

**VILLAGE OF YELLOW SPRINGS, OHIO
ORDINANCE 2023-28**

**REZONING 2 PARCELS TOTALING 0.57 ACRES OF PROPERTY LOCATED AT 144 CLIFF STREET TO PLANNED UNIT DEVELOPMENT (PUD) AND AMENDING THE ZONING MAP
ACCORDINGLY AND APPROVING THE PRELIMINARY DEVELOPMENT PLAN**

WHEREAS, the Planning Commission, following a public hearing and deliberations on May 9, 2023, recommended approval of an application submitted by BUSHCO, LLC, which requested that the official zoning map for the Village of Yellow Springs be amended from "I-1" "Mixed Use Industrial" to "PUD" Planned Unit Development with underlying zoning of I-1 allowing certain uses from the B-1 Central Business District and B-2 General Business District for the Property located at 144 Cliff Street with the Greene County Parcel ID Numbers: F19-000100110025700 and F19-000100110025800; and

WHEREAS, the Planning Commission, following a public hearing and deliberations on May 9, 2023, also recommended approval of a preliminary plat plan for the proposed PUD at 144 Cliff Street; Greene County Parcel ID Numbers: F19-000100110025700 and F19-000100110025800, and;

WHEREAS, Planning Commission unanimously recommends that Council allow the BUSHCO, LLC PUD have an underlying zoning of I-1, Mixed Use Industrial, along with allowing certain uses from the B-1 Central Business District and B-2 General Business District as set forth in the Planning Commission record,

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO
HEREBY ORDAINS THAT:**

Section 1. Village Council accepts the Planning Commission recommendation and approves the rezoning with map amendment from "I-1", "Mixed Use Residential" to "PUD" Planned Unit Development with underlying zoning of I-1 and specific uses within the B-2 and B-1 districts, as set forth in the attached Exhibit 1, for the Property consisting of .57 acres located at 144 Cliff Street with Greene County Parcel ID Numbers: F19-000100110025700 and F19-000100110025800, and as more particularly described in the Legal Description attached hereto as Exhibit 2.

Section 2. Village Council also accepts the Planning Commission recommendation and approves the Preliminary Development Plan.

Section 3. The Zoning Administrator is directed to update the Official Zoning Map maintained and kept on file by the Zoning Administrator pursuant to Village Code Section 1242.02.

Section 4. The Village Manager is hereby authorized to take all steps necessary to enter into a PUD Agreement with BUSHCO, LLC in a form to be approved by the Village Solicitor and substantially similar to the draft agreement attached hereto and incorporated herein as Exhibit 3, prior to commencement of construction and submission of the final development plan under to Village Code Section 1254.05(e).

Section 5. This ordinance shall take effect and be in full force at the earliest date permitted by law.

Signed: 
Brian Housh, President of Council

Passed: 7-3-2023

Attest: 
Judy Kintner, Clerk of Council

ROLL CALL:

Brian Housh __Y__

Kevin Stokes __Y__

Marianne MacQueen __Y__

Carmen Brown __Y__

Gavin DeVore Leonard __Y__

Exhibit 1 to Ordinance 2023-27 Schedule of Uses

Table 1250.02 Schedule of Uses: Business Districts			
Use	B-1	B-2	Specific Conditions
Accessory Uses			
Accessory buildings, structures, and uses		P	Section 1260.04
Home occupations			Section 1262.08 (e)(5)
Outdoor patio seating in conjunction with a permitted restaurant		C	
Food, Drink, Entertainment and Hospitality			
Art galleries, museums and similar cultural facilities	P		
Assembly and performance halls	C		
Bars, taverns, clubs and restaurants serving alcoholic beverages		C	
Bed and breakfasts			Section 1262.08 (e)(2)
Brew pubs and similar establishments		C	
Community centers and senior centers	P		
Cultural buildings	C		
Farmers' market		C	
Hotels and motels		C	
Indoor commercial recreation such as theaters, bowling lanes and skating rinks		C	
Internet sweepstakes café			
Mobile vending (food trucks)		C	Section 1268.08 (d)(1)
Outdoor commercial recreation such as mini-golf and batting cages		C	Section 1262.08 (d)(3)
Restaurants, excluding drive-in or drive-thru facilities		P	
Health Care and Social Assistance			
Hospitals		C	
Medical and dental laboratories		C	
Medical and dental offices and clinics		P	
Office, Financial and Commercial Services			
Banks, credit unions and similar financial institutions, excluding drive-in and drive-thru facilities		P	
Business machine sales & service		P	

Cleaning services		P	
Electric, plumbing supplies sales & service		P	
Glass sales & service		P	
HVAC sales & service		P	
Locksmith shops		P	
Machinery and equipment sales & service		P	
Mail order businesses and fulfillment centers		P	
Offices for executive, administrative, professional, real estate, accounting and similar professional activities		P	
Pest control services		P	
Petroleum products sales		C	
Printing, photocopying and publishing services		P	
Repair shops (non-automotive)		P	
Tool and equipment rental		P	
Personal Service			
Commercial schools and studios including art, dance, martial arts, and music		C	
Day care, nursery schools and child care establishments		P	
Health and fitness clubs		P	
Personal service establishments such as barber and beauty shops, tailors, photo studios, shoe repair and watch repair		P	
Tattoo parlor		C	
Public/Quasi-Public			
Churches and customary related uses		P	
Government offices and facilities		P	
Libraries			
Residential			
Dwellings, single-family detached			
Dwelling units on the upper floors of buildings with nonresidential uses at street level			Section 1262.08(e)(4)
Transient guest lodging		C	Section 1262.08(e)(7)
Retail			

Artisan shops, such as glass blowers, metal sculptors, wood carvers and weavers producing their goods and selling them for retail on premises		P	
Bicycle sales, rental and repair	P		
Building supply and equipment sales, not including lumber yards		C	
General retail catering to the needs of the community, but less than 10,000 square feet of UFA		P	
General retail of 10,000 square feet UFA or more		P	Section 1262.08 (a)(3)
Vehicle Sales, Service and Related Uses			
Drive-in and drive-thru facility for banks, pharmacies, restaurants and dry cleaners		C	Section 1262.08 (a)(1) and 1262.08 (d)(2)
Sales of new and used vehicles, boats, farm implements and similar vehicles and equipment		C	Section 1262.08 (h)(1)
Sale of new vehicle parts, not including installation/repair		P	
Truck and trailer rental		C	
Vehicle and equipment rental		C	
Vehicle repair, major		C	Section 1262.08 (h)(2)
Vehicle repair, minor		C	Section 1262.08 (h)(3)
Vehicle service stations		C	Section 1262.08 (h)(4)
Vehicle wash facilities		C	Section 1262.08 (h)(5)
Other			
Mortuaries and funeral homes		C	Section 1262.08 (a)(2)
Showrooms for home improvements, decorations and similar items, not including outdoor storage		P	
Radio, television and recording studios		P	
Utility and public service buildings, not including outdoor storage		P	
Uses similar to other uses permitted in this district and consistent with the purpose of the district, as determined in accordance with Section 1242.06		C	Section 1242.06
Veterinary clinics		C	

Use	I-1	Specific Conditions
Accessory buildings, structures and uses	P	1260.04
Cafeteria facilities located within a principal use	P	

Caretaker residence	C	
Child care facilities located within a principal use	C	
Corporate offices incidental to the principal use	P	
Outdoor patio in conjunction with a permitted restaurant	C	
Outdoor storage related to a principal use	C	
Retail incidental to the manufacture or production of goods on the premises, not exceeding 30% of the total floor area of the principal building	C	
Vehicle wash facilities for trucks and trailers	P	
Agribusiness	C	
Breweries, distilleries and bottling plants	P	
Farm, including raising animals	C	
Farmers market	C	
Food processing plants	C	
Greenhouse/nursery (not including retail sales)	C	
Kennels	C	
Produce and other food products terminals	C	
Business machine sales & service	P	
Cleaning services	P	
Electric, plumbing supplies sales & service (not including showrooms)	P	
Glass sales & service	P	
HVAC sales & service	P	
Locksmith shops	P	
Machinery and equipment sales & service	P	
Mail order businesses and fulfillment centers	P	
Pest control services	P	
Petroleum products sales	P	
Printing, photocopying and publishing facilities	P	
Repair shops (non-automotive)	P	
Tool and equipment rental	P	
Building material and lumber supply, including lumberyards	C	

Contractors' offices and shops (not including outdoor storage)	P	
Landscaping services	C	
Commercial schools and studios including art, dance, martial arts, and music	C	
Trade schools	P	
Training centers, engineering or sales	P	
Bars, taverns, clubs and restaurants serving alcoholic beverages	C	
Brew pubs and similar establishments	C	
Mobile vending (food trucks)	C	1262.08(d)(1)
Restaurants, excluding drive-in or drive-thru facilities	C	
Sexually oriented businesses	P	1262.08(d)(3)
Medical and dental laboratories	C	
Building material manufacturing including milling, planning and joining	C	
Chemical manufacturing and storage	C	1262.08(b)(1)
Machine, sheet metal and welding shops	C	
Manufacturing, compounding, processing, packaging, treating or assembly from previously prepared materials	P	
Metal stamping, pressing and buffing	C	
Paint, rust proofing and rust coating	C	
Tool and die shops	C	
Offices for executive, administrative, professional, real estate, accounting and similar professional activities	P	
Research, development and testing laboratories	P	
Government offices, buildings and facilities	P	
Bottled gas storage and distribution	C	
Cartage, express and parcel delivery facilities	C	1262.08(f)(1)
Heliports and helipads	C	
Mini-warehouse and self-storage facilities	C	1262.08(f)(2)
Warehouses and distribution centers	C	1262.08(f)(1)
Wholesale businesses	C	
Public utility buildings	P	
Solar facilities (nonresidential)	P	

Telephone exchange buildings	P	
Utility substations	P	
Wind energy conversion systems (single accessory)	C	
Wireless communication facilities and towers	C	1262.08(g)(1)
Truck and heavy equipment repair		1262.08(h)(2)
Truck and trailer rental	C	
Vehicle and equipment rental	C	
Vehicle repair, major	C	1262.08(h)(2)
Vehicle repair, minor	C	1262.08(h)(3)
Vehicle service stations	C	1262.08(h)(4)
Vehicle wash facilities	C	1262.08(h)(5)
Recycling collection and/or processing facility (non-hazardous)		
Storage of hazardous materials		1262.08(b)(1)
Artisan shops, such as glass blowers, metal sculptures, wood carvers and weavers producing their goods and selling them for retail on premises	C	
Bicycle sales, rental and repair	C	
Radio, television and recording studios	P	
Uses similar to other uses permitted in this district and consistent with the purpose of the district, as determined in accordance with Section 1242.06	C	1242.06

Exhibit 2 to Ordinance 2023-27 Legal Description

EXHIBIT A

PARCEL I

Situated in the County of Greene in the State of Ohio and in the Village of Yellow Springs:

Beginning at an iron pin being a corner to Lots 6 and 7 of Section 13 of Oakwood Subdivision to said village, and a corner to Hooper Construction Co., 40 acre tract; PC 31 PG 246A

Thence North 4° 37' East, 100.00 feet to an iron pin a corner to Lot 5 of said subdivision;

Thence South 84° 44' East, 75.00 feet to a post;

Thence South 4° 56' West, 94.60 feet to an iron pin a corner to said Hooper Construction Co.;

Thence North 88° 53' West, 74.60 feet to the place of beginning and containing seventeen hundredths (.17) of an acre of land be it the same more or less.

(Parcel No. F19-0001-0011-0-0258-00)

PARCEL II:

Situated in the Village of Yellow Springs, County of Greene and State of Ohio:

Being parts of Lots Nos. One (1), Two (2), Three (3) and Four (4) in Oakwood Addition of said Village and more fully described as follows: SECTION 13 PC 31 PG 246A

Beginning at an iron pin set at the Southeast corner of Lot No. 9 and in the North property line of Cliff Street; thence with the North line of said Street N. 78° 58' E. 117.95 feet to an iron pin at the Southwest corner of the property of the Yellow Springs Lumber Co.; thence with the West line of said Lumber Co. N. 4° 30' E. 205.00 feet to the Northwest corner of said Lumber Co. and in the South property line of Pleasant Street; thence with the South line of said Street N. 84° 44' W. 41.10 feet to an iron pin at the Northeast corner of a lot belonging to Felix and Corn Johannes; thence with their East line S. 4° 12' W. 100.00 feet to an iron pin; thence N. 87° 30' W. 75.00 feet to an iron pin at the Northeast corner of Lot No. 7; thence with the East line of Lot No. 7 and Lot No. 8 S. 3° 47' W. 133.00 feet to the place of beginning and containing Forty Hundredths (0.40) of an acre, be it the same more or less as surveyed by H. H. Warner, November 14, 1946.

(Parcel No. F19-0001-0011-0-0257-00)

Exhibit 3 to Ordinance 2023-28

DRAFT

PLANNED UNIT DEVELOPMENT AGREEMENT

This Planned Unit Development Agreement (the “Agreement”) is made this ____ day of _____, 2023, by and between Massies Creek Ventures, LLC, an Ohio limited liability company, (the “Applicant”), and the Village of Yellow Springs, Ohio an Ohio municipal corporation (the “Village”).

RECITALS

WHEREAS, on May 9, 2023 the Village adopted Ordinance No. 2023-27, (such ordinance and any exhibits thereto together, the “PUD Ordinance”), attached hereto and incorporated herein by reference as **Exhibit A**, amending the zoning map of the Village to rezone the property depicted in **Exhibit B** (the “Property”) attached hereto and incorporated herein by reference, from I-1 to PUD;

WHEREAS, pursuant to Chapter 1254 of the Yellow Springs Codified Ordinances, the Property is to be developed in accordance with certain standards;

WHEREAS, pursuant to Section 1254.05(e) of the Yellow Springs Codified Ordinances, prior to the issuance of any building permits or commencement of construction of any portion of the Property, the Applicant shall enter into an agreement with the Village, in recordable form, setting forth the Applicant’s obligations with respect to the Property;

WHEREAS, a final development plan was approved by the Village Planning Commission, which is attached hereto and incorporated by reference as **Exhibit C**; and

NOW, THEREFORE, pursuant to the covenants, agreements, and pledges contained herein, the Applicant and the Village do hereby agree that the Property shall be developed in accordance with the provisions set forth herein:

1. Applicable Standards. The Applicant shall develop the Property and construct all improvements thereon in accordance with all applicable standards set forth in the Village’s codified ordinances, or any other applicable state or local requirements.

2. Final Development Plan and Approved Uses. Applicant shall adhere to the final development plan, and all applicable conditions attached to the approval by the Village. The only uses allowed within the PUD are those specifically approved by the Village. Any change in uses shall be considered a major change and will be processed accordingly.

3. **Remedies.** The parties acknowledge that monetary damages for a breach of this Agreement may be inadequate to compensate the Village. Accordingly, the parties expressly agree that, for so long as Applicant owns any portion of the Property, in the event of a violation of this Agreement, with respect to such violation, the Village shall be entitled to receive specific performance. Nothing herein shall be deemed a waiver of the Village's rights to seek enforcement of this Agreement or zoning approvals previously granted, to the extent otherwise authorized by law. Notwithstanding the foregoing, in the event there is a violation(s) or alleged violation(s) of the terms or conditions of this Agreement by the Applicant, then the Village shall serve written notice upon the Applicant setting forth the manner in which Applicant has violated the Agreement, and such notice shall include a demand that the violation(s) be cured within a stated reasonable time period. Should a court of competent jurisdiction find the Applicant to be in breach of any provision of this Agreement or the PUD approval (in whole or in part), then the Applicant shall be required to reimburse the Village for its reasonable attorney fees and costs in connection with the enforcement of such breach. Additionally, the Village shall have the right to utilize stop work orders as appropriate for any violations. All of the remedies of the Village under this Agreement, the Village's Zoning Ordinance, and state law shall be deemed to be cumulative. In the event of default of this Agreement by the Applicant, the Village shall be entitled to any remedies available at law or in equity. The remedies available to the Village in this Section 4 shall be binding on any successors in interest in the Property to the Applicant.

4. **Recording and Binding Effect.** This Agreement and the approved final development plan applicable to the Property shall be binding on all successors in title as to the Property (as well as any and all portions thereof), including but not limited to, successor Applicants and the purchasers and owners of any individual lot, parcel, or unit within the Property. This Agreement shall be recorded in the Recorder's Office of Greene County, Ohio.

5. **Miscellaneous.**

a. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be constructed in all respects as if any invalid or unenforceable provision were omitted.

c. **Governing Law.** This Agreement is being executed and delivered and is intended to be performed in the state of Ohio and shall be constructed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof. The parties herein agree to submit to the personal jurisdiction and venue of a state court with subject matter jurisdiction located in Greene County, Ohio.

d. **Headings and Recitals.** The parties acknowledge and agree that the headings and subheadings in this Agreement are for convenience only and shall have no bearing or effect. The parties acknowledge and agree, however, that the recitals hereto are and shall be

considered an integral part of this agreement proper to its correct understanding and interpretation.

e. Authorization. The parties affirm that their representatives executing this Agreement on their behalf are authorized to do so (and can fully bind their respective party) and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved. The Applicant further affirms that it is not in default under the terms of any land contract for all or part of the Property.

f. Fees. The Applicant shall pay any and all applicable building permit, zoning, and other fees to the Village.

g. Changes to Final Development Plan. Any changes to the approved final development plan shall comply with the Zoning Ordinance.

h. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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Exhibit A to Exhibit 3
Council Ordinance 2023-28

Exhibit B to Exhibit 3
Map of the Property



Exhibit C to Exhibit 3: Legal Description

EXHIBIT A

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(Parcel No. F19-0001-0011-0-0268-00)

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(Parcel No. F19-0001-0011-0-0267-00)

Description Check

Greene County Engineer's Tax Map Dept.

☒ XX Legally Sufficient As Described

☐ Legally Sufficient With Corrections Noted

☐ Legally INSUFFICIENT, New Survey Required

Date: 05-26-23 By: pam

PAR ID Dist BK PG PAR

Exhibit D to Exhibit 3: Final Development Plan

(See Attached)