

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday, August 31, 2016

CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Ted Donnell, Chair.

ROLL CALL

Ted Donnell, Chair, Steve Conn, Kingsley Perry, Ellis Jacobs and Alternate Dan Reyes were present, as was the Zoning Administrator for the Village, Denise Swinger. Chris Peifer was out of town.

REVIEW OF AGENDA

There were no changes made to the agenda.

REVIEW OF MINUTES

Minutes for BZA Meeting of May 11, 2015. Jacobs MOVED and Conn SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 4-0 on a voice vote, with Donnell abstaining because he was recused from the May meeting.

PUBLIC HEARINGS

An application for a variance seeking relief from the required side yard setback at 1210 Corry Street, R-A: Low Density Residential District was submitted by the property owners Rick and Chris Kristensen. PARCEL ID #: F190001001600008200.

Donnell prefaced the discussion by forwarding his opinion that the stated 25' side yard setback requirement for R-A in the current zoning code may well be an error. Donnell supported his position by recalling his participation in the Technical Review Committee (TRC) meetings for the zoning code update.

Donnell stated that conversation within the committee and with Planning Commission and Council at the time tended strongly to the desire for increased infill. To that end, front yard setbacks were reduced, a fact reflected in minutes for that time period and in the current code. Curiously, Donnell pointed out, there is no reflection in the minutes of any discussion regarding any desire to increase side yard setbacks. The sideyard setback prior to the new code was 20' with a 10' minimum per side for what was then referred to as the "A" district, now referenced as "R-A".

As a participant in the zoning code rewrite process, Donnell stated, increase in setbacks was never the intention of the TRC, Council or Planning Commission. He pointed out that taken together, these observations indicate that the increased side yard setback in the R-A was made in error and was not caught in the revision process.

Conn commented that he had served on the TRC as well, and that his recollection of the intent of the committee as well as of Council and Planning Commission agreed with that of Donnell. HE commented that the increased setback had confused him as an inconsistency when he read the application.

Reyes stated that he had attended a number of the meetings held to review the draft zoning code in 2012 and 2013 and his memory was that the bulk of discussion centered around the "B" and "C" districts and the desire to increase density in those areas, with the "A" district only minimally discussed. Reyes concurred that discussion did focus on the desire to increase density and infill.

Swinger commented upon Donnell's assertion of the 25-foot side yard requirement being an error, noting that in researching the Planning Commission and Council minutes of 2012 and 2013 during the zoning code update she was unable to find any discussion of the change to the side yard setbacks.

Prior to the 2013 zoning code update, Swinger noted, side yard setbacks for dwelling units were A District (low density) of 10 feet minimum (both sides); B District (moderate density) - 5 feet minimum with a total minimum of 15 feet; and C District (high density) of 5 feet minimum with a total minimum of 12 feet.

Jacobs stated that the matter should go to the Planning Commission for a text amendment.

Conn MOVED that the BZA send a recommendation to the Planning Commission that they review the R-A side yard setback with the BZA's recommendation that they reduce the side yard setback in that district from 25 feet to 20 feet. Perry SECONDED.

Reyes asked whether the change would make any difference to the applicants.

Donnell responded that while it would not affect the current case, it will affect the remaining two lots the applicant owns in that district.

Donnell noted that the applicants had purchased the property under the assumption that the side yard setback would be 20 feet.

Donnell CALLED THE VOTE, and the MOTION PASSED 5-0 on a VOICE VOTE.

Swinger introduced the hearing with the following information:

The applicant's minimum front yard and rear yard setbacks meet the zoning code's minimum requirements of 25 feet with a front yard measurement of 50 feet and rear yard measurement of 57 feet.

Donnell OPENED THE PUBLIC HEARING.

William Short, who sold the Kristensens the properties, commented that the matter of the increased setbacks came as a great surprise to him, since he had laid out the lots with the 20-foot side yard setback in mind, and asked the Planning Commission to act within its powers to assure that the matter was resolved to the satisfaction of the property owners.

Tim Barhorst, the neighboring property owner, stated that he was surprised at the 25-foot setback as well, and stated his support for the variance request.

Tom Grey stated his support for the Kristensens and their variance application.

Rick Kristensen noted that there is an easement through the adjoining property which further reduces the usable area of that property, stating that reduction of the setback would be useful for that property as well.

Donnell CLOSED THE PUBLIC HEARING.

Conn MOVED TO APPROVE THE VARIANCE AS REQUESTED. Jacobs SECONDED. Donnell asked that the variance criteria be dispensed with, given the clarity of the decision and the recommendation being made to the Planning Commission. Donnell CALLED THE VOTE, and the MOTION PASSED 5-0 on a ROLL CALL VOTE.

AGENDA PLANNING

There was no Agenda Planning.

ADJOURNMENT

There being no further business, Conn MOVED and Jacobs SECONDED a MOTION to adjourn. The MOTION PASSED 5-0. Meeting ADJOURNED at 7:19pm.

Ted Donnell, Chair

Attest: Judy Kintner, Clerk