

VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on Wednesday, May 9, 2013 at 7:00 PM in Council Chambers, Second Floor, John Bryan Community Center, 100 Dayton Street, Yellow Springs, Ohio 45387

- 7:00 CALL TO ORDER
ROLL CALL
- 7:05 REVIEW OF AGENDA
- 7:06 REVIEW OF MINUTES
Minutes BZA Meeting of January 9, 2013
- 7:10 PUBLIC HEARING
315 Elm Street; Variance Request
- 8:45 AGENDA PLANNING
- 9:00 ADJOURNMENT

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday January 9, 2013

CALL TO ORDER

The meeting was called to order at 7:06 p.m. by Ted Donnell, Chair.

ROLL CALL

Ted Donnell, Ellis Jacobs, Steve Conn, Kingsley Perry, Chris Peifer and Alternate Dan Reyes were present, as were the Zoning Administrators for the Village, Stephen Anderson and Tamera Ennist. Village Manager Laura Curliss was also in attendance.

REVIEW OF AGENDA

There was no review of the agenda.

REVIEW OF MINUTES

Jacobs MOVED and Perry SECONDED a MOTION to APPROVE the Minutes for March 21, 2012. Peifer abstained due to absence from that meeting. The MOTION PASSED 5-0.

NOMINATION OF CHAIR

Ellis Jacobs nominated Ted Donnell, who nominated Steve Conn, who revealed that he will be out of the country for six months and thus unable to fulfill the role. Donnell then nominated Jacobs, who made an articulate and impassioned refusal, leaving Donnell as the only nominee. Jacobs MOVED and Perry SECONDED a nomination for Ted Donnell as Chair. The MOTION PASSED 5-0 on a VOICE VOTE.

PUBLIC HEARINGS

Donnell noted his plans to summarize what the proposed zoning code would indicate as compared to what the current code would indicate as a way to illustrate changes currently in the works which will affect requests for variance.

Donnell commented that in the proposed code, this request would be a conditional use request which would go through Planning Commission, while under the current code, it is both a variance request and a conditional use request.

305 North Walnut Street:

Stephen Anderson, Executive Director of Greene County Regional Planning, presented the following information on the variance request for Yellow Springs Brewery, 305 N. Walnut Street:

APPLICANTS: Lisa Wolters & Nate Cornett; Property Owners: Rod Hoover & Sam Young

REQUESTED ACTION: Request for variance to increase the amount of floor space devoted to retail from the 10% allowed in the current Zoning code. Request to use 30% of floor space for retail.

GREENE COUNTY PARCEL ID#: *F19000100110025900.*

EXISTING ZONING: The property is zoned Light Industrial

STAFF ANALYSIS OF THE APPLICATION: The applicant requests approval of a variance to allow for a tasting room as part of the retail sales of their product.

VARIANCE CRITERIA: *This case has an unusual procedural posture in that the proper request should have been for a Conditional Use permit rather than a variance; however, under the revisions to the Zoning Code that are nearing completion, this request would likely be granted to allow the use of 30% of the floor space for retail.*

Pursuant to the requirements of Section 1242.06(d) of the Village Zoning Code, Variances from the terms of the Zoning Code shall be granted only where the property owner shows that the application of a zoning requirement to the property owner's property is inequitable causing the property owner 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 owner's property are identified in Section 1242.06(d)(1) (A)(1-7).

STAFF RECOMMENDATION: Staff recommends that the Board of Zoning Appeals allow a "variance" for use of 30% of the floor space for retail related to manufacturing in a brewery. The reason for allowing this is because of the change to the zoning code that will allow this as a conditional use once adopted by Council. Staff will request the business owners to return to the Village Planning office after the new zoning code has been adopted to apply for a conditional use permit. Staff recommends ALLOWING the variance at this time on condition that the applicants return after the effective date of the new zoning code to apply for a Conditional Use Permit.

Donnell OPENED THE PUBLIC HEARING.

Wolters commented that the information that they need to make an additional request to Planning Commission is new to her and Cornett.

Conn asked for clarification regarding this part of the recommendation, stating that he did not understand the requirement for a second hearing.

Curliss noted that if the owners did not wish to open soon, the matter would wait for the new zoning code to be implemented, but the need to move quickly, this is the most efficient and legal approach .

Anderson clarified that the new code would consider 10%-30% of floor space a conditional request, rather than a variance.

There was debate as to whether there exists a way for the request to come through only once and remain legal, as the group sought to fully understand the reasons underlying the manner of the request and the condition that the request return for a hearing before Planning Commission.

Curliss noted that the issues that will have to be addressed by Planning Commission are regarding such matters as parking and traffic flow.

Jacobs received further clarification that the request is “properly here as a request for a variance under the existing zoning code.” If the variance is granted, BZA can only approve the increased use of floor space, but cannot address the conditions.

Ennist explained that if the request were only for 10% of the floor space, the request could go directly to PC for a conditional use hearing. Because the need is for 30% floor space, BZA has to grant a variance for that request before the matter can move to Planning Commission for the necessary conditional use hearing.

Donnell CLOSED THE PUBLIC HEARING.

Donnell moved the matter through the seven criteria for the granting of a variance, with the group hearing and then voting on each of the criteria.

A. Variance standards. Variances from the terms of the Zoning Code shall be granted only where the property owner shows that the application of a zoning requirement to the property owner's property is inequitable causing the property owner 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 owner's 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;

Peifer received clarification that the criteria can be weighed in total in making a final determination. He commented that the property could in fact be used if employing only 10% of the floor space.

All members (4-0) voted “YES”, with Conn abstaining.

2. Whether the variance is substantial;

All members (5-0) voted that the requested degree of variance is NOT 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;

All members (5-0) voted “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;

All members (5-0) voted “NO”.

5. Whether the property owner purchased the property with knowledge of the zoning restriction;

Jacobs provided clarification regarding this criterion, noting that the variance runs with the property rather than with the tenant or the business.

All members (5-0) voted “YES”.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

All members (5-0) voted “NO”.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

All members (5-0) voted “YES”. Here, Curliss noted that the Village is currently moving in the direction of greater flexibility.

Jacobs MOVED that BZA accept Staff recommendations regarding the granting of the request for a variance at 305 N. Walnut Street, given that this property owner has encountered practical difficulties in the use of the property which can be obviated by the granting of a 30% floor space variance. Conn SECONDED the MOTION, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

BZA then discussed whether the condition that the request return before Planning Commission for a conditional use hearing be written in to the variance, with all agreeing that the only the variance request be dealt with. There were no conditions attached to the granting of the variance.

329 North High Street:

Anderson presented the following information on the variance request for 329 North High Street.

APPLICANT: Frank M. Riley, property owner

REQUESTED ACTION: Consider a variance request from Section 1250.02 Permitted Uses, Lot Size and Bulk Requirements.

HEARING NOTICE: *“Frank Riley requests a variance to the front yard setback in order to build a new dwelling unit on his property at 329 North High St. As proposed, the front of the property will shift to Pleasant St., with a setback of about 5 feet. According to 1250.02, a 25-foot front yard setback is required.”*

LOCATION: 329 North High Street.

GREENE COUNTY PARCEL ID#: F19000100110007700

EXISTING ZONING: The property is zoned Residence “B”

District Requirements for single family dwelling

Lot area per dwelling: 7,500 sq. ft.

Lot width: 50 ft.

Minimum setbacks:

Front: 25 ft. (setback shall be 30 ft. on streets other than local streets.)

Side: 5/15 (one side yard may be 5 ft. however the sum of both yards must be 15 ft.)

Rear: 25 ft.

STAFF ANALYSIS OF THE APPLICATION: The applicant requests approval of a variance to allow for the construction of a new single family dwelling.

BZA took several minutes to determine where the property lies and to understand the nature of the request and its impact on the neighboring structures.

Property Information and Analysis:

The property is located at 329 North High Street. The lot is a corner lot measuring 50 ft. along North High Street and 75 ft. along Pleasant Street, equaling 3,750 sq. ft. in size, this would be an existing non-conforming lot for lot area. By definition this lot would have 2 front yards, with N. High St., being a residential collector requiring a 30 ft. setback and Pleasant St., being a local street requiring a 25 ft. setback. The rear yard for this lot would be opposite N. High St. and require a 25 ft. setback and the side yard would be opposite Pleasant St. and require a 5 ft. setback. If all setbacks were adhered to, it would leave a building envelope of 20 ft. by 20 ft. allowing a 400 sq. ft. foot print. The applicant proposes to build a dwelling that is approximately 56 ft. wide by 42 ft. deep facing Pleasant St. Without knowing exactly where this dwelling will sit on the lot it appears that with the lot size and setbacks and the dwelling size a variance would be needed for both fronts-- rear and side. Therefore, multiple setback variances would be needed in order to locate the proposed dwelling on this lot. Further, the maximum lot coverage as identified in Section 1250.02 is 40% whereas the floor plan provided proposes a dwelling of 2040+/- sq. ft. that would cover approximately 54% of the lot, which would lead to another variance request.

Additional Information:

Section 1250.07 Minimum Habitable Space: No dwelling unit shall be less than 500 sq. ft. for an efficiency; 700 sq. ft. for a one-bedroom unit; 800 sq. ft. for a two-bedroom unit and 900 sq. ft. for a three-bedroom or larger unit.

Anderson here commented that there was no site plan submitted, but that if setbacks are applied as required, the dwelling cannot meet the minimum requirement for an efficiency regardless of how the dwelling is situated on the lot.

Reyes commented that a small unit would not be out of keeping with the neighborhood.

Conn asked for a comparison with the proposed zoning code regarding compliance. Donnell noted that the proposed square foot minimum is 875 square feet of buildable area (, and that the structure would still fail to comply under the proposed code.

Conn noted that the design is not site-specific, which might mitigate the issue.

Anderson commented that given the visible footprint (via GIS) of a structure on the lot recently, there is precedent for a structure there which sat eight feet back from Pleasant Street, and 25 feet off of Pleasant, and which was substantially smaller than the proposed unit.

Anderson suggested that the matter would perhaps be better served if it started as a discussion between the zoning department and the property owner, so that each variance does not create another set of required variances.

VARIANCE CRITERIA: Pursuant to the requirements of Section 1242.06(d) of the Village Zoning Code, Variances from the terms of the Zoning Code shall be granted only where the property owner shows that the application of a zoning requirement to the property owner's property is inequitable causing the property owner 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 owner's property are identified in Section 1242.06(d)(1) (A)(1-7):

STAFF RECOMMENDATION: Staff recommends that the Board of Zoning Appeals **deny** the variance request for the property located at 329 North High Street to reduce the front setback along Pleasant St., to about 5 feet because this would not allow this proposed dwelling to be constructed without further variances (front yard setback along N. High Street, rear yard setback, side yard setback and lot coverage).

There was a general discussion, put in motion by Peifer, as to the difference between denying a request and tabling the matter.

Donnell stated that there is not enough information in the application to answer the terms of the criteria.

Peifer asked whether the BZA is required to act within a specified amount of time, and was told that there is a 30 day requirement for action.

The Clerk read from the zoning code section 1232.06. B-1, which requires that a complete application, including a clear description, a scale drawing, and details of the variance(s) involved, and other materials as required.

Based on this information Conn MOVED TO TABLE the variance request. Perry SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Anderson here suggested that in future, opening the floor for comment before a vote would be prudent so that any neighbors who might not be able to attend a subsequent meeting could be heard.

Donnell agreed, and OPENED THE FLOOR for comment.

A neighbor, Bill Hoffman, asked whether the applicant could legally build a structure directly next to his property line.

Donnell responded that a structure could be built up to five feet from the property line on the side abutting Hoffman's property without requiring a variance.

Donnell CLOSED THE PUBLIC HEARING.

9 Lawson Place:

Tamara Ennist presented the following information on the variance request for 9 Lawson Place:

APPLICANT: Maria Inman, property owner.

REQUESTED ACTION: Consider variance requests from Section 1250.02 Permitted Uses, Lot Size and Bulk Requirements.

Hearing notice: *“Maria Inman has requested variances to both front and side yard setback requirements in order to construct additions to her home at 9 Lawson Place. As proposed, the plan would result in both front (for a carport in an existing driveway) and side yard setbacks of about 3.5 ft. 1250.02, requires a front yard setback of 25 and a least side yard setback of five feet.”*

LOCATION: 9 Lawson Place.

GREENE COUNTY PARCEL ID#: F19000100040004300.

EXISTING ZONING: The property is zoned Residence “B”

District Requirements for single family dwelling

Lot area per dwelling: 7,500 sq. ft.

Lot width: 50 ft.

Minimum setbacks:

Front: 25 ft. (setback shall be 30 ft. on streets other than local streets.)

Side: 5/15 (one side yard may be 5 ft. however the sum of both yards must be 15 ft.)

Rear: 25 ft.

STAFF ANALYSIS OF THE APPLICATION: The applicant requests approval of a front yard setback variance and a side yard setback variance for the construction of an addition and a carport.

Property Information and analysis:

The property is located at 9 Lawson Place. The lot is an interior lot measuring approximately 84 ft. along Lawson Place and 98 ft. deep, equaling approximately 8,232 sq. ft. By definition this lot has a front yard, along Lawson Place with a 25 ft. front yard setback. The applicant proposes to build an addition on the north side of the existing dwelling that will be approximately 3.5 feet from the property line (not including the overhang), approximately 1 foot 10 inches from the front and north property line (including overhang) where a 5 foot side yard setback is required (other side yard will be approximately 26 ft.). The proposed carport will be approximately 1 foot 10 inches from the front and north side yard (including overhang) where a 25 ft. front yard setback is required and a 5 ft. side yard setback is required (other side yard will be approximately 26 ft.)

Additional Information:

Lawson Place has a right of way of approximately 50 ft. and a pavement width of approximately 20 ft. Lawson Place is not a thru street but leads to the Greene Metropolitan Housing Authority housing complex to the south. This street is heavily travelled due to the number of residents at GMHA. Besides the above mentioned complex, only two other residential dwellings and a multifamily dwelling have driveway access to Lawson Place.

VARIANCE CRITERIA: Pursuant to the requirements of Section 1242.06(d) of the Village Zoning Code, variances from the terms of the Zoning Code shall be granted only where the property owner shows that the application of a zoning requirement to the property owner's property is inequitable causing the property owner 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 owner's property are identified in Section 1242.06(d)(1) (A)(1-7).

STAFF COMMENTS:

By using the definition of "Building, edge of" the property owner is requesting a variance of approximately 3 ft. 2 inches from the required 5 ft. side yard setback (carport and addition) leaving approximately 1 ft. 10 inch as the side yard setback. For the Carport the property owner is also requesting a variance of approximately 23 ft. 2 inches from the required 25 ft. front yard setback leaving approximately a 1 ft. 10 inch as the front yard setback.

VILLAGE MANAGER RECOMMENDATION: It is important to preserve the right-of-way for pedestrian traffic (now or future) as well as traffic on the street. This is the purpose for front yard setbacks. 25 feet allows for adequate future use. Also, if any person were to park a car in the driveway, the 25 foot setback allows the vehicle to be pulled in so as not to encroach on the right-of-way. Side yard setbacks are needed for public service access (fire trucks, electric, water, etc.).

SIDE YARD SETBACK -- In the Inman case, they have 26 feet on the south but would end up with only 1.5 feet on the north and so have met the total of 15 feet required for side yard setbacks; however, the adjacent (north) property's back yard is large enough to allow public service access on the side even with the 1.5 foot setback. This setback would not adversely affect the delivery of government services. Therefore, I recommend GRANTING a variance from this side yard setback requirement.

FRONT YARD SETBACK. The request to use 23 feet of the 25 foot setback on the front will adversely affect the delivery of government services, particularly in the event that in the future sidewalks were constructed, if utilities were placed in this area or if the street foot print were expanded. The Village Manager recommends DENYING the variance for the front yard setback.

Ennist referred BZA to the included site plan for review.

Donnell OPENED THE PUBLIC HEARING.

The applicant, Maria Inman, stated that at the time she purchased the property, regarding the required setback. She commented that she would be willing to shorten the proposed carport if it would bring the proposal in line with setback requirements.

Conn asked whether, if the recommendations were followed, how much of the proposal Inman could complete.

Inman stated that she would be able to build the addition but not the carport. Conn then asked whether Inman would be open to modification of the proposal, and suggested moving the carport to the other side of the structure.

Inman responded that that side of the house lets in the sun, and contains mature trees, which would prevent that from being a desirable option.

Jacobs asked how much setback was truly needed for the front yard setback. Ennist responded that if there were a garage with doors, the 25 foot setback would be necessary. Because the structure is a carport, she explained, there is some wiggle room regarding the setback.

Jacobs characterized the structure as a “covered driveway.”

Ennist noted that a reason for enforcing the setback requirement is that a future property owner might wish to enclose the carport, and the code currently permits two sides to be enclosed.

Peifer commented on the design of the addition, wondering why the addition is so far forward. Inman responded that this design, “fits with the rest of the house” with regard to interior doorways and access to the bedroom.

Donnell inquired as to whether Inman had explored other solutions, commenting that the Board does not care about the esthetics, and may deny a variance based on the availability of other building options.

Peifer asked Inman about shortening the carport. She responded that she could move it farther up the driveway, which would reduce the setback variance.

Donnell characterized the problem as one of visibility; if one is backing out of the structure, there has to be a certain amount of space for both pedestrian and driver visibility. He noted that he would be happier allowing a variance for a porch than for a structure where visibility affects safety.

In answer to a question from Jacobs, Inman commented that she would be willing to reduce the size of the carport by as much as nine feet. She further commented that there is not a great deal of pedestrian traffic on her dead-end street.

Donnell noted that the proposed code will reduce the front yard setback from 25 feet to 20 and the rear yard setback from 35 to 20 feet. The side yard setbacks remain the same at a minimum of five and a minimum combined total of 15. Donnell cited this as a way of illustrating where the Village is headed in terms of setbacks and density.

Donnell noted that on a carport, the setback includes an overhang, while a garage would not. He cited issues of fire safety, and of the ability to place a ladder against the structure without encroaching into a neighboring yard as relevant to the setback requirement. Donnell concluded that Inman has enough latitude to redesign the structure so that it would not require a variance.

Inman responded that the functionality of the lot, given the interior of the house is greater with the current design.

Ennist responded to a question from Conn, stating that the adjoining property to the north has a garage located approximately 12.5 feet from the property line.

Peifer confirmed that there are two distinct issues at hand, and identified that the front yard issue is the greater problem. Donnell agreed that the issues would be more easily addressed separately.

Donnell elected to start with the variance relevant to the addition (side yard setback), and moved the BZA members through the variance criteria 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;

All members (4-0) voted "YES", with Conn abstaining.

2. Whether the variance is substantial;

Donnell asked for a definition of "substantial", and Curliss opined that if the neighbor exercised their right to build up to the setback, the amount of space between structures would be minimal, and would render the variance substantial.

In answer to a question from Reyes, Curliss suggested that Inman might be able to purchase a small amount of land from the abutting neighbor. Donnell here suggested the possibility of a deed restriction in the form of a minimum setback of, for example, eight feet.

Ennist cautioned that the matter should be in the form of a recorded easement to avoid future problems.

Conn then noted that if Inman removes the overhang in favor of a gutter, and if she successfully obtains a deed restriction from the neighbor, the result would be the need for a variance of only 1.5 feet, which, Conn stated, is not "substantial".

Inman expressed satisfaction with this approach.

Donnell stated that if the matter is approved with conditions as follows: 1. The overhang is replaced with a gutter, and 2. A deed restriction is obtained for the adjoining property such that the owner of said property agrees to an eight foot setback on that side of the property, then the variance would not be substantial.

Jacobs suggested considering a variance of only 1.5 feet.

The Clerk asked if Inman could here amend her request for a variance to 1.5 feet. Donnell agreed to this change, and asked the board to consider the variance of 1.5 feet.

All members (5-0) voted that the requested degree of variance is NOT 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;

All members (5-0) voted “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;

All members (5-0) voted “NO”.

5. Whether the property owner purchased the property with knowledge of the zoning restriction;

The vote was 1 “NO” (Conn), 3 “YES” (Peifer, Donnell, Jacobs) and one abstention (Perry). The vote total was 3-1 “YES”.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

The vote was 4-1 “YES”, with Jacobs casting the dissenting vote because of the word “feasibility” in the question.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

All members (5-0) voted “YES”.

Conn MOVED to grant a side yard setback variance of 1.5 feet on the north property line at 9 Lawson Place. Jacobs SECONDED. Donnell added that the setback does include encroachment of the overhang of the carport. Jacobs seconded the amendment, and the MOTION AS AMENDED PASSED 5-0 ON A ROLL CALL VOTE.

Donnell then addressed the variance relevant to the front yard setback (the carport), which is a 23 foot, 2 inch variance. Board members and Inman agreed to work towards a compromise before moving through the variance criteria.

Donnell commented that most recent car models are 12-16 feet in length, while most car stalls are 18 feet in length. Donnell suggested that if the carport could be moved back another four feet, the carport would project 14 feet into the front yard setback, making the setback almost 11 feet.

Conn commented here that under the proposed code, the setback will be 20 feet, which would mean a variance of 9 feet, rather than 11.

Donnell here brought up the matter of side enclosures, noting that the side attached to the home is considered one of the two sides permissible. He explained that the goal is to ensure that a pedestrian walking down the street, or an approaching car are able to see a vehicle pulling out of the structure in time to react.

Donnell suggested stating something like “one can only enclose the north and south sides of the carport, to a maximum of 50% coverage.

Anderson noted that conditions stay with the property, so that the matter would remain enforceable even if Inman were to sell the property.

Conn suggested that Inman might wish to consult with her architect before proceeding with the request.

Donnell stated that if Inman wishes to move the application forward, the BZA is willing to let he know what their limits are with regard to allowing a front yard setback variance in this case.

Donnell stated that he was able to consider granting a 15 foot variance on the front yard setback.

Peifer stated that he wanted to understand the issue around line-of-sight, given his understanding that the traffic load in the area is relatively high. He noted also the possibility of pedestrian traffic if a sidewalk were constructed.

Donnell stated that if there were a sidewalk put in, it would be located at a distance of 10 feet from the proposed carport. Ten feet, he stated, is enough space to see an entire car length from the sidewalk.

Donnell commented that if there were a side on the carport, the driver of the vehicle would be unable to see the sidewalk until s/he was upon it.

Inman commented that she would be amenable to a stipulation that she be restricted from building any additional sides on the carport.

Donnell MOVED that the BZA consider a variance of 15 feet.

Inman stated that she would like to amend her request for variance to the front yard setback to 15 feet.

Donnell stated that the BZA will consider a 15 foot setback for the proposed carport as currently designed with only one enclosed side ONLY, and for no other structures.

Donnell then addressed the variance relevant to the front yard setback (the carport), a 15 foot variance, and moved the BZA members through the variance criteria 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;

All members (4-0) voted "YES", with Conn abstaining.

2. Whether the variance is substantial;

The vote was 3-2 that the variance IS SUBSTANTIAL, with Donnell and Jacobs casting the "NO" votes.

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.

All members (5-0) voted "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;

All members (5-0) voted "NO".

5. Whether the property owner purchased the property with knowledge of the zoning restriction;

All members (5-0) voted "YES".

5. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

All members (5-0) voted "YES".

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

All members (5-0) voted "YES".

Jacobs MOVED to GRANT THE VARIANCE AS AMENDED. Conn SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Conn stated that he will be out of the country for six months, and Reyes will serve as his alternate.

Citizen Paul Abendroth suggested adding fire safety to the list of services in item four.

AGENDA PLANNING

Anderson referenced the item Agenda Planning, and asked the BZA whether they have a list of rules and regulations.

Donnell commented that the solicitor has advised the BZA regarding the swearing in of all speakers, but stated that he is in disagreement with this approach. Donnell stated that it is the BZA's preference to work with applicants to help them achieve both their and the Village's goals. Donnell opined that a system of rigid protocols is inhibiting to a collaborative atmosphere.

Anderson stated that his issue is not with regard to conducting the meeting, to which he had no objection, but with the protocols for staff. He noted that with regard to the Riley variance request, it had been deemed complete by the former zoning administrator, while the BZA believed there was not adequate information. He asked also for specific information as to the distance within which notification is required.

Donnell asked that Anderson use the draft text of the proposed zoning code as the required protocols.

Curliss voiced agreement with this approach.

Donnell asked that the subsequent meeting address administrative protocols.

ADJOURNMENT

There being no further business, Jacobs MOVED and Conn SECONDED a MOTION to adjourn. The MOTION PASSED 5-0. Meeting ADJOURNED at 9:18 pm.

Ted Donnell, Chair

Attest: Judy Kintner, Clerk

BOARD OF ZONING APPEALS

MEETING DATE: MAY 8, 2013

STAFF REPORT: Tamara Ennist, Village Zoning Administrator

LOCATION: 315 Elm Street

ZONING DISTRICT: Residence 'B'

APPLICANT: Les Gilford

PROPERTY OWNER: Judith Hempfling

REQUESTED ACTION: Request for a variance to Yellow Springs Zoning Ordinance Sections 1250.06(a) and 1268.05 in order to reduce the off-street parking requirements associated with the conversion of an accessory structure to a dwelling unit as permitted in Section 1278.02(e).

HEARING NOTICE: *“Les Gilford, acting with acknowledgement of the property owner, Judith Hempfling, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Sections 1250.06(a) & 1268.05 in order to reduce the parking required for a new dwelling unit proposed within an existing accessory structure located at 315 Elm Street. The property is located within the Residence ‘B’ zoning district which permits an accessory residence providing that 2 off-street parking spaces are provided.*

GREENE COUNTY PARCEL ID: #F19000100100013000.

STAFF ANALYSIS OF THE APPLICATION: The applicant is requesting relief from the strict requirements of the off-street parking regulations as it applies to a residential dwelling unit.

Property Information and analysis:

The property, located at 315 Elm Street, is lot #79 of the Yellow Springs Subdivision and it measures 70.50' X 120', equaling 8460 square feet (approx. .2-acre). Currently, this lot contains a two-family residential principle structure and a detached two car garage accessory structure. The owner has applied for a zoning permit to allow the accessory structure to be converted into a dwelling unit as permitted by Section 1278.02(e).

Variance Criteria

Yellow Springs Zoning Ordinance, Section 1250.06(a) identifies that, “All residential structures shall provide two spaces per dwelling unit. All other uses are structures are subject to the parking requirements set forth in Chapter 1268.

Yellow Springs Zoning Ordinance, Section 1268.05 identifies that, “The following residential establishments shall have the following number of off-street parking spaces; (c) “One and two-family housing dwelling units - 2.0 off-street parking spaces per dwelling unit...

NOTE: This application was previously submitted to the Board of Zoning Appeals for their review on March 21, 2012. At that meeting the Board of Zoning Appeals approved the application as a special exception per Yellow Springs Zoning Ordinance Section 1242.06(e)(1)E.

However, Yellow Springs Zoning Ordinance, Section 1242.06(c)(3) states, “Every special exception or variance granted by the Board shall expire and be of no force or effect after twelve months from the date of granting by the Board unless the beneficiary of such special exception or variance shall have made a substantial start toward putting the property affected to the use permitted within such time period.”

Yellow Springs Zoning Ordinance, Section 1242.06(e)(1)E states; “Special Exemptions. (1) Application for a special exception shall follow the same procedures outlined in Section 1242.05(f). A special exception may be granted to allow the following situations:

E. To vary parking and loading-unloading regulations whenever the character or use of the building is such as to make unnecessary the full provision of parking and loading-unloading facilities or when such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

STAFF RECOMMENDATION: See attached letter of clarification provided by John Chambers on March 12 2012 for the BZA hearing held March 21, 2012. Staff has no concerns.

Village of Yellow Springs

ZONING/UTILITY TAP PERMIT Village of Yellow Springs, Ohio

As required by Section 1240 of the Village Zoning Code: A zoning permit shall be required and obtained prior to any change of use of structure or of land. The following information is necessary to initiate the acquiring of such permit.

PERMIT NUMBER: 2013-03

Applicant Name Les Gilford Phone: 767-8293

Property Owner Name: Judith Hempfling Phone: 767-1227

Property Address: 315 Elm St.

Real Estate Tax Map Identification: Book 1, Map _____ Parcel I.D.# F19000100100013000

Present Zoning: Residence B Present Use: duplex

Proposed Project: Convert garage to 1 BR apt. (700 sq ft.)

Note: A plot plan showing property dimensions, existing and proposed structure dimensions and their respective location on the property, street frontage and building height must be included in this drawing. This sketch does not need to be drawn to scale but must include the outlined information.

Notes/Special Conditions: Variance needed from Sections 1250.06(a) & 1268.05 to reduce parking requirements prior to issuance of the zoning permit.

Does the project include any subsurface dwelling space? Yes No

If the answer above is YES, both applicant and owner must sign before a permit will be issued:

I/We acknowledge that subsurface conditions (shallow bedrock, high water table) in Yellow Springs can cause wet or flooded basements/lower levels occasionally.

[Signature]
Applicant Signature

Owner Signature (when required)

Approved by Village: _____ Title: _____

Fees: Zoning \$10
Water Tap/Meter _____
Sewer Tap _____
TOTAL \$10

RECEIVED: 4/11/13 - Tamara J. Ferriest



Village of Yellow Springs

BOARD OF ZONING APPEALS APPLICATION FOR VARIANCE

Name of Applicant: Les Gilford

Phone: (937) 767-8293 Email: _____

Property Owner: Judith Hempfing

Phone: (937) 767-1227 Email: _____

Address of Proposed Project: 315 Elm St.

Greene County Parcel I.D. #: F19000100100001300

Description of Proposed Project: Conversion of existing Accessory structure to a dwelling unit as permitted in Section 1278.02(e). Asking for a variance to Sections 1250.06(a) & 1268.05 to reduce parking requirements.

On April 11, 2013 (date), Les Gilford

first approached my office applying for a zoning permit for the project described above. The

application for permit was denied for the following reasons: Sec 1250.06(a) Requires two parking spaces per dwelling unit. Sec. 1268.05 Requires 2.0 parking spaces per unit.

Fee: \$35.00 Paid on: 4/11/13 (date) Attach copy of check or receipt

Zoning Administrator: TAMARA ENNIST Date: 4/11/13

Search

Search Results

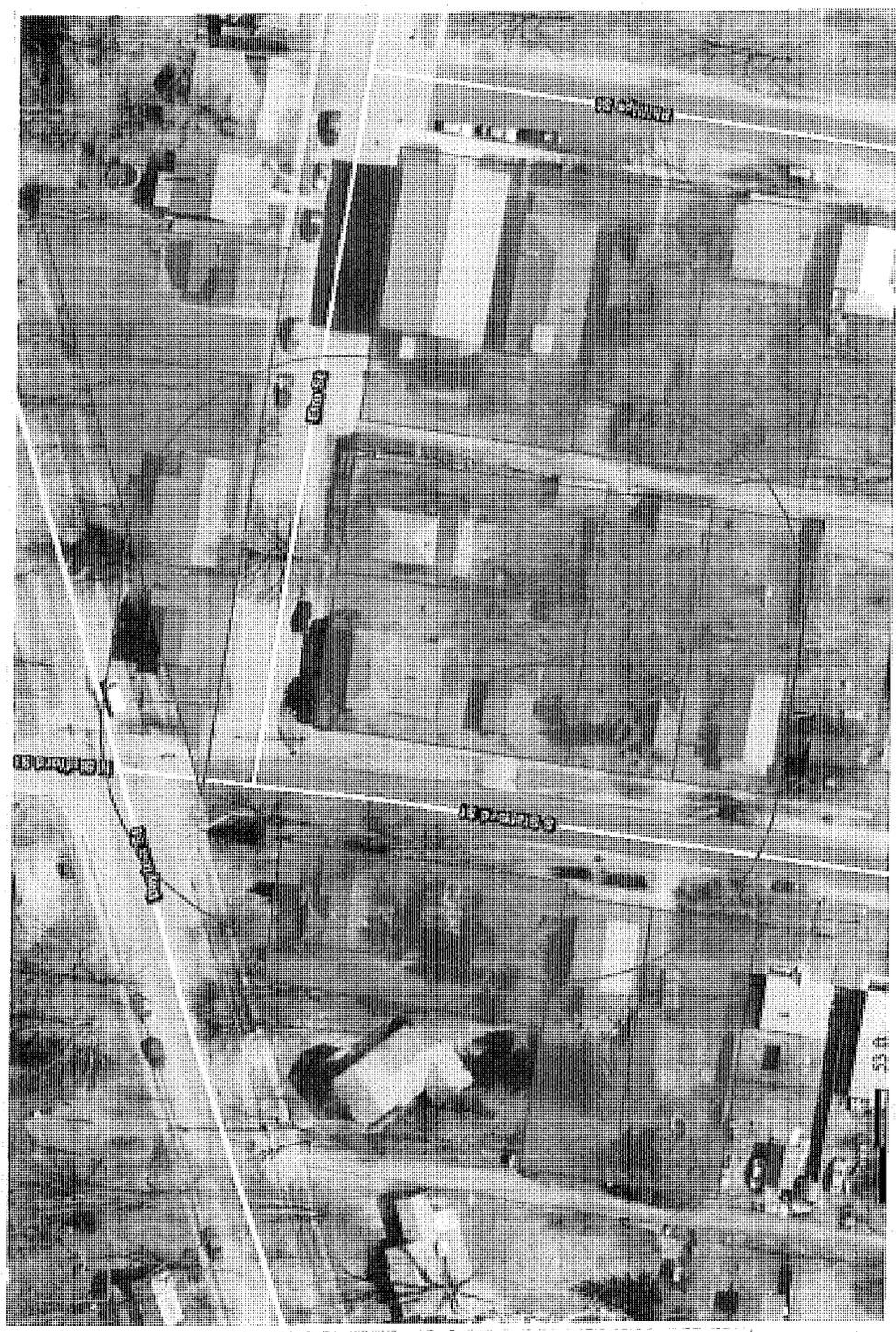
Map Layers

Property Information

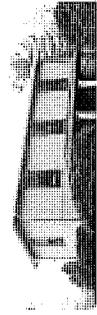
Additional Property Information

parcel ID F19000100100013000
 owner Name HEMPFLING JUDITH
 property Address 315 ELM ST
 mailing Address 315 ELM ST
 YELLOW SPRINGS OH 45387
 description YELLOW SPRINGS W SIDE
 LOT 79
 class 315 ELM ST
 and Use RESIDENTIAL
 area 510
 appraised Bldg \$132,670.00
 appraised Land \$48,000.00
 appraised Total \$180,670
 total Taxes \$3,895.10
 taxes Owed \$1,947.55
 billing Taxes: \$0.00
 sale Date 2/1/2007
 sales Amount \$143,500.00
 neighborhood 00126000
 zoning
 deed Volume/Page 44-57 / 234
 survey Record /
 abinet Vol/Pg 31/247A-B
 taxing district YELLOW SPRINGS VIL

Click Here To View Map



Click Here To View Additional Property Information



Property Information

F19000100100013000
HEMPFLING JUDITH
315 ELM ST
YELLOW SPRINGS OH 45387

F19000100100012800
PARKER SUE T
235 PARK MEADOWS DR
YELLOW SPRINGS OH 45387

F19000100100013600
NOWIK MARCIA CLAIRE
312 S STAFFORD ST
YELLOW SPRINGS OH 45387

F19000100100012900
PORTER ELIZABETH SUE
315 S STAFFORD ST
YELLOW SPRINGS OH 45387

F19000100100010600
PARKS MARIE BERNADINE
314 PHILLIPS ST
YELLOW SPRINGS OH 45387

F19000100100010200
TAFT JUDY A
351 DAYTON ST
YELLOW SPRINGS OH 45387

F19000100100013100
WYATT CHRISTOPHER NEIL
311 ELM ST
YELLOW SPRINGS OH 45387

F19000100100010400
MC NICHOLAS JOHN T TR
308 PHILLIPS ST
YELLOW SPRINGS OH 45387

F19000100100010300
WRIGHT STERLING F
520 LINCOLN CT
YELLOW SPRINGS OH 45387

F19000100100013200
KADIS PAUL P
403 ELM ST
YELLOW SPRINGS OH 45387

F19000100100010100
ERFE ALICIA M
340 ELM ST
YELLOW SPRINGS OH 45387

F19000100100010500
SCHNURR DENNIS M
310 PHILLIPS ST
YELLOW SPRINGS OH 45387

F19000100100013500
NOWIK MARCIA CLAIRE
312 S STAFFORD ST
YELLOW SPRINGS OH 45387

-Public Notice-
PUBLIC HEARING
YELLOW SPRINGS, OHIO
Board of Zoning Appeals

Notice is hereby given that:

Les Gilford, acting with acknowledgement of the property owner, Judith Hempfling, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Sections 1250.06(a) & 1268.05 in order to reduce the parking required for a new dwelling unit proposed within an existing accessory structure located at 315 Elm Street. The property is located within the Residence 'B' zoning district which permits an accessory residence providing that 2 off-site parking spaces are provided. The property is further identified by Greene County Parcel ID #F19000100100013000. **A PUBLIC HEARING WILL BE HELD ON THIS PETITION: DATE:** Wednesday, May 8, 2013. **TIME:** 7:00 p.m. **LOCATION:** Council Chambers, 2nd Floor, Bryan Center, 100 Dayton Street, Yellow Springs, OH 45387

This notice provides you and every other interested party the opportunity to appear or have input at the hearing. You may come in person or have someone appear on your behalf. You may express your views in writing by providing a copy to the Clerk of Council for inclusion in the record of the hearing. The application, as prepared by the petitioners, may be examined at the office of the Village Planner on the 2nd floor of the Bryan Community Center, 100 Dayton Street, Yellow Springs, Ohio 45387. Questions regarding the applications, zoning code or procedures may be directed to the Village Zoning Office at the same address, or by calling 937-767-3702. Tamara Ennist, Village Zoning Administrator.

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131 Marshall St.
Yellow Springs, Ohio 45387
Tele. 937-767-8293
Cell 937-206-9801
E-Mail lesgilford@aol.com

Gilford General Contractors

March 18, 2012

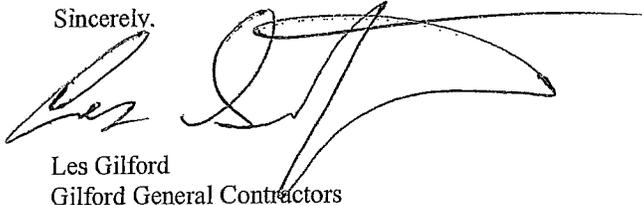
Village of Yellow Springs
100 Dayton St.
Yellow Springs, Ohio 45387

RE: Zoning Variance for 315 Elm St. Yellow Springs, Ohio

Due to funding issues and scheduling, the project was delayed. There are no changes to the project that the Board of Zoning Appeals granted a variance. I would like to ask for an extension for the project variance.

Thank you so much for your consideration in this matter.

Sincerely,



Les Gilford
Gilford General Contractors

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131 Marshall St.
Yellow Springs, Ohio 45387
Tele. 937-767-8293
Cell 937-206-9801
E-mail lesgilford@aol.com

Gilford General Contractors

March 17, 2012

Yellow Springs Board of Zoning Appeals
100 Dayton St.
Yellow Springs, Ohio 45387

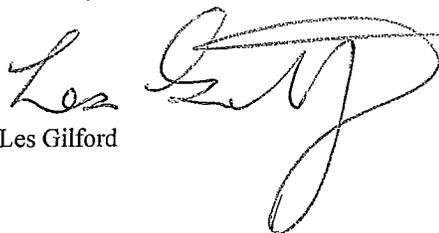
Board Members,

This brief letter is referring to the request by Judith Hempfling involving the garage conversion to a small one unit apartment at 315 Elm St. A few positive things will occur should this project move forward. The Village's stated goal of increasing density in some areas of the Village will be in concert with this project. A de-facto situation of on-street parking in this area (Dayton St, Stafford St., Elm St., Walnut St.) currently is in force, so no changes to the parking, from present, will occur. In fact, the situation will improve. We will remove the very short driveway in front of the garage, which when in use blocks the sidewalk, thereby increasing on-street parking by one space. We also would gravel an area so two cars can park safely between the edge of the street pavement and the sidewalk.

We look forward to working with the Village for the betterment of all concerned.

Thank you for your consideration in this matter.

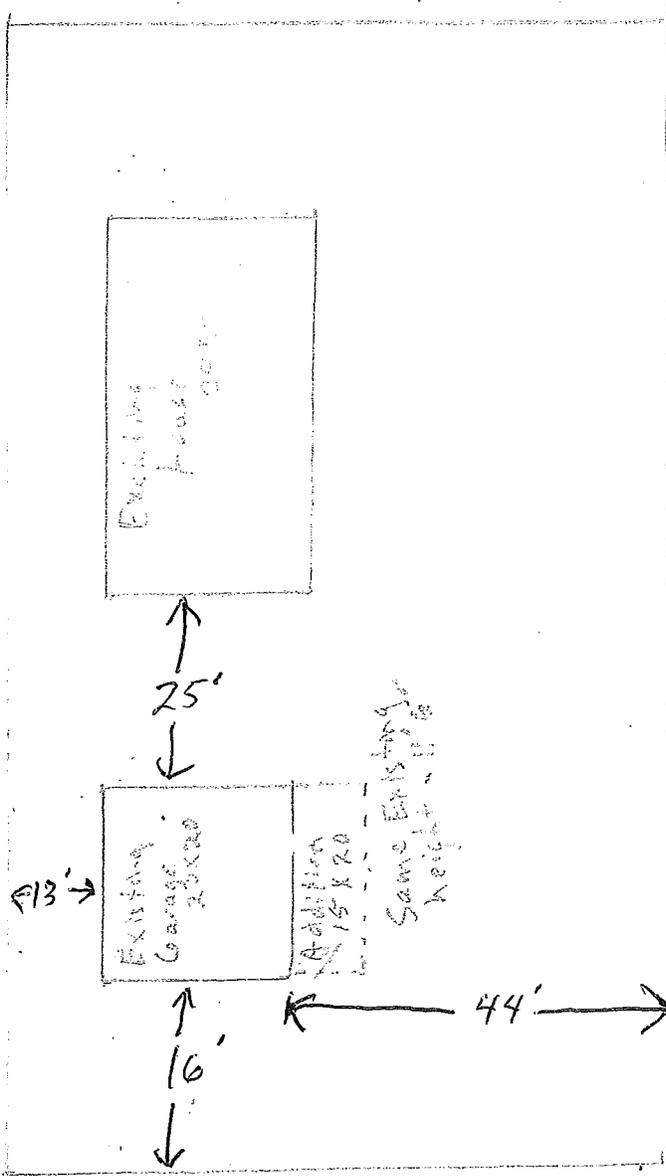
Sincerely,


Les Gilford

S. Stafford St.

F.M.S.T

120.0



70.5

Greene County GIS

Owner Information

Owner Name HEMPLING JUDITH
 Owner Cont
 Mailing Addr 315 ELM ST
 YELLOW SPRINGS OH 45387

Property Information

Parcel ID F19000100100013000
 Address 315 ELM
 District YELLOW SPRINGS VIL
 Acres
 Description YELLOW SPRINGS W SIDE
 LOT 79
 315 ELM ST

Building Information

Story 2
 Construction ASBESTOS
 Style OLD STYLE TWO STORY
 Year Built 1900
 Sq Ft 2075
 Total Rooms 8
 Bedrooms 3
 Family Room 0
 Full Baths 0
 Half Bath 2
 Basement 0
 PART
 Fire Place C+
 Mkt Adj 510
 Land Use GAS
 Heat Fuel CENTRAL
 Heating

Values

Appraised \$48,000.00
 Land \$132,670.00
 Building \$180,670.00
 Total

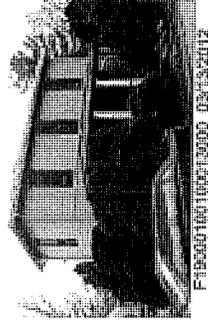
Taxes

Real \$0.00
 Special \$0.00
 Total \$0.00
 Delinquent 1st Half \$1,947.55
 2nd Half \$1,947.55
 Total Taxes \$3,895.10
 Due \$1,947.55

Sales Price \$143,500.00
 Date 02/01/07

The information combined on this estimated map is used to identify and locate other maps of land in Greene County for appraisal and taxing purposes only and is NOT to be construed or used as a deed. The information is provided for informational purposes only and is not guaranteed. Any errors or omissions should be reported to the Greene County Auditor's Office. This information is not intended to be used for any purpose other than that for which it was prepared. It is not intended to be used for any purpose other than that for which it was prepared. It is not intended to be used for any purpose other than that for which it was prepared.

1 inch = 22 Feet



F19000100100013000 02/01/07





Greene County GIS

Owner Information

Owner Name **HEMPFLING JUDITH**
 Owner Cont
 Mailing Addr **315 ELM ST
 YELLOW SPRINGS OH 45387**

Property Information

Parcel ID **F19000100100013000**
 Address **315 ELM**
 District **YELLOW SPRINGS VIL**
 Acres
 Description **YELLOW SPRINGS W SIDE
 LOT 79
 315 ELM ST**

Building Information

Story **2**
 Construction **ASBESTOS**
 Style **OLD STYLE TWO STORY**
 Year Built **1900**
 Sq Ft **2075**
 Total Rooms **8**
 Bedrooms **3**
 Family Room **0**
 Full Baths **2**
 Half Bath **0**
 Basement **PART**
 Fire Place
 Grade **C+**
 Mkt Adj
 Land Use **510**
 Heat Fuel **GAS**
 Heating **CENTRAL**

Values

	Appraised	Assessed
Land	\$48,000.00	\$16,800.00
Building	\$132,670.00	\$46,430.00
Total	\$180,670.00	\$63,230.00

Taxes

	Delinquent	1st Half	2nd Half
Real	\$0.00	\$1,947.55	\$1,947.55
Special	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$1,947.55	\$1,947.55
		Total Taxes	\$3,895.10
		Due	\$1,947.55

Sales

	Price
Date	\$143,500.00
	02/01/07

The information contained on this cadastral map is used to locate, identify and inventory parcels of land in Greene County for appraisal and taxing purposes only and is NOT to be construed or used as a legal description. Map information is believed to be accurate but accuracy is not guaranteed. Any errors or omissions should be reported to the Greene County Auditor's Office. In no event will Greene County be liable for any damages, including loss of data, lost profits, business interruption, loss of business information, or other pecuniary loss that might arise from the use of this map or the information it contains.

1 inch = 29 Feet



F19000100100013000 03/13/2012



COOLIDGE WALL

A Legal Professional Association

Jonas J. Gruenberg
Merle F. Wilberding
Glenn L. Bower
J. Stephen Herbert
R. Scott Blackburn
Richard A. Schwartz
Sam Warvar
Terence L. Fague
John C. Chambers
Richard A. Talda
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Joshua R. Lounsbury
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www.coollaw.com

Direct Dial Number
937-449-5532

E-mail Address:
chambers@coollaw.com

March 12, 2012

Mr. Ed Amrhein
Village of Yellow Springs, Ohio
100 Dayton Street
Yellow Springs, Ohio 45387

Re: Special Exception Question – Conversion of Garage

Dear Ed:

You have advised that you have received a request for a zoning permit under the Yellow Springs Zoning Code ("Code") to convert an existing garage in the Residence-B District to a single family dwelling unit. You advise that the existing house on the lot currently houses two residential dwelling units, and that the only off-street parking for the existing duplex is the two spaces within the existing garage. The conversion of the garage to a residential dwelling unit will, of course, eliminate those two existing off-street parking spaces. You have asked whether this project could possibly be permitted through a special exception granted by the BZA.

Please be advised that it is my opinion that this request could potentially be approved by the BZA as a special exception, assuming all of the conditions are met. The special exception would be approval of eliminating the requirement for any off-street parking for the three residential units to be located on the lot. All of the parking would then have to occur on the street.

The special exception must be granted by the BZA pursuant to Section 1242.06(E)(1)(e). That Section states that a special exception may be granted "to vary parking and loading-unloading facilities regulations whenever the character or use of the building is such as to make unnecessary the full provision of parking and loading-unloading facilities or when such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or convenience." I note further that the statute in Section 1242.06(E)(2) then states that the BZA shall make written findings regarding Points A through H listed in the statute as a condition to granting a special exception.

The next question is exactly how many parking spaces the special exception would be for. The existing use currently has two parking spaces, but the house is used as a duplex. Ordinarily, a duplex would require four off-street parking spaces. You advise that you find no record of a variance or special exception being granted to this site. You further indicate that this site has been used as a duplex for a long time, and that you find no records that establish clearly whether this is something that occurred in violation of the off-street parking requirements, or whether it is

COOLIDGE WALL

A Legal Professional Association

Mr. Ed Amrhein
March 12, 2012
Page 2

a non-conforming use that was legal at the time it was created but was subsequently made non-conforming by a change in the law. Ohio law states that zoning regulations are to be interpreted to the benefit of the property owner where they are unclear. Since we do not know whether this is a non-conforming use or an illegal use, we must interpret the regulations in a way most favorable to the owner. Therefore, we will consider the existing parking arrangement a non-conforming use.

The existing duplex use of the house normally requires four off-street parking spaces, but only two are provided today. Having three dwelling units on the lot is a permitted use in the Residence-B District so long as all other conditions are met. You advise me that all other zoning requirements are met except for the off-street parking requirement. The new residential unit to be put into the garage will require two parking spaces. A special exception will clearly be required for those spaces. While this duplex is a legal non-conforming use today, the change in the garage use from parking to residential dwelling use alters the non-conforming use currently on site. Section 1266.02 states that a non-conforming use of the structure or land shall not be extended or enlarged except as approved by the BZA as a special exception. I interpret the Code to require a non-conforming use that is being altered to come into conformance with the Code if possible. However, the Code provides that a non-conforming use may be expanded if the BZA approves a special exception. I conclude therefore that the BZA must approve a special exception for the six required off-street parking spaces to allow this project to proceed. That will bring the lot into compliance with the Code and eliminate the non-conforming status currently in place.

Very truly yours,


John C. Chambers
Village Solicitor

JCC/jmc

c: Laura Curliss ✓