

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

In Council Chambers @ 5:30 P.M.

Wednesday, August 14, 2024

CALL TO ORDER

The meeting was called to order at 5:30 p.m. by Anthony Salmonson, Chair.

ROLL CALL

Anthony Salmonson, Chair, members Scott Osterholm Matt Raska and Ellis Jacobs were present. Zoning Administrator for the Village, Meg Leatherman, was also present.

COMMUNICATIONS

Audrey Alexander re: Objection to Fence Height Variance
Audrey Alexander re: Objection to Fence Height Variance Addendum

REVIEW OF AGENDA

There were no changes made.

REVIEW OF MINUTES

Minutes for BZA Meeting of May 15, 2024 were reviewed. Osterholm MOVED and Raska SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 4-0 on a VOICE VOTE.

PUBLIC HEARINGS

Variance Request– Central Business District (B-1) – 247 Xenia Ave., Caleab Wyant, on behalf of Hoover Rentals LLC, has submitted an application for a variance seeking relief from Chapter 1266.03(h), for allowance of a marquee sign structure of 200 square feet, with projection from the building of 8 feet, and total sign area of 79.1 square feet. Greene County Parcel ID # F19000100100000500.

Leatherman introduced the hearing, noting that she had reviewed the applicable criteria in her staff report and addressed those. Leatherman stated that the theater opened in 1929, and that the existing sign was built in that timeframe. The marquee sign structure and dimensions have not changed through the years, but the materials and language placed on the marquee have changed several times. The proposal includes removal of the entire marquee due to structural concerns.

The proposal includes a total of three signs. The front sign, placed on the face of the marquee structure parallel to Xenia Avenue, reads “Little Art Theatre” and is 36.1 square feet. There will be one sign on the face of each end, perpendicular to the building, each measuring 16.8 square feet. These would be Electronic Message Center (EMC) signs, and language would periodically change based on the shows and events being offered. The total size of the face of the marquee structure is 172.3 square feet. The marquee structure will allow for a clearance of 8’6” between the sidewalk and bottom of the sign.

Leatherman explained that standards for signs vary based upon the type of sign. She explained her methodology for measuring dimensions, which was to measure the text areas of each side, then added the three together for a total of 69.7 square feet. Because the allowable area is 48 square feet, the variance request is for 21.7 square feet.

The second variance is for the projection of the structure. The current extension is 10 feet, the proposed extension is 9 feet, for a variance of 3 feet.

Leatherman noted that illuminated signs are permitted if not within 50’ of a residential zone, and that condition is met.

Salmonson asked whether the current sign extension had been formally granted and was told that was not likely the case, making it a non-conforming use.

John Paulson, Consulting Engineer and project manager, stated that the LAT had received a grant to fund the re-build of the marquee, with the original intent to re-skin the frame. This had proven a non-starter when the frame was discovered to be wood, not steel, which would not meet current code.

Salmonson OPENED THE PUBLIC HEARING. There being no comment, Salmonson CLOSED THE PUBLIC HEARING.

The Clerk then read the Duncan Standards as applicable to the variance of three feet to the projection limit of six feet for a total of nine feet as follows, calling roll on each standard:

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

Jacobs MOVED to APPROVE the variance of three feet to the projection limit of six feet for a total of nine feet. Raska SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

Regarding a variance of 21.7 feet to the square foot maximum of 48 for a total size of 69.7 square feet, Salmonson OPENED THE PUBLIC HEARING.

There being no comment, Salmonson CLOSED THE PUBLIC HEARING.

The Clerk then read the Duncan Standards as applicable to the variance of 21.7 feet to the square foot maximum of 48 for a total size of 69.7 square feet as follows, calling roll on each standard:

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

Raska MOVED to APPROVE the variance of 21.7 feet to the square foot maximum of 48 for a total size of 69.7 square feet. Osterholm SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

Variance Request– Medium Density Residential District (R-B) –716 S. High St., Nadia Malarkey, on behalf of Mike Chambers and Ralita Sue Hildebrand, has submitted an application for a variance seeking relief from Chapter 1260.01(a)(1) for fence height. Greene County Parcel ID # F19000100080001000.

Leatherman introduced the hearing, stating that Nadia Malarkey has applied on behalf of Mike and Sue Chambers, the property owners, and has submitted a variance application seeking relief from Chapter 1260.01(a)(1) & 1260.01(a)(4), for allowance of a fence height of eight feet in the side yard and for allowance of a fence height of five feet in the front yard. The property is located at 716 S. High St. in the Medium Density Residential (R-B) District.

Fences in residential zones are allowed to be up to six feet in height in side yards (VC 1260.01(a)(4)). The applicant requests an eight foot fence for a length of 25 ft in the side yard. The fence would be attached to northeast corner of the home and run perpendicular to the home.

Fences in front yards must not exceed four feet (VC 1260.01(a)(1)). The applicant requests a five foot fence in the front yard. The fence would attach to the end of the eight foot fence and run north for 80 feet all the way to the north property line.

Leatherman noted that the fence height variations are being requested for pet and safety reasons.

Nadia Malarkey addressed Planning Commission in response to the letter received from Audrey Alexander which objected to the variances and listed several complaints regarding the project in general.

Malarkey noted that the trees removed were invasive species or were in dangerous condition, and that the intent is to create an ecologically diverse and esthetically pleasing area. Malarkey stated that the decisions were made by professionals in an effort to follow code regarding invasive species and to improve safety in the case of diseased or frail trees.

In making the case for the fence variations, Malarkey stated that the proposed 8-foot solid side yard privacy fence will sit 23 feet back from the sidewalk and would be in keeping with the architecture of the home. The 5-foot fence, she stated, would be black steel, and the 5-foot height is required so that the dogs do not jump the fence.

Malarkey characterized granting the variances as a gesture of welcome to the community.

Salmonson OPENED THE PUBLIC HEARING. There being no remarks, Salmonson CLOSED THE PUBLIC HEARING.

Salmonson acknowledged receipt of the two letters from Ms. Alexander objecting to the variance requests.

Jacobs noted that the author of the letters had clearly put a great deal of thought and effort into the letters, but, he stated, they do not address the specific issues before BZA.

Malarkey noted that she had apologized for her error in removing vegetation from a neighboring property. She stated that she had been unaware that the area was not part of her clients' property, and was careful to respect the boundary as soon as this error was pointed out to her.

Sue Hildebrand, homeowner, commented that the landscaping is meant to be sustainable and beautiful. She stated her hope that the fence would sit back far enough from the sidewalk that it will not appear outsized or off-putting. She emphasized that the variance request is to assure privacy and screening to prevent the dogs from becoming agitated by passersby.

In response to a query from Jacobs, Hildebrand stated that none of the dogs have previously jumped a similarly situated 4-foot fence.

Salmonson inquired as to why the current 6-foot fence in the side yard is inadequate.

Malarkey responded that because there is a deck with a height of 13" above ground, the 6-foot fence is not adequate to ensure privacy.

Leatherman responded to a question from Salmonson, affirming that there is no setback requirement for fences.

Jacobs commented that there are great differences between communities with tall fences and communities with no fences or shorter fences, observing that in the case of the latter, there is a greater sense of community. He opined that an 8-foot fence is essentially “a stockade,” in questioning the necessity of that height.

Malarkey responded that because the fence is in line with the home, the homeowner could technically build an addition in that same space which was as tall as the house. She then commented that aesthetically the taller fence looks better and affords better privacy. She added that the “stockade” effect is reduced by the setback and will be further mitigated by plantings.

Malarkey advocated for the 5-foot fence, stating that the black metal will be nearly invisible.

There followed some confusion as to how side yard is determined with respect to a front-facing fence, and Leatherman explained that any structure in line with or behind the front wall of the home is in the side yard.

Upon request of an audience member, Salmonson RE-OPENED THE PUBLIC HEARING.

Neighbor Wayne Gulden argued that the side yard fence is not in fact a side yard fence but is a front yard fence. He pressed this point at some length.

This was discussed briefly between Jacobs and Malarkey, with the matter becoming confused.

Leatherman clarified that the matter before the Board is only that of fence height for the side yard fence and fence height for the rear yard fence.

Salmonson CLOSED THE PUBLIC HEARING.

Raska stated that he supports the variance as being a matter of privacy.

The Clerk then read the Duncan Standards as follows, for a variance request of two feet, to allow an eight-foot fence in the side yard, calling roll on each standard:

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

Raska MOVED to APPROVE the variance of two feet, to allow an eight foot fence in the side yard. Osterholm SECONDED.

Raska and Osterholm iterated their support for the variance, citing privacy rights.

Jacobs reiterated his concern for high fences facing the sidewalk and stating that the code limits the height for a reason.

Osterholm argued that the deck height limits the privacy offered by a six-foot fence.

Raska argued that the property owner should be able to do as they wish with their property to assure their privacy.

Raska reiterated his motion.

The Clerk CALLED THE VOTE, and the MOTION FAILED 2-2 ON A ROLL CALL VOTE, with Osterholm and Raska voting FOR and Salmonson and Jacobs voting AGAINST approval.

At the request of the Chair, the Clerk then read the Duncan Standards as follows, for a variance request of one (1) foot, to allow a five (5) foot fence in the front yard, calling roll on each standard:

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

Raska MOVED to APPROVE the variance request of one (1) foot, to allow a five (5) foot fence in the front yard. Jacobs SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

AGENDA PLANNING

There were no items on the schedule.

Leatherman stated that she would revise the staff report based upon the decision, but stated that the decision can be appealed.

The Clerk (incorrectly) stated that appeals would go to Xenia Municipal Court and that an appeal could only be made on procedural grounds (correct). (Village code requires that appeals go to Council, but can only be made on procedural grounds).

ADJOURNMENT

There being no further business, Raska MOVED and Osterholm SECONDED a MOTION to adjourn. The MOTION PASSED 4-0 on a voice vote. Meeting ADJOURNED at 6:35PM.

Anthony Salmonson, Chair

Attest: Judy Kintner, Clerk