

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

In Council Chambers @ 5:30 P.M.

Wednesday, September 14, 2022

CALL TO ORDER

The meeting was called to order at 5:30 p.m. by Matt Reed, Acting Chair.

ROLL CALL

Matt Reed, Acting Chair, members Anthony Salmonson, Scott Osterholm and Matt Raska were present. Zoning Administrator for the Village, Denise Swinger, was also present.

COMMUNICATIONS

There were no communications.

REVIEW OF AGENDA

There were no changes made.

REVIEW OF MINUTES

Minutes for BZA Meeting of July 6, 2022 were reviewed. Salmonson MOVED and Raska SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 on a ROLL CALL VOTE, with Reed Abstaining due to absence from that meeting.

PUBLIC HEARINGS

- 1) **Variance Request**– R-B, Moderate Density Residential District – 420 Phillips Street Alex Melamed, on behalf of Will and Margaret Mattox, has submitted an application for a variance seeking relief from Chapter 1260.02 (a) (2) front yard setback for a primary dwelling unit. **Greene County Parcel ID #F19000100090002700**

Swinger explained the request as follows:

This property has two front yard lot lines. The front yard lot line facing Phillips Street has been approved for a setback of five feet due to the allowance of the average front setback in 1260.02 Dimensional Provisions, which states, *“Where two or more lots entirely or partially within 200 feet of a subject lot, on the same side of the street and the same block, are occupied by principal buildings whose existing front setback is less than required by the zoning district, the average of the established setbacks for those buildings shall be the minimum required front setback for the subject lot.”*

The request for the variance in the application states the reason as *“this would bring the house closer to the original home location that occupied the lot for more than 100 years.”* Once constructed, the primary dwelling will have a five-foot setback on the Phillips Street side. With this variance request, the house will also have a 10-foot setback along the West Davis Street side.

Alex Melamed, the designer of the proposed structure, stated that the request for the variance stems from a desire to better use the whole lot, and, he argued, the variance is “in keeping with the historic design standard.”

Property owner Will Maddox stated that he would like to use the entirety of the footprint of the previous home.

Reed asked whether the existing vegetation along Phillips Street would be retained, and Maddox stated that it would.

Salmonson asked whether Maddox had contacted the neighbors regarding the request and was told that he had not.

Swinger noted that she had notified neighboring property owners as required.

Swinger noted that there are no other homes along Davis Street located that close to the property line.

Reed OPENED THE PUBLIC HEARING.

There being no comment, Reed CLOSED THE PUBLIC HEARING.

Osterholm inquired as to whether Public Works staff had any issues with the request and was told they do not.

Swinger elaborated that normally there must be a compelling reason to grant a variance.

The Clerk then read the Duncan Standards as follows, calling roll on each standard:

- (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; Osterholm: Y; Raska: Y; Reed: Y
- (2) Whether the variance is substantial; Salmonson: Y; Osterholm: N; Raska: N; Reed: 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; Osterholm: N; Raska: N; Reed: 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; Osterholm: N; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Raska: N; Reed: Y
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y

Raska MOVED to APPROVE the variance as requested. Osterholm SECONDED.

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

Variance Request – R-A, Low Density Residential District – 430 Fairfield Pike – Catherine Price has submitted an application for a variance seeking relief from the required fence height – 1260.01 (a) (1) General Provisions.

Greene County Parcel ID #F19000100120002800 and Parcel ID #F19000100120007100

Swinger explained the request as follows:

Catherine Price has submitted a variance application and a narrative explanation with a site plan. She is seeking a variance to protect her front yard from headlights shining into her two glass exterior walls as vehicles travel along Fairfield Pike and Stafford Street.

Ms. Price would like to install six foot tall fence panels, eight feet in width in the front yard. These panels would be setback 35 feet from the road and placed on the inside of the densely wooded area. She has reinstalled the original 16 feet of eight foot tall panels that were removed from the side yard by her neighbor. Staff was not able to determine who owned the original eight-foot fence, but it was located on the property line and the neighbor at 420 Fairfield Pike removed it to install another fence. The new fence installed by the neighbor is in compliance with the zoning code at six feet.

Staff could not find where a variance was granted for the original eight-foot tall fence. The fence height is not in compliance with the zoning code and staff has determined a variance is necessary in order to keep it. Staff also checked the height requirements prior to the 2013 Zoning Code update and the heights were the same as they are now (four feet in front yards and six feet in side and back yards. Ms. Price's request is two-fold: 1) a two-foot variance to the side yard height of six feet to allow the applicant to keep the original eight foot tall fence and 2), a two-foot variance to the front yard height of four feet to allow for a six foot tall fence that will be located behind a wooded area, 35-feet from Fairfield Pike.

Raska inquired as to whether Public Works staff have any concerns regarding the request.

Swinger responded that normally she would not support such a request, but that the topography is such that the fence will be obscured behind foliage and will be thirty feet off of the road.

Price provided detail regarding her request.

Reed OPENED THE PUBLIC HEARING.

Joyce Apel, a neighbor, opined that the former property owner had been known to her and “he would have been precise” she stated, asserting that the fence must therefore be on Price’s property.

Swinger reported that neighboring properties had been properly notified.

Reed CLOSED THE PUBLIC HEARING.

Raska MOVED TO APPROVE THE REQUEST FOR A VARIANCE TO THE SIDE YARD FENCE HEIGHT OF TWO FEET. Salmonson SECONDED.

The Clerk then read the Duncan Standards as follows, calling roll on each standard:

- (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; Osterholm: Y; Raska: Y; Reed: Y
- (2) Whether the variance is substantial; Salmonson: N; Osterholm: N; Raska: N; Reed: 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; Osterholm: N; Raska: N; Reed: 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; Osterholm: N; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: N; Reed: N
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: N; Osterholm: N; Raska: N; Reed: N
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

Salmonson asked whether Price had used drapes or something similar to block the headlights and was told she had not.

Raska MOVED TO APPROVE THE REQUEST FOR A VARIANCE TO THE FRONT YARD FENCE HEIGHT OF TWO FEET with a SETBACK OF 30 FEET. Osterholm SECONDED.

The Clerk then read the Duncan Standards as follows, calling roll on each standard:

- (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; Osterholm: Y; Raska: Y; Reed: Y
- (2) Whether the variance is substantial; Salmonson: Y; Osterholm: N; Raska: N; Reed: 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; Osterholm: N; Raska: N; Reed: 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; Osterholm: N; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: N; Reed: N

- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: N; Osterholm: Y; Raska: Y; Reed: Y
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Osterholm: N; Raska: N; Reed: N
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

Variance Request– R-A, Low Density Residential District – 251 Whitehall Drive - Shirley Smith has submitted an application for a variance seeking relief from Chapter 1262.08 (e) (7) B Transient Guest Lodging – Location. **Greene County Parcel ID # F19000100120005700**

Swinger explained the dilemma, noting that the code states that “Planning Commission shall consider the proposed location relative to its proximity to other such uses in the vicinity in order to avoid an undue concentration that could have a negative effect on the surrounding neighborhood including affordable housing concerns. *In no case, can a transient guest lodging be located closer than 500 feet from another transient guest lodging, as measured from closest property line to closest property line.* A transient guest lodging unit may be located in a dwelling unit, a room or rooms in a dwelling unit, or an accessory dwelling unit, but no more than one transient guest lodging permit shall be granted per property or per owner.”

Swinger noted that Council’s intent in permitting TGLs had been twofold: one, to provide reasonably priced lodging options for visitors and two; to allow residents of the Village to supplement their incomes in such a manner as to better be able to afford the high cost of living in the Village.

Swinger then stated that the applicant is requesting a 243 foot variance from the 500-foot requirement because her house is in a different neighborhood, Fair Acres. Within the Fair Acres neighborhood, there are two other TGL’s and both are 500 feet or more from her property location.

Swinger noted that this would be a less-than 50% variance, and noted that Fairfield Pike is a major dividing line in terms of neighborhoods.

Reed commented that he remembered the discussion regarding TGLs in the Village, and agreed with Swinger regarding the intent of both PC and Council.

Smith read a statement attesting to her long residency in the Village and her desire to remain despite continually increasing utility costs and taxes.

Smith noted that the house has two “wings”, perfectly suiting it to rental on one side.

Smith stated that she has spoken to her neighbors about the idea of a TGL and has received support from all of the neighbors.

Salmonson inquired about parking.

Smith stated that she intends to widen the driveway to accommodate a second vehicle.

Reed OPENED THE PUBLIC HEARING.

Denise Lemon, friend and neighbor, described Smith as “an excellent neighbor and the ultimate hostess,” and stressed the need for affordable rental options for visitors.

Reed CLOSED THE PUBLIC HEARING.

Raska MOVED TO APPROVE THE DIMENSIONAL VARIANCE OF 243 FEET AS REQUESTED. Osterholm SECONDED.

The Clerk then read the Duncan Standards as follows, calling roll on each standard:

- (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; Osterholm: Y; Raska: Y; Reed: Y

- (2) Whether the variance is substantial; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: 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; Osterholm: N; Raska: N; Reed: 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; Osterholm: N; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: N; Reed: N
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: N
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

AGENDA PLANNING

There were no items for consideration.

ADJOURNMENT

There being no further business, Salmonson MOVED and Osterholm SECONDED a MOTION to adjourn. The MOTION PASSED 4-0 on a voice vote. Meeting ADJOURNED at 6:33PM.

Matt Reed, Acting Chair

Attest: Judy Kintner, Clerk