

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday, December 2, 2015

CALL TO ORDER

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

ROLL CALL

Ted Donnell, Chair, Steve Conn, Ellis Jacobs, Kingsley Perry and Dan Reyes were present, as was the Zoning Administrator for the Village, Denise Swinger.

REVIEW OF AGENDA

There were no changes made to the agenda.

REVIEW OF MINUTES

Minutes for BZA Meeting of June 10, 2015. Jacobs MOVED and Conn SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 on a voice vote.

Minutes for BZA Meeting of October 28, 2014. Conn MOVED and Reyes SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 on a voice vote.

PUBLIC HEARINGS

Perry recused himself for reasons of potential conflict of interest.

Swinger reviewed the application as follows:

733 Union Street. An application for a variance seeking relief from the required side yard setback of ten (10) feet (1248.03a) for an upper deck and stairway extending to within two (2) feet of the side yard property line at 733 Union Street, Greene County Parcel ID#F19000100020006000 was received from the property owner, Tom Gray. The property is located in the R-A Low Density Residential Zoning District.

Background:

Staff became aware of a deck being constructed near a property line at 733 Union Street. The owner, Tom Gray, was contacted and asked to stop construction pending the permitting process. Mr. Gray promptly submitted his documentation with the Village of Yellow Springs and Greene County, but had to cancel participation in the Village of Yellow Springs October BZA meeting due to a prior commitment.

The deck (see attachment A) is an 8ø x 12ø structure which adds 96ø square feet to the principal existing footprint. With this measurement included, the total square footage of all structures on the property does not exceed the lot coverage in R-A Low Density Residential of 35 percent of the total lot size. The lot size is 14,518 square feet with 35 percent allowable lot coverage. This equates to a maximum of all structures allowed equaling no more than 5,081 square feet. The existing structures and the deck = 2,095 square feet, well below the maximum.

The side yard requirement for R-A Low Density Residential is a minimum of 10ø and a total minimum of 25ø. His deck comes within 2ø of the property line and Mr. Gray is requesting a variance of 8ø in order to complete his upper deck which will serve as a landing area to a door he will install allowing him to access the upstairs of his garage for storage. This deck will not be enclosed and used for storage itself. Provisions of the zoning code, including by way of example, lot size, width, setbacks, parking requirements and height, shall be in harmony with the intent and purposes of the code, as provided below.

Swinger commented that all abutting and adjacent property owners have been notified. Pending no objections, staff recommends the Board of Zoning Appeals **APPROVE** a variance for relief from the side yard requirement of 10 feet. Because of the angle of the property line, the back of the existing garage/shop is already located very close to the property line.

Donnell OPENED THE PUBLIC HEARING.

Tom Grey explained that the property has been in his family for two generations, and that while the upper floor of the garage has been regularly but sporadically used as a residence, there has never been a separate access to that space; it has been shared with the home.

Donnell CLOSED THE PUBLIC HEARING.

Jacobs asked whether there was any history of issues with the adjoining property owner.

Grey stated that there have been no issues in 40 years. He stated that long ago, when the adjoining property owner constructed their home, there was tension, but that this has dissipated over the intervening years.

Swinger noted that there were no responses back from neighbors.

Conn asked whether there was any other way to create a second means of egress.

Grey outlined the limitations of the lot, stating that this is the only existing solution.

Reyes commented that the addition appears to be a second residence, rather than simply storage. He stated that if the space is improved to the point of being a viable residence might the reaction from neighbors be different.

Grey stated that he has no plans in that direction at present.

Donnell noted that it is the code that created a non-conformity, such that the Board would not be increasing a non-conformity in granting the variance. Per section 1282.04 (a)(1): No nonconforming building or structure may be enlarged or altered in a way that increases its nonconformity. The addition would follow the existing non-conformity along the same plane, and would thus not add to the non-conformity.

Reyes commented that he would be happier with the application if it were posited as a potential residence so that all possibilities are covered.

Conn commented that this is unfairly anticipating hypotheticals.

Donnell stated that the Board could make the classification of the structure as an accessory dwelling unit.

Grey commented that it has been used as such off and on over a period of many years.

Jacobs asked whether the matter would need to come back to the Board if the use were to change and become an accessory structure.

Swinger stated that the garage is within 10 feet of the home and as such the accessory structure can be considered as part of the home. She commented that the use has been grandfathered in.

Donnell stated that in that case it is more accurate to categorize the use as an accessory structure.

Jacobs noted that the notice requirement is very vague. He stated that the notice has to identify a potential use, not every possible use.

Donnell called for a motion.

Jacobs MOVED to GRANT THE VARIANCE REQUEST AS SUBMITTED. Conn
SECONDED.

Donnell read the variance standards and called the votes 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; Reyes: Y, Conn: Y, Donnell: Y, Jacobs: Y.
- (2) Whether the variance is substantial; Reyes: N, Conn: N, Donnell: 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. Reyes: N, Conn: N, Donnell: 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. Reyes: N, Conn: N, Donnell: N, Jacobs: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction. Reyes: Y, Conn: N, Donnell: N, Jacobs: Y.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance. Reyes: Y, Conn: N, Donnell: N, Jacobs: N.
- (7) Whether the existing conditions from which a variance is being sought were self-created. Reyes: Y, Conn: N, Donnell: N, Jacobs: N.

(8) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Reyes: Abstain, Conn: Y, Donnell: Y, Jacobs: Y.

(b) The Board shall determine, after weighing the factors described above and any other factors the Board deems relevant, whether the property owner has shown practical difficulties so inequitable as to justify granting a variance to the property owner.

Donnell CALLED THE VOTE, and the MOTION PASSED 3-0, with Reyes Abstaining.

Perry rejoined the meeting.

AGENDA PLANNING

There was no Agenda Planning.

ADJOURNMENT

There being no further business, Jacobs MOVED and Conn SECONDED a MOTION to adjourn. The MOTION PASSED 4-0. Meeting ADJOURNED at 7:31pm.

Ted Donnell, Chair

Attest: Judy Kintner, Clerk