

VILLAGE OF YELLOW SPRINGS, OHIO

Ordinance 2021-23

AMENDING SECTION 1278.06 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF YELLOW SPRINGS, OHIO FOR DECISIONS OF THE BOARD OF ZONING APPEALS

Whereas, Chapter 1278 of the Village of Yellow Springs Codified Ordinances, specifically Section 1278.06, establishes a date of expiration for variance approvals by the Board of Zoning Appeals (“BZA”), when variances granted under the BZA’s quasi-judicial authority are subject to the analysis of standards based on the “practical difficulties” test found in *Duncan v. Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (1986), codified in Section 1278.04 of the Village Codified Ordinances;

Whereas, as variances are sought by property owners to address characteristics of a parcel which are somewhat permanent in nature, such as lot dimensions, setbacks, parking and structure height; and based on the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, if facts exist to approve the variance request upon initial application, but the property owner does not proceed, although the Village’s code currently imposes an expiration date, if that owner or a successor subsequently asks for the same variance for the same parcel, identical findings under identical circumstances requires equal treatment under the law for the *Duncan* test;

Whereas, after being advised by certain property owners in the Village who obtained variances, but experienced difficulty in obtaining construction materials and scheduling contractors due to supply chain shortages in 2020 and 2021, as well as delays in inspections by the Greene County Building Regulations Department, Village Staff and the Planning Commission reviewed the expiration parameters set forth in Section 1278.06 of the Village Codified Ordinances for variances approved by the BZA and related zoning code deadlines and determined it is in the best interest of the Village to recharacterize the nature of a variance approval, given the broad impact of the COVID19 pandemic, as a measure to protect health, safety and welfare; and

Whereas, Planning Commission pursuant to Section 1276.02(a) of the Village Codified Ordinances, after “review of effectiveness and appropriateness” of the code section, voted June 15, 2021 to recommend the amendment to Section 1278.06 of the Codified Ordinances to Council;

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

Section 1. Section 1278.06 of the Codified Ordinances of the Village of Yellow Springs, Ohio is amended to read as set forth below with new language underlined and **bolded** and deleted language in ~~strikethrough~~:

1278.06 DECISIONS OF THE BOARD.

(a) The Board shall decide all applications and appeals within 30 days after the completion of a hearing unless appellant agrees to a longer period. The decision shall be binding upon the Zoning Administrator. The terms of the Board's decision, including any conditions imposed,

shall be incorporated in subsequent permits and official authorizations pertaining to the subject site.

(b) The concurring vote of a majority of the quorum of the Board shall be necessary to reverse an order, requirement, decision or determination of the Zoning Administrator or body charged with enforcement and administration of this code, to grant a variance from the requirements of this code, or to decide in favor of the applicant on any other matter.

(c) Every variance granted by the Board shall ~~expire~~ **lapse** and be of no force or effect after ~~12~~ **24** months from the date of granting by the Board, unless the applicant has made substantial progress toward achieving the approved construction.

(d) Decisions of the Board of Zoning Appeals may be appealed to the Village Council, according to Section [1276.03](#).

(Ord. 2013-19. Passed 9-16-13; Ord. 2019-25. Passed 7-15-19.)

Section 2. Council makes the findings that this Text Amendment is consistent with Section 1280.02(a) of the Village Codified Ordinances in that they clarify the intent of the code; address recent case law; do not create incompatible land uses within a zoning district; are supported by the findings of reports, studies, or other documentation on functional requirements, contemporary building practices, environmental requirements and similar technical items; are consistent with the Village's ability to provide adequate public facilities and services; and are consistent with the Village's desire to promote the public health, safety, convenience, comfort, prosperity and general welfare of the community.

Section 3. This ordinance shall take effect at the earliest time allowed by law.

Brian Housh, President of Council

Passed: 7-19-2021

Attest: _____
Judy Kintner, Clerk of Council

ROLL CALL

Housh __Y__

MacQueen __Y__

Stokes __Y__

Kreeger __Y__ Curliss __Y__