

VILLAGE OF YELLOW SPRINGS  
BOARD OF ZONING APPEALS  
MEETING AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on  
Wednesday, October 26, 2022 at 5:00 PM. Via Zoom Platform

We will broadcast the public hearing “live” via our Community Access cable station, which is simultaneously shown on the Village’s “Community Access Yellow Springs” YouTube station.

You may also express your views in writing by providing a copy to the Clerk of Council for inclusion in the record of the hearing. Please submit your letter by no later than **Thursday, October 20, 2022 for inclusion in the BZA packet: however, all letters received any time prior to the hearing will be provided to Board of Zoning Appeals members and the Zoning Administrator.** The application, as prepared by the petitioner, may be examined at the office of the Zoning Administrator on the 2<sup>nd</sup> floor of the Bryan Community Center, 100 Dayton Street, Yellow Springs, Ohio 45387 at any time during regular office hours or on the Village website at [www.yso.com](http://www.yso.com) after **Friday, October 21, 2022.** Questions regarding the application, zoning code or procedures may be directed to the Zoning Administrator Denise Swinger, phone (937) 767-1702 or by email to [dswinger@vil.yellowsprings.oh.us](mailto:dswinger@vil.yellowsprings.oh.us).

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5:00 CALL TO ORDER

ROLL CALL

REVIEW OF AGENDA

COMMUNICATIONS

REVIEW OF MINUTES

Review of Minutes for September 14, 2022.

PUBLIC HEARINGS

- 1. Variance Request** – R-A, Low Density Residential District – 765 Wright Street – Laura Pardo has submitted an application for a variance seeking relief from the required fence height – 1260.01 (a) (1) General Provisions. Greene County Parcel ID # F19000100050006200

AGENDA PLANNING

ADJOURNMENT

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

**In Council Chambers @ 5:30 P.M.**

**Wednesday, September 14, 2022**

**CALL TO ORDER**

The meeting was called to order at 5:30 p.m. by Matt Reed, Acting Chair.

**ROLL CALL**

Matt Reed, Acting Chair, members Anthony Salmonson, Scott Osterholm and Matt Raska were present. Zoning Administrator for the Village, Denise Swinger, was also present.

**COMMUNICATIONS**

There were no communications.

**REVIEW OF AGENDA**

There were no changes made.

**REVIEW OF MINUTES**

Minutes for BZA Meeting of July 6, 2022 were reviewed. Salmonson MOVED and Raska SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 3-0 on a ROLL CALL VOTE, with Reed Abstaining due to absence from that meeting.

**PUBLIC HEARINGS**

- 1) **Variance Request**– R-B, Moderate Density Residential District – 420 Phillips Street Alex Melamed, on behalf of Will and Margaret Mattox, has submitted an application for a variance seeking relief from Chapter 1260.02 (a) (2) front yard setback for a primary dwelling unit. **Greene County Parcel ID #F19000100090002700**

Swinger explained the request as follows:

This property has two front yard lot lines. The front yard lot line facing Phillips Street has been approved for a setback of five feet due to the allowance of the average front setback in 1260.02 Dimensional Provisions, which states, *“Where two or more lots entirely or partially within 200 feet of a subject lot, on the same side of the street and the same block, are occupied by principal buildings whose existing front setback is less than required by the zoning district, the average of the established setbacks for those buildings shall be the minimum required front setback for the subject lot.”*

The request for the variance in the application states the reason as *“this would bring the house closer to the original home location that occupied the lot for more than 100 years.”* Once constructed, the primary dwelling will have a five-foot setback on the Phillips Street side. With this variance request, the house will also have a 10-foot setback along the West Davis Street side.

Alex Melamed, the designer of the proposed structure, stated that the request for the variance stems from a desire to better use the whole lot, and, he argued, the variance is “in keeping with the historic design standard.”

Property owner Will Maddox stated that he would like to use the entirety of the footprint of the previous home.

Reed asked whether the existing vegetation along Phillips Street would be retained, and Maddox stated that it would.

Salmonson asked whether Maddox had contacted the neighbors regarding the request and was told that he had not.

Swinger noted that she had notified neighboring property owners as required.

Swinger noted that there are no other homes along Davis Street located that close to the property line.

Reed OPENED THE PUBLIC HEARING.

There being no comment, Reed CLOSED THE PUBLIC HEARING.

Osterholm inquired as to whether Public Works staff had any issues with the request and was told they do not.

Swinger elaborated that normally there must be a compelling reason to grant a variance.

The Clerk then read the Duncan Standards 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; Osterholm: Y; Raska: Y; Reed: Y
- (2) Whether the variance is substantial; Salmonson: Y; Osterholm: N; Raska: N; Reed: 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; Raska: N; Reed: 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; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Raska: N; Reed: Y
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: 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; Raska: Y; Reed: Y

Raska MOVED to APPROVE the variance as requested. Osterholm SECONDED.

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

**Variance Request** – R-A, Low Density Residential District – 430 Fairfield Pike – Catherine Price has submitted an application for a variance seeking relief from the required fence height – 1260.01 (a) (1) General Provisions.

**Greene County Parcel ID #F19000100120002800 and Parcel ID #F19000100120007100**

Swinger explained the request as follows:

Catherine Price has submitted a variance application and a narrative explanation with a site plan. She is seeking a variance to protect her front yard from headlights shining into her two glass exterior walls as vehicles travel along Fairfield Pike and Stafford Street.

Ms. Price would like to install six foot tall fence panels, eight feet in width in the front yard. These panels would be setback 35 feet from the road and placed on the inside of the densely wooded area. She has reinstalled the original 16 feet of eight foot tall panels that were removed from the side yard by her neighbor. Staff was not able to determine who owned the original eight-foot fence, but it was located on the property line and the neighbor at 420 Fairfield Pike removed it to install another fence. The new fence installed by the neighbor is in compliance with the zoning code at six feet.

Staff could not find where a variance was granted for the original eight-foot tall fence. The fence height is not in compliance with the zoning code and staff has determined a variance is necessary in order to keep it. Staff also checked the height requirements prior to the 2013 Zoning Code update and the heights were the same as they are now (four feet in front yards and six feet in side and back yards. Ms. Price's request is two-fold: 1) a two-foot variance to the side yard height of six feet to allow the applicant to keep the original eight foot tall fence and 2), a two-foot variance to the front yard height of four feet to allow for a six foot tall fence that will be located behind a wooded area, 35-feet from Fairfield Pike.

Raska inquired as to whether Public Works staff have any concerns regarding the request.

Swinger responded that normally she would not support such a request, but that the topography is such that the fence will be obscured behind foliage and will be thirty feet off of the road.

Price provided detail regarding her request.

Reed OPENED THE PUBLIC HEARING.

Joyce Apel, a neighbor, opined that the former property owner had been known to her and “he would have been precise” she stated, asserting that the fence must therefore be on Price’s property.

Swinger reported that neighboring properties had been properly notified.

Reed CLOSED THE PUBLIC HEARING.

Raska MOVED TO APPROVE THE REQUEST FOR A VARIANCE TO THE SIDE YARD FENCE HEIGHT OF TWO FEET. Salmonson SECONDED.

The Clerk then read the Duncan Standards 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; Osterholm: Y; Raska: Y; Reed: Y
- (2) Whether the variance is substantial; Salmonson: N; Osterholm: N; Raska: N; Reed: 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; Raska: N; Reed: 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; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: N; Reed: N
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: Y
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: N; Osterholm: N; Raska: N; Reed: 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; Raska: Y; Reed: Y

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

Salmonson asked whether Price had used drapes or something similar to block the headlights and was told she had not.

Raska MOVED TO APPROVE THE REQUEST FOR A VARIANCE TO THE FRONT YARD FENCE HEIGHT OF TWO FEET with a SETBACK OF 30 FEET. Osterholm SECONDED.

The Clerk then read the Duncan Standards 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; Osterholm: Y; Raska: Y; Reed: Y
- (2) Whether the variance is substantial; Salmonson: Y; Osterholm: N; Raska: N; Reed: 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; Raska: N; Reed: 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; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: N; Reed: N

- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: N; Osterholm: Y; Raska: Y; Reed: Y
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Osterholm: N; Raska: N; Reed: 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; Raska: Y; Reed: Y

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

**Variance Request**– R-A, Low Density Residential District – 251 Whitehall Drive - Shirley Smith has submitted an application for a variance seeking relief from Chapter 1262.08 (e) (7) B Transient Guest Lodging – Location. **Greene County Parcel ID # F19000100120005700**

Swinger explained the dilemma, noting that the code states that “Planning Commission shall consider the proposed location relative to its proximity to other such uses in the vicinity in order to avoid an undue concentration that could have a negative effect on the surrounding neighborhood including affordable housing concerns. *In no case, can a transient guest lodging be located closer than 500 feet from another transient guest lodging, as measured from closest property line to closest property line.* A transient guest lodging unit may be located in a dwelling unit, a room or rooms in a dwelling unit, or an accessory dwelling unit, but no more than one transient guest lodging permit shall be granted per property or per owner.”

Swinger noted that Council’s intent in permitting TGLs had been twofold: one, to provide reasonably priced lodging options for visitors and two; to allow residents of the Village to supplement their incomes in such a manner as to better be able to afford the high cost of living in the Village.

Swinger then stated that the applicant is requesting a 243 foot variance from the 500-foot requirement because her house is in a different neighborhood, Fair Acres. Within the Fair Acres neighborhood, there are two other TGL’s and both are 500 feet or more from her property location.

Swinger noted that this would be a less-than 50% variance, and noted that Fairfield Pike is a major dividing line in terms of neighborhoods.

Reed commented that he remembered the discussion regarding TGLs in the Village, and agreed with Swinger regarding the intent of both PC and Council.

Smith read a statement attesting to her long residency in the Village and her desire to remain despite continually increasing utility costs and taxes.

Smith noted that the house has two “wings”, perfectly suiting it to rental on one side.

Smith stated that she has spoken to her neighbors about the idea of a TGL and has received support from all of the neighbors.

Salmonson inquired about parking.

Smith stated that she intends to widen the driveway to accommodate a second vehicle.

Reed OPENED THE PUBLIC HEARING.

Denise Lemon, friend and neighbor, described Smith as “an excellent neighbor and the ultimate hostess,” and stressed the need for affordable rental options for visitors.

Reed CLOSED THE PUBLIC HEARING.

Raska MOVED TO APPROVE THE DIMENSIONAL VARIANCE OF 243 FEET AS REQUESTED. Osterholm SECONDED.

The Clerk then read the Duncan Standards 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; Osterholm: Y; Raska: Y; Reed: Y

- (2) Whether the variance is substantial; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: 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; Raska: N; Reed: 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; Raska: N; Reed: N.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: Y; Osterholm: Y; Raska: N; Reed: N
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: N
- (7) Whether the existing conditions from which a variance is being sought were self-created; Salmonson: Y; Osterholm: Y; Raska: Y; Reed: 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; Raska: Y; Reed: Y

The Clerk CALLED THE VOTE ON THE MOTION TO APPROVE and the MOTION PASSED 4-0 on a ROLL CALL VOTE.

**AGENDA PLANNING**

There were no items for consideration.

**ADJOURNMENT**

There being no further business, Salmonson MOVED and Osterholm SECONDED a MOTION to adjourn. The MOTION PASSED 4-0 on a voice vote. Meeting ADJOURNED at 6:33PM.

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Matt Reed, Acting Chair

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Attest: Judy Kintner, Clerk



**TO:** Board of Zoning Appeals  
**FROM:** Denise Swinger, Zoning Administrator  
**MEETING DATE:** Wednesday, October 26, 2022  
**RE:** BZA22-08

**VARIANCE REQUEST** – R-A, Low Density Residential District – 765 Wright Street – Laura Pardo has submitted an application for a variance seeking relief from the required fence height – 1260.01 (a) (1) General Provisions.

**Greene County Parcel ID # F19000100050006200**

**NOTIFICATION OF PUBLIC HEARING** – A public hearing notification was provided in accordance with the Village’s zoning regulations including publication in the Yellow Springs News, mailed notice to abutting and adjacent neighbors of the property, and the posting of a sign on the property noticing the public hearing.

**BACKGROUND**

Laura Pardo has submitted a variance application (**Exhibit A**). She is seeking a two-foot variance to allow for coverage of their vehicles parked at the front of the property. The property was flooding and it required a retaining wall to stop the water from entering the lower level of the home. In 2018, the newly appointed Public Works Director Johnnie Burns, actively began fixing storm water issues around the village. Unbeknownst to the village, a contractor building a house at 688 Wright Street, cut into the village’s storm drain making it ineffective to shed water into our storm sewer system. The Public Works Director suspects this drain was broken in 1997. The applicant has a storm outlet on her property that drains to the other side of the street. When it rained, the water would back up into her property because of the broken storm drain. Once the village crew found the broken pipe, they were able to fix it.



Location of broken storm pipe in front of 688 Wright Street

The zoning code regarding the height of fences states the following:

**1260.01 BUILDINGS AND STRUCTURES**

(a) Fences and Walls. Notwithstanding other provisions of this zoning code, fences, walls and foliage are permitted in required yards under the following conditions:

- (1) The height shall not exceed four feet in the front yard, including both front yards of a corner or through lot, except within the clear vision triangle (see Section [1260.02\(b\)](#)) which shall be three feet.
- (2) Fences, walls and foliage adjacent to any public sidewalk shall be set back at least one foot from the inside of the sidewalk.
- (3) Visibility into and out of any driveway or street shall remain unobstructed.
- (4) Within a side or rear yard in a Residential District, no fence or wall shall be permitted to exceed a height of six feet, measured from the natural grade to the uppermost portion of the fence.



**765 Wright Street**



**VARIANCE CRITERIA**

**1278.04 Variances**

The Board’s power to grant variances from the dimensional 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.

**(a) Variance Standards.** Variances from the terms of the code shall be granted only where the applicant shows that the strict application of a zoning requirement causes practical difficulties in the use of the property. The factors to be considered and weighed by the Board in determining whether a property owner has encountered practical difficulties in the use of the property include, but are not limited to:

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

**(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.

**STAFF RECOMMENDATION**

Staff recommends BZA members drive by to see the location of the fence. In order to be compliant with our zoning code height of four feet in front yards, the top four boards shown in the photo on page two would need to be removed. The applicant would like to keep the height in order to cover the tops of their vehicles.

If you have any questions, please feel free to call me at 767-1702 or email [dswinger@vil.yellowsprings.oh.us](mailto:dswinger@vil.yellowsprings.oh.us).

Respectfully submitted,

Denise Swinger  
Zoning Administrator

EXHIBIT A



Board of Zoning Appeals  
Public Hearing Request:  
Variance

Planning & Zoning Department  
100 Dayton St, 2<sup>nd</sup> Floor  
Yellow Springs, OH 45387  
Office: (937) 767-1702  
Fax: (937) 767-3720

[FOR OFFICE USE ONLY]

Case #: BZA-22-008  
Hearing Date: 10/26/2022

**Applicant Information**

Property Address:	<u>765, WRIGHT ST., YELLOW SPRINGS, OH, 45387</u>		
Property Owner:	<u>RAHUL RAO</u>	Phone: <u>864-650-4557</u>	Email: <u>RAHULSRAO@GMAIL.COM</u>
Mailing Address:	<u>765, WRIGHT ST., YELLOW SPRINGS, OH, 45387</u>		
Applicant Name:	<u>LAURA PARDO</u>	Phone: <u>864-650-5888</u>	Email: <u>LAURITILA@GMAIL.COM</u>
Applicant Address:	<u>765, WRIGHT ST., YELLOW SPRINGS</u>		

**Project Information**

I am requesting a variance on the dimensional requirement as outlined in (cite Zoning code section): \_\_\_\_\_

Description: We were being constantly flooded because there is no run-off gutter on the side of the road. The village did not help us, so we had to build a retaining wall and regrade our front lawn. Now we want to put up a fence to make it look good.

Dimensions of Project & Total measurement of Variance requested: Requested variance is for 6 ft. fence above ground (5" above cement retaining wall). This is enough to cover the tops of our cars.

Site Plan Attached:  Stormwater Mitigation Plan Attached:

I understand that approval of this application does not imply approval for any administrative review, conditional use permit, variance, or exception from any other Village regulations which are not specifically the subject of this application. I understand that I remain responsible for satisfying requirements of any easements or private restrictions or covenants affecting the property.

I understand that the Village is not responsible for inaccuracies in information I have presented, and that inaccuracies may result in the revocation of any Zoning permit as determined by the Village. I further certify that I am an owner, or lessee, or agent fully authorized by the owner to make this application. I understand any statements made to me about the time required to process this application are general estimates and not binding. Further, I understand that it may be necessary for the Village to request additional information and clarification after I have submitted this application and accompanying documentation.

I understand this application is a public record and the property will be posted with signage by Village staff prior to any public hearings and that I am responsible for the cost of repair or replacement if such signage is damaged or removed by non-Village personnel.

I hereby certify under penalty of perjury that I am the applicant and the information and statements I have given on this application, drawings, and specifications are, to the best of my knowledge, true and correct.

Applicant Signature: \_\_\_\_\_ Date: 10/3/22

FOR OFFICE USE ONLY

Zoning Fee: \$ <u>100.00</u>	Payment Type: <input type="checkbox"/> Check   <input type="checkbox"/> Cash   <input checked="" type="checkbox"/> Card	Approved <input type="checkbox"/>   Denied <input type="checkbox"/>
Other fees: \$ _____	Zoning District: <u>R-A</u>	Permit Number: _____
Total \$ <u>100.00</u> pd <u>10/3/22</u>	<u>Danise Swartz</u> Zoning Official Name and Title	Date