

**VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
MINUTES**

Virtual Meeting @ 6:00 P.M.

Wednesday, November 17, 2021

CALL TO ORDER

The meeting was called to order at 6:00 p.m. by Ellis Jacobs, Acting Chair.

ROLL CALL

Ellis Jacobs, Chair, members Anthony Salmonson, Matt Raska and Matt Reed were present. Zoning Administrator for the Village, Denise Swinger, was present. Solicitor Breanne Parcels was also present.

REVIEW OF MINUTES

Minutes for BZA Meeting of August 11, 2021 were reviewed. Salmonson MOVED and Raska SECONDED a MOTION TO ADOPT THE MINUTES AS WRITTEN. The MOTION PASSED 4-0 on a voice vote.

COMMUNICATIONS

The Clerk will receive and file:

Stephen and Vivian Markley re: 506 South High Variance
Wayne Gulden/Bette Kelley re: Sign Variance on Corry Street

REVIEW OF AGENDA

There were no changes made.

PUBLIC HEARINGS

- 1) **Variance Application** – B-1, Central Business District – 225 Corry Street – Max Crome of Crome Yellow Springs, on behalf of the property owner Iron Table Holdings LLC, has submitted an application for a variance seeking relief from the required rear yard setback - Chapter 1250 Business Districts, and a variance seeking relief from the number, size and height requirements for certain signs on the property –Chapter 1266 – Signs – Table 1266.03 (a) Permitted Signs. **Greene County Parcel ID #F19000100100020400**

Swinger introduced the request(s) as follows:

Max Crome on behalf of Iron Table Holdings has submitted a BZA variance application for 225 Corry Street. Planning Commission approved a conditional use on September 14, 2021 for a restaurant serving alcohol, entertainment space, and outdoor patio seating with the condition that the applicant seek a variance from the BZA for relief from the five-foot rear yard setback requirement for their outdoor patio and for identified signs that exceed the size and/or height, the number per street frontage and total number of signs. Max Crome has submitted a narrative to his application explaining the requested variances.

The outdoor patio variance is for a zero lot line, and the applicant is seeking relief from the required five-foot rear yard setback. Only the rear yard has this five-foot setback requirement in the B-1 District. The front and side yard setbacks are zero in B-1 (see table below).

This is the same request the BZA allowed for the Yellow Springs Brewery at Millworks and the Lumber Company Market/Eatery at 108 Cliff Street. All three establishments are located along the Little Miami Scenic Trail.

Swinger described the sign variances: in any B or I district, a maximum of three types of permitted signs and four total permitted signs per principal building shall be allowed. In the case of a multi-tenant building where the maximum number of permitted signs has been reached, one additional sign per tenant shall be permitted. The Zoning Administrator may exempt the maximum requirement if a site visit determines the location of the signs will not be visible from the street or public property.

In this case, Swinger said, the allowance is five signs of three different types because there will be two tenants at this location. The site plan shows signs #2, #3, #6, #7, and #10, exempt from the sign code. The remaining signs #1, #4, #5, #8 and #9 are regulated by the sign code. Variances are requested for the following:

Signs #1, #4 and #5 are along the front of the property at Corry Street. The code allows one per street frontage and the applicant is requesting a variance to allow two additional.

Sign #9 exceeds the size limit of 25 sq. ft. by 4.7 sq. ft. and the applicant is requesting a variance to allow a size of 29.7 sq. ft. This sign is located along the bike path and meets the requirement of 5% of allowed wall area.

Sign #1 is the marquee – See requirements below:

Marquee sign

Number	One per business
Size	48 square feet maximum
Location	Projecting out from building wall not more than six feet
Height	A clearance of at least eight feet is required between the sidewalk and the bottom of the sign
Other	Flashing lights are not permitted

The marquee projects out from the building 5’- 9” and the clearance between the sidewalk and the bottom of the sign is 12-feet, in compliance with the zoning code.

There is a logo sign that is part of the marquee making it a single sign. A variance is required for the overall size of the marquee and height, which extends above the roofline, but is not a roof sign. The size of the marquee will allow for text large enough to be “legible from a reasonable distance.” The marquee with logo measures 134.6 sq. ft. at the street frontage and 106.8 sq. ft. at the side. The actual signage on the marquee measures 48 sq. ft. at the front and 20 sq. ft. on the side. The applicant did a mockup of the size of the marquee with the logo in order to show its impact in relationship to the rest of the building. This is a unique use as a performance venue and Crome indicated the vertical element to this marquee is a common design for theatre marquees. It is staff’s opinion that the mockup, built to scale, is not extensive in proportion to the overall size of the building.

Max Crome displayed some of the renderings that were shown to Planning Commission to clarify what the various signs will look like in “real life”. He noted the need for the signage to be seen from the intersection of US 68 and Corry.

The Clerk received clarification that an internally lighted sign is permissible in the B-1, and that the variance is for size only.

Crome provided a Google street view of the sign area to indicate the angle at which the residents of the only dwelling in the area will see the sign.

Raska asked whose jurisdiction the issue of light pollution falls under, and was told Planning Commission, and that that PC had addressed this issue when they heard the conditional use application for the Comedy Club.

Crome described the types of lighting, stating that exterior lights will adhere to a 90 degree cutoff.

Jacobs OPENED THE PUBLIC HEARING.

Bette Kelley stated that she views the Marquee sign as being four signs, and complained again about the potential light intrusion into her home. She asked that the variance not be granted.

Wayne Gulden objected to the variance, and speculated that it would “set precedent.”

Parcels reiterated that lighting is not part of the BZA consideration, only the signage.

Crome described the types of lighting and when the lights would be on or dimmed.

Parcels stated that every BZA hearing is conducted on the merits of the case, and no case sets precedent for another. She stated again that BZA’s considerations are limited to the variances being sought; setback, and size and number of signs.

Jacobs asked Gulden and Kelley about a reference in their letter regarding “Mr. Crome’s verbal representations to us”.

Gulden stated that the mock-up provided seemed much smaller than what is being requested.

Crome stated that the mock-up was to scale and was the size being requested.

Jacobs raised a situation heard by BZA in the past in which conditions were incorporated into the variance because of complaints raised by a neighbor.

Parcels stated that the issue at hand is to grant or not grant a variance, and that conditions cannot be imposed by the BZA.

Jacobs asked whether the variance request could be changed to accommodate the neighbor concerns.

Jacobs stated that he cannot separate the number and size of the signs from the lighting issue.

The Clerk noted that the zoning area in question is the B-1.

Raska asked whether Gulden and Kelley feel any differently about the variance after hearing Crome speak.

They indicated that they did not.

Jacobs asked whether Crome could make any further assurances.

Crome stressed the need for the size of the sign as it is scaled, and stated that he would be responsive to the concerns of the neighbors. He noted that the sign will be “an iconic thing seen all over the world.”

Jacobs CLOSED THE PUBLIC HEARING.

The Clerk read the Duncan Standards on the REQUEST FOR A VARIANCE TO THE REAR YARD SETBACK as follows, calling roll on each.

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (2) Whether the variance is substantial; Salmonson: N; Raska: Y; Reed: N; Jacobs: N.
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; Salmonson: N; Raska: Y; Reed: N; Jacobs: N.
- (4) Whether the variance would adversely affect the delivery of governmental services such as water distribution, sanitary sewer collection, electric distribution, storm water collection, or refuse collection; Salmonson: N; Raska: N; Reed: N; Jacobs: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Raska: Y; Reed: N; Jacobs: Y.
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: N; Raska: N; Reed: Y; Jacobs: Y

Salmonson MOVED TO APPROVE THE VARIANCE TO THE REAR SETBACK REQUIREMENT AS REQUESTED. Reed SECONDED, and the MOTION PASSED 4-0.

The Clerk read the Duncan Standards ON A VARIANCE TO THE SIZE AND/OR HEIGHT, THE NUMBER PER STREET FRONTAGE AND TOTAL NUMBER OF SIGNS AS REQUESTED as follows, calling roll on each.

Reed asked for discussion. He noted that the sign will be located in the CBD, but stated that he is concerned about the size of the sign.

Salmonson inquired as to how much of a variance the vertical sign actually is.

Swinger stated that this is difficult to determine, since the entirety of the sign, both the horizontal marquee portion and the vertical projection, are factored together.

The Clerk asked whether Crome could provide the dimensions for just the vertical projection portion of the sign.

Crome stated that the vertical portion of the sign is four feet by eight feet, or 24 square feet. He commented that the sign is scaled with the size of the marquee, and that while it could be slightly smaller, it would lose impact if it were scaled very much smaller.

In response to a question from Reed, Parcels stated that conditions cannot be imposed upon the variance, but that the applicant can return with a modified application for consideration at a later point.

Jacobs commented that the applicant can choose to modify the request.

The extent of the variance was discussed. Swinger commented that the logo is the portion that exceeds the code.

Reed asked for negotiation in reduction of the size of the sign.

Jacobs stated that this is all possible within the context of the meeting.

Swinger commented that the sign is not out of proportion to the building in terms of scale.

Crome showed a slide of the mock up to offer perspective. He affirmed that the sign will be internally lit.

Crome offered to reduce the sign height by one foot.

Raska stated that a 4'X7' sign is not substantially different from a 4'X8' sign.

Reed MOVED TO APPROVE THE SIGN VARIANCE AS REQUESTED FOR THE NUMBER OF SIGNS PER STREET FRONTAGE AND WITH THE CONDITION THAT THE MARQUEE SIGN IS A MAXIMUM OF SEVEN FEET ABOVE THE BODY OF THE MARQUEE, AS AGREED UPON WITH THE APPLICANT. Jacobs SECONDED.

The Clerk then called the Duncan Factors as follows:

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (2) Whether the variance is substantial; Salmonson: N; Raska: Y; Reed: Y; Jacobs: Y.
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; Salmonson: N; Raska: Y; Reed: N; Jacobs: N.
- (4) Whether the variance would adversely affect the delivery of governmental services such as water distribution, sanitary sewer collection, electric distribution, storm water collection, or refuse collection; Salmonson: N; Raska: N; Reed: N; Jacobs: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Raska: N; Reed: Y; Jacobs: Y.
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Raska: N; Reed: Y; Jacobs: Y.

The Clerk then called the vote on the MOTION TO APPROVE. The MOTION PASSED 3-1, with Raska voting against.

- 2) **Variance Application** – R-A, Low Density Residential District – 202 Fairfield Pike – Josh Myers, property owner, has submitted an application for a variance seeking relief from the required number of bathrooms for Accessory Dwelling Units – Chapter 1262.08 (e) (1) Conditional Use – Specific Requirements. **Greene County Parcel ID #F19000100120001800**

Swinger explained the variance request as follows:

Josh Myers submitted a conditional use application to the Planning Commission for an accessory dwelling unit (ADU). The Planning Commission approved his request for an accessory dwelling unit. Later, in a resubmission of plans due to the condition of the existing garage, which had to be demolished, he showed a second half bath. Because ADU's allow for only one bathroom, Josh Myers has submitted a variance application seeking relief to the number of required bathrooms.

Mr. Myers currently lives in Columbus and rents out the primary dwelling. He is building the ADU to use when he is here with his family, and specifically wants to have outdoor access to the half bath for his family's use. The original square footage of the ADU approved by the Planning Commission has not changed.

Myers explained the additional bathroom as an outdoor-facing room which could be used by his family when outdoors.

Swinger described the limitations of an ADU in terms of size and accessories.

Jacobs OPENED THE PUBLIC HEARING.

Swinger described a neighbor who had called with questions, which she had addressed at the time, to the satisfaction of the caller.

There being no comment, Jacobs CLOSED THE PUBLIC HEARING.

The Clerk read the Duncan Standards as follows, calling roll on each.

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (2) Whether the variance is substantial; Salmonson: N; Raska: N; Reed: N; Jacobs: N.
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; Salmonson: N; Raska: N; Reed: N; Jacobs: N.
- (4) Whether the variance would adversely affect the delivery of governmental services such as water distribution, sanitary sewer collection, electric distribution, storm water collection, or refuse collection; Salmonson: N; Raska: N; Reed: N; Jacobs: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.

Salmonson MOVED TO APPROVE THE VARIANCE AS REQUESTED. Raska SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

- 3) **Variance Application** – R-B, Moderate Density Residential District – 506 S. High Street – Mark Massie of Massie Signs & Art on behalf of the Edward Jones Company, has submitted an application for a variance seeking relief from the required front yard setback for signs – Chapter 1266 Signs – Table 1266.03 (a) Permitted Signs. **Greene County Parcel ID #F19000100040007100**

Swinger explained the requested variance, explaining that Coactive Yellow Springs is a building owned by Mark Obstalecki that provides small businesses a location to rent out space with common shared areas for tenants. The Edward Jones Company, a lessee, is requesting a sign at the front of the property. The property has two lots with a building setback that is non-conforming with the zoning code. Setbacks in R-B are a minimum of 20-feet. This building is setback 2 to 3-feet from the property line and 7-8 feet from the edge of the sidewalk.

Mark Massie, representing Edward Jones, described the sign, which will be a total of five feet tall.

Swinger noted that the sign meets all code conditions, but requires a variance to the setback requirement, since the building is within that setback.

Jacobs OPENED THE PUBLIC HEARING. He noted a letter received in support of the variance. There being no comment, Jacobs CLOSED THE PUBLIC HEARING.

The Clerk read the Duncan Standards as follows, calling roll on each.

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (2) Whether the variance is substantial; Salmonson: Y; Raska: N; Reed: N; Jacobs: N.
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance; Salmonson: N; Raska: N; Reed: N; Jacobs: N.
- (4) Whether the variance would adversely affect the delivery of governmental services such as water distribution, sanitary sewer collection, electric distribution, storm water collection, or refuse collection; Salmonson: N; Raska: N; Reed: N; Jacobs: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Raska: Y; Reed: Y; Jacobs: Y.

Raska MOVED TO APPROVE THE SETBACK VARIANCE AS REQUESTED. Jacobs SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

AGENDA PLANNING

There were no future agenda items.

ADJOURNMENT

There being no further business, Raska MOVED and Salmonson SECONDED a MOTION to adjourn. The MOTION PASSED 4-0. Meeting ADJOURNED at 7:40 PM.

Ellis Jacobs, Chair

Attest: Judy Kintner, Clerk