

VILLAGE OF YELLOW SPRINGS  
BOARD OF ZONING APPEALS  
AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on Wednesday,  
October 28, 2015 at 7:00 PM in Council Chambers, Second Floor, John Bryan  
Community Center, 100 Dayton Street, Yellow Springs, Ohio 45387

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7:00 CALL TO ORDER

ROLL CALL

REVIEW OF AGENDA

COMMUNICATIONS

7:05 REVIEW OF MINUTES  
Minutes for BZA Meeting of June 10, 2015

7:10 PUBLIC HEARINGS  
Variance Request: 326 Phillips Street, Parker Buckley and Carol Young, Greene  
County Parcel ID # F19000100100011400. This variance request is in the R-B Moderate  
Density Residential zoning district; To exceed the rear yard requirement of no more than  
30 percent (Section 1260.04(a) 3) in order to construct a detached two-car garage with  
access through the existing alleyway.

8:45 AGENDA PLANNING

9:00 ADJOURNMENT

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

**IN COUNCIL CHAMBERS @ 7:00 P.M.**

**Wednesday, June 10, 2015**

**CALL TO ORDER**

The meeting was called to order at 7:04 p.m. by Ted Donnell, Chair.

**ROLL CALL**

Ted Donnell, Chair, Ellis Jacobs, Dan Reyes and Chris Peifer were present, as was the Zoning Administrator for the Village, John Yung. Kingsley Perry arrived as the first public hearing started.

**REVIEW OF AGENDA**

There were no changes made to the agenda.

**REVIEW OF MINUTES**

Minutes for BZA Meeting of November 5, 2014. Jacobs MOVED and Peifer SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 ON A VOICE VOTE. Reyes abstained due to non-participation in that meeting.

Donnell recused himself for reasons of potential conflict of interest. He owns the neighboring property.

**PUBLIC HEARINGS**

- 1) Application 15-001 for a four (4) foot height variance for a front yard fence at 120 Railroad Street, Greene County Parcel ID # F19000100110031000. The property is located in the B-1 Central Business Zoning District. David K. Chapelle, applicant.

The applicant has recently purchased the house at 120 Railroad Street in the Village. The property is zoned B-1 Central Business. He intends to renovate the property to use as his residence. Single-family dwellings are permitted in the B-1 zoning district. The renovation project includes the installation of an eight-foot tall masonry wall along the property. The applicant has stated that the wall would be styled after similar street fronting walls found in London and that sections of the wall would be blank space to host mural art. There is currently a chain link fence along the front of the property that is conforming in height to the zoning code.

The variance request is four feet of relief from the front yard fence height limit in Section 1260.01(a.1). The property is not located along a street frontage however the address implies that the property fronts Railroad Street. The property is accessed by an easement that runs behind the properties on Dayton Street and along the interior of the Railroad Street parking lot that is owned by the Village.

**Findings**

In consideration of to the zoning criteria:

- (1) Is there beneficial use without the variance?

- a. Yes. The fence can be constructed to meet the height requirements of the zoning code. However it will not achieve the degree of privacy desired by the applicant.
- (2) Is the variance substantial?
  - a. Yes. The variance would impact the visual sight lines of the property from adjacent right-of-way. However if development were to occur on the Village owned parking lot, visibility of the property from the right-of-way will be very limited.
- (3) Will granting the variance alter the essential character of the neighborhood or will adjoining properties would suffer a substantial detriment as a result of the variance?
  - a. No. The property is adjacent to a Village owned parking lot. It would provide a buffer from the activities of the parking lot.
- (4) Does granting the variance interfere with the delivery of government services?
  - a. No. It has been identified this project will not interfere with delivery of services.
- (5) Did the property owner have knowledge of the zoning restrictions?
  - a. No. The property was not aware of the restriction until their contractor had a discussion with the Village staff regarding the proposed improvements.
- (6) Can some other method be used to address the issue besides a variance?
  - a. No. If a conforming fence was constructed it would not be enough to buffer the property from the adjacent parking lot.
- (7) Is the existing condition for a variance self-created?
  - a. No. The property owner did not create the conditions for the variance application.
- (8) Would granting the variance be in the spirit and intent of the zoning code?
  - a. Yes. Granting the variance would allow for flexible usage of private property.

Does the strict application of a zoning requirement causes practical difficulties in the use of the property?  
 Yes. The front yard fence regulations do not adequately address screening issues for the residential property fronting a public parking lot. The lot receives frequent activity not only from cars but also is the location of dumpsters for several businesses that front Dayton Street. The property would need adequate screening from such activities.

Has the property owner shown practical difficulties so inequitable as to justify granting the variance?  
 No. The applicant has not provided any evidence of undue financial hardship. However; the front yard fence regulations do not offer the degree of privacy desired by the applicant.

### Discussion

The property is a unique situation being located on the interior of a block with only access via an easement on the adjacent parking lot property. The zoning code treats easements as street locations however the adjacent property is a parking lot. Therefore the fence should be treated as a parking lot buffer however the zoning code does not allow that type of application for front yards fences. Therefore the situation requires a variance.

### Recommendation

Staff recommends that the Board of Zoning Appeals **APPROVE** a variance for four feet of relief from the maximum fence height stated in Section 1260.1(a.1) of the Zoning Code with the following conditions:

- Proposed wall include mural space for artists;
- Proposed wall will not exceed eight feet;

- And proposed wall will be located three feet from front yard lot line.

And the following findings of fact:

- There is a unique situation presented that is not adequately addressed by the zoning code;
- The variance request conforms to the intent of the Zoning Code;  
And the variance request is in compliance with the standards of Section 1278.04 of the zoning code.

Jacobs asked for specific language from the zoning code regarding fence height in the CBD. Yung read this information, reiterating that the height cannot exceed 4ø in any zone. He then read the sections relevant to side and rear yard fencing, specifically that, "Fences in nonresidential districts shall be permitted up to eight feet in height, provided for each foot exceeding six feet, there shall be a one and one-half foot setback from side property lines."

Peifer received confirmation that the wall will surround the property, and that the variance is for the front wall only.

Jacobs asked the purpose of the wall, and was informed that the property is adjacent to a parking lot, and was told that the reason for the desired wall was to shield the property from the parking lot.

Reyes introduced past fence height decisions as a possible factor, but there were no immediately comparable cases recalled.

Jacobs invited comment from the Solicitor, who stated his opinion that proper questions were being asked, and that he had nothing further at that time.

Jacobs invited the homeowner's agent to address the request.

Kori Grimm of Scanlon Construction addressed the group, noting that the property owner intends to add to the property significantly. She noted that the renovations are planned to mesh with the historical elements of the home, and that a part of the exterior wall is planned as a graffiti/mural space.

Grimm stated that originally the intent was to have the front wall height only 4ø but concerns about security and privacy have led to a desire to have an 8ø wall around the entire property. Grimm provided renderings of the proposed renovations and improvements to the property. The proposed wall is primarily masonry, and the owner proposes a façade for graffiti space on the east side wall. There will be a pedestrian gate and a vehicle gate in the wall.

Jacobs received confirmation that the top of the wall will be a masonry cap.

Ted Donnell, adjacent property owner, addressed the CBE area, noting that all but the northwest corner is located in the CBD.

Donnell stated that living on a parking lot requires a great deal of tolerance for late night bar-attendees, a great deal of vehicle traffic for parking purposes, characterizing it as abnormally active for the Village.



Donnell noted that Railroad Street is a complete lot removed from the property in question--approximately 70 feet from the Right of Way. He stated that the home had originally been built as a part of the grain elevator property, with access to the railroad, noting that there is no other like property in the Village in terms of the parameters of location.

Grimm stated that the Village Planner had indicated that there was a possibility that something could be done with the parking lot in the future, which had some influence on the desire for an 8ø wall.

Reyes asked about the access easement located to the east of the property.

Donnell stated that the owner is Bob Baldwin, and there is agreement among the building owners for access to the alley, which contains the dumpsters for all of the businesses. Donnell opined that the agreement is likely written.

Jacobs commented that he had become sensitive to the fact that increasing wall height changes the character of an area. He stated that he would be open to learning of compelling circumstances to be considered in favor of granting the variance, but that his stance was that there should be compelling reason such that the decision did not set a precedent.

Yung spoke to the unique nature of the property in that there is no street frontage, and that the closest neighboring property is a likely detriment to the value of the property. He noted that it is typical for a parking lot to provide a buffer to neighboring properties.

In response to a question from Perry, Yung noted that there is ample space for fire and emergency access, the alley width being about 30 feet.

Jacobs asked for further proof of the property's uniqueness.

Yung stated his understanding of Jacobs's concern, and stated that he could think of no other landlocked properties that have a parking lot in front of them.

Donnell stated that he would question the assignment of the front yard to the north side of the property, arguing that the property is not on the ROW. Donnell stated that this feature adds to the peculiar nature of the property.

Yung read that the zoning code defines the front lot line in the case of an interior lot as, "the line separating the lot from the street ROW or the road easement."

Donnell then argued that Dayton Street would be the logical "road", in that it provides the access to the lot.

Donnell argued that in the search to find a non-precedent setting reason for permitting the variance, the argument that a front yard abuts dumpsters and the rear of a row of businesses is more compelling than the parking lot argument.

Yung commented that the setback in the case of interpreting Dayton Street as the road access would be 0, and the 8 feet would be a permitted use because it is in excess of 10 feet set back from Dayton Street.

Yung noted that alleys are not generally considered for frontage. He stated that if the Board determines that the alley defines the front yard, then there is no front yard for the property. Yung explained the argument as assigning Dayton Street fronting street because the easement access the road at Dayton Street.

The Clerk asked for confirmation that if the decision is that the fronting street is Dayton Street, then no variance is required. Yung confirmed this, based upon the fact that the setback would be sufficient to permit an 8 foot fence.

Yung repeated the zoning code language for fence height, and stated that the front lot line of a property is dependent upon the easement or street ROW that permits access to the property.

In response to a question from Jacobs regarding why the fence would be permitted at 8 feet if the frontage were Dayton Street, Yung stated that it is because the setback from the street at that point exceeds the three feet per one foot of fence exceeding the permitted limit. That is, there is more than 4X3 (12 feet) of setback to the edge of the fence in that location.

Donnell pointed out that there is a permitted 8 foot fence at the Tavern that does not impede upon the character of the area.

Jacobs conceded that the property is uniquely exposed, and that he was inclined to say yes, but was still concerned about setting precedent.

The group revisited the idea of considering Dayton Street as the access ROW.

Jacobs asked Yung whether the setback could not be considered in excess of the 12 feet needed for the additional four feet if it remains as a Railroad Street frontage.

Yung stated that he is not comfortable making the interpretation to define Dayton Street as the frontage because he believes a house should have a front yard, but accepts the judgment of the BZA.

Conard commented that Yung's analysis is well thought out with regard to the unique nature of the property. He stated that he was not comfortable opining on the suggestion of changing the frontage.

Conard noted that the property is an island, and access is via a public easement over private property, which is beyond the scope of the usual consideration. Conard asked the Board to determine whether there is a basis to grant or deny the request based upon the current parameters for the lot.

Donnell pointed out that this was the point he had been trying to make with regard to the property being unique enough to grant the variance without setting a precedent. He commented that Railroad is not in fact a legal ROW.

Jacobs asked rhetorically whether any present could name any property which is located on the interior of a block with the only access via an easement and adjacent to a parking lot.

Reyes asked whether the lot is technically a buildable lot. Yung opined that it would not be, since it does not have access. Because it already exists, frontage must be determined in the most logical manner possible, which involves figuring out the access point/s.

Yung went over the zoning map, pointing out that there is not comparable property located within the Village.

Jacobs OPENED AND THEN CLOSED THE PUBLIC HEARING due to a lack of participation.

Jacobs read through the variance standards with a vote following each standard 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; **Reyes: YES; Perry: YES; Peifer: YES; Jacobs: YES.**
- (2) Whether the variance is substantial; **Reyes: YES; Perry: NO; Peifer: NO; Jacobs: NO.**
- (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; **Reyes: NO; Perry: NO; Peifer: NO; Jacobs: NO.**
- (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; **Reyes: NO; Perry: NO; Peifer: NO; Jacobs: NO.**
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; **Reyes: YES; Perry: NO; Peifer: YES; Jacobs: YES.**
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; **Reyes: YES; Perry: NO; Peifer: YES; Jacobs: NO.**
- (7) Whether the existing conditions from which a variance is being sought were self-created; **Reyes: NO; Perry: NO; Peifer: NO; Jacobs: NO.**
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. **Reyes: YES; Perry: YES; Peifer: YES; Jacobs: YES.**

Jacobs asked if, after weighing the factors described above and any other factors the Board deems relevant, whether the property owner has shown practical difficulties so inequitable as to justify granting a variance to the property owner. He asked for a MOTION.

Peifer MOVED to APPROVE THE 4Ø VARIANCE TO THE FENCE HEIGHT MAXIMUM FOR THE CBD FOR A MAXIMUM HEIGHT OF 8Ø OF MASONRY FENCE. Perry SECONDED.

Jacobs then interjected suggestions for conditions. Reyes expressed some reservations, and speculated as to whether there were other means of accomplishing the goal in another way.

The Clerk interjected with concern that the initial motion was getting confused.

Jacobs asked Peifer to withdraw his original motion and have Yung walk through the findings of fact and then bring another motion.

Jacobs clarified that he would like read into the record a finding of fact on which the motion would be based, as follows: This is a unique situation not adequately addressed by the zoning code in that the property is located on the interior of a block with access only via an easement on the adjacent parking lot property.

The Board discussed the possibility of future development of the parking lot as a potential factor.

The Clerk suggested that the motion could read as follows: Given that this is a unique situation not adequately addressed by the zoning code in that the property in question is located on the interior of a block with access only via an easement on the adjacent parking lot property, I MOVE THAT BZA APPROVE THE REQUESTED 4ø VARIANCE TO THE FENCE HEIGHT MAXIMUM FOR THE CBD FOR A MAXIMUM HEIGHT OF 8ø OF MASONRY FENCE, with the following conditions:

1. A wall includes mural space for artists
2. The wall will not exceed 8 feet in height
3. The wall will be set back 3 feet.

Perry SECONDED. Jacobs CALLED THE VOTE, and the MOTION PASSED 3-1 on a ROLL CALL VOTE, with Reyes voting against.

Donnell then returned to the table.

- 2) Application 15-002 for a side yard variance seeking maximum relief from the setback (five (5) and ten (10) feet on each side) of an interior lot line at 302 Corry Street, Greene County Parcel ID# F19000100100018200 and F19000100100018100. The property is located in the R-C High Density Residential Zoning District. Steve and Tina Bujenovic, applicants.

Yung asked a procedural point of order of the Solicitor, wondering if the request could be heard without the applicant present. It was determined that there was precedent for that occurrence, and that all parties had been properly notified.

The applicant has recently purchased three contiguous lots located at 302 Corry Street. Two of the lots front the corner of Corry and Glen Streets. An existing wood frame house sits on one of the properties. The applicant indicated that he intends to demolish the existing structure and build a new house on the property however the new house will straddle the interior lot line.

Staff indicated to the applicant that the typical procedure for these types of situations is for the property to be replatted. The applicant indicated that he would continue to pursue the variance request anyway.

The variance request is five feet of relief from the interior side yard setbacks of two of the lots. The property is located in the R-C High Density Residential zoning district which has a side yard setback of five (5) to ten (10) feet for a total of fifteen (15) feet of setback.

Lot A (the lot at the corner) is a double frontage lot. The primary frontage (along Corry) is 166 ft. wide. The area of the lot is 8,245 square feet which exceeds the minimum lot area of 4,800 square feet.

Lot B (the Glen St. lot) is an interior lot. Its lot width is 45.50 feet. The lot area is 6,944 square feet.

Lot C (the landlocked parcel) is not located along a frontage. It meets width and area requirements but is not considered a buildable lot due to not having access to a dedicated public right-of-way.

## Findings

In consideration of to the zoning criteria:

- (9) Is there beneficial use without the variance?
  - a. Yes and no. As the property is currently configured there is little beneficial use however all separate lots do conform to the zoning code and are buildable lots in their own right (with the exception of Lot C which lacks access to a street). If the property is replated, the request for a variance would not be needed.
- (10) Is the variance substantial?
  - a. No. Acquiring a replat would eliminate the need for a variance and allow for more flexibility in setbacks for the construction of the house.
- (11) Will granting the variance alter the essential character of the neighborhood or will adjoining properties would suffer a substantial detriment as a result of the variance?
  - a. No. The lot is a corner lot and the house would replace an existing house.
- (12) Does granting the variance interfere with the delivery of government services?
  - a. No. The house will utilize existing utility tap-ins.
- (13) Did the property owner have knowledge of the zoning restrictions?
  - a. Yes. The property owner purchased the property with knowledge of the interior lot line.
- (14) Can some other method be used to address the issue besides a variance?
  - a. Yes. The applicant can go through the replat process to consolidate the lots and eliminate the need for a variance.
- (15) Is the existing condition for a variance self-created?
  - a. No. However the applicant has the opportunity to address the situation in a way that would not require a variance and has not done so.
- (16) Would granting the variance be in the spirit and intent of the zoning code?
  - a. No. Granting this variance would go against Section 1240.02(c) which stated that the code was developed to, "promote efficient use of land." Granting the variance would not allow the three parcels to be used efficiently compared to the replat option.

Does the strict application of a zoning requirement causes practical difficulties in the use of the property?

- No. The applicant is constructing a new house on the site which is a considerable investment. The financial burden of conducting a replat would be minimal in scope of the project.

Has the property owner shown practical difficulties so inequitable as to justify granting the variance?

- No. The applicant has not provided any evidence of undue hardship.

## Discussion

At the time of application staff indicated that it would be a better option for the applicant to replat. A replat would eliminate the need for any future variances regarding structures located on or near the interior lot line. It would eliminate the need for this variance.

Additionally, there is a concern regarding the strict interpretation of building code on this site. Lot lines are treated as building walls in the code therefore any building wall within three feet of a lot line must be

fire rated for at least two hour protection in fire. This requirement could potential drive up cost of construction, far more than going through the replat process would.

Staff is concerned that granting the variance will not address any future interior lot line problems for future additions or accessory structures since the variance request is only for a new principle structure at the site. The code is written to imply that a variance request is one of last resort, that the situation is unique and that there is substantial evidence that the practical application of the zoning code would not work in a presented situation.

There is a more logical, legal and non-cost prohibitive option of a replat. The option is not cost prohibitive given the size and scope of the project. The properties are not unique for the purposes of constructing the house and the applicant has not presented any evidence of a hardship. Staff has found that this is not a case where a variance would be appropriate.

### **Recommendation**

Staff recommends that the Board of Zoning Appeals **DENY** a variance for five feet of relief from the side yard setback of two interior lots as regulated in Table 128.03(a) of the Zoning Code with the following findings of fact:

- The applicant has not exhausted other methods to correct the need for a variance.
- The applicant has not demonstrated inequitable circumstances.
- The applicant has not demonstrated hardship.
- Granting the variance is not in the spirit and intent of the Zoning Code.

Conard read from section 1260.04(g): Uses on the lot: Every building, structure or use established within the Village shall be located upon a legally recorded lot or parcel and shall conform to all requirements of this code.

Donnell asked how it might affect the outcome if three of the four lots were made into a single lot. There followed a theoretical discussion.

Yung opined that if the lots were re-platted, it would eliminate the need for the owner to return to the BZA for permission to proceed. He estimated the cost at under \$800.

Donnell suggested that all lots would need to be replatted so that lot C is not left as a landlocked parcel.

Conard redirected the discussion to the variance discussion.

Donnell invited the applicant to speak. The applicant not being present, there was no comment.

Donnell OPENED THE PUBLIC HEARING. Donnell CLOSED THE PUBLIC HEARING due to lack of comment.

Donnell CALLED FOR A MOTION.

Jacobs MOVED TO DENY THE REQUESTED VARIANCE. Peifer SECONDED.

Donnell read through the variance standards with a vote following each standard 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; **Reyes: YES; Perry: YES; Peifer: YES; Jacobs: YES; Donnell: YES**
- (2) Whether the variance is substantial; **Reyes: YES; Perry: YES; Peifer: YES; Jacobs: YES; Donnell: YES**
- (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; **Reyes: NO; Perry: NO; Peifer: NO; Jacobs: NO; Donnell: NO**
- (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; **Reyes: NO; Perry: NO; Peifer: NO; Jacobs: NO; Donnell: NO**
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; **Reyes: YES; Perry: YES; Peifer: YES; Jacobs: YES; Donnell: YES**
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; **Reyes: YES; Perry: YES; Peifer: YES; Jacobs: YES; Donnell: YES**
- (7) Whether the existing conditions from which a variance is being sought were self-created; and **Reyes: NO; Perry: NO; Peifer: NO; Jacobs: NO; Donnell: NO**
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. **Reyes: NO; Perry: NO; Peifer: NO; Jacobs: NO; Donnell: NO**

Donnell CALLED THE VOTE ON THE ORIGINAL MOTION, and the MOTION WAS DENIED 5-0 ON A ROLL CALL VOTE.

#### **AGENDA PLANNING**

Yung reported no cases scheduled for July.

The Clerk asked Yung to share his information regarding how to measure setbacks in response to the BZA request for guidance on this topic

Yung stated that his interpretation was to measure from the building footprint. This interpretation was greeted with appreciation.

#### **ADJOURNMENT**

There being no further business, Jacobs MOVED and Perry SECONDED a MOTION to adjourn. The MOTION PASSED 5-0. Meeting ADJOURNED at 8:55pm.

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Ted Donnell, Chair

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Attest: Judy Kintner, Clerk



TO: Board of Zoning Appeals

FROM: Denise Swinger, Zoning Administrator

DATE: October 19, 2015

RE: Public Hearing – October 28, 2015

**Variance Request:** 326 Phillips Street, Parker Buckley and Carol Young, Greene County Parcel ID # F19000100100011400. This variance request is in the R-B Moderate Density Residential zoning district; "To exceed the rear yard requirement of no more than 30 percent (**Section 1260.04(a) (3)**) in order to construct a detached two-car garage with access through the existing alleyway."

### Background

The applicants first approached the Village for a permit to build the accessory structure on July 28<sup>th</sup>. As a result of conflicting text within the code, the Zoning Administrator denied the permit on August 10<sup>th</sup>. On August 31<sup>st</sup> the Zoning Administrator presented text amendments to the Planning Commission which included easing restrictions on accessory structures (see attached text amendment). Under **1260.04 Uses (a) (3)** it states "accessory buildings and structures may be erected in a rear yard if set back at least ten feet from the rear and five feet from the side property lines. In any case, accessory buildings and structures shall not occupy more than 30 percent of the required rear yard." The Zoning Administrator's request to have the second sentence removed was due to the definition of "Required Yard."

Under **Definitions 1284.11 – Yard, required** - it states "That portion of the yard lying between the lot line and the required building setback line." If the accessory building or structure cannot occupy more than 30 percent of the required rear yard, the applicants would not be able to build the garage even though their backyard is much bigger than the area defined.

Planning Commission approved the text amendments. The amendments are now before Council with the first reading of the ordinance on November 2<sup>nd</sup>. The applicants are pursuing the variance rather than wait for an approval by Council in order to build their garage before winter.

### Variance Criteria

#### 1278.04 Variances

The Board's power to grant variances from the dimensional provisions of the zoning code, including by way of example, lot size, width, setbacks, parking requirements and height, shall be in harmony with the intent and purposes of the code, as provided below.

**(a) Variance Standards.** Variances from the terms of the code shall be granted only where the applicant shows that the strict application of a zoning requirement causes practical difficulties in the use of the



property. The factors to be considered and weighed by the Board in determining whether a property owner has encountered practical difficulties in the use of the property include, but are not limited to:

- (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;
  - (2) Whether the variance is substantial;
  - (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;
  - (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;
  - (5) Whether the property owner purchased the property with knowledge of the zoning restriction;
  - (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
  - (7) Whether the existing conditions from which a variance is being sought were self-created; and
  - (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
- (b) The Board shall determine, after weighing the factors described above and any other factors the Board deems relevant, whether the property owner has shown practical difficulties so inequitable as to justify granting a variance to the property owner.

In considering this variance, please note section **1260.04(a) (4)** "an accessory building or structure designed for and containing a vehicle entrance to be accessed from an existing publicly dedicated and commonly used alley may be located on the rear lot line, if parking space plans have been approved by the Zoning Administrator." The applicants do not intend to build the garage on their rear lot line, but will have it placed 5 feet in from this rear lot line. This two-car garage meets the parking requirement under section **1264.02** of 2 spaces per single-family dwelling.

## Recommendation

Staff recommends that the Board of Zoning Appeals **APPROVE** a variance for relief from the rear yard requirement of no more than 30 percent in order for the applicants to construct a detached two-car garage with access through the existing alleyway.

If you have any questions, please feel free to call me at 767-1702 or email [dswinger@yso.com](mailto:dswinger@yso.com).

**Text Amendment Proposals:** Added text is underlined, deleted text is ~~struck through~~.

1260.04        Uses

(a)        Accessory Buildings and Structures.

(1)        Accessory buildings or garages shall be considered to be part of the principal building and subject to all setback requirements of the principal building, if structurally and architecturally integrated into the building or if attached by an enclosed breezeway or similar enclosed structure not greater than ten feet in length. Detached accessory buildings shall be located at least ten feet from any principal building.

(2)        Accessory buildings and structures shall not be erected in any front yard.

(3)        Accessory buildings and structures may be erected in a rear yard if set back at least ten feet from the rear and five feet from the side property lines. ~~In any case, accessory buildings and structures shall not occupy more than 30 percent of the required rear yard.~~

(4)        An accessory building or structure designed for and containing a vehicle entrance to be accessed from an existing publicly dedicated and commonly used alley may be located on the rear lot line, if parking space plans have been approved by the zoning administrator.

(5)        The height of an accessory structure shall not exceed eighteen feet when a hip or gable roof is used, fifteen feet when a mansard or gambrel roof is used and twelve feet when a flat or shed roof is used, except when a dwelling unit is included in the structure, in which case the height shall not exceed twenty-four feet.

(6)        The total square footage of all aAccessory structures on the property shall not exceed 6650 percent of the principal building floor area or 800750 square feet, whichever is less.

(7)        An accessory building or accessory structure shall not be constructed or occupied on a lot before the principal building or use on the lot is constructed.

(8)        Accessory buildings and structures in planned unit developments shall be subject to the same requirements as in the Residential Districts.

(9)        Accessory structures located in a designated flood hazard area shall comply with the additional provisions set forth in Chapter 1282.

(10)       Swing sets, playground equipment, garden trellises, well-head covers and similar above-ground yard equipment accessory to a residential use shall be exempt from the provisions of this zoning code, except for height limitations, or unless specific provision is made for such equipment by Village ordinance.

(11)       Buildings and structures accessory to non-residential uses shall meet the minimum setback requirements and height limitations for principal buildings in the respective zoning district.

(12)       Accessory structures and buildings shall share all public utilities (water/sewer/electric) with the principal building. Accessory structures and buildings will not be separately metered.

(13)       Above ground and in-ground swimming pools filled above a depth of two feet shall meet the setback standards of this ordinance with the following provisions:

          (a)        The pool shall be surrounded by a fence at least four feet in height on all sides and be accessed by a self-closing and self-latching gate or by an elevated deck with hand railings that is compliant with local building code.

(14)       Residential access driveways shall be at least three feet from side property lines and construction shall ensure that drainage is sloped away from adjacent properties.

## **1282.05      Nonconforming Lots of Record**

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- (a) A lot of record that exists at the time of adoption or amendment of this code that does not meet the minimum requirements for lot width or lot area may be used for any permitted use in the district in which the lot is located, provided that any building or structure constructed on the lot complies with all other requirements of the zoning district. The nonconforming lot may also be used for conditional uses, if it meets all applicable requirements for those uses.
- (b) Adjoining nonconforming lots of record or nonconforming lots adjoining conforming lots that are owned by the same property owner of record shall be counted as a whole for the purposes of erecting accessory structures, additions, fences and signs if the following criteria are met:

  - (1) An existing principal structure is located on the property and was constructed prior to the adoption of this zoning ordinance.
  - (2) The proposed improvement must comply with existing zoning setback regulations for the exterior portions of the adjoining lots not owned by the same property owner.



**Village of Yellow Springs**  
100 Dayton Street, 45387  
PHONE: (937) 767-1702  
FAX: (937) 767-3720  
**Board of Zoning Appeals**  
**Application**

Case #: BZ15-03 [OFFICE USE]

TYPE OF REQUEST: (Check one) ☒ **VARIANCE** ☐ **ZONING APPEAL**

☐ **OTHER (Please Specify):** \_\_\_\_\_

1. Property Address and/or Parcel ID: 326 PHILLIPS ST, YELLOW SPRINGS OH
2. Property Owner: PARKER BUCKLEY & CAROL YOUNG  
Address: 326 PHILLIPS ST. YELLOW SPRINGS Phone: 937 206-4139
3. Description of request: PLEASE SEE ATTACHED.

The owner of this property and undersigned do hereby certify that the information and statements given on this application, drawings, and specifications are to the best of their knowledge, true and correct.

Signature of Applicant: Parker Buckley Title: Owner  
Address: 326 PHILLIPS ST. YELLOW SPRINGS Date: SEP 23, 2015  
E-mail: pbuckley@wdh.rr.com

**DO NOT WRITE BELOW THIS LINE [OFFICE USE]**

Zoning Classification: \_\_\_\_\_ Fee: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

Request Denied or Approved: \_\_\_\_\_

Chairman: \_\_\_\_\_

Attest: \_\_\_\_\_

Description of request:

We desire to build a modest (nominally 24 x 24 ft.) free-standing two car garage in the rear yard of our property, with access through the existing alleyway. The current zoning language severely restricts the size of our garage, essentially making it impractical to build. The present zoning code reads:

**Section 1260.04 (a) 3**

In any case, accessory buildings and structures shall not occupy more than 30 percent of the required rear yard.

And:

**1284.11 Definitions: X-Y-Z**

Yard, required. That portion of the yard lying between the lot line and the required building setback line.

The current definition of "required rear yard" considers only the strip of land from the setback line to the end of our property (on the alleyway). This ignores the actual size of our back yard.

At the August 31, 2015 Planning Commission meeting, the former Zoning Administrator, John Yung, presented suggested language changes to the zoning code which would alleviate this problem. These language changes were accepted by the Commission and are working their way through the normal process of additional hearings, periods of public comment, etc. Being aware of the time required for this process, we are requesting that the proposed new language be accepted as the basis for providing a variance so that we may proceed with construction before winter. Our desired garage design easily meets the proposed new language.

**Owner's response to Variance Standard Factors:**

- (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;

The property will maintain its present value without the addition of a garage; however, the addition of a modest garage will very likely enhance the value of the property.

- (2) Whether the variance is substantial;

We are requesting the variance so that we may proceed with construction of a two car garage before the start of winter. The garage is very much in keeping with other structures in the area and will be in compliance with anticipated corrections to the existing zoning code.

- (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;

Several other homes on the street have non-attached garages and/or outbuildings. We have advised our neighbors of our desire to build a garage and have heard no objections.

- (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;

We do not believe this to be the case. Alleyway access for emergency and utility services will remain the same. Garage construction will not impact the various utilities. Electric service to the garage is already available on the premises.

- (5) Whether the property owner purchased the property with knowledge of the zoning description;

We did not. While we admittedly could/should have researched the zoning code before purchasing, both the realtor and our local general contractor advised us that it would be no problem building a garage at the end of our yard.

- (6) Whether the property owner's predicament feasibility can be obviated through some method other than a variance;

Other than waiting for the official adoption of the new zoning language to work its way through the village government process, there is no other known remedy that will allow us to proceed with construction before winter.

- (7) Whether the existing conditions from which a variance is being sought were self-created; and

Other than our desire to build a garage, we did not create the conditions prompting this variance request. It appears that the existing zoning code incorporated language with unanticipated, overly restrictive consequences.

- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

We believe it would be. We will be in total compliance with the new zoning language being moved through the regular acceptance process.

2014090041

CLIENT: JACOB & JAYNE MONAT

STREET ADDRESS: 326 PHILLIPS STREET  
CITY OR VILLAGE: YELLOW SPRINGS

TOWNSHIP:

COUNTY: GREENE

STATE: OHIO

CITY LOT NUMBER:

SECTION, TOWN, RANGE

PLAT NAME: YELLOW SPRINGS

PLAT LOT NUMBER: PT. LOTS 65 & 66

PLAT BOOK: 31

PAGE: 247A

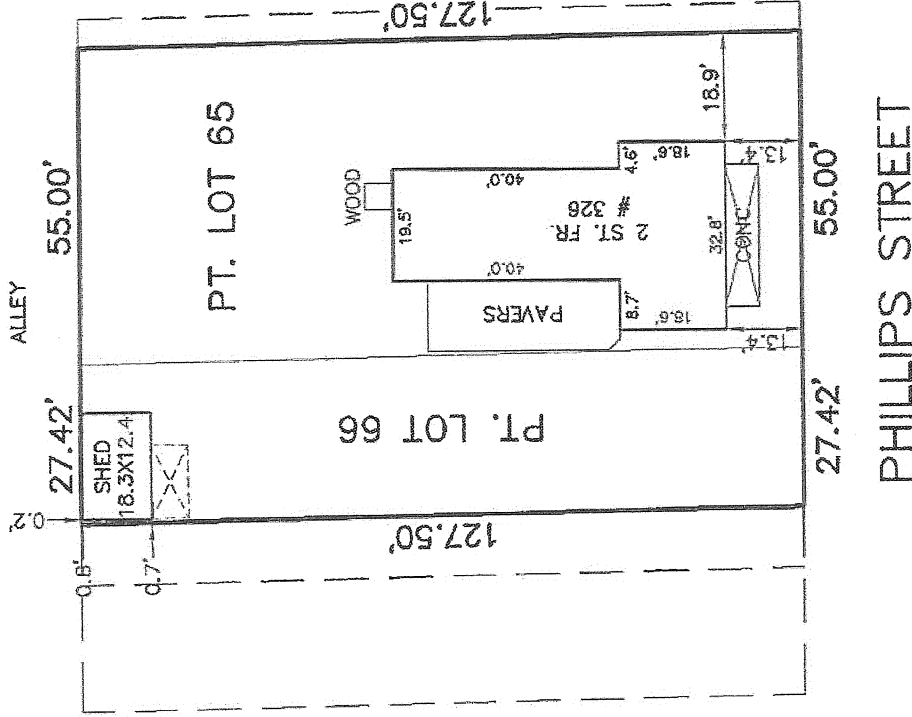
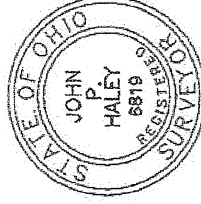
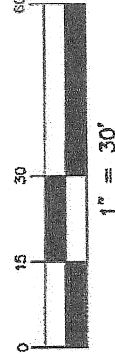
Survey made for the instance of:

M & M TITLE COMPANY and  
TALMER BANK AND TRUST ISAOA/ATMA

We certify that this survey shows the improvement or improvements as located on the premises described; that the improvement or improvements are entirely within lot lines and that there are no encroachments upon the premises described, by the improvement or improvements of adjoining premises.

By: *John P. Haley*  
Registered Surveyor

Mortgage Location Survey prepared in accordance with Chapter 4733-38 Ohio Administrative Code, and is not a boundary survey pursuant to Chapter 4733-37 Ohio Administrative Code. Property corners were not set. Buildings and fences should not be established from this survey.



NOTES:  
• DUE TO LACK OF MONUMENTATION FOUND IN THE FIELD, A BOUNDARY SURVEY SHOULD BE PERFORMED TO VERIFY MEASUREMENTS.



**Haley-Dusa**  
Engineering & Surveying Group, LLC  
270 Regency Ridge Drive, Suite 203  
Dayton, Ohio 45419  
Phone: (937) 439-4300 Fax: (937) 439-2005  
Email: haleydusa@haleydusa.com  
Website: www.haleydusa.com

Scale: 1"=30' Drawn: SBM Checked: JPH  
Date: 10-09-14 Job No. 14-29917



*Garage designs being considered.*

**Carol Young**

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**From:** Parker Buckley <pbuckley@woh.rr.com>  
**Sent:** Wednesday, September 23, 2015 10:20 AM  
**To:** Carol Young  
**Subject:** FW: 24x24 Garage

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**From:** Alex Melamed [<mailto:a.g.melamed@gmail.com>]  
**Sent:** Friday, July 17, 2015 11:24 AM  
**To:** Parker Buckley; Andrew Kline  
**Subject:** 24x24 Garage

I did a quick render of the shortened garage. It seems to me substantially similar with a little more room to get in and out in the driveway. You should still have room for a workbench in there as well as parked cars, but that's what the existing shed is for right? Take your time on this, I will fit it in when you decide. Best,

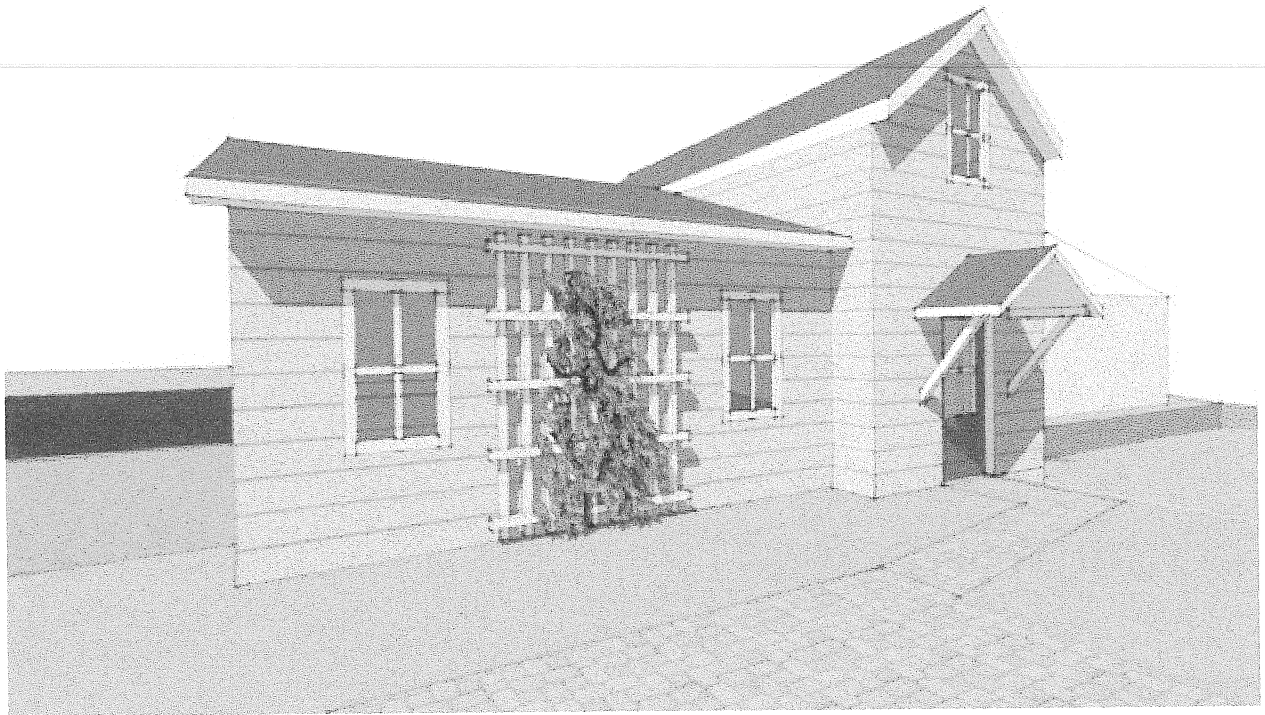
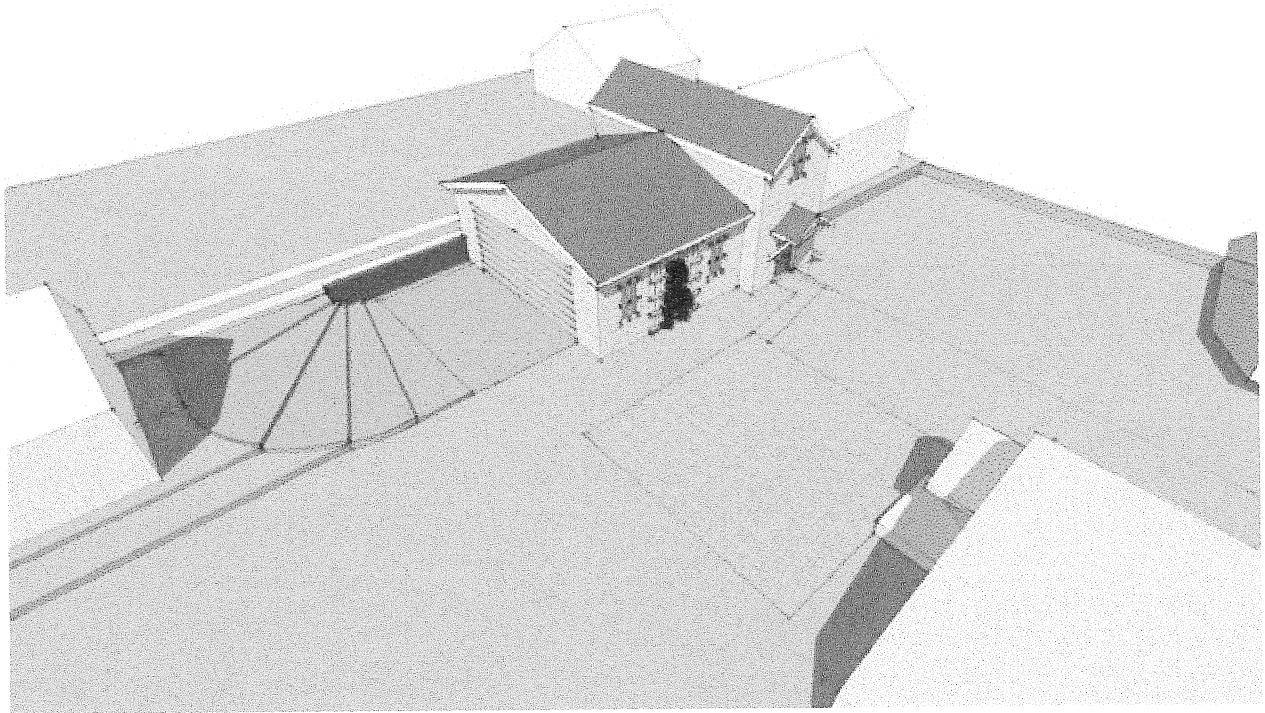
-Alex

Food for thought:



Alex Melamed, CPHC  
Design Director  
Green Generation Building Co.

Yellow Springs, OH





Phillips St

