - City of Springboro Parcel:
 - One (1) property has acreage greater than ten acres. (See Exhibit: 30)
 - Franklin Township Parcels:
 - One (1) property has acreage greater than 1 acre and less than five acres. (See Exhibit: 32)
 - Two (2) properties have acreage greater than five acres but less than ten acres. (See Exhibits: 33, 35)
 - Two (2) properties have acreage greater than ten acres. (See Exhibits: 10, 31)

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 variance is necessary to reduce the hardship created by the Zoning Code, which in this case has the effect of requiring the creation of useless parcels along the road frontage to serve land remotely located."

The following issues need to be considered:

- See #2 above.
- The applicant has established a development plan that establishes a larger than minimum lot size configuration for all lots in the subdivision. (See Exhibits: 2, 9)
- The minimum lot size for the "SR-1" is one acre. (See Exhibit: 11C)

- Conforming to the 100' frontage requirement would create two "dumbbell" shaped lots similar to how the proposed 7.6249 acre parcel is configured. (See Exhibits: 2, 9, 11C)

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

The applicant states: "Jason Fisher of the Warren County Engineer's office has stated that the only one additional curb cut will be allowed to serve the larger property due to sight distance limitations. This requires that four parcels share a common vehicular access to Beal Road. The proposed plan is the least deviation from the zoning resolution that will place the shared curb cut in an acceptable location. If the old growth woods is later conveyed to a public agency, the two parcels given the variance would be combined and thereby satisfy all zoning requirements."

The following issues need to be considered:

- The applicant has not supplied information from the Warren County Engineer's Office.
- Section 413(A) of the Warren County Subdivision Regulations allow shared driveways for up to five (5) dwellings. Any more dwellings and the driveway would be required to be upgraded to a public street. (See Exhibit: 39)
- Shared driveways and access easements are common when sight distance issues exist along roads.
- Based upon the aerial of the subject property, the current house has access to Beal Road. Through the subdivision process, it is unclear if that access would be exclusively used for the 2.8825 acre parcel. (See Exhibits: 1E, 2, 9)
- The proposed development plan is the applicant's desire to subdivide his land with lot sizes higher and lot counts lower than what is achievable in the Suburban Residence Zone "SR-1".
- If the parcels were donated to a public agency and combined, the greater width at Beal Road would allow for an entrance feature to the 11.9586 acre parcel. (See Exhibits: 2, 9)
- A public or private street built to the Warren County Engineer's requirements would require a minimum of a 24' pavement width for the road. If the road were public, the road Right-of-Way would be a minimum of 70'. The private road could have a road Right-of-Way less than 70'.

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

The applicant states: "The Eckerts acquired the property without knowledge of the zoning restriction."

The following issues need to be considered:

- The applicant and his brother were listed on a Survivorship Deed for the property from their parents on November 12, 1991. This deed was recorded May 25, 2003. (See Exhibits: 40A-C)

- The applicant's family owned the property at least at the time of the June 19, 1969 Survey Record 12-153. (See Exhibit: 13)
- The zoning of this property after the November 1973 election, (approval of zoning resolution into new format) was Rural Residence Zone "R-1". (See Exhibits: 41A-E)
- The panhandle lot and the design parameter were part of the Trustee Resolution 87-05, valid September 2, 1987. (See Exhibits: 42A-F)
- In 2005, per Trustee Resolution 2963, the zoning classification of this parcel was changed to Suburban Residence Zone "SR-1". (See Exhibits: 43A-B)

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

The applicant states: "The variance is in the public interest because it reduces density of development, there reducing the demand for public services. It also makes possible a future waterside nature preserve that is unlike any other in the community."

The following issues need to be considered:

- Parks are a permitted use per Section 6.52(B) of the Clearcreek Township Zoning Resolution: Publicly owned or operated properties including parks, playgrounds and community centers allows the former to exist at the minimum lot size and configuration for the Suburban Residence Zone "SR-1". (See Exhibit: 11A)
- All residential lots are required to have road frontage on dedicated, improved streets or road so that each is a stand alone independent lot and can more easily be transferred between parties.
- The stacking of panhandle lots prohibition deters the development of parcels that are too far away from the road right-of-way that would be better accessed by a public street network.
- Minimum and maximum panhandle lot road frontage requirements allow a driveway to be established but not a structure in the handle.
- Minimum panhandle body acreage (independent of the handle), allows the lot to have sufficient acreage to accommodate a single family dwelling, accessory structures and a leach field.
- The zoning police power focuses on protecting health, safety and welfare of the community.
 - Health
 - Minimum lot size for septic.
 - Setbacks for structures.
 - Safety
 - Physical access to property.
 - Address of property.
 - Setbacks for structures.
 - Fire hydrant placement.
 - Welfare

- Panhandle design as a viable lot option.
- Frontage requirements.
- Setbacks for structures.

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: “The remnant of old growth woods included in the parcels identified is too fragile to become a park, but it is so unique that it deserves to be made accessible to the public for study purposes. The development plan was designed to facilitate this purpose, and all sales have followed this plan. The BZA’s assistance is needed to make the joint access drive work as planned.”

The following issues need to be considered:

- At the time of this report, the Administrator has been informed about the opportunity for procuring the land, but no formal discussions have occurred between the applicant and the Township regarding the opportunity.
- Through access easements, a joint driveway could be established without needing a variance. As identified above, the design would have an impact on the usability of the frontage acreage of the parcels, if the owner desired to build in the rear of the property instead of the front of the property.
- Variances run with the property.
- See staff photos for reference of the site. (See Exhibits: 12A-12K)

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.