

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday, February 26, 2020

CALL TO ORDER

The meeting was called to order at 7:00 p.m. by Matt Reed, Chair.

ROLL CALL

Matt Reed, Chair, members Dino Pallotta, Scott Osterholm, Anthony Salmonson and Alternate Richard Zopf were present, as was the Zoning Administrator for the Village, Denise Swinger, and Solicitor Ben Mazer. Ellis Jacobs was not present.

REVIEW OF MINUTES

Minutes for BZA Meeting of December 11, 2019. Salmonson MOVED and Pallotta SECONDED a MOTION TO ACCEPT THE MINUTES AS AMENDED. The MOTION PASSED 5-0 on a voice vote.

Minutes for BZA Retreat of February 20, 2020. Pallotta MOVED and Salmonson SECONDED a MOTION TO ACCEPT THE MINUTES AS WRITTEN. The MOTION PASSED 5-0 on a voice vote.

COMMUNICATIONS

- Luan Heit re: Support for Variance/Orton
- Linda Chernick re: Support for Variance/Orton
- Steve and Jean Payne re: Support for Variance/Orton
- John Canon re: Support for Variance/Orton
- Volker Bahn/Deanna Newsom re: Support for Variance/Orton

Reed acknowledged the communications.

REVIEW OF AGENDA

There were no changes made to the agenda.

PUBLIC HEARINGS

1. A variance seeking relief from Table 1248.03(a) Dimensional Requirements: Residential Districts regarding a setback for a principal structure per Chapter 1248 Residential Districts. Property owner Susan Stiles and William Alan Ramey – 200 West South College Street - R-B, Moderate Density Residential District. **Greene County Parcel ID #F19000100080023900.**

Susan Stiles and Alan Ramey are requesting a ten-foot variance on the west side of their lot at the corner of West South College Street and South High Street. On a corner lot, the rear lot line is opposite the shorter of the two front lot lines. In this case, the rear yard lot line is the western line which requires a setback of 20-feet. The zoning code does not require that houses must face a certain direction. To preserve as many trees as possible, the property owners chose to face their home towards West South College Street. The applicants are requesting a variance of 10-feet to their rear yard lot line which is outlined in their detailed application.

Swinger stated that staff has no issue with the variance. If this were a side yard, as it is for their neighbors to the west, the setback would have been as close as five feet for a total of 15-feet on both

sides. A ten-foot variance seems reasonable, especially since they did state in their application that they checked with their neighbors who suggested a 15-foot variance (*5-feet from the property line*) was too close.

The request is for a ten-foot variance, Swinger stated, noting that there has been one communication with a neighbor who has no issue with the variance, and one from the neighbor directly to the west who is expressing an objection.

Reed called for input from the applicants.

Susan Stiles explained the rationale for the placement of the home, which prioritized the trees on the lot which were a significant reason for their purchase of that particular lot. She commented that many persons in the neighborhood also value the trees.

Salmonson asked whether Stiles was aware of the zoning restrictions at the time of purchase. Stiles responded that she knew she should have checked on this but had not, and that John Canon suggested trying for a variance to be able to save the trees.

Pallotta confirmed that the Stiles and Ramey had contacted the neighbors to the west.

Stiles confirmed this, and confirmed that they had asked the neighbors about being within five foot of the neighbor's lot line, and while they were not pleased with the notion they agreed not to dispute the matter.

Stiles said she and Ramey then consulted with the architect and came up with a way to move the garage shed ten feet from the neighboring lot line. That home is five feet from their lot line.

Stiles confirmed that she and Ramey had informed the neighbors that they had increased the setback by another five feet.

Stiles noted that it is the garage which will be located the ten feet from the lot line, and will primarily be located along the neighboring driveway.

Reed OPENED THE PUBLIC HEARING.

John Canon stated that he owns the property south of the property in question. He stated that he would like to see the trees preserved. He noted that the proposed garage would abut the neighbor's carport, which seemed to him inconsequential.

Alan Brunsman received information regarding alley property ownership not relevant to the hearing.

Swinger confirmed that the alley between the homes in question is vacated.

Reed CLOSED THE PUBLIC HEARING.

Reed read through the Duncan Standards as a means of discussing the matter at hand.

- (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: Yes; Reed: Yes; Zopf: Yes.

(2) Whether the variance is substantial;

Zopf commented that ten feet does not seem substantial in that it is typical of many properties in town.

Reed commented that if the frontage was on South College Street the setback would in fact be ten feet.

Zopf commented that he could not determine the intent of the zoning code in this matter, and noted that it is not typical for a neighboring property to be located next to a rear yard, and that ten feet is a “generous” setback for a side yard. He stated that approval would not be approval of an unusual coverage of a lot.

Roll Call: Osterholm: No; Salmonson: No; Pallotta: No; Reed: No; Zopf: 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;

Reed commented that it is almost the opposite, that if the trees were removed that would be the greater detriment to the neighborhood.

Salmonson agreed with this perspective.

Roll Call: Osterholm: No; Salmonson: No; Pallotta: No; Reed: No; Zopf: 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; Osterholm: No; Salmonson: No; Pallotta: No; Reed: No; Zopf: No.

Swinger confirmed that the variance would not affect utility or fire access.

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

Swinger commented that it might be easy to forget the “two front yards” rule, although she had mentioned it early on. She noted that the architect had also forgotten this circumstance.

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

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

(8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Reed commented that the fact that rotating the street frontage “makes the issue go away” indicates to him that this is not a substantial issue.

Roll Call: Osterholm: Yes; Salmonson: Yes; Pallotta: Yes; Reed: Yes; Zopf: Yes.

The Clerk reviewed the members’ responses to the Duncan Standards.

Salmonson asked that the Board consider the opposing neighbor’s letter.

Pallotta commented that the fact that it is the garages which will abut mitigates the request.

Zopf commented that the thrust of the letter seemed to be that the neighbor had complied with the code believing that was their duty, and they believed that the same should be required of the applicants. He stated that he did not believe this situation is the same, and the location of the trees on the lot makes the property different.

Reed commented that the trees are a physical feature of the land and might therefore be a justifiable reason for a variance.

Pallotta stated that the idea of two frontages with what seemed to him an arbitrary selection of frontage was compelling reason for a variance.

Zopf MOVED to APPROVE THE VARIANCE REQUEST AS STATED. Osterholm SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Reed recused himself from the BZA for reasons of potential conflict of interest, and Pallotta took over as Chair.

2. A variance seeking relief from section 1260.04(a)(5) regarding the height of accessory structures per Chapter 1260 General Provisions. Property owner Nancy Schwab – 310 Orton Rd – R-A, Low Density Residential District. **Greene County Parcel ID # F19000100160006500.**

Swinger introduced the hearing as follows:

Brett Henderson of Yellow Springs Solar submitted a variance application on behalf of the property owner Nancy Schwab, who signed the application. They are requesting a variance of 3’ 4 3/16” to the height of an elevated ground mount solar array which will also serve as a carport. Section 1260.04 (a) (5) of the zoning code provides different heights for accessory structures depending on the type of roof. In this case, it is a shed roof design with a height maximum of 12 feet.

Swinger noted that she had conferred with the Public Works Director who confirmed that the increased height would not create any issue with regard to access to or interference with power lines. She noted that the size of the property is 3.5 acres.

Pallotta invited Henderson to speak to the project.

Henderson commented that another location had been considered for the solar array, but that this location allows for no tree removal and allows a good pitch for capture of solar rays. He stated that Greene County has issued requisite permits.

Pallotta OPENED THE PUBLIC HEARING.

Alan Brunzman stated that he owns an adjacent home and the driveway. He inquired as to whether the project would create more traffic or in any way impact his property.

Henderson stated that there will be two deliveries, both with box trucks.

Brunzman inquired as to the weight of the trucks.

Osterholm interjected that this will be about 18-26 thousand pounds.

Zopf commented that the variance is unrelated to the trucks or the driveway, and if the use is permitted then all necessary construction is permitted, unless there is a critical issue.

Pallotta CLOSED THE PUBLIC HEARING.

Osterholm asked whether there have been deliveries to date, such as UPS, and Schwab confirmed this.

Salmonson asked whether there is a use agreement regarding the driveway, and Brunzman indicated that there is an agreement.

Pallotta 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: Yes; Zopf: Yes
- (2) Whether the variance is substantial; Osterholm: No; Salmonson: No; Pallotta: No; Zopf: 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; Osterholm: No; Salmonson: No; Pallotta: No; Zopf: 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; Osterholm: No; Salmonson: No; Pallotta: No; Zopf: No
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Osterholm: No; Salmonson: No; Pallotta: No; Zopf: No

Zopf commented that the variance is for the purpose of installing solar panels, which did not exist at the time of the purchase of the property.

- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Osterholm: Yes; Salmonson: Yes; Pallotta: Yes; Zopf: Yes
- (7) Whether the existing conditions from which a variance is being sought were self-created; Osterholm: Yes; Salmonson: Yes; Pallotta: Yes; Zopf: No
- (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; Zopf: Yes

BZA members debated the question briefly, agreeing that the “justice done” refers to justice to the property owner and community as a whole.

Salmonson MOVED to APPROVE THE VARIANCE AS REQUESTED. Osterholm SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

Zopf commented that there are “a number of people who feel that the zoning code should be changed”, to allow solar panels to exceed the height of the structure. He asked that this be communicated to the Planning Commission for a possible code amendment.

Salmonson disagreed, commenting that that would essentially be “passing the buck”, since persons might then seek to increase the height of the structure.

Mazur recommended that the matter be referred to Planning Commissions, opining that this is an appropriate area of consideration for that body.

Pallotta asked that the matter be passed along to Planning Commission for discussion.

AGENDA PLANNING

Swinger noted a possible variance for an awning upcoming.

ADJOURNMENT

There being no further business, Salmonson MOVED and Osterholm SECONDED a MOTION to adjourn. The MOTION PASSED 4-0. Meeting ADJOURNED at 8:01pm.

Dino Pallotta, Acting Chair

Attest: Judy Kintner, Clerk