

**Case Numbers:** 17-BZA-012

**Request:** Variance

**Applicant:** Donnie Hensley

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

**Report Date:** October 25, 2017

**Hearing Date:** November 14, 2017

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

**Description of Property:**

The address of the property is 3575 Crestview Dr. The property is 9.573 acres in size. The property is identified by parcel id 09-33-176-011 and account number 0210919. The parcel is located in Section 33, Town 4 and Range 4 in Clearcreek Township. The property is zoned Open Space Rural Residence Zone “OSR-1”. (See Exhibits: Location Map, 1A-H, 2A-H, 3A-B)

**Nature of the Request:**

The applicant states: “Unnecessary Hardship for the owner. Due to lack of road frontage the property is land locked. Half the dream of owning a horse farm has come through. We need a variance to make the other half come through to build a single family residence to make it a 100% working horse farm. Being on premise would greatly ease maintaining farm and maximize its existence.” (See Exhibits: Location Map, 2A-H, 3A-B)

**Background on the Nature of the Request**

**Staff Comments:**

The applicant is requesting a variance to allow a paper street and an access easement to the property to function as road frontage so a single family dwelling can be constructed. The property is currently accessed through an easement and over Parcel “B” a “paper” street in the McGill Meadows Subdivision. (See Exhibits: 2A-H, 4, 5A-C)

Agricultural parcels are not required to meet the zoning resolution. When the use evolves into a residential use, a parcel needs to meet the minimum frontage and dimensional requirements for the zoning classification in order to be issued a residential zoning permit.

In 1960, the McGill Meadows subdivision was proposed, and in 1961 it was approved. Three “paper” streets (future roads in which road right-of-way was held, but no improvements were performed by the developer for access to adjacent parcels) were identified: Parcel “B”, “C” and “D”. (See Exhibit: 4)

The subject parcel has gone through several survey configurations, but has consistently used Parcel “B” as its access. (See Exhibits: 6A-B, 7A-B, 8, 9A-B, 10, 11A-B, 12)

In 1988, via Warren County Common Pleas Court Case Number 46700 it was determined that Parcels “B”, “C” and “D” would be treated differently. The owner of Parcel “B” had plans to construct a roadway overtop of Parcel “B” and then it would be dedicated to the County. In 1993, Parcels “C” and “D” were reconfigured, but Parcel “B” at that time was undeveloped. Parcel “B” remains undeveloped and functions as access to the subject property as well as parcel 09-33-163-023, account number 0211265. (See Exhibits: 2A-H, 5A-C, 16)

The following Sections of the Clearcreek Township Zoning Resolution are involved with this request:

### DEFINITIONS

- SEC. 3.027** **Agriculture**: The use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry and accessory uses such as packing, treating, storing or selling produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.
- 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. 3.561** **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.

### 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. 5.08** Nothing contained in this Code shall prohibit the use of any land for agricultural purposes or the construction or use of any building or structure incidental to such agricultural use, and no zoning certificate shall be required for any such agricultural use, building or structure.

**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.

## **OPEN SPACE RURAL RESIDENCE ZONE "OSR-1" REGULATIONS**

**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:

**SEC. 5.57 FOR LOTS OTHER THAN OSDOD, 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 twelve hundred (1200) feet.
- D.** The body of the lot shall have a minimum area that meets or exceeds the minimum lot size established in Section 5.55 (A) and is exclusive of the panhandle portion of the lot.
- E.** The body of the lot shall have a minimum width of two hundred ten (210) feet and a minimum depth of two hundred (200) feet.
- F.** All structures shall be built within the body of the panhandle lot.
- G.** The principal structure shall have a minimum front yard of one hundred (100) 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 one hundred (100) 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: "The lack of a residence on the property has become an obstacle to its use as a boarding/breeding/sales facility for horses. Each of the prospective buyers or

renters have been unwilling to move their expensive horses onto the property without a permanent residence. Horse trainer/owners want a caretaker to be in residence where their animals are boarded in case of theft, malicious acts against their animals or vandalism when no one is on the property at night. Horse owners have repeatedly stated that they will not leave their expensive horses unattended all night. Since the only reasonable use for the property is equine breeding/boarding/sales, the final judgement of potential buyers or trainers who wish to lease the farm is that it is not suitable to leave the animals unattended at any point in a 24 hour period and a permanent residence is necessary for them to be able to consider a purchase or lease of the property.”

The following issues need to be considered:

- 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: 13, 14)
- In 2005, per Trustee Resolution 2980, the zoning classification of this parcel was changed to Open Space Rural Residence Zone “OSR-1”. (See Exhibits: 15A-B)
- Agriculture can occur in any zoning classification. When the parcel is over five acres in size, the use can be classified as an agricultural exempt use.
- The Warren County Auditor has designated the use of the property as 0102-Livestock Farm and the building types as commercial. Based upon my discussion with the Warren County Auditor for the Current Agricultural Use Value (CAUV) program, staff found out that the property was previously enrolled in the Certified State Forest Program not the CAUV Program. When owner discontinued participation in the State Forest Program, the Livestock Farm designation was applied to the property. It appears that since the property wasn’t part of the CAUV Program the structures were not considered agricultural but non-residential/commercial classification. (See Exhibits: 1A-H, 17A-E)
- The barns were built on the property in 1994. (See Exhibit: 1A)
- Parcel “B” is 50’x220’ in size. (See Exhibits: 3A-B, 4, 6A-B)
- If the parcel were viewed as a regular lot, 140’ of road frontage would be required. If the parcel were viewed as a panhandle lot, a minimum of 20’ maximum of 40’ would be required.

*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 neighbors live directly on Crestview Ave. The facility is located behind the subdivision, but all in residence in front of the property are aware that a horse facility was behind them and cars and horse trailers on the driveway in and out was a regular occurrence and not regarded negatively.”

The following issues need to be considered:

- The applicant desires to establish a single family detached residence on a parcel that lacks road frontage but has access through a Common Pleas Court Judgment through Parcel “B” and an access easement through parcel 09-33-163-023. (See Exhibits: 2A-H, 5A-C)

- The two parcels that are accessed from Parcel “B” have gone through several configurations. (See Exhibits: 7A, 8, 9A-B, 10, 11A-B, 12)
- Parcel “D” was split between an adjoining property owner to the north (3765 Crestview Ave) and the then 10 acre parcel to the west (3749 Crestview Ave). (See Exhibits: 5A-C, 8, 10, 12, 18, 19)

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

The applicant states: “The building of single family home would not alter in anyway the tree-line perimeter. The home would be built to upscale standards, would not be a prefab or mobile home. The water and electric and mail box has been in for years, clearly marked for delivery’s or finding boarding location. Nothing would change it been horse facility for years. Only addition is a single family residence in rear, no change to character of neighborhood.” (See Exhibits 20A-C)

The following issues need to be considered:

- In the five hundred (500) foot notification area, there are 52 properties. (See Exhibit: 21)
  - For comparison purposes:
    - Forty two (42) properties are in the McGill Meadows subdivision and are less than one 1 acre in lot size. (See Exhibits: 6A, 19, 30-70)
    - Ten (10) properties are five acres or greater in lot size. (See Exhibits: 16, 18, 23-29)
    - Three (3) of the five acre plus lots are classified with the Current Agricultural Use Value (CAUV) designation. (See Exhibits: 16, 28, 29)
    - Two (2) of the five acres or greater lots are classified as as panhandle lots. (See Exhibits: 18, 23)
    - Parcel “B” and the former “D” are both located in the notice area. (See Exhibits: 3A-B, 21)
    - This is the first variance application in the notice area.

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 unnecessary hardship is the inability to reside on the property to carry on boarding facility. Difficulty because horse owners for boarding require full time care on site.”

The following issues need to be considered:

- See above for description of properties in the 500’ notice radius.
- See Exhibits 71A-G for staff photos of the subject property.

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

The applicant states: “When property purchased it has residence/agriculture zoning. I assumed no problem to build, however I have approached 3 other land owners which touch

sides of this property no one wants to sell it off of 48. Every resident on our street I approached, Crestview, did not object to the home being built.”

The following issues need to be considered:

- The current configuration of the subject property and parcel 09-33-163-023 occurred in 2003. (See Exhibits 11A-B, 12)
- The applicant purchased the property at a Sheriff Sale in 2015. (See Exhibit: 1D)
- The applicant isn't seeking to further subdivide the parcel and yield more lots. The applicant is requesting the ability to establish a residence on an existing parcel that lacks road frontage but has access through a Warren County Common Pleas Court Judgement and an easement over an adjacent parcel, 09-33-163-023. (See Exhibits 2A-H, 3A-B, 4)
- 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'. Anything less than public frontage would require a variance or PUD approval.

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

The applicant states: “No, I was a cash buyer and assumed since it was zoned residence/agriculture it would no incur to be a problem to have a residence on property.”

The following issues need to be considered:

- See #1 & #5 above.

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

The applicant states: “Since the neighborhood is all residential surrounding this property, except for this property, which has been a horse farm for many years now, its existence hasn't ever been questioned by any the neighbors. All neighbors have no problem with a residence going in.”

The following issues need to be considered:

- 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 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: “This property from the start was in poor condition when purchased. Much work, over year an half, to bring it just back up into shape. Roughly 60k was spent on the renovations. No disruptions in any of the utility services, markings clear for EMS, mailbox clearly marked. Need get site developed for running horse boarding, and a residence would greatly enhance boarding facility and maintaining property.”

The following issues need to be considered:

- Variances run with the property.
- See staff photos for reference of the site. (See Exhibits: 71A-G)
- This parcel retained the 1987 issued street address from the Warren County Engineer’s Office. This address has directed utilities and the public to the property prior to and after the establishment of the barns in 1994. (See Exhibit 72)
- The property is currently being marketed for sale. (See Exhibit 73)

**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.