

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday, February 22, 2017

CALL TO ORDER

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

ROLL CALL

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

REVIEW OF AGENDA

There were no changes made to the agenda.

REVIEW OF MINUTES

Minutes for BZA Meeting of November 28, 2016. Conn MOVED and Peifer SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 4-0 on a voice vote.

NOMINATION OF CHAIR

Conn NOMINATED Donnell as Chair. Peifer SECONDED, and the MOTION PASSED 3-0 on a voice vote, with Donnell abstaining.

The vote on the nomination will be held at the next BZA meeting.

PUBLIC HEARINGS

Variance Request: 319 Allen Street, Property Owner – Eric Juergens – Parcel ID #F19000100150002200.

A variance seeking relief from section 1260.04 (a) (6) - Accessory structures shall not exceed 66% of the principal building floor area or 800 square feet, whichever is less, and

1262.08 (e)(1) D - The accessory dwelling unit shall be limited in size to a maximum of 66% of the total living area of the principal dwelling or 800 square feet, whichever is less.

Swinger described the proposed project as follows:

The property owner recently purchased this property, located in Residential A – Low Density Residential District. He intends to add an accessory structure for use as a garage below and an accessory dwelling unit above. The size of the accessory structure being proposed is 936 square feet, and the property owner is requesting a variance of 136 square feet.

Swinger recommended that the Board of Zoning Appeals approve the variance of 136 square feet. Because of the large lot size of 2.290 acres, staff does not believe the variance will affect the essential character of the neighborhood nor will the adjoining properties suffer a substantial detriment as a result.

Conn sought clarification that the only matter before the Board is the variance of 136 square feet. This was affirmed by Donnell and Swinger.

Donnell OPENED THE PUBLIC HEARING.

Mr. Juergens stated that he has no plans for the rest of the property at present, and promised “a quality structure” which would be an asset to the neighborhood.

Conn received confirmation from Mr. Juergens that the new structure will be erected on the footprint of the garage that is currently standing.

Mike Kelley, a neighbor, asked several general zoning questions which were answered by Swinger, who informed the group that ADUs are permitted as a conditional use in all three residential areas of town.

Jennifer Sloan, who resides in the property to the rear of Mr. Juergens’ lot, stated her concern that the rear of her home is entirely glass and that if trees are removed, or if there are no leaves on the trees, a second story window in the location requested will look out onto her exposed home.

Builder Tim Conrad addressed this concern, noting that the current garage sits closer to the property line than will the new structure.

Donnell CLOSED THE PUBLIC HEARING.

Conn reiterated that the only item on the table was the variance request for a 136 square foot variance to the footprint of the proposed structure.

Peifer followed this up, noting that the height of the proposed structure is 23 feet 10 inches; just under the permitted 24 foot limit for an accessory structure with an accessory dwelling unit.

Donnell commented that the zoning code does not address screening issues for the second story, since that could lead to other issues such as infringement upon solar access. While a six foot fence would be permitted, Donnell said, there are no options available with regard to second story screening, since the Board has no authority to require this.

Ms. Sloan commented that the rear of her property rises about six feet into the Juergens’ property, exacerbating the height of the neighboring structure.

Donnell commented that the zoning code addresses the height issue in that while the height of a principle structure can be 35 feet, the height of the ADU cannot exceed 24 feet.

Sloan then asked whether Juergens could “make the windows smaller” as shown on one side of the drawing, on the side of the structure facing her property.

Juergens responded that the small window pictured is a bathroom window. He commented that the ADU is planned as a space for his college-age son to stay in when he is home on breaks. This would mean that typically there would only be someone in the structure about three months of the year.

Mike Kelley asked whether there were plans to remove any trees, and Builder Conrad responded that he does plan to remove at least one tree.

Donnell CALLED FOR A MOTION.

After receiving confirmation from Swinger that the variance is indeed 136 square feet, Conn MOVED TO APPROVE the variance. Peifer 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; Conn: Yes; Donnell: Yes.

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

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

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Peifer: Yes; Perry: Yes; Conn: Yes; Donnell: Yes.

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

The MOTION PASSED 4-0 ON A ROLL CALL VOTE.

AGENDA PLANNING

There was no Agenda Planning.

ADJOURNMENT

There being no further business, Conn MOVED and Peifer SECONDED a MOTION to adjourn. The MOTION PASSED 4-0. Meeting ADJOURNED at 7:26pm.

Ted Donnell, Chair

Attest: Judy Kintner, Clerk