

VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on Wednesday,
April 17, 2019 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

REVIEW OF AGENDA

COMMUNICATIONS

7:05 REVIEW OF MINUTES
Minutes for BZA Meeting of January 9, 2019

7:10 PUBLIC HEARINGS
A variance seeking relief from section 1248.03 Lot and Width Requirements - Parcel ID
#F19000100100012100 and F19000100100012200 in the R-B, Moderate Density Residential
District. The property owners Carl Maneri – 343 S. Stafford Street and Judith Hempfling 225 W.
Limestone Street, seek to reduce the non-conformity on two lots through a replat of their abutting
properties.

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, 2019

CALL TO ORDER

The meeting was called to order at 7:02 p.m. by Ellis Jacobs, Acting Chair.

ROLL CALL

Ellis Jacobs, Acting Chair, Matt Reed, and Alternate Richard Zopf were present, as was the Zoning Administrator for the Village, Denise Swinger. Chris Peiffer and Steve Conn were not present.

REVIEW OF MINUTES

Minutes for BZA Meeting of, April 26, 2017. Jacobs MOVED and Reed SECONDED a MOTION TO ADOPT THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 on a voice vote.

REVIEW OF AGENDA

There were no changes made to the agenda.

PUBLIC HEARINGS

A variance seeking relief from section 1266.03 Permitted Signs - (f) Business Center sign – height and size in order to add Kettering Health Network to the DMS Ink sign. DMS Ink, Property Owner – 888 Dayton Street – Parcel ID # F19000100030001500 in the PUD (Planned Unit Development) District.

Swinger introduced the variance request, stating the following information:

The property is located at the NE corner of Dayton Street and E Enon Road. It is one of three parcels owned by DMS inside the village. In addition, there are two adjacent parcels owned by DMS, Inc. located to the north of the site in Miami Township. The lot with the existing business center sign is 1.77 acres. A large parking lot is accessed from East Enon Road. Two additional access points exist from Dayton Street; one for truck access to existing loading docks on the east side of the structure and one that provides access to a medical clinic and emergency access to the building.

The structure is currently occupied by seven separate businesses; DMS Ink and its division Barrett Brothers Legal Publishing; the Bricks Agency; Ability, (formerly e-Health Data Solutions); Brick Forge; Community Physicians of Yellow Springs and Yellow Springs Primary Care.

The property is zoned PUD. Section 1254.03 of the PUD Requirements states “any use permitted by right or conditional approval in any zoning district may be permitted within a PUD” and “In the case of a mix of uses, the zoning requirements applicable to each use category shall apply to that use.”

The property is also located in a Gateway Overlay District - Section 1256.03. As it relates to signs, the only requirement is to follow the underlying zoning district specifications in Chapter 1266 - Signs.

In 1266.03 Permitted Signs - it states “In any B or I district, a maximum of three types of permitted signs and four total permitted signs per principal building shall be allowed. In the case of a multi-tenant building where the maximum number of permitted signs has been reached, one additional

sign per tenant shall be permitted.” A new text amendment to the zoning code’s sign ordinance this past year allows for additional signs if they are not visible from the public right-of-way.

Select Signs is seeking a variance to replace the existing ground sign located near the corner of Dayton Street and East Enon Road in order to add Kettering Health Network and Community Physicians of Yellow Springs to it. Currently there exist several temporary free-standing signs at this corner advertising the Community Physicians clinic. If approved, staff would ask that these be removed. There are no other freestanding signs on the lot identified as Parcel #F19000100030001500. The specifications for **Business Center** signs are:

Number	One per property. No other freestanding sign shall be permitted on the property for individual businesses.
Size	48 square feet
Location	Minimum ten feet from front lot line, minimum 25 feet from all other property lines
Height	Six feet maximum

The proposed sign measures 8 feet in height, 2 feet over the maximum height of six feet. The proposed size of the sign is 64 sq. ft., or 16 sq. ft. over the maximum size of 48 sq. feet.

It making a determination, BZA should consider the size of the property with its three separate lots in the village, and two in the township, the number of buildings (3), and the number of businesses: DMS, Inc., Barrett Brothers, The Bricks, Ability, Brick Forge, Yellow Springs Primary Care off Dayton Street and Community Physicians of Yellow Springs off E. Enon Road (7). The sign is setback 40 feet from both front lot lines, much more than the required minimum of ten feet from the front lot lines, and a minimum 25 feet from all other property lines.

Staff measured the height of the Antioch University Midwest sign across the street at 900 Dayton Street. It has a height of 10+ feet and is not set back as far from the property line.

Reed confirmed that each of the five parcels is permitted a ground sign.

Zopf commented that three of the parcels have no businesses built as of yet and that two of them are located in the Township.

Swinger noted that the proposed sign is a “business center” sign, in that it notes several businesses.

Jacobs noted the request that the freestanding signs be removed once the larger sign is approved.

Zopf pointed out that those signs are considered temporary and should be treated as such.

Zopf opined that a sign should not be a means of advertising, and argued that because Kettering Health Network (KHN) offices are not located on the property, their logo should not be permitted on the sign.

Dave Smith, the Director of Facilities Management for KHN responded that the reasoning behind the logo placement is to make the public aware that KHN serves the Yellow Springs community.

John Cowel of Select Signs responded to Zopf's comment, stating that he did not mean the sign as an advertisement but as an identifier. He explained that Community Physicians was absorbed by KHN, but that putting only the KHN logo on the sign might confuse long-time patients, who think of the office under the "Community Physicians" name. This is an ID sign, not an ad sign, Cowel stated.

Zopf noted that Dayton Mailing Services is applying for the sign permit, but that there are "five other businesses". What if others want more visibility, he inquired, will the sign be expanded further?

Smith responded that they do not see multiple businesses wanting to place on the sign as a strong possibility.

Jacobs asked why the sign needs to be larger than permitted.

Cowel responded that all the current businesses are under the umbrella of DMS, but that KHN is a contributor to the county and to the community, and wished to have a visible identifier in this manner. He noted that the doctor's office which is not identified on the sign had previously been approved for a ground sign, but had not wanted to spend the money..

Jacobs OPENED THE PUBLIC HEARING. There being none present wishing to comment, Jacobs CLOSED THE PUBLIC HEARING.

Zopf raised the concern that the property owner/applicant was not present at the hearing.

Cowel responded that he normally takes care of the sign permit for his clients.

Reed suggested that an approval be based upon the condition that Swinger receive a letter from DMS stating their approval of the sign request.

Reed MOVED TO APPROVE THE SIGN PERMIT WITH THE REQUESTED VARIANCE, WITH THE CONDITION THAT ACKNOWLEDGEMENT OF AND AGREEMENT WITH THE REQUEST BE RECEIVED FROM DMS.

Jacobs SECONDED.

Jacobs than read through the variance standards, with roll call following each question, with the result 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; Zopf: Yes; Reed: Yes; Jacobs: Yes.

(2) Whether the variance is substantial; Zopf: Yes; Reed: 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; Zopf: No; Reed: 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; ; Zopf: No; Reed: No; Jacobs: No.

(5) Whether the property owner purchased the property with knowledge of the zoning restriction; Zopf: Yes; Reed: Yes; Jacobs: Yes.

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Zopf: Yes; Reed: Yes; Jacobs: Yes.

(7) Whether the existing conditions from which a variance is being sought were self-created; Zopf: Yes; Reed: Yes; Jacobs: No.

(8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Zopf: No; Reed: Yes; Jacobs: Yes.

Jacobs then CALLED THE MOTION. The MOTION PASSED 2-1, with Zopf voting against.

(The outcome was unknown at the close of the meeting, due to a discrepancy between the zoning code language and that of the Village Charter. The Solicitor was asked to opine, and he confirmed that the Charter trumps the zoning code, and because the Charter states that "a majority of the quorum" is required for passage, the motion did pass.)

AGENDA PLANNING

There was no Agenda Planning.

ADJOURNMENT

There being no further business, Reed MOVED and Zopf SECONDED a MOTION to adjourn. The MOTION PASSED 3-0. Meeting ADJOURNED at 7:50pm.

Ellis Jacobs, Acting Chair

Attest: Judy Kintner, Clerk



BOARD OF ZONING APPEALS

STAFF REPORT: Denise Swinger, Zoning Administrator

LOCATION: 225 West Limestone Street and 343 South Stafford Street

ZONING DISTRICT: R-B, Moderate Density Residential District

APPLICANT: Judith Hempfling

PROPERTY OWNER: Judith Hempfling

REQUESTED ACTION: A variance seeking relief from section 1248.03 Lot and Width Requirements – Parcel ID #F19000100100012100 and F19000100100012200. The property owner Judith Hempfling of 225 West Limestone, along with property owner Carl Maneri of 343 S. Stafford Street, seek to reduce the non-conformity on two lots through a replat of their abutting properties (Exhibit 1).

PROPERTY INFORMATION & ANALYSIS:

The lot, owned by Hempfling, faces South Stafford Street. The abutting lot owned by Maneri has a dwelling unit that encroaches on Hempfling’s property five feet. Mr. Maneri needs to resolve the encroachment issue in order to sell his property. Each property measure 50 feet by 127.50 feet or 6,375sf. An easement was explored as an option, but it was determined that the best way to resolve the encroachment was through a replat. Mr. Maneri has agreed to this replat to resolve the issue (Exhibit 2).

1248.03 SPATIAL REQUIREMENTS.

(a) All lots and buildings shall meet the minimum area and width requirements of [Table 1248.03](#). New lots shall not be created, except in conformance with these requirements.

<i>Table 1248.03 Lot and Width Requirements: Residential Districts</i>		
Zoning District	Minimum Lot Area (Sq. Ft.)¹	Minimum Lot Width (Ft.)
R-A, Low-Density Residential	7,500	60
R-B, Moderate-Density Residential	6,000²	50
R-C, High-Density Residential	4,800³	40

(b) All structures and their placement on a lot shall conform to the minimum dimensional requirements listed in [Table 1248.03a](#).

Table 1248.03a Dimensional Requirements: Residential Districts

Zoning District	Maximum Building Height (Ft./stories)	Minimum Yard Setbacks (Ft.)				Max. Lot Coverage (%)
		Front	Side		Rear	
			Total	Least		
R-A	35/2.5	25	20	10	25	35
R-B	35/2.5	20	15	5	20	40
R-C	35/3	20	10	5	15	50

4 Average established setback shall apply, where applicable, in accordance with Section [1260.02\(a\)](#).

STAFF ANALYSIS:

The two lots are zoned R-B. The minimum lot width requirement for R-B is 50 feet with a lot area of 6,000sf. Currently, both lots comply with this requirement. At issue is the non-conformities of the structure on the two lots. The lot owned by Mr. Maneri has a non-conforming structure with the dwelling not meeting the five feet minimum side yard setback. Ms. Hempfling’s lot also has a non-conformity with Mr. Maneri’s dwelling crossing her side yard lot line by five feet.

In discussing the issue with the Village manager and solicitor, staff suggests a replat to increase Mr. Maneri’s lot width to 60 feet and reduce Ms. Hempfling’s lot width to 40 feet (Exhibit 3). This will make Mr. Maneri’s property conforming as the house will be setback five feet from the property line and will no longer encroach on Ms. Hempfling’s lot. The lot itself will also remain a conforming lot with the zoning code’s requirements for lot width and size. The replat does create a different non-conformity on Ms. Hempfling’s lot in that the lot width and size will not be in compliance with the R-B District requirements. The lot width and size does reduce it to a size that is allowed in the zoning code under the R-C, High Density Residential requirements with its 40-foot width and 5,100sf of lot area so the size will not have an effect on Ms. Hempfling’s lot from being buildable unless the BZA disagrees since it was a conforming lot at the time of the adoption of this code (see 1282.05 below).

The zoning code’s definitions for non-conforming structure and lot are:

Nonconforming building or structure. Any building or structure that was legally established and in existence at the time this code, or any amendment, was adopted, and which does not conform to the current regulations of the district in which it is now located.

Nonconforming lot. Any lot of record that was legally established and in existence at the time this code, or any amendment, was adopted, and which does not conform to the current regulations of the district in which it is now located.

1282.05 Non-Conforming Lots of Record

(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 code.

(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.

RECOMMENDATION:

There are a number of non-conforming structures and non-conforming lots within the Village and staff has made attempts to reduce these non-conformities whenever possible. Staff has determined that this is a unique situation that will not have a detrimental effect on the neighborhood. Although Ms. Hempfling's lot can be built on now, a replat will reduce the likelihood of future neighbor disputes that might not be solved by an easement and will enable the two property owners to pay taxes on that portion of land they have use of. Staff is recommending approval of this variance.

Respectfully submitted,

Denise Swinger
Planning & Zoning Administrator
Village of Yellow Springs
(937) 767-1702

EXHIBIT 2

Denise Swinger

From: Carl Maneri <carlmaneri@gmail.com>
Sent: Wednesday, February 13, 2019 11:02 AM
To: Denise Swinger
Cc: sheila@dunphyrealestate.com
Subject: 343 South Stafford

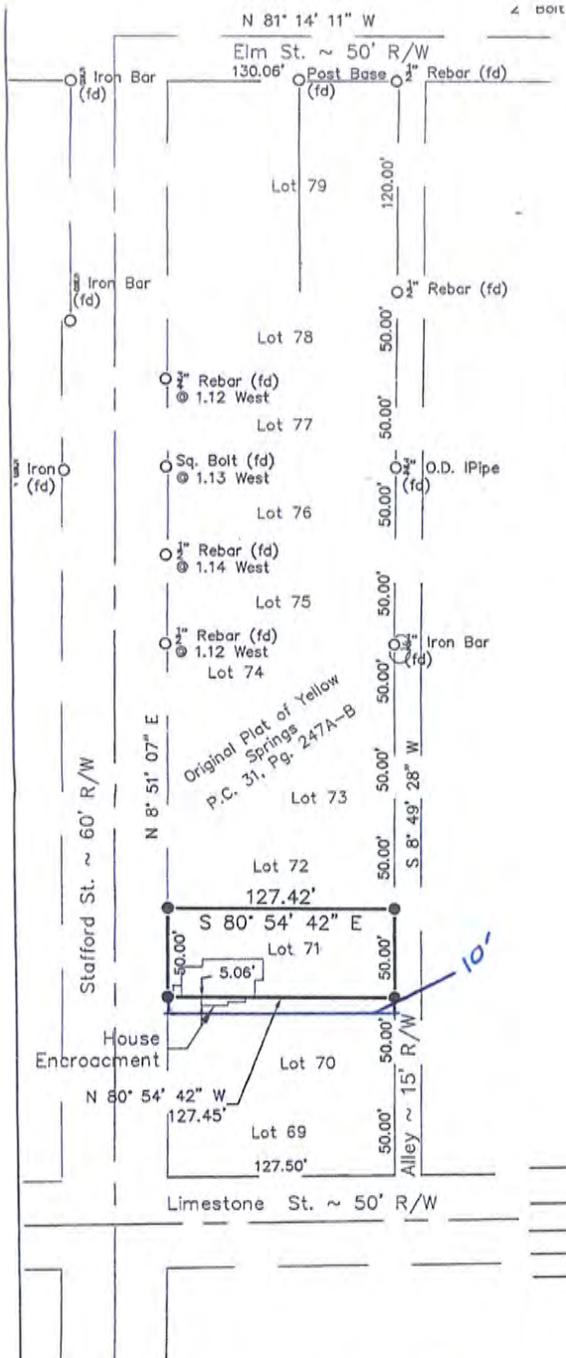
Dear Denise,

I agree to purchase the extra ten feet on the south side of the property at 343 South Stafford. I will attend the BZA meeting at which it will be formalized.

Please let me know if this message is sufficient.

Many thanks, Carl Maneri

EXHIBIT 3

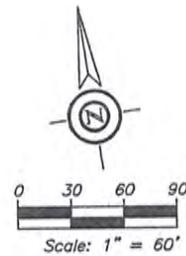


NOTES:

1. Basis of Bearings is Grid North, State Plane Coordinate System, NAD 83 (2011), Ohio South Zone
2. [Bracketed] calls refer to deed or survey references.

REFERENCES:

1. Current Owner
Carl C. Maneri and Patricia S. Maneri
~~Plat 506~~, Page 572
D.V.
2. Survey Record
P.C. 31, Page 247A-B
P.C. 34, Page 986A
S.R. 22, Page 53
S.R. 27, Page 189



LEGEND

- 5/8" Dia. Re-Bar w/Plastic Cap (Set) Stamped "HILLARD P.S. 8558"
- Stone (fd)
- ▲ Spike (Set)
- △ Railroad Spike (fd)
- Monument (fd), As Noted
- AG At Grade or Above Grade

Hillard Engineering and Surveying, LLC.
7667 State Route 55
Urbana, Ohio 43078
(937) 244-8835

SURVEYED BY: Ryan D. Hillard, BE, PS
REG. SURVEYOR NO. 8558

APPROVED GREENE COUNTY ENGINEER
By _____ Date _____

APPROVED BY: _____ DATE _____
ZONING _____

RPCC, CITY, OR VILLAGE _____ DATE _____



GRANTOR Carl C. Maneri & Patricia S. Maneri

GRANTEE _____

LOCATION
Section 20, Town 4, Range 8

_____ Village of Yellow Springs _____
GREENE COUNTY, OHIO
DATE December 5, 2018



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

[OFFICE USE]
 Case #: B719-02
 Zoning District: R-B

TYPE OF REQUEST: (Check one) VARIANCE ADMINISTRATIVE APPEAL
 OTHER (Please Specify): _____

1. Property Address and/or Parcel ID: E19-001-0010-0-0121-00 Stafford St

2. Property Owner: Judith Hempfling
 Address: 225 W. Limesdore St, 45045387 Phone: 937-592-1295

3. Description of request: This parcel, a fifty foot buildable lot, has a 5 foot encroachment of the neighboring house on it. This was built many years ago at the time Carl Moreis, the owner of the property, needed to resolve an encroachment in order to complete the sale of the property.
I, Dennis Switzer & Pat Bates discussed a Chris Leonard & one member that we resolve the non-compliance of his property by me selling 10 feet of my lot to him. This will resolve his non-compliance.
They had suggested that my 40 foot lot ^{span} receive a variance so that it remains a buildable lot in Residence B. Given that this agreement between Mr. Moreis & myself would resolve one non-compliance, Village staff has agreed to making this recommendation to BZA. Thank you,

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: Judith Hempfling Title: owner
 Address: 225 W Limesdore St / 45045387 Date: 2/11/19
 E-mail: Judithhempfling@gmail.com

DO NOT WRITE BELOW THIS LINE [OFFICE USE]

Zoning Classification: R-B Fee: \$100.00

Hearing Date: 3/20/2019

Request Denied or Approved: _____

Zoning Official Name & Title: _____