

Case Number: 24-BZA-004

Request: Variance

Applicant: Matthew Chrisovergis, agent for Radmedix 2, Inc

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

Report Date: June 24, 2024

Hearing Date: July 9, 2024

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

Description of Property:

The property is identified as 4629 Utica Road. The property is also identified as Tract 17, 90.206 Acres Survey. The property is identified by parcel id 09-28-200-014 and account number 0103675. The property is 5.00 gross acres in size. The property is zoned Open Space Rural Residence Zone “OSR-1”. (See Exhibits: Location Map, 1A-C, 2, 3)

Nature of the Request:

The applicant states: “I received a notice of a streetscape buffer requirement for my property which wasn't disclosed to me by my contractor at the time of permit issuance. I am requesting that the board grant me a variance on the tree's needed for the streetscape buffer due to the existing tree's already on the property.” (See Exhibits: 4A-H)

Background on the Nature of the Request

Staff Comments:

The applicant is requesting a variance from Section 17.06 (C) of the Clearcreek Township Zoning Resolution to allow the existing vegetation along Pekin Road, which is located in the road right-of-way (ROW) to substitute for the required streetscape buffer. (See Exhibits: 3, 6A-E, 7A-F)

The parcel is part of the 90.206 Acres Survey, Volume 12 Plat 191 which was created in 1971. The first thirty (30) feet of depth of the subject parcel is comprised of a combined road right-of-way (ROW) & utility easement. Prior to my May 30, 2024 discussion with Mr. Josh Green from the Warren County Engineer’s Map Room, the Zoning Department had been requiring survey (unplatted) parcels to plan for a future utility easement that was independent of the road right-of-way when installing required streetscape buffers, but not requiring future Warren County Thoroughfare ROW width. The Thoroughfare ROW widths are periodically updated and only applied to the parcel at the time of a plat or replat. Based upon this updated understanding of the utility placement in the ROW, staff would give credit to any existing tree or existing shrub that meets the minimum credit requirements for size or height if, located outside of the existing ROW. Based upon the Warren County GIS measurement, the lot frontage/edge of road ROW is approximately 24’ north of the edge of pavement of Pekin Road. (See Exhibits: 2, 3, 5A-B)

Per Section 17.02 of the Clearcreek Township Zoning Resolution, when a parcel has frontage on a collector or arterial street and when an applicant applies for a single family dwelling permit the provisions of the chapter are applicable.

Zoning permit 11,353 was issued to the applicant’s builder (EJR Construction, Mr. Eric Ross) on February 17, 2023. I explained the requirement and asked Mr. Ross to declare which option was applicable to the application: 1. If the landscape will be installed within one year of the approval. 2. If existing trees meet the requirement. 3. If the builder will forward the paperwork to the owner and provide a streetscape credit. 4. If the builder will forward the paperwork to the owner. Mr. Ross filled out and signed the streetscape paperwork which indicated the required landscaping would be planted within one year. (See Exhibits: 4A, 4G-H)

Per Clearcreek Township Zoning Resolution Section 17.07 (C): The minimum size for a required deciduous tree is one and one half (1½) inch caliper. Additional tree credits are given for taller evergreen trees or larger diameter deciduous trees. For existing deciduous trees, a measurement of the diameter of the tree trunk is measured four (4) feet from grade. The diameter is divided by one and one half (1½) inches. This yields the number of tree credits held in a single tree.

Based upon the frontage width (418.03') of Utica Road and the setback (200') of the single family dwelling: sixteen (16) trees were required for the Utica Road streetscape buffer. Code Enforcement Officer Lori Burton found three (3) existing trees (due to size) to meet the tree credit requirement. (See Exhibits: 3, 4G-H)

Based upon the frontage width (531.92') of Pekin Road and the setback (290') of the single family dwelling: twenty-one (21) trees were required for the Pekin Road streetscape buffer. The applicant is seeking the existing vegetation (honeysuckle and deciduous trees) along Pekin Road to meet the credit requirements for the streetscape buffer. During my site visit, I found that in the existing vegetation screen, honeysuckle was the primary vegetation. Six (6) existing trees (with a diameter: 6", 6", 8", 8", 12", 16") could count toward the requirement if not located in the ROW. The former calculates to thirty-six (36) tree credits. These trees are coincident with or north of an old farm fence and are between thirteen (13) feet and sixteen (16) feet from the pavement. I also found two (2) 4" diameter trees, twenty-three (23) feet and twenty-five (25) feet off the pavement. The former calculates to four (4) tree credits. Combined, this is a minimum of 40 tree credits. (See Exhibits: 3, 4G-H, 6A-E, 7A-F, 8)

On December 14, 2000, via Trustee Resolution 2237, Text Amendment 2000-2 was approved. This text amendment established standards for buffers and screening along the public right-of-way and between zoning classifications. (See Exhibits: 9A-O)

On January 10, 2002, via Trustee Resolution 2404, Text Amendment 2001-4 was approved. This text amendment refined the standards for buffers and screening along the public right-of-way and between zoning classifications. (See Exhibits: 10A-C)

The finding and intent of Chapter 17, as well as the requirements for 17.06(C) have been inserted below. The rationale for requiring the streetscape buffer be located on private property outside of the road right-of-way and any utility easement was to ensure that the streetscape buffer would remain under the care of the property owner. Trees and/or shrubs located in the road right-of-way or utility easement are not protected and are subject to removal or modification by the governing jurisdiction for road authority or public utility authority.

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

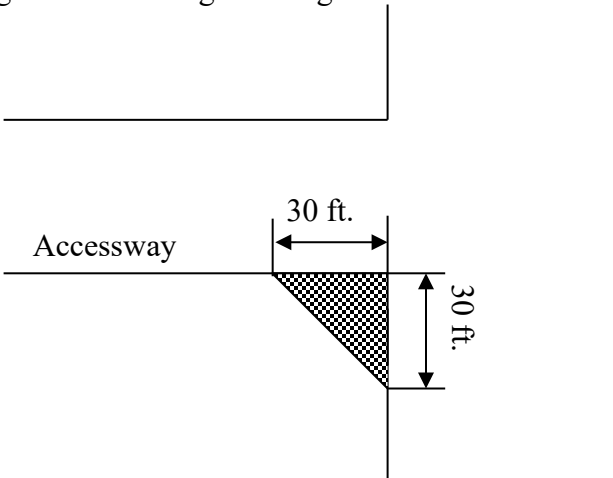
DEFINITIONS

SEC. 3.152 **Buffer:** A combination of physical space and vertical elements, such as plants, berms, fences, and/or walls, for the purposes of separating and screening incompatible land uses of different types and/or intensities from each other.

Sec. 3.1534 **Buffer, Streetscape:** Buffer that is parallel to the parcel frontage and which abuts all easements and/or right-of-way.

SEC. 3.192 **Clear Sight Triangle:** The area to the inside corner of the intersecting pavement edges of one private accessway or public street and another public street, in the shape of a triangle formed by a line of sight connecting the pavement edge of each thirty (30) feet outward from such intersection, unless otherwise required at a greater distance therefrom by the public road authority of jurisdiction.

Figure of Clear Sight Triangle



- SEC. 3.218** **Crown:** The top of a tree foliage canopy, in representing the greatest extent of such outward branching growth from the tree trunk.
- SEC. 3.221** **Deciduous Plant:** A plant with foliage that is shed annually.
- SEC. 3.307** **Evergreen Plant:** A conifer tree or shrub, noted for perpetual foliage that always remains green throughout the life of such plants.
- SEC. 3.3105** **Fence, Decorative:** A physical barrier that is constructed so that the vertical surface is open or closed. The fence must contribute to the identification and ascetics of principal use and comprised of pvc vinyl, ornamental aluminum or wrought iron.
- 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. 3.5609** **Ornamental Plant:** A deciduous or conifer tree or shrub planted primarily for its decorative characteristics, such as flowering and foliage color, and/or for screening purposes being smaller in height, width and foliage density at maturity compared to other plant varieties which would be inappropriate or undesirable to such regard in a constrained spacial allowance or a setting where blocking a view is not wanted for sight distance safety or other reasons.
- 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. 3.649** **Screen**: A method or device for buffering the otherwise potentially greater impacts of noise and/or unsightly visual intrusions from one land use on another with more harmonious elements, such as plants, earth forms, fences, walls or any appropriate combination thereof to accomplish the desired degree of buffering.
- SEC. 3.64061** **Shade Tree**: A deciduous tree planted primarily for its high crown of foliage or overhead canopy.
- SEC. 3.64062** **Shrub**: A deciduous or evergreen plant that is typically more woody and with denser foliage and smaller in size and height than a tree, consisting of numerous small branching stems at or near the ground, for decorative and/or buffer screening purposes.
- SEC. 3.682** **Street, Major Arterial**: A public street, typically with multiple travel lanes, primarily intended to provide for vehicular through-traffic movement to and from other arterial class and/or collector class streets, preferably having no direct access to local streets and land, except for large-scale uses, with controlled access and channelized median-separated travel lanes where land access is permitted and at signalized intersections with other roads, and on which little or no parking is permitted.
- SEC. 3.683** **Street, Major Collector**: A public street with typically two to three lanes that function or is intended to collect and convey vehicular traffic to and from local and minor collector class streets in providing linkage with arterial class streets and along which direct access to abutting property is discouraged and parking is not permitted.
- SEC. 3.684** **Street, Minor Arterial**: A public street typically with three or more travel lanes at intersections with arterial class streets, that is primarily intended to provide for vehicular through-traffic movement to and from other arterial class and/or collector class streets, preferably having minimal direct access to local streets and land uses, unless with access control improvements where land access is permitted and having signalized intersections with other roads and on which little or no parking is permitted.
- SEC. 3.685** **Street, Minor Collector**: A public street with typically two to three lanes that functions or intended to collect and convey vehicular traffic to and from local, collector class and arterial class streets and along which direct access to abutting property is provided and parking may be permitted.
- SEC. 3.72051** **Tree**: A large, woody plant having one or several self-supporting stems or trunks and numerous branches. May be classified as deciduous or evergreen.
- SEC. 3.7265** **Wall, Decorative**: A physical barrier that is constructed so that the vertical surface is closed, thus preventing the passage of light, air, and vision in a horizontal plane. The exterior materials adjacent to the road right-of-way shall be comprised of brick and/or stone.

SEC. 3.7266 Wall, Retaining: A wall or terraced combination of walls used at a grade change to hold the soil on the up-hill side from slumping, sliding or falling. The exterior materials adjacent to the road right-of-way shall be comprised of any combination of the following: brick, keystone concrete block, stone.

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. 3.78 Zoning Compliance Certificate: An applicant initiated document issued by the zoning inspector that certifies compliance of a given property use and structures with all applicable requirements set forth in the zoning resolution.

CHAPTER 17: BUFFER AND SCREENING

SEC. 17.01 Findings and Intent

A. Findings

The Clearcreek Board of Trustees find that:

- Landscaping and buffering development with earth mounding or other formations, trees and other vegetation promotes the health, safety, and welfare of the community to such an extent as to justify the demand of landscaping and buffering requirements for consistent application throughout the Clearcreek Township community
- Trees and landscaping benefit the community by:
 - Absorbing carbon dioxide and returning oxygen to the atmosphere;
 - Precipitating dust and other particulates from the air;
 - Providing wildlife habitat, particularly for birds, which in turn help control insects;
 - Providing soil stabilization, which reduces erosion and mitigates the effect of flooding;
 - Providing shade, which reduces energy consumption and glare, and making outdoor areas more comfortable during warm temperature months;
 - Making the built environment more attractive by adding a variety of color, shape, and pattern and thus increasing community pride and the value of the property;

- Providing attractive buffering between incompatible land uses of a different type and/or intensity;
- Helping to mitigate the effects of traffic flow on property owners by screening and separating the public and private areas of interaction. This screen helps to mold the visual experience of the vehicular traveler and provides a rural flavor to the network. Conversely, this screen reduces the impact of headlights and vehicular noise on the property owner while prohibiting haphazard pedestrian to vehicular interaction;
- Open fields, pastures and cropland benefit the community by:
 - a. Serving as an intervening buffer between the developed use on a lot and the adjoining public street traffic;
 - b. Perpetuating a desired sense and characteristics of ruralness that impacts the perceived image of the community and its sense of welfare;
 - c. Acting to encourage the preservation and/or utilization of farmland in the township;
- Because native vegetation is adapted to local diseases, pests, soil and climate, it is generally more economical and desirable than non-native species, which require more pesticide, fertilizer, and water.
- Non-native vegetation can crowd out native vegetation, use more water, and damage the environments from increased use of fertilizers and pesticides.
- Earth mounding and other formations benefit the community by:
 - A. Mitigating conflicts between adjoining land uses of different types and/or intensities;
 - B. Mitigating vehicular noise and light from the road right-of-way.

B. Intent

Requirements of this chapter shall be applied, and implemented in effort to achieve the following:

1. To enhance the attractiveness of the community;
2. To conserve energy through the cooling and shading effects of trees;
3. To mitigate otherwise potentially greater nuisances such as noise, glare, heat, air pollution, and stormwater runoff;
4. To mitigate conflicts between adjoining land uses of different types and/or intensities;
5. To preserve the environment and ecological benefits of existing native trees and vegetation;
6. To increase the safety of private property by erecting a screen from roads that are designed to carry traffic at speeds equal to or over thirty-five miles per hour;
7. To promote safe and efficient use of off-street parking facilities and other vehicular use areas by:
 - a. Clearly delineating and buffering the bounds of vehicular use areas, particularly where they abut public rights of way, so that movement, noise and glare in one area do not adversely distract activity or impair safety in another area;
 - b. Limiting physical site access to established points of ingress and egress;

- c. Limiting the internal movement of vehicles and pedestrians to designated traffic configurations;
- d. Preserving irreplaceable natural heritage for existing and future generations;
- e. Serving to maintain a sense of ruralness through the promotion of various forms of buffers;
- f. Acting to promote a sense of private space separate from the public realm.

SEC. 17.02 Application

The provisions of this chapter apply to the following:

- A. New sites of Residence Zone “R-2”, Residence Zone “R-3”, Open Space Rural Residence Zone “OSR-1”, Residence Zone “R-1”, Residence Zone “R-1A”, Township Residence Zone “TR-1”, Suburban Residence Zone “SR-1” when a parcel has frontage on a collector or arterial street and an applicant applies for a single family dwelling zoning permit. New principal structures in the Office Zone “O”, Neighborhood Business “B-1”, General Business “B-2”, Light Industry “M-1” and Heavy Industry “M-2” ZONES. A certificate of zoning compliance shall be issued hereafter for any site development or the construction or improvement of any building, structure or vehicular use area except where landscaping for development construction has been approved as required by the provisions of this chapter.

SEC. 17.05 Variations

The Board of Zoning Appeals (BZA) may modify buffer and landscaping standards where:

- A. There are special considerations of site design and/or topography.
- B. There exists a unique relationship to other properties.
- C. The plantings or planting area would conflict with utilities, easements, or overhead power lines.
- D. Proposed street widening not provided by the developer will consume the landscaping area.
- E. The additional screening or landscaping requirements of any other section warrant a variance, in which case, the approving authority may vary the requirements of this section so long as the intent of all sections are met.
- F. The approving authority may require alternative buffers of landscaping when a modification to the requirements of this section is warranted in order to meet the intent of the specified standards.
- G. The test to guide the BZA shall be that of Unnecessary Hardship.

SEC. 17.06 Buffer Areas

- A. To separate incompatible uses, perimeter and/or streetscape buffers shall be required.
- B. In calculating a buffer, the width of the property must be established. The following examples are based on a lot width of one (100) feet. The minimum buffer width, the number and type of vegetation as well as screening materials are based on this standard. If the width of the property is greater or less than the standard, a percentage shall be established based on the one hundred (100) feet standard. This derived percentage shall be used to compute the requirements for vegetation. The standard width and the maximum percentage of screening materials shall remain constant,

regardless of the width. When the final number of required trees is not a whole number, the whole number will be rounded up if tenths is greater than or equal to five (5) or rounded down if less than five (5).

C. Streetscape buffer

If the zone listed in the first row of the streetscape interaction table has frontage on a public right-of way then a streetscape buffer is required. The designation of an “x” will require a streetscape buffer.

Streetscape Interaction Table

Open Space Rural Residence “OSR-1”, Residence “R-1”, Township Residence “TR-1”, Suburban Residence “SR-1” parcels with frontage on a street meeting criteria	Residence “R-1A” ZONE	Residence “R-2” Zone	Residence “R-3” Zone	Public Institutional “PI” zone	Office “O” Zone	Neighborhood Business “B-1” Zone	General Business “B-2” Zone	Light Industrial “M-1” Zone	Heavy Industrial “M-2” Zone
X	X	X	X	X	X	X	X	X	X

Legend for Options:

Deciduous Tree



Deciduous Shrub



Evergreen Tree



Evergreen Shrub



Fence/Wall



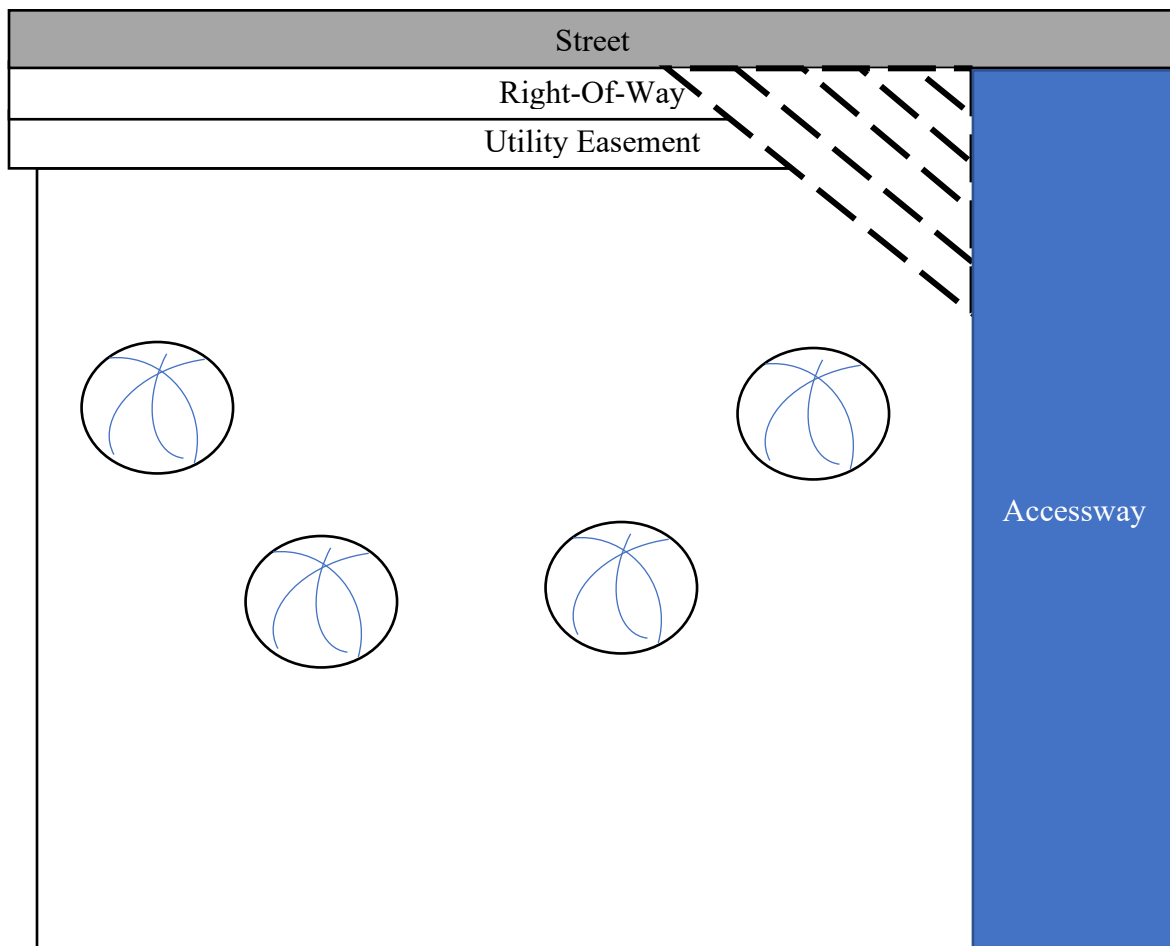
Clear Sight Triangle



Option 2: Residential streetscape buffer per one hundred feet of road frontage, when the building is setback equal to or greater than one hundred (100) feet from the edge of the right-of-way.

Minimum number of trees	Minimum number of shrubs
4	0

Option 2: Example of Possible Design per Every One Hundred (100) 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: “The property is an open lot, providing a blank canvas for building. It features an existing tree screen, which enhances its appeal. With the variance granted to maintain the current tree screen, the property's value is significantly increased, as minimal clearing is required for construction.” (See Exhibit: 3)

The following issues need to be considered:

- The applicant has provided photos of the existing vegetation screen. (See Exhibits: 6A-E)
- Staff has provided additional photos of the existing vegetation screen. (See Exhibits: 7A-F)
- Typical ROW is comprised of pavement, drainage swales. The ROW can also be comprised of extra width for future road improvements. Typically the ROW ends close to the top of the ditch that is opposite the pavement. On this parcel, close to that location, a section of farm fence still remains. Since fencing is a permanent impediment, it is encouraged to be located outside of the maintained area. In this case the Clearcreek Township Road Maintenance Department maintains the pavement and ditch. Several times a year the ditch and overhanging vegetation are mowed to remove obstructions to the ROW. The area north of the fence has been left to revert to nature and has not been maintained to the same level as the area south of the fence. (See Exhibits: 6A-E, 7A-F)
- The current 60’ ROW width along Pekin Road for this parcel has not changed since the parcel was created in 1971. (See Exhibits: 2, 3)
- From 1956 to 1994, along Pekin Road several platted subdivisions have been created. The Warren County Engineer’s Office could not produce a copy of a Throughfare Plan that predated the 1996 Thoroughfare Plan. It appears based upon the approved final plats for these subdivisions, the ROW was 60’ in width:
 - Pekin Road Subdivision, May 1956, has a 60’ ROW. (See Exhibit: 11)
 - Pekin Corners, February 1988, has a 60’ ROW. (See Exhibit: 12)
 - Hathaway Estates, May 1992, has a 60’ ROW. (See Exhibit: 13)
 - Saramy Acres, February 1993, has a 60’ ROW. (See Exhibit: 14)
 - Shady Creek Estates, November 1993, has a 60’ ROW. (See Exhibit: 15)
 - Earnhart Estates, June 1994, has a 60’ ROW. (See Exhibit: 16)
- Two (2) subdivisions along Pekin Road were platted after the 1996 Thoroughfare Plan was adopted. Pekin Road at this time would have been classified as a collector road. A collector road has a 70’ ROW width with a 15’ utility easement per side. A total of 100’ is held for ROW and public utility easement (PUE). (See Exhibits: 17A-B)

- Clear Spring Estates Section 2, February 2002 has a 60' ROW. (See Exhibit: 18)
 - It is unclear why this subdivision didn't dedicate 70' ROW per the 1996 Thoroughfare Plan. (See Exhibit: 17B)
- Pond View Estates Subdivision, December 2020 has an 80' ROW. (See Exhibit: 19)
 - It is unclear why this subdivision dedicated ROW to the 2023 standard and not the 1996 standard. (See Exhibits: 17B, 20B)
 - Per the 2023 Official Thoroughfare Plan Warren County Ohio, Pekin Road has a functional classification as a collector road (residential/rural). Figure A.9 shows the typical section for this type of road. The current standard is an eighty (80) foot ROW with a 10' deep PUE coincident with the edge of ROW. A total of 100' for ROW and PUE continues to be required, however the dimensions for both were slightly modified. (See Exhibits: 20A-C)
- If a road improvement were required along the Pekin Road frontage any improvement that could not be contained in the existing ROW width, would necessitate the purchase of additional ROW from the owner. The ROW width would increase to the size needed but no greater than the current Thoroughfare Plan width.
 - The current Thoroughfare Plan 80' ROW width if needed would remove the existing vegetation screen. The ROW improvements (pavement, ditch, relocation of utilities) would also remove any streetscape buffer vegetation that was given credit but located in the newly acquired ROW. (See Exhibit: 21)
 - The Zoning Department would give credit for vegetation located at least twenty-four (24) feet north of the pavement of Pekin Road. (See Exhibits: 5A-B)

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 property benefits from an ideal tree screen with 100% opacity, a feature that cannot be replicated by planting new trees. The challenge I face is that this existing screen cannot be relocated out of the utility easement. Planting new trees would not only be redundant but also fail to achieve the intended effect of the current screen." (See Exhibits: 6A-E, 7A-F)

The following issues need to be considered:

- One-hundred (100) percent opacity means the view is completely blocked.
- Zero (0) percent opacity means the view is completely visible.
- In addition to the subject property, there are a total of twelve (12) parcels located in five (5) surveyed (uplatted) subdivisions in the five hundred (500) foot notice area. (See Exhibits: 2, 22, 23A, 38A)
- Six (6) parcels have single family dwellings that were constructed before the streetscape buffer requirements were established (prior to January 14, 2021). (See Exhibits: 2, 22, 23A-B, 26A-B, 31, 32 A-B, 35A-B, 36A-B, 37, 38A-B)
- Three (3) parcels are being used agriculturally. (See Exhibits: 2, 22, 24A-B, 27, 28, 29, 30A-B)

- Three (3) parcels are vacant and being used residentially. (See Exhibits: 2, 22, 25A-B, 31, 33, 34)
- See Number 1 above.

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

The applicant states: “I am requesting the variance to preserve the existing natural deciduous tree screen, which is in harmony with the character of my neighbors' properties and the community.”

The following issues need to be considered:

- In the five hundred (500) foot notice area, no variance request was found for a streetscape buffer.
- The subject property is 5.00 gross acres in size. The parcel is unplatted, it was created by a survey and the road right-of-way is held in the form of an easement. (See Exhibits: 1A, 2, 3)
- In the five hundred (500) foot notification area, there are twelve (12) parcels. (See Exhibit: 22)
 - Lot size comparisons:
 - Five (5) parcels are below 5.00 acres in lot size. (See Exhibits: 22, 26A, 32A, 33, 34, 35A)
 - Three (3) parcels equal to 5.00 acres in lot size. (See Exhibits: 22, 23A, 24A, 25A)
 - Two (2) parcels are greater than 5.00 acres and less than 10 acres in lot size. (See Exhibits: 22, 36A, 38A)
 - Two (2) parcels are greater than 42 acres and less than 50 acres in lot size. (See Exhibits: 22, 28, 30)
 - All twelve (12) parcels are unplatted and have road right-of-way in the form of an easement. (See Exhibits: 2, 22, 27, 29, 31)
- The 90.206 Acres Survey and the Warren County GIS shows the ROW to be 60'. South of the parcel is a 40.632 acre parcel that was identified in 2021, as the Betty Wright Survey. The Betty Wright Survey shows the ROW to be 80' based upon the Thoroughfare Plan, with a disclaimer that the Pekin Road Right-of-Way Width is Unknown per the Warren County Road Records. The Warren County GIS Aerial doesn't reflect the forty (40) foot ROW cross section, it shows a thirty (30) foot ROW cross section. The only governmental reason to remove the existing vegetation would be through the re-alignment of the ditch profile after a pavement expansion as part of required road improvement. See Number 1 above. (See Exhibits: 2, 8, 20B, 21, 29)

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: “Relocating the trees would not only disrupt this natural screen but also impose an unnecessary hardship of planting, maintenance, and costs associated with replicating the current tree screen already in place.”

The following issues need to be considered:

- The applicant is seeking approval to allow the existing vegetation screen to meet the requirement for the streetscape buffer and not plant trees that will be blocked from view because of the dense growth of honeysuckle and deciduous trees. (See Exhibits: 3, 6A-E, 7A-F)
- Per Section 17.06 (C) Option 1A (in Background above); the streetscape buffer is required to be located parallel to the road frontage, outside of road right-of-way & utility easements. The streetscape buffer shall be located between the house and the road frontage. No minimum distances from the utility easement or the home have been established for the streetscape buffer.
- Clearcreek Township Zoning Resolution Table 17.13 lists Hardy Trees for Ohio. Section 17.07 (C)(2)(e) suggests that a minimum of three (3) tree species be planted in the buffer to resist disease. However, the former are guidelines and not requirements. During the zoning site visit to determine compliance with the streetscape buffer requirements, the species of trees are not documented, only the size and location of the trees. Thus any tree meeting the minimum size regardless of species will be given credit. (See Exhibits: 9N, 10C)
- The variance request deals with the reduction of the streetscape buffer requirement.
 - The applicant is requesting the existing trees in the vegetation screen located in the road right-of-way be counted 100% toward the requirement. (See Exhibits: 8, 21)
 - I found four (4) tree credits to exist outside of the ROW. This is 19.05% of the required tree credit. (See Exhibit: 8)
 - The applicant plans to perpetuate the growth of pear trees (On January 7, 2023, declared an invasive species in Ohio), that have naturally established as a secondary buffer. The pear trees don't currently meet the minimum caliper size for credit. If the pear trees met the minimum caliper size they would have been given credit by our office. See above. (See Exhibits: 39A-F, 41, 42A-B)
 - The existing barrier is comprised of honeysuckle, an invasive species, but has established a vegetation screen with a higher opacity than the required tree credit would provide. (See Exhibits: 6A-E, 7A-F, 39A-F)
 - The Clearcreek Township Zoning Resolution only prohibits noxious weeds from the required buffers, not invasive species. (See Exhibits: 9K, 40A-C)

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

The applicant states: "The regulation does not account for the existing vegetation on my property. I am requesting that the board honor the variance, recognizing that the current tree screen fulfills the intention of the Streetscape Buffer Zoning Requirement. This existing vegetation already satisfies the intended purpose of the regulation"

The following issues need to be considered:

- See Background above.
- See Number 4 above.

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

The applicant states: “When I purchased the property in 2017, I was unaware of this zoning requirement, as it only became applicable when I decided to build on the property in 2023”

The following issues need to be considered:

- The current zoning format for buffers and screening was approved January 10, 2002. (See Exhibits: 10A-C)
- The parcel was created on September 10, 1971 via Survey Vol 12 Plat Number 191. (See Exhibit: 2)
- Per the Warren County Auditor’s Website, the applicant purchased the property on August 10, 2017. (See Exhibit: 1B)
- See Background above.

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

The applicant states: “I firmly believe that granting this variance is in the public's interest, as it maintains the character of the neighborhood and satisfies the intent of the zoning requirement.”

The following issues need to be considered:

- The existing vegetation screen is not required to be replaced if a road improvement or utility modification occurs.
- The streetscape buffer is required to be established on private property outside of road right-of-way & utility easements.
- See Findings and Intent of Chapter 17 above.
- See Numbers 1, 3 & 4 above.
- See Background above.

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: "In addition to my request for a variance, I plan to allow a portion of the Pekin Road frontage (approximately 50' x 500') to grow naturally, with a maintained perimeter. This area, which already contains around 75 naturally growing pear trees of approximately 2' in height (Ref. Exhibit), will provide reassurance to Clearcreek Township. Should the township decide to widen the road and/or remove the existing buffer, this natural screen will continue to satisfy the zoning requirement." (See Exhibits: 6A-E, 41, 42A-B)

The following issues need to be considered:

- The applicant proposes an area 50'x500' to grow naturally. Mr. Ross measured the current growing area to be 130'x480'. (See Exhibit: 41)
 - Either depth (50' or 130') would exceed the future ROW and PUE if the maximum distances were imposed during a road improvement. (See Exhibit: 21)

- **SEC. 17.05 Variations**

The Board of Zoning Appeals (BZA) may modify buffer and landscaping standards where:

- There are special considerations of site design and/or topography.
- There exists a unique relationship to other properties.
- The plantings or planting area would conflict with utilities, easements, or overhead power lines.
- Proposed street widening not provided by the developer will consume the landscaping area.

- **Staff Comments:**

- ***This section appears to be applicable based upon the different ROW widths imposed since 1971. At the time of this report, a road improvement is not being considered for the frontage of this parcel.***
 - ***See Number 1 and 8 above.***

- The additional screening or landscaping requirements of any other section warrant a variance, in which case, the approving authority may vary the requirements of this section so long as the intent of all sections are met.

- **Staff Comments:**

- ***Section 17.01(B) outlines the intent of the chapter. The existing vegetation appears to meet the following items:***

1. ***To enhance the attractiveness of the community;***
3. ***To mitigate otherwise potentially greater nuisances such as noise, glare, heat, air pollution, and stormwater runoff;***
4. ***To mitigate conflicts between adjoining land uses of different types and/or intensities;***
6. ***To increase the safety of private property by erecting a screen from roads that are designed to carry traffic at speeds equal to or over thirty-five miles per hour;***

7(d) Preserving irreplaceable natural heritage for existing and future generations;

7(e) Serving to maintain a sense of ruralness through the promotion of various forms of buffers;

7(f) Acting to promote a sense of private space separate from the public realm.

- The approving authority may require alternative buffers of landscaping when a modification to the requirements of this section is warranted in order to meet the intent of the specified standards.

- ***Staff Comments:***

- *The existing vegetation screen has achieved a higher opacity than the required streetscape buffer could have provided within a year from the date of the zoning permit.*

- *The BZA will need to determine if additional vegetation should be required if the existing vegetation screen was approved via a variance and later removed by a road improvement.*

- *If additional vegetation is required at the time of the road improvement, then it makes sense that the vegetation be measured at the time of the road improvement.*

- *This would allow any trees in the “growing area” to establish and at that future time be reviewed to see if the minimum tree credit can be documented.*

- *Any deficient credit would be supplemented by the installation of new trees meeting the minimum requirements.*

- The test to guide the BZA shall be that of Unnecessary Hardship.

- **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.