

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

**Virtual Meeting @ 5:00 P.M.**

**Wednesday, March 31, 2021**

**CALL TO ORDER**

The meeting was called to order at 6:00 p.m. by Ellis Jacobs, Acting Chair.

**ROLL CALL**

Ellis Jacobs, Chair, members Anthony Salmonson and Scott Osterholm were present. Zoning Administrator for the Village, Denise Swinger, was present. Solicitor Breanne Parcels was also present.

**REVIEW OF MINUTES**

Minutes for BZA Meeting of January 27, 2021 were reviewed. Salmonson MOVED and Osterholm SECONDED a MOTION TO ADOPT THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 on a voice vote.

**COMMUNICATIONS**

Frank Jennings re: Objection to YS Brewery Setback Variance Request  
Young/Buckley re: Agreement with 322 Phillips Street Variance Request

**REVIEW OF AGENDA**

There were no changes made.

**PUBLIC HEARINGS**

**1) Variance Application** – R-B, Moderate Density Residential District – 332 Phillips Street Thomas Gregor, on behalf of property owners Terry Smith and Mary Eby, has submitted an application for a variance seeking relief from Chapter 1248 Residential Districts - Table 1248.03a Dimensional Requirements regarding the front yard setback for a porch. Greene County Parcel ID #F19000100100011800.

Thomas Gregor, on behalf of the owners, has submitted an application for a variance to the front yard setback at 332 Phillips Street. According to the application, the current front porch is falling apart. The porch has a length of 7-feet with a depth of 5’4”. The owners would like to expand the length to 13’ with a covered roof edge length of 14’ and a depth of 5’6” with a covered roof edge depth of 6-feet. The steps would be relocated at the front coming within 1-inch of the property line and 2 ½ feet from the Village’s sidewalk.

The front yard setback for the R-B, Moderate Density Residential District is 20-feet, however the dwelling and porch at the front is grandfathered in. The new porch would extend another 2 inches with a roof overhang of 8-inches. Adding steps to create a front entrance will bring the steps within one inch of the property line. Staff recommends the 8” variance for the porch/roof overhang, but does not recommend the addition of the steps at the front because they could be located at the side of the porch. Staff also recommends they get an official survey to ensure the structure does not encroach on the right-of-way.

Swinger commented that the steps as configured would be one inch from the property line and Two and one-half feet from the sidewalk, and reiterated her recommendation that the variance be to permit the steps to the side of the porch but not to the front of the porch. She stated that an official survey would be needed to permit steps to the front. Swinger stated that a neighboring porch to the south extends to within 18” of the sidewalk.

In response to a question from the Clerk, Swinger explained that placing the steps to the side of the porch does not expand the non-conformity.

Gregor affirmed that the roof covers the porch only, not the steps.

Gregor stated that the new porch is deeper than the original, which extends it. He commented that the property owners would be permitted to place a 4' high fence on the property line and wondered how this is different than steps.

Swinger noted that it is speculation as to where the property line is, and that a survey would be required to clarify this.

Gregor explained the difference between a registered official survey and anything unofficial.

Jacobs stated that the stairs would end two-and-a-half to three feet from the sidewalk.

Parcels responded that an official survey is needed to avoid an issue with marketable title or sidewalk expansion at a later point, since the property line as now marked is unofficial, and the sidewalk does not encompass the entire right-of-way.

Terry Smith asserted that a neighbor has steps that come closer to the sidewalk than do their proposed steps.

Jacobs clarified that the problem is the issue of "one inch from the property line" and if that property line is marked incorrectly, therein lies the problem.

Jacobs asked the cost of a survey, and was told this would be about \$1,200.00.

Mary Eby commented that the house is an historical structure and that the steps out the front are more in keeping with the structure of the house.

Salmonson received confirmation that the steps would be one inch from the property line if the property line is correct.

Eby and Smith asserted that their steps would be farther back from the sidewalk than those of the neighbor.

Jacobs OPENED THE PUBLIC HEARING.

Parcels stated that if the Eby/Smiths wish to build up to the property line, they can have a survey done showing the property line as one inch away. She stressed that the steps may not encroach into the Village's right-of-way.

Jacobs asked whether there was some other way to determine the property line, other than a survey.

Parcels stated that property GIS records are not accurate and cannot be a substitute for an official survey.

Jacobs stated that BZA could grant the variance in two ways: one to permit the steps to the side with no conditions and the other to permit the steps to the front with conditions.

Salmonson asked whether the property owners would have to do this or whether they could just go ahead with the construction and take a chance. He commented that in the unlikely event that the Village had to access their ROW and the steps were encroaching, replacement of the steps would still cost less than a survey.

Parcels stated that the property owners might be able to obtain a survey at a lesser cost.

The Clerk opined that because the property owners have brought the matter to BZA, BZA has to rule on the request and cannot advise proceeding without permission.

There being no further comment, Jacobs CLOSED THE PUBLIC HEARING.

Jacobs MOVED to APPROVE THE REQUESTED VARIANCE EITHER WITH THE STEPS BUILT OFF THE SIDE WITH NO CONDITIONS, OR WITH THE STEPS BUILT OFF THE FRONT WITH THE CONDITION THAT THE PROPERTY OWNERS SUBMIT A SURVEY, CONDUCTED BY A REGISTERED OFFICIAL SURVEYOR, WHICH DENOTES THE PROPERTY LINE AND ESTABLISHES THAT THERE IS NO ENCROACHMENT OVER THE PROPERTY LINE. Osterholm SECONDED.

Jacobs read the Duncan Standards as follows, with some discussion of each, and the Clerk calling roll on each.

- (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; Salmonson: Y; Osterholm: N; Jacobs: Y.
- (2) Whether the variance is substantial; Salmonson: N; Osterholm: N; Jacobs: N.
- (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; Salmonson: N; Osterholm: N; Jacobs: N.
- (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; Salmonson: N; Osterholm: N; Jacobs: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: N; Jacobs: Y.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Jacobs: Y.
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: N; Osterholm: Y; Jacobs: N.
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Osterholm: Y; Jacobs: Y.

Jacobs CALLED THE VOTE ON THE MOTION TO APPROVE. The MOTION PASSED 2-1, with Salmonson voting against.

Salmonson explained his “no” vote as a vote against the burden placed on the property owners in requiring an official survey.

2) Variance Application – B-2, General Business District –1475 Xenia Avenue – Ted Donnell, on behalf of Yellow Springs Brewery owners Nate Cornett and Lisa Wolters, has submitted an application for a variance seeking relief from Chapter 1250 Business Districts – Table 1250.03a regarding the front yard setback for an outdoor patio area at the brewpub’s south location. Greene County Parcel ID#F19000100060009200;

Ted Donnell, on behalf of Lisa Wolters and Nate Cornett, owners of Yellow Springs Brewery, submitted an application for an outdoor patio at the front of their building at 1475 Xenia Avenue. Staff denied the application based on its encroachment within the setback. The applicant requested a hearing before the BZA and decided to first seek approval from the Planning Commission as the outdoor patio is also a conditional use. The Planning Commission approved the outdoor patio with the condition that a variance be granted from the BZA.

After the Planning Commission approval, staff requested the owners mark the property line to allow for a measurement of the proposed 16’ x 10’ patio in preparation for the variance hearing. Once this was completed, staff found that the proposed patio encroached on the property line. The Village’s solicitor requested that the property owners have a new survey done because the plat was recorded in 1956. The alleyway does not exist on the original plat and accurate measurements are necessary to determine the variance request.

The zoning code requires 30-foot front yard setbacks in B-2. From a review of the zoning code in 1956 prior to the construction of the building in 1960, the building was in conformance at the time as only side and rear setbacks are mentioned in this area of the Village.

The variance request is for a patio addition of 9-feet to the 20-feet of existing building grandfathered in. According to the architect, the property line is 10’ from the NW corner of the building and 12 ½’ from the SW corner of the building. The patio is 9’ deep so the distance to the property line from the NW corner will be one foot and the SW corner will be 3 ½ feet.

Given the lot characteristics with a grandfathered nonconforming structure, the ROW may be an adequate proxy for a portion of the setback under the *Duncan* factors. As the Village maintains a pedestrian path and stormwater drainage in the ROW, the Public Works Director confirmed the variance would not interfere with utilities. Located in our Gateway Overlay District, the outdoor patio design will be an enhancement to the B-2, General Business District.

Swinger affirmed that the variance would be to the 30’ setback requirement.

Ted Donnell, representing the applicants, explained the decision to put the patio to the front rather than the side, arguing that the patio at the front requires patrons to pass back through the building to exit the property, allowing for monitoring of the patrons to assure that glasses are not being carried off the premises, etc. He asserted that the front patio adds to a pedestrian-friendly entry to that area.

Wolters stated that she and Cornett will be encouraging walking and biking to the business, and the patio helps that effort.

Cornett stated that the front patio was the “next best thing” to a rooftop patio, stating that it will provide an inviting look and allow for more parking to the side.

Wolters responded to a question from Salmonson, stating that the patio will be enclosed with a fence.

Jacobs OPENED THE PUBLIC HEARING.

Jacobs made note of the letter received from Frank Jennings objecting to the variance on the basis that smokers would create a health hazard for pedestrians.

Osterholm commented that persons are permitted to smoke on the sidewalk.

Donnell responded to the letter, stating that there would not be any smoke wafting to the sidewalk due to the height of the patio and prevailing winds.

Wolters stated that they will not permit smoking on the patio.

Jacobs CLOSED THE PUBLIC HEARING.

Salmonson MOVED TO APPROVE THE VARIANCE AS REQUESTED. Osterholm SECONDED.

Jacobs read the Duncan Standards as follows, with some discussion of each, and the Clerk calling roll on each.

- (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; Salmonson: Y; Osterholm: Y; Jacobs: Y.
- (2) Whether the variance is substantial; Salmonson: N; Osterholm: N; Jacobs: N.
- (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; Salmonson: N; Osterholm: N; Jacobs: N.
- (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; Salmonson: N; Osterholm: N; Jacobs: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: N; Jacobs: Y.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Jacobs: Y.
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Osterholm: Y; Jacobs: Y.
- (8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Salmonson: Y; Osterholm: Y; Jacobs: Y.

The Clerk CALLED THE ROLL ON THE MOTION TO APPROVE, and the MOTION PASSED 3-0 ON A ROLL CALL VOTE.

**AGENDA PLANNING**

There were no future agenda items.

**ADJOURNMENT**

There being no further business, Osterholm MOVED and Salmonson SECONDED a MOTION to adjourn. The MOTION PASSED 3-0. Meeting ADJOURNED at 6:47 PM.

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Ellis Jacobs, Chair

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Attest: Judy Kintner, Clerk