

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

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

**Wednesday, May 15, 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 Matt Reed, Scott Osterholm and Matt Raska were present. Zoning Administrator for the Village, Meg Leatherman, was also present.

**COMMUNICATIONS**

There were no Communications.

**REVIEW OF AGENDA**

There were no changes made.

**REVIEW OF MINUTES**

Minutes for BZA Meeting of March 20, 2024 were reviewed. Reed MOVED and Osterholm SECONDED a MOTION TO APPROVE THE MINUTES AS WRITTEN. The MOTION PASSED 4-0 on a VOICE VOTE.

**PUBLIC HEARINGS**

**Variance Request**– Medium Density Residential District (R-B), Gateway Overlay – 101 Cemetery St., Sam Durham, on behalf of Lisa Smale, has submitted an application for a variance seeking relief from Chapter 1260.01(a)(1), for allowance of a fence height of six (6) feet in the front yard. Greene County Parcel ID # F19000100130000200.

Leatherman introduced the hearing as follows: The property owner is requesting permission to construct a six foot fence--two foot variance--along Xenia Avenue to reduce noise levels and provide a visual barrier to the highway

Fences in residential zones are allowed to be up to six feet in height, except in the front yard where they are limited to four feet (VC 1260.01(a)(1)). Since the property has frontage along Xenia Avenue and Cemetery Street it is considered a corner lot, and the code requires that corner lots have two front yards. Approval of a variance is required for the portion of the fence exceeding four feet along Xenia Avenue.

Leatherman noted the location, which abuts State Route 68 at a traffic light, resulting in a high noise level from traffic.

Leatherman stated that she has spoken to the Village Manager, who is requesting a five-foot setback from the sidewalk to the fence along Xenia Avenue as a condition should BZA vote to permit the variance. Leatherman stated that she recommends approval of the variance with the requested condition.

Village Manager Burns addressed BZA, noting that the intersection of US 68, SR 343 and Cemetery Street presents safety concerns, and has been the site of several serious collisions. Burns commented that a previous Zoning Administrator had improperly permitted a six-foot fence along US 68 which is currently in place on a property across the street from Smale.

Burns noted that the trees on the Smale property add to the visual impediment, as does the incline of the yard.

Smale confirmed that she has no plans to remove any of the existing trees, but stated that she did plan to remove the bushes, which she believes are as great or greater a visual impediment as a fence might be.

Burns and BZA reviewed the diagram submitted by Smale and Durham.

BZA discussed whether a cutout or a gradually fence increasing in height would resolve the issue.

Smale confirmed that the fence would be solid.

Burns commented that the Village has utility underground at that corner and will be marking those areas in the next several weeks.

Burns noted that ODOT has an issue with the fence located across the highway due to the number of incidents related to reduced sightline.

Burns requested a ten-minute break to drive the street and refresh his memory.

The Clerk suggested that if all parties were agreeable to a pause, BZA could hear the second variance and then return to the 101 Cemetery Street variance. It was so decided.

**Variance Request**– Medium Density Residential District (R-B), 410 N High St., Darren Gilley has submitted an application for a variance seeking relief from Chapter 1248.03(b), Table 1248.03(b), seeking relief to side yard setbacks. Greene County Parcel ID #F19000100010005100, F19000100010005200, F19000100010005300.

Leatherman introduced the hearing, noting that Gilley wishes to construct a pre-fabricated structure with a footprint of 40'x40' and with two-stories and a total livable area of approximately 2,400 square feet. An existing single-family home is situated across two adjoining lots also owned by Gilley.

The property is located on the corner of Pleasant and North. High Streets. The code (1284.06) requires that corner lots have two front lot lines, necessitating a 20' setback from each street. The applicant is requesting a 5' setback along Pleasant Street for a variance of 15 feet.

The improved portion of Pleasant Street. ends at North High, and the Pleasant Street right-of-way extends beyond High Street to the west as gravel. The gravel portion is not part of the Village street system and is not maintained by the Village. Two homes use this gravel section as their primary access point. The Village has no future plans to improve this section of Pleasant Street. since it extends into an enclave of un-annexed property.

Leatherman noted that two homes use the gravel portion of the street as access to their homes.

Responding to a question from Reed, Leatherman stated that the lot is buildable even without the variance.

Darren Gilley stated that the lot is less usable without the variance, since it would result in a narrow home with a large yard. He responded to a question from Raska, stating that he has considered that the new home could be sold at a later point if it is situated entirely upon the separate lot.

Gilley expressed awareness of the need for separate utility tap ins.

Salmonson OPENED THE PUBLIC HEARING.

Mitch George, a neighbor, received confirmation that access points have not yet been determined. He also received confirmation that Gilley does not intend to remove any trees in the process.

Salmonson CLOSED THE PUBLIC HEARING.

BZA briefly discussed the extent of the Right-of-Way.

Leatherman confirmed that the ROW is 50 feet.

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; Raska: N; Reed: Y; Osterholm: N
- (2) Whether the variance is substantial; Salmonson: N; Raska: N; Reed: N; Osterholm: Y
- (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; Raska: N; Reed: N; Osterholm: 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; Raska: N; Reed: N; Osterholm: N
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction; Salmonson: N; Raska: N; Reed: N; Osterholm: N

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

Reed MOVED to APPROVE the variance of 15 feet along Pleasant Street as requested. Raska SECONDED, and the MOTION PASSED 4-0 ON A ROLL CALL VOTE.

**RESUMPTION OF PUBLIC HEARING FOR 101 CEMETERY STREET**

Burns addressed BZA, stating that he had driven the area to check sight lines. He stated that he called the Electric Superintendent to get his opinion as well. Burns expressed that even if the permitted four foot fence is erected it will cause a safety issue, in his opinion. A six-foot fence would be out of the question, he stated.

Salmonson asked about utility location, and Burns responded that location will take place in the next several weeks and could interfere with the existing fencing.

Burns conveyed his sympathy for the homeowner’s predicament, but reiterated his concern for safety at that intersection.

Reed asked about several options using varying heights.

Reed asked whether the hearing could be continued in order to give time for the petitioner to meet with Burns to look at possible options.

The Clerk suggested that the petitioners meet with staff to see whether the issue can be resolved without a variance. Should a variance be needed, she commented, BZA would still have a clear understanding of the issues at hand.

BZA did not vote on the request, given that it was being withdrawn in favor of finding an alternative.

Salmonson received assurance that no additional fees would be charged for a re-submitted variance, since the process was suggested by staff.

**AGENDA PLANNING**

There were no items on the schedule.

**ADJOURNMENT**

There being no further business, Reed MOVED and Raska SECONDED a MOTION to adjourn. The MOTION PASSED 4-0 on a voice vote. Meeting ADJOURNED at 6:15PM.

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Anthony Salmonson, Chair

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Attest: Judy Kintner, Clerk