

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday, April 26, 2017

CALL TO ORDER

The meeting was called to order at 7:02 p.m. by Ted Donnell, Chair.

ROLL CALL

Ted Donnell, Chair, Kingsley Perry, Chris Peifer and Dan Reyes were present, as was the Zoning Administrator for the Village, Denise Swinger. Ellis Jacobs and Steve Conn were not present.

REVIEW OF MINUTES

Minutes for BZA Meeting of February 22, 2017. Perry MOVED and Peifer SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 4-0 on a voice vote.

REVIEW OF AGENDA

There were no changes made to the agenda.

VOTE FOR CHAIR

Donnell called the vote, and the nomination of Ted Donnell for Chair for 2017 passed, 4-0 on a roll call vote.

PUBLIC HEARINGS

1. 130 North Walnut Street (Michael and Carol McKeever) –Parcel ID#F19000100110026900: Variance request in the R-B, Moderate Density Residential District; to exceed the maximum height of eighteen (18) feet by four (4) feet.

Swinger explained the request as follows: the applicant has requested a variance seeking relief from section 1260.04 Uses, which states: *(a) Accessory Buildings and Structures – (5) The height of an accessory structure shall not exceed 18 feet when a hip or gable roof is used, 15 feet when a mansard or gambrel roof is used and 12 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 24 feet.*

The applicant requests a variance of four (4) feet to exceed the maximum height of eighteen (18) feet in order to heighten an existing accessory structure to twenty-two (22) feet for the purpose of creating a storage area over the garage.

This is an existing garage and is therefore grandfathered into the code, however it is still necessary to examine the existing structure against the zoning code requirements to ensure it is not a non-conforming structure (Chapter 1284.04 (a) (1). Staff has determined it is NOT a non-conforming structure and can be altered because of the following:

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.

The existing garage is set back at least ten feet from the rear and five feet from the side property lines according to the builder Michael Spencer.

Accessory structures shall not exceed 66% of the principal building floor area or 800 square feet, whichever is less.

The existing garage measures 24 X 32 feet for a total of 768 square feet. The principal building measures 1,245 square feet. At 768 square feet, the accessory structure does not exceed 66% of the principal building floor area or 800 square feet.

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.

The accessory structure will not be separately metered. Electric will be shared with the principal dwelling.

Swinger stated that she had spoken with Michael Spencer, of Spencer Building Group, and received confirmation that the property owners are not interested in the option of an Accessory Dwelling unit at this time. Their purpose in requesting the height variance (which will then create enough head room to permit the possibility of an ADU) is to accommodate shelving for storage purposes.

Reyes commented that he was confused by the drawings, which appear to be of a non-conforming dwelling. In support of this view, Reyes stated that the setbacks appear to be less than the minimum requirement. Reyes stated that he is aware that a rendering cannot be read verbatim, but that "eyeballing" the drawings led him to conclude that the setbacks are insufficient for a conforming use, appearing more like 2-5 feet than the required 10 feet. The number of feet is not noted, Reyes stated, leaving it open to interpretation.

Donnell stated that his interpretation was based upon the fact that the structure is an existing structure, and the variance does not represent a change of use. Donnell stated that he considers the situation a replacement of an existing structure. He commented that he had relied upon the builder's statement that the structure was in compliance to setback requirements.

Reyes responded that he assumed the matter to be relevant to the variance request.

Donnell concurred, and stated that he would explore this with the builder.

Donnell commented that he is unclear as to why there is a distinction between ADUs and Accessory Structures with regard to height maximum, and asked that BZA explore this following the hearing. He suggested the possibility of raising the height limit for all accessory structures to 25 feet regardless of roof type or type of accessory structure.

Donnell OPENED THE PUBLIC HEARING.

Michael Spencer addressed the setback issue, stating that the rear yard setback is at least 10 feet, the north easement for the structure is 14-15 feet, and the south easement is 5 feet. Spencer commented that he had discussed the possibility of creating an ADU so that they have more potential for use of the structure in the future, and that the homeowners were not interested. Their primary interest in the structure is storage, and the homeowners have existing six-foot storage racks, which is dictating the issue of interior height.

Donnell asked where Spencer took his measurements, and this was briefly discussed.

There was discussion regarding the abutting alley and whether it is a vacated alley or not. This was not conclusively determined.

Reyes commented that the interior spaces of the accessory structure are sufficient for an ADU.

Spencer explained the rationale behind the height of the structure. In response to a question from Reyes, he stated that he is building to the drawings, not to the description.

Donnell asked a question based upon the drawings to which he has access, and was told that those drawings are not the ones from which Spencer is currently working.

Donnell confirmed that there is no potential for an ADU as a use for the space.

Wesley McKeever spoke, apologizing for the fact that apparently the wrong drawings had gone out to the Planning office.

Donnell CLOSED THE PUBLIC HEARING.

Donnell CALLED FOR A MOTION.

Reyes MOVED TO APPROVE THE VARIANCE IF THE REVISED DIMENSIONS ARE ATTACHED AS AN EXHIBIT TO THE PROPOSAL. Perry SECONDED.

Donnell read through the variance standards, with roll call following each question, with the result as follows:

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: Yes; Perry: Yes; Reyes: Yes; Donnell: Yes.

(2) Whether the variance is substantial; Peifer: No; Perry: Yes; Reyes: No; Donnell: 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; Peifer: No; Perry: No; Reyes: 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; Peifer: No; Perry: No; Reyes: No; Donnell: No.

(5) Whether the property owner purchased the property with knowledge of the zoning restriction; Peifer: Yes; Perry: Yes; Reyes: Yes; Donnell: Yes.

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Peifer: No; Perry: No; Reyes: No; Donnell: Yes.

(7) Whether the existing conditions from which a variance is being sought were self-created; Peifer: Yes; Perry: Yes; Reyes: Yes; Donnell: Yes.

(8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; Peifer: Yes; Perry: Yes; Reyes: Yes; Donnell: Yes.

The Clerk asked for clarification of the MOTION TO APPROVE THE VARIANCE with regard to the conditions of approval.

There was discussion among BZA members regarding the correct wording of the conditions.

Peifer expressed concern that the comment regarding “revised drawings” might create confusion, and asked for clarification as to what they were revised to or from.

Swinger commented that in either case, the variance request itself would remain unchanged because any drawing changes would be to the interior of the structure.

Donnell clarified that the drawings now in the hands of the BZA are not consistent with the discussion that the BZA had just held. Neither are they consistent with the application for the variance, given that the builder has stated that those are not the drawings from which he is working.

The Clerk received clarification that the revised drawings will be referenced as “the final plans” for purpose of the motion requesting “revised drawings”.

Donnell CALLED THE VOTE, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

DISCUSSION

Donnell proposed a discussion regarding the issue of roof height, opining that the inconsistency between the height for Accessory Structures and Accessory Dwelling Units should be rectified.

Donnell explained that during the zoning code process the two types of structures were dealt with separately, and it is his opinion that there was nothing intentional in creating the disparity.

Donnell suggested that the matter be passed to Swinger to take to Planning Commission for their consideration, and, if approved, on to Council for a vote on the change. Donnell noted that there would be public hearings at every step in the process.

Swinger commented that ADUs that come before Planning Commission have to meet a number of standards to be permitted.

Donnell noted that the use is permitted, with conditions. He opined that the roof height is relatively immaterial.

Peifer received clarification that an Accessory Structure cannot become an ADU without going to Planning Commission for the change of use.

Reyes brought up the issue of the maximum number of square feet permitted as a potential deterrent to ADUs. He brought up the concern around ADUs exceeding the size of the primary structure.

BZA held a general discussion regarding changes to the code with regard to ADUs and whether there was a rationale behind the difference in height requirements.

All members of the BZA agreed with Donnell’s suggestion that the issue regarding roof height for ADUs and Accessory Units be taken to Planning Commission for their consideration, with the recommendation that the height restrictions be made consistent.

Peifer asked about the vacated alley with regard to calculation of the setback. He asked whether neighboring properties are able to negotiate that one property owner take the entire alley or vice versa,

Swinger responded that this is indeed the case.

Donnell explained the process, noting that there are still utility easements in place, allowing Village utility access to the area.

AGENDA PLANNING

There was no Agenda Planning.

ADJOURNMENT

There being no further business, Peifer MOVED and Perry SECONDED a MOTION to adjourn. The MOTION PASSED 4-0. Meeting ADJOURNED at 7:50pm.

Ted Donnell, Chair

Attest: Judy Kintner, Clerk