

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday, December 11, 2019

CALL TO ORDER

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

ROLL CALL

Dino Pallotta, Acting Chair, members Scott Osterholm and Anthony Salmonson were present, as was the Zoning Administrator for the Village, Denise Swinger, and Solicitor Chris Conard. Matt Reed, Ellis Jacobs and Richard Zopf were required to recuse.

REVIEW OF MINUTES

Minutes for BZA Meeting of March 17, 2019. MOVED and SECONDED a MOTION TO ADOPT THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 on a voice vote.

SWEARING IN

Conard queried those present, asking a show of hands from those intending to speak. He then asked those persons to “swear or affirm” that anything they stated to the Board during the meeting would be accurate.

COMMUNICATIONS

- Marie Miller re: Variance Request
- Dr. Pollack re: Variance Request
- Carrie Campbell re: Variance Request

Pallotta acknowledged the communications.

REVIEW OF AGENDA

There were no changes made to the agenda.

PUBLIC HEARINGS

A variance seeking relief from section 1260.04(a)(3) setback of accessory structures and 1260.04(a)(5) height of accessory structures per Chapter 1260 General Provisions. Property owner Brett Henderson – 335 West Davis Street - R-B, Moderate Density Residential District Parcel ID #F19000100040005100. Swinger described the matter as follows, noting that she has provided a great deal of information based upon complaints and allegations made by Henderson, but that the hearing is specific to the height and setback of the structure.

On August 9, 2013, a zoning permit #2013-26 was issued to Yellow Springs Home, Inc. for an 11 x 18- foot accessory structure. The diagram indicated a 7-foot setback from the building’s side yard lot line. The permit was issued by a former zoning employee. The permit does not indicate the height.

The zoning code was updated in September 2013. The height of accessory structures changed depending on the roof design. Section 1260.04 (a) (5) provides different heights depending on the roof design for this structure is a shed roof which cannot be taller than 12 feet. Prior to the zoning code update, the height limit under Section 1278.02 (c) was 15 feet.

Based on Greene County GIS mapping of properties, the accessory structure was not completed until sometime in late 2017/early 2018.

Pallotta received instruction from Conard that BZA will consider only height and setback, but that history may be considered as relevant to those considerations.

The current zoning code indicates that when a structure is modified or relocated, a new permit is required. Section 1272.01(a)(1) states, “*A zoning permit shall be required and shall be obtained from the Zoning Administrator by the property owner or his or her agent:*

(1) Prior to the construction, occupancy or use of any proposed structure or addition to an existing structure, or prerequisite to the continued occupancy of a newly altered, reconstructed, enlarged or relocated structure.”

Mr. Henderson submitted a new permit application to the Village zoning office on October 17, 2019 in which he intended to move the shed to a different location on the property.

Staff denied the permit based on the height only, which was indicated on the drawings to be 18 feet. Staff did not deny it based on the setback because his drawing showed an eight-foot setback from the side yard lot line at the roof’s edge.

After receipt of an email informing Mr. Henderson that the permit was denied, Mr. Henderson responded on October 23, 2019 with a request for a variance hearing and indicated that he wanted to submit the application as a solar project.

Staff received via email the variance application on October 31, 2019. Staff then sent a second letter to Mr. Henderson on November 8, 2019 to clarify the violations.

Mr. Henderson acknowledged receipt of the letter in an email on November 13, 2019 where he responded that his intent in the variance request is to keep the structure in its current location. In this email, he indicates that he had trimmed two feet off the roof overhang, leaving two feet from the property line at the roof edge. This makes the variance request three feet to the side yard setback.

Previous Zoning Code - 1278.02(b) “*Accessory structures may be erected in a rear yard if such structures are kept at least ten feet from the rear and five feet from side property lines.”*

Current Zoning Code – 1260.04(a)(3) “*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 Village determines setbacks by what is defined in the current zoning code as the “*Building Envelope.*” The “*Building Envelope*” definition is, “*The maximum three dimensional volume on a lot within which a structure can be built, as permitted by applicable height and setback requirements.*” The previous zoning code determines setbacks by what was defined as “*Building, edge.*” The “*Building, edge*” definition is, “*The horizontal limit of a building, including the drip or eave line of all roofs, carports, permanent awnings and decks.*”

Mr. Henderson also indicated in his November 13, 2019 email that he will take off the reflector attachment on top, which would bring the structure down to a height of 12’10”. He has not done this and the current height of the structure is either 18 feet per his drawing submitted with the permit application or 17 feet which he indicated via email.

Swinger commented that the setback has changed based upon the degree of the overhang, but that the current overhang indicates a setback of two feet, which requires a variance of three feet. She stated that based upon current information, Henderson is seeking a height variance of five feet.

Swinger responded to a question from Pallotta, stating that at the time that Henderson was presenting another matter, she noted that he had an accessory structure, and she commented that the maximum height allowance for any accessory structure was 18 feet maximum. She did not pursue the matter at that time, assuming that the original permit, issued in 2013, would have covered this structure.

Swinger further explained that while the permit was issued in 2013, the pad was put in in 2013 and the structure was begun in about 2015 and reached its current height in about 2017.

Conard clarified that there is an existing structure on the property, and that it is non-conforming in that it violates both the height and side yard setback requirements of the zoning code. To make the structure compliant, Mr. Henderson has submitted a variance request.

Salmonson received clarification that the intrusion into the setback is the result of a three-foot overhang.

Swinger noted that she had provided both zoning codes' language concerning height and setback given Henderson's argument that he should have been grandfathered into the former zoning code, but indicated that both codes say essentially the same thing in different ways. She then commented that in her opinion, since Henderson had not made significant progress on the structure within a 12-month period from the time the permit was initially issued—to Home, Inc.—that Henderson needed to obtain a new permit at this point.

Salmonson received clarification that it is the responsibility of the permit holder to inform the Village as to when a project is completed, but that the permit in question had been issued two years prior to her starting in the position of Zoning Administrator, and she had assumed the project was completed.

Pallotta received clarification that grandfathering would not apply in this instance, since there was never a request to renew the permit.

Swinger stated that she had let Henderson know on several occasions that he would need to receive a new permit for any changes made to the structure, but that this had not occurred to date.

Salmonson asked what the actual height of the building is, since there are several heights listed, and some materials have been removed.

The Clerk received clarification that the variance request is for five feet in height.

Brett Henderson explained the situation, stating that his agreement with Home, Inc. at the time of purchase of the property was that Henderson would be permitted to build a garage on the pad that Home, Inc. had poured for that purpose on the property. He described his process in some detail, stressing his own design and work to erect the structure, noting that he was attempting to "create as large a canopy as possible for solar panels" in the process.

Henderson stated that the structure currently serves as "the warehouse for my solar business, and is the storage area for the 30 solar projects I am working on," He noted that he employs "five local young men."

Henderson stated that he had put solar panels up on the roof of the shed, but that they were “broken” and he only put them up to see how well the structure would work to hold solar panels.

Swinger commented that she has never received a letter from the structural engineer Henderson says he hired to assess the structure.

Henderson responded to a question from Pallotta, stating that he does plan to attach solar panels to the structure at a later date.

Pallotta ascertained from Henderson that in his business, YS Solar obtains all needed permits. He asked why Henderson had not obtained a permit from the Village to place the panels on the shed roof.

Henderson stated that it was “R&D.”

Pallotta commented that Henderson seems to be “asking for forgiveness rather than permission,” which seems to be creating problems for him. He commented that Henderson seems to be in need of a Home Occupation permit as well as a permit to build the structure.

Henderson held forth regarding the nature of the creative process and how it does not follow a linear path.

Henderson stated that he has submitted his home address on any number of applications and that the Village has never informed him that he needs a Home Occupation Permit.

Salmonson received confirmation that if the structure were built with walls perpendicular to the ground, with only a one-foot overhang, he would be in compliance.

Swinger commented that now that Henderson has disclosed that materials for 30 projects is being delivered to his home address, this indicates to her a clear need for a Home Occupation Permit.

Henderson expressed frustration, indicating that he would like to move out of the Village.

Swinger encouraged him to just come in and get the paperwork filled out.

Conard commented that now that staff have been made aware of the situation, they are obligated to follow up.

Henderson commented that his priorities had been “to fight for a reason to live” previously, and was not interested in jumping through administrative hoops.

Salmonson asked whether Henderson could make the building compliant.

Henderson commented that he could, “if that is what is required.”

Pallotta OPENED THE PUBLIC HEARING.

Mitzie Miller, an immediate neighbor, read her letter, which commented that she considers the structure an eyesore, and of shoddy construction, which is lowering her property value and diminishing her privacy. She asked for a clear message to the property owner that he needs to follow the law. She stated that the shed should not exceed twelve feet in height.

Lauren Miller commented that the shed has “morphed” over time, and is not sure what it is or may become. She asked that the Village give Mr. Henderson clarity as to what he is permitted to build.

Brett Knickerbocker commented that while he values “uniqueness”, he sympathizes with Mitzie Miller’s perception of a lack of privacy due to the height of the structure.

Salmonson asked Knickerbocker if he was aware of any increase in traffic on that street, to which Knickerbocker responded that he was not.

Richard Zopf asked that the code section regarding determination of the side setback be read, stating that he “could not find it online”.

Swinger noted that it is in the packet, but looked it up and read the following: “**Building envelope.** The maximum three dimensional volume on a lot within which a structure can be built, as permitted by applicable height and setback requirements.”

Swinger then read the definition used in the previous zoning code, “The building edge definition is the horizontal limit of the building including the drip or eave-line of all roofs, carports or decks.”

Swinger explained that the maximum three-dimensional volume of a structure must be located outside of the setback, which, though stated differently is the same requirement for either code.

Pallotta CLOSED THE PUBLIC HEARING.

Conard stated that he is unclear as to the actual request at this point. He suggested to BZA members that they have the latitude to make the request at hand clear before proceeding.

Pallotta attempted to get Henderson to clarify what he is requesting.

Conard joined the effort, explaining to Henderson his options.

Henderson stated that he would be asking for “a foot” in height variance.

Pallotta expressed frustration in being unable to understand what Henderson wants to request.

Conard asked that Henderson state that he is modifying his request from a five-foot height variance to a one-foot height variance.

Regarding side setback, Conard asked Henderson to clarify his request in this regard.

Henderson stated that he would like a two-and a half-foot side-setback variance.

Henderson asked how long he would have to make the structure compliant.

Henderson stated that he would like a “two-and-a-half-foot setback from the side yard.” He then changed his mind, and amended this to “a three foot (36 inch) variance.

Conard then read the preamble to Chapter 1278.04, the Variance Standards, stating that “Variances from the terms of the code shall be granted only where the applicant shows that the strict application of a zoning requirement causes practical difficulties in the use of the property. The factors to

be considered and weighed by the Board in determining whether a property owner has encountered practical difficulties in the use of the property.

Conard then advised that the matter be broken into two requests, one for side yard setback and one for the height variance.

The group decided to go through the request for the height variance first.

The Clerk 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; Osterholm: No; Salmonson: Yes; Pallotta: No.

(2) Whether the variance is substantial; Osterholm: No; Salmonson: No; Pallotta: Yes.

(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; Osterholm: Yes; Salmonson: Yes; Pallotta: Yes.

(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; Osterholm: No; Salmonson: No; Pallotta: Yes.

(5) Whether the property owner purchased the property with knowledge of the zoning restriction; Osterholm: No; Salmonson: No; Pallotta: No.

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

(7) Whether the existing conditions from which a variance is being sought were self-created; Osterholm: Yes; Salmonson: Yes; Pallotta: Yes.

(8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; Osterholm: Yes; Salmonson: Yes; Pallotta: Yes.

The Solicitor advised that "whether or not there is currently anything on the property has nothing to do with your decision."

Salmonson MOVED to APPROVE THE VARIANCE REQUEST of ONE FOOT IN HEIGHT. Osterholm SECONDED, and the MOTION PASSED 3-0 ON A ROLL CALL VOTE.

BZA then considered the side setback variance of two-and on-half-feet.

The Clerk 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; Osterholm: Yes; Salmonson: Yes; Pallotta: No.

(2) Whether the variance is substantial; Osterholm: Yes; Salmonson: Yes; Pallotta: Yes.

(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; Osterholm: No; Salmonson: No; Pallotta: Yes.

(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; Osterholm: No; Salmonson: No; Pallotta: Yes.

(5) Whether the property owner purchased the property with knowledge of the zoning restriction; Osterholm: No; Salmonson: No; Pallotta: No.

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

(7) Whether the existing conditions from which a variance is being sought were self-created; Osterholm: Yes; Salmonson: Yes; Pallotta: Yes.

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

Osterholm cited Campbell's letter, stating that the side that the shed is on abuts Campbell's yard, and because she does not have an issue with the variance, he is inclined to grant the request.

Osterholm MOVED to APPROVE THE VARIANCE REQUEST of TWO FEET TO THE SIDE SETBACK REQUIREMENT. Salmonson SECONDED, and the MOTION PASSED 2-1 ON A ROLL CALL VOTE, with Pallotta voting against.

The Board then considered conditions.

Conard suggested that the Board consider the structural integrity of the building as it now exists.

Swinger clarified that the structure cannot become a tiny house, which would require a conditional use hearing for an accessory structure. She stressed that the structure cannot be occupied.

Pallotta stated that Henderson will have to provide a letter to staff from a structural engineer verifying that the structure is safe.

Salmonson requested that a condition be placed that the work on the structure be completed "between 12 December and 15 January 2020" and that the inspection by the Zoning officer be completed by January 15, 2020. This means that a representative of the Village has permission to access the property between December 12, 2019 and January 15, 2020.

Pallotta stipulated further that because construction had been done without a valid permit, that Henderson would need to obtain all appropriate permits from the Village by January 15, 2020. He clarified that failure to do so would result in citations.

The Clerk read back the conditions as stipulated, as follows: permission shall be granted to Village staff to access the property for the purpose of determining height and setback between December

12, 2019 and January 15, 2020. All modifications to the structure must be completed by January 15, 2020. The structural integrity of the building shall be attested to by a certified structural engineer and this delivered in letter form to Village staff.

Swinger stated that the modifications to the structure will meet the standards for a solar accessory. Henderson would need to return for a permit to place the panels once he receives clearance from Greene County for that structure.

Salmonson MOVED to APPROVE THE VARIANCE OF ONE FOOT IN HEIGHT AND OF THREE FEET TO THE SIDE SETBACK with the conditions as follows: permission shall be granted to Village staff to access the property for the purpose of determining height and setback between December 12, 2019 and January 15, 2020. All modifications to the structure must be completed by January 15, 2020. The structural integrity of the building shall be attested to by a certified structural engineer and this delivered in letter form to Village staff by January 15, 2020. Osterholm SECONDED. The MOTION PASSED 2-1, with Pallotta voting against.

Conard addressed Henderson, chastising him for the exorbitant time and energy spent on the part of the Village to address issues at his home. This has been unnecessary. He asked on behalf of Village staff that Henderson follow the rules moving forward, and that he consider apologizing to Village staff.

Pallotta commented that the process is there for a reason, and applies to all citizens equally. If you follow the process you will receive answers and guidance, he commented.

Salmonson suggested that Henderson get a plan approved and then build to the plan. Constant change to a plan causes problems.

Swinger stated that there has been “an exorbitant waste of staff time over the past three years.” She noted that she has an open door policy, “but you have to meet me half-way.”

Henderson stated that he “will do better.”

AGENDA PLANNING

There was no Agenda Planning.

ADJOURNMENT

There being no further business, Pallotta MOVED and Salmonson SECONDED a MOTION to adjourn. The MOTION PASSED 3-0. Meeting ADJOURNED at 9:09pm.

Dino Pallotta, Acting Chair

Attest: Judy Kintner, Clerk