

**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