

VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on Wednesday, September 18, 2013 at 7:00 PM in Council Chambers, Second Floor, John Bryan Community Center, 100 Dayton Street, Yellow Springs, Ohio 45387

7:00 CALL TO ORDER

ROLL CALL

7:05 REVIEW OF AGENDA

7:06 REVIEW OF MINUTES

Minutes for BZA Meeting of May 8, 2013

Minutes for BZA Meeting of June 19, 2013

7:10 PUBLIC HEARINGS

335 W. Davis: Variance Request, Continuation of Hearing from 8/21 Meeting

1485 Xenia Avenue: Request for Special Exception

8:45 AGENDA PLANNING

9:00 ADJOURNMENT

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday June 19, 2013

CALL TO ORDER

The meeting was called to order at 7:02 p.m. by Ted Donnell, Chair.

ROLL CALL

Ted Donnell, Kingsley Perry, and Alternate Dan Reyes were present, as was the Zoning Administrator for the Village, Tamara Ennist. Steve Conn and Chris Peifer were unable to attend. Ellis Jacobs arrived after the first hearing, and was present for the second hearing.

REVIEW OF AGENDA

There was no review of the agenda.

REVIEW OF MINUTES

Minutes for May 8, 2013, were TABLED due to lack of a quorum. The MOTION PASSED 3-0.

PUBLIC HEARING

APPLICANT: Gerald W. Matthews Contractor & Builder;

PROPERTY OWNER: Otha & Margaret Davenport

REQUESTED ACTION: Request for a variance to a required front yard setback for the purpose of an addition to the principle structure.

Hearing notice: *“Gerald W. Matthews Contractor & Builder, LTD., acting with acknowledgement of the property owner, Otha B. & Margaret A. Davenport, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Sections 1250.02 (Table) in order to reduce the front yard setback required along Green Street for the purpose of constructing an addition to the east side of the principally permitted single-family dwelling located at 640 Limestone Street. The property is located within the Residence ‘B’ zoning district which requires a front yard setback of twenty-five feet along Green Street and the applicant is asking for a variance of seven (7) feet. The property is further identified by Greene County Parcel ID #F19000100040000400*

LOCATION: 640 W. Limestone Street

GREENE COUNTY PARCEL ID#: F19000100040000400.

EXISTING ZONING: The property is within the Residence ‘B’ zoning district

STAFF ANALYSIS OF THE APPLICATION: The applicant requests approval of a 7’ variance to the required 25 foot front yard setback (**Section 1250.02 Table**) from front lot line along Green Street to allow construction of an addition to the east side of the principal residential structure. The required 30 feet front yard setback from the front property line along West Limestone Street will be satisfied with the proposed addition maintaining the current 40 feet setback established with the current structure.

Property Information and Analysis:

The property is located at 640 W. Limestone Street. This property is lot #4 of the Phillips Two Subdivision and is a corner lot situated at the SW corner of the intersection of W. Limestone Street and Green Street. The lot has 153.96 feet of frontage along W. Limestone and 149.78 feet of frontage along Green Street.

The existing single-family structure faces W. Limestone Street and is 61 feet long by 39 feet deep. The house location on the lot provides a 40 feet deep front yard along W. Limestone Street and a 38 feet deep front yard along Green Street.

A detached garage, approved June 27, 2011, is located on the southeast side of the lot just 12 feet from the front lot line along Green Street. This accessory structure is 36' x 36' and located 22 feet from the closest part of the principle structure and 12' from the side property line.

The property is surrounded on three sides by residential uses within the Residence 'B' zoning district with Village park land located on the north side across W. Limestone Street.

Additional Information:

VARIANCE CRITERIA:

Section 1250.02 (Permitted Uses; Lot Size And Bulk Requirements) Table; Single-family dwelling in the B zoning district **requires a minimum front yard setback of 25 feet** on local streets (Green Street) and 30 feet on streets other than local streets (W. Limestone is a Residential Collector).

Section 1240.09 DEFINITIONS;

(89) "Setback" means the required minimum horizontal distance between the building line and the related front, rear and side property line.

(122) "Yard" means an open space at grade between the edges of a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. Specifically:

A. "Front yard" means a yard extending the full width of the lot between the edge of a building and the front lot line.

B. "Rear yard" means a yard extending the full width of the lot between the edge of a building and the nearest side lot line.

C. "Side yard" means an open space extending from the front yard to the rear yard between the edge of a building and the nearest side lot line.

(61)D. "Lot line" means the property lines bounding a lot, excluding any area within a public right-of-

1. A front lot line separates a lot from a public street right-of-way.

2. A rear lot line is opposite and most distant from the shortest (reference corner lot) front lot line. *(By definition the rear lot line would be opposite from Green Street.)*

3. A side lot line is any lot line other than a front or rear lot line.

(61)C. "Frontage" of a lot means the portion nearest the public street right-of-way. **In the case of corner lots, all sides of a lot adjacent to streets shall be considered frontage and yards shall be provided with reference to each right-of-way abutted.**

Section 1278.03 EXCEPTIONS TO AREA, YARD AND HEIGHT REQUIREMENTS.

(b) Yard Exceptions and Modifications.

(1)A. In any Residential District where a block has 50% or more of the lot frontage on one side of the street improved with buildings, the front yard requirements for single-family dwellings may be reduced as follows;

1. For new dwellings and existing dwellings conforming to the district requirements, the front setback shall be reduced to the average of the two nearest dwellings along that

frontage. *(In this case the average of the setbacks of the two nearest dwellings would be greater than the minimum setback (25 feet) currently allowed.)*

B. However, in no case shall the reduction be greater than 50% of the district standard.... *(50% of the district standard would be 12.5 feet – and the proposed reduction would be 7 feet)*

(4) Front yard setback requirements shall apply to both street frontages in the case of a corner lot.

STAFF RECOMMENDATION: Staff recommends that the Board of Zoning Appeals consider that the proposed setback will be less than the setback of the detached garage and visibly shielded by this structure from the properties on the same side of the block.

Following the description of the variance request, Donnell OPENED THE PUBLIC HEARING.

Grandson of the applicant, Stefan Ritchie, made a statement to the effect that his grandfather is currently in poor health and at the Ohio State University Medical Center receiving treatment. He stated that the reason for the request is his grandparents' need for a more accessible dwelling, with access to bathroom facilities on the first floor. Ritchie passed out copies of a letter from his grandfather and read same.

Ritchie read that the previous zoning inspector (Ed Amrhein), had agreed with Otha Davenport that the frontage facing Green Street would be considered a side yard, and as such had given permission for construction of a garage in that area, using side yard setback requirements.

Davenport's letter expressed the expectation and hope that the side yard setback requirements used by the previous zoning inspector would prevail in this case as well, with permission following to construct an accessible addition to the home.

Contractor David Matthews spoke on behalf of Gerald Matthews, stating that he had built the aforementioned garage, and at that time had rerouted the electrical lines such that they could be easily used for a later addition. He noted his surprise that the setback was an issue, given the previous decision that the Green Street frontage be considered a side yard.

Matthews added that the home currently is not at all handicap accessible.

Donnell CLOSED THE PUBLIC HEARING.

Donnell inquired whether the proposed addition was listed on the original permit for the garage, and was told by Matthews that it was not, but that Ed Amrhein was made aware of the plan for a later addition.

Ennist stated that she has record of the permit for the detached garage, signed by Amrhein. She stated that the current code, under 1278.03 states that both frontages on a corner lot shall be considered front yards.

Perry received information that the addition would contain a master bed and bath suite.

Reyes asked whether this was the most feasible direction in which to extend the home, and was told by Matthews that that was indeed the case.

Donnell explained to the applicant that each new application for variance has to be considered based upon current knowledge and information.

Ennist noted that the rear yard setback requirement is ten feet, and that an accessory structure must be in a rear yard.

Ennist explained further that the portion of the yard opposite to the shortest frontage is considered the rear yard for a corner lot.

Ritchie asked whether an exception could be made for purposes of handicap accessibility.

Donnell explained that the zoning code makes no such distinction, but that that aspect of the request would be considered when weighing the criteria for granting the request. Donnell stated his opinion that a property owner has the right to reasonable access to his or her own home, noting that he would consider this criterion.

Donnell then went through the criteria as follows:

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.

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;
Donnell opined that accessibility could be achieved without encroachment upon the setbacks, voting YES.
Reyes: YES; Perry: YES
2. Whether the variance is substantial;
Donnell: NO; Reyes: NO; Perry: NO
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;
Donnell: NO; Reyes: NO; Perry: NO
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;
Donnell: NO; Reyes: NO; Perry: NO
5. Whether the property owner purchased the property with knowledge of the zoning restriction;
Donnell opined that the question is irrelevant to this situation, and a vote was not called.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

Donnell opined that because there is an accessibility issue, and because the applicant had built a garage with such an accommodation in mind, a variance is in order.

Both Perry and Reyes agreed. A vote was not formally called.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;

Donnell opined that if the variance were not granted the Board would be discriminating against someone of limited means and voted YES; Reyes: YES; Perry: YES

Perry MOVED to GRANT THE VARIANCE AS REQUESTED. Reyes SECONDED, and the MOTION PASSED 3-0 on a ROLL CALL VOTE.

Donnell called a brief break, following which two individuals came forward to receive information as to how best to submit their application for a variance for an eight foot fence in the rear yard.

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Ellis Jacobs arrived at 7:50 pm, and the Board proceeded with the second variance request as follows: Donnell recused himself from the Board for the purpose of representing Yellow Springs Brewery in their variance request. Jacobs assumed the role of Chair.

APPLICANT: Ted Donnell; Yellow Springs Brewery

PROPERTY OWNER: Millworks Development Corp.

REQUESTED ACTION: Request for Variance to Rear Yard Setback

Hearing notice: *“Ted Donnell, acting with acknowledgement of the property owner, Millworks Development Corp. for the structure operated by The Yellow Springs Brewery which is operated by Lisa Wolters and Nate Cornett, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Section 1260.06(f) in order to construct a series of accessory decks along the east side of the Yellow Springs Brewery building located at 305 N. Walnut Street within a required rear yard setback. The property is located within the Light Industrial zoning district and a rear yard of no less than twenty-five (25) feet is required for a principally permitted structure. The applicant is requesting that the accessory decks, covered with fabric awnings be placed within six (6) inches of the common property line along the bike/pedestrian path. Applicable Yellow Springs Zoning Code sections are; Sec. 1242.06(d). The property is further identified by Greene County Parcel ID #F19000100110025900*

LOCATION: 305 N. Walnut Street

GREENE COUNTY PARCEL ID#: F19000100110025900.

EXISTING ZONING: The property is within the Light Industrial zoning district

STAFF ANALYSIS OF THE APPLICATION: The applicant requests approval of a variance to allow a group of decks to be placed within a required 25’ rear yard [Section 1242.06(d)]. However, a patio may project into rear yards, provided that they are not closer than three feet to any adjacent property line

[Section 1278.03(b)(5)]. So in essence, the applicant is requesting approval of a 2.5 feet variance to the required three (3) feet setback for a patio/deck use according to the site plan provided.

Property Information and analysis:

The property is located at 305 N. Walnut Street. The Yellow Springs Brewery is one of several structures located on the site. It is located on the southwestern portion of the lot and is adjacent to the common property line shared with The Little Miami Scenic Bike/Pedestrian Path. The building is approximately 128 feet long and the length runs parallel to the eastern lot line of the parcel identified as parcel ID #F19000100110025900, as shown on the Greene County GIS mapping website. On December 29, 2011 a survey record identified that an additional portion of land along this eastern boundary, measuring 12± feet, was obtained by Millworks Development Corp. on June 27, 2012 and is identified as parcel ID #F19000100110032500.

Additional Information:

VARIANCE CRITERIA:

Section 1260.01 (Purpose) “The Light Industrial District has been planned to encourage the development of manufacturing, wholesale and large professional establishments which are clean, quiet and free of hazardous or prohibited elements. The creation or promotion of retail activities in this District is not encouraged.”

Section 1260.03 Conditionally Permitted Uses

(c) Accessory retail sales of goods produced on site. No more than 10% of the ground floor area shall be used for retail sales. *(On January 9, 2013, the Yellow Springs Board of Zoning Appeals granted a variance, conditional upon obtaining approval of the conditional use, to allow The Yellow Springs Brewery to use 30% of the floor area for accessory retail sales of goods produced on site. Then, on January 11, 2013, the Yellow Springs Planning Commission approved the conditional use application with the variance.)*

(e) All uses not otherwise prohibited by law. *(Section 1260.04 Prohibited Uses, does not specifically prohibit an accessory deck. But, section 1260.04(b) includes ... “other activities tending to create direct consumer traffic” ... In this case, however, the direct consumer traffic has already been approved by allowing accessory retail sales of goods produced on site and the any increase related to the placement of the decks would be from the existing bike path which would not necessarily increase the consumer traffic through the industrial site.)*

Section 1278.03 EXCEPTIONS TO AREA, YARD AND HEIGHT REQUIREMENTS.

(b) Yard Exceptions and Modifications.

(5) Patios may project into rear yards, provided that they are not closer than three feet to any adjacent property line. *(The Yellow Springs Zoning Code does not provide a definition for ‘Patio’ or for ‘Deck’. Most generally, a patio tends to be at grade and decks may or may not be at grade. The application does not specify the height of the decks.)*

STAFF RECOMMENDATION: Staff recommends that the Board of Zoning Appeals consider that although the proposed setback will be less within 6” of the parcel containing The Little Miami Scenic Bike/Pedestrian Path, the actual paved area is shown to be approximately six (6) feet from the edge of the proposed decks. In addition, the proposal will encourage interaction between a Village business and the users of this public transportation corridor which may encourage other businesses to utilize this approach.

In answer to a question from Reyes, Ennist noted that the addition of the decks would increase the Brewery's overall floor area, which could potentially be used in the percentage of floor space calculation for retail sales.

Donnell responded that regardless of the addition of the decks, the retail sales percentage falls within 30%.

Donnell described the decks as a way for the property owner to serve clientele who are coming in off of the bike path.

In answer to a series of questions from Jacobs, Donnell stated that beer will not be served on the deck, but may be carried out, and that there will be no seating option on the deck, although there will be tables available. The notion is not for patrons to sit, he commented, but to taste the product and then move on.

Reyes commented on the fact that when the rear parcel was ceded to Millworks about a year ago, it was meant as a truck docking area. Ellen Hoover responded that Millworks may still have a need for docks, but that they try to respond to the needs of their renters, and that the deck plan meets with their approval.

Reyes queried Donnell as to the design he is using for the decks, and was satisfied that another strategy is not easily workable.

Jacobs OPENED THE PUBLIC HEARING.

Dianne Chiddester, a neighbor, expressed concern for the neighborhood with respect to noise. She stated that she could not imagine the outdoor area not making an impact on the quiet of the neighborhood.

Chiddester asked whether the decks could begin as a smaller version of the current plan, and asked that a means for working with neighbors regarding any noise issues be put into place.

Neighbor Beth Holyoke expressed general support for the brewery, but shared the concerns presented by Chiddester with regard to noise.

Reyes asked Donnell whether there was an easy way to address the issues presented, and offered several suggestions.

Donnell noted that the Brewery is permitted to have a deck which is 544 square feet, and that he is within that limit currently. He stated that his design is more esthetically pleasing, in his opinion, than a deck extending the length of the building that did not require a variance.

Regarding the noise issue, Donnell commented that past studies show that the Millworks building itself reflects sound, making sound mitigation outside the building difficult. He stressed that the lack of seating is part of an overall plan to limit customer time in the facility, noting again that the tasting area is an accessory use.

Jacobs noted that there is good incentive to both parties to work to reduce noise levels, and offered a short break so that Donnell could meet with his client.

Donnell objected to any request that would require his client to respond to an undefined notion of “too loud.”

Donnell commented that opening up the rear of Millworks to a legitimate use may diminish the littering and graffiti-ing of the area.

Reyes confirmed that the deck area will not be covered other than by the sun-shielding fabric.

Ellen Hoover addressed the noise issue, stating that the existing foliage in the area tends to mitigate noise. She stated that Millworks tries to address any neighbor complaints that arise, but expressed reluctance to take any responsibility for a tenant over whom they have limited control.

Reyes and Jacobs discussed the notion of a “good neighbor” agreement. Reyes received confirmation of the Yellow Springs Brewery’s approved hours.

Ennist received confirmation that there are no plans for lighting the deck area aside from the existing safety and Village lights.

Perry received confirmation that the deck can hold up to 40 persons, and that there are no plans for any outdoor music or performance.

Chiddester noted that there is no foliage between her home and Millworks, and suggested this as something Millworks might provide to mitigate noise.

Donnell commented that his client has the legal right to make noise up to the limit proscribed by the Village nuisance ordinance, stating that there is no obligation to provide noise mitigation simply on the assumption that there may be excessive noise.

Reyes suggested lowering the deck to reduce the travel of sound.

Donnell expressed that this is not in fact possible given the constraints of the building.

Jacobs commented that a deck would certainly impact the character of the neighborhood to some extent, but remarked that a more extensive deck could be built without a variance. Jacobs suggested that Donnell speak with his client to see whether a compromise can be reached.

Donnell objected to any approach that is based upon a vague definition of “too loud”. Donnell stated that any level of conversation on the desk will not rise to the level noted in the noise ordinance as problematic.

Jacobs called a five minute recess.

Lisa Wolters, of Yellow Springs Brewery, spoke to the issue, reassuring those present of both her and Nate (Cornett)’s desire to control sound levels. She spoke of environmental constraints in place such as tall tables and no chairs. Wolters characterized the establishment as “not a bar, but a tasting room”.

In answer to a question from Jacobs, Wolters stated that the Brewery has permission to be open all days of the week from 10am to midnight. Wolters stated that they don’t use most of those hours, and that she would not object to having the hours reduced.

Donnell reiterated that the brewery is primarily a production facility, and that consumption on the premises is a secondary use.

Chiddester commented that there are a number of unknown factors, and asked that there be a process by which concerns could be addressed, should they arise.

Jacobs suggested that conditions be attached that the deck not be used past 10pm, and that if there are complaints from neighbors, there is a mechanism in place for dealing with them.

Jacobs then called the variance criteria for the matter as follows

Pursuant to the requirements of Section 1242.06(d)(1)A of the Village Zoning Code, Variances from the terms of the Zoning Code shall be granted only where the property owner shows that the application of a zoning requirement to the property owner's property is inequitable causing the property owner 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 owner's 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;
Jacobs: YES; Reyes: YES; Perry: YES
2. Whether the variance is substantial;
Jacobs: NO; Reyes: YES; Perry: YES
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;
Jacobs: NO; Reyes: NO; Perry: NO
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;
Jacobs: NO; Reyes: NO; Perry: NO
5. Whether the property owner purchased the property with knowledge of the zoning restriction;
Jacobs: YES; Reyes: YES; Perry: YES
6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
Jacobs: YES; Reyes: YES; Perry: YES
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
Jacobs: YES; Reyes: YES; Perry: YES

Jacobs determined that there were no further factors to be considered.

Reyes and Donnell discussed the nature of potential noise complaints, and several ways in which these can be addressed. Jacobs weighed in that if there are repeated problems which may be systemic or structural that those are addressed effectively.

Perry MOVED to GRANT THE VARIENCE with two conditions; that the deck close at 10pm daily, and that if sound issues are raised by neighbors, the owners agree to make a good faith effort to address these. Reyes SECONDED, and the MOTION PASSED 3-0 on a ROLL CALL VOTE.

The Clerk suggested a subsequent meeting for July 17th, and this date was tentatively agreed upon.

Donnell asked the Clerk to follow up with Peifer to assure that he wishes to retain his seat, having missed the last several meetings.

ADJOURNMENT

There being no further business, Jacobs MOVED and Perry SECONDED a MOTION to adjourn. The MOTION PASSED 4-0. Meeting ADJOURNED at 9:30 pm.

Ted Donnell, Chair

Attest: Judy Kintner, Clerk

BOARD OF ZONING APPEALS

MEETING DATE: August 21, 2013

STAFF REPORT; Tamara Ennist, Village Zoning Administrator

APPLICANT: Brett Henderson

PROPERTY OWNER: Yellow Springs Home Inc.

REQUESTED ACTION: Request for a variance to allow a parking pad to be located in front yard area.

HEARING NOTICE: **335 W. Davis Street** (Residence ‘B’ District) – Owner, Brett Henderson acting with acknowledgement of the Land Owner; Yellow Springs Home Inc., request a variance to Section 1268.02(f) to allow an off-street parking area in the front yard area in front of the principle building. Greene County Parcel ID; #F19000100040005100. Applicable Yellow Springs Zoning Code sections are: 1240.09(71), 1240.09(72), 1240.09(89), 1240.09(115), 1240.09(120), 1240.09(122)A, 1250.05(c), 1250.06(a), 1268.02(a), 1268.02(f) & 1268.05(c), & 1268.10(c).

LOCATION: 335 W. Davis Street

GREENE COUNTY PARCEL ID#: F19000100040005100.

EXISTING ZONING: The property is located within the Residence “B” zoning district.

STAFF ANALYSIS OF THE APPLICATION: Property Information and analysis:

The property is located at 335 Davis Street and is the next to the last property with vehicular access to this right-of-way. Davis Street dead ends at this point and a pedestrian path continues through to connect with Lawson Place. It is an interior lot measuring approximately 50 feet wide and 129 feet deep. The principle residential structure is proposed to be located 25’ from the front lot line according to a site plan drawing submitted by the applicant. A shared driveway provides access from W. Davis Street for this property and for the neighboring property to the east, 333 W. Davis Street.

The applicants proposal is to provide a gravel parking pad perpendicular to the driveway located on the west side of the shared driveway between the front lot line and the front of the principle structure. The proposed parking pad would be 25’ wide and 16’ deep.

VARIANCE CRITERIA: Additional Information.

CHAPTER 1268 OFF-STREET PARKING AND LOADING

SECTION 1268.02 Off-Street Parking and Loading; General Requirements

(f) Other provisions of this Zoning Code notwithstanding, **off-street parking areas, exclusive of driveways, in Residence, Conservation and residential PUD Districts must meet the same setback requirements as for principal buildings.** In other zoning districts, however, off-street parking may be located within ten feet of the public right-of-way, provided that such ten-foot strip meets appropriate Village landscaping requirements.

SECTION 1268.03 Design Requirements.

(e) **All unenclosed off-street parking areas, with the exception of single-family residential driveways, shall be separated from public rights-of-way by a clear or landscaped area of at least ten feet in width.**

SECTION 1268.05 Residential Off-Street Parking Requirements

(c) One and two-family housing 2.0 per dwelling unit, except when located in the central Business District, and then 1.0 per dwelling unit

SECTION 1240.09 (DEFINITIONS).

(61) **Lot measurements** shall be defined as follows:

C. **“Frontage”** of a lot means the portion nearest the public street right-of-way.

D. **“Lot line”** means the property lines bounding a lot, excluding any area within a public right-of-way. Specifically:

1. A **front lot line** separates a lot from a public street right-of-way.

(71) **“Parking lot”** means an area not within a building where motor vehicles may be stored for the purpose of temporary, daily or overnight off-street parking.

(72) **“Parking space, off-street”** means an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but located totally outside of any street or alley right-of-way.

(79) **“Principal use”** means the main use of land or structures, as distinguished from a secondary or accessory use.

(89) **“Setback”** means the required minimum horizontal distance between the building line and the related front, rear and side property lines.

(115) **“Structure”** means anything constructed, erected or placed which requires location on the ground or attachment to something having location on the ground. **The term includes patio and parking area**, exclusive of driveways and walkways.

(120) **“Variance”** means a dispensation permitted on individual parcels of property as a method of alleviating unnecessary hardship by allowing reasonable use of a building, structure or property which, because of unusual or unique circumstances, is denied by the terms of this Zoning Code.

(122) **“Yard”** means an open space at grade between the edges of a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. Specifically:

A. **“Front yard”** means a yard extending the full width of the lot between the edge of a building and the front lot line.

Pursuant to the requirements of Section 1242.06(d)(1)A of the Village Zoning Code, Variances from the terms of the Zoning Code shall be granted only where the property owner shows that the application of a zoning requirement to the property owner’s property is inequitable causing the property owner 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 owner’s 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; and
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

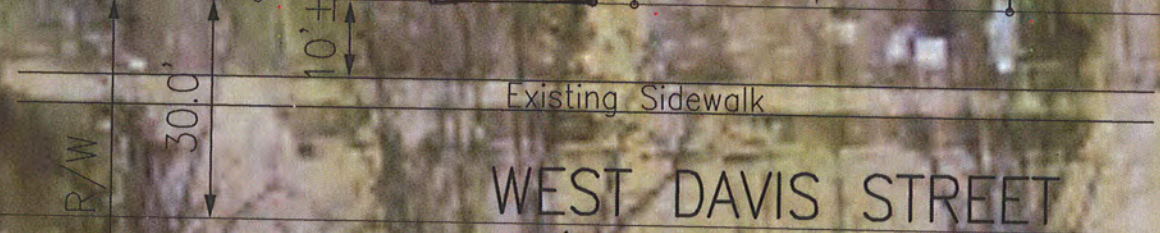
The Board shall determine, after weighing the factors described above and any other factors the Board deems relevant, whether the property owner has shown practical difficulties so inequitable as to justify granting a variance to the property owner.

STAFF RECOMMENDATION: Staff recommends that the Board of Zoning Appeals consider this application after hearing the applicant's justification for the requested variance - to allow an off-street parking area in the front yard area in front of the principle building.

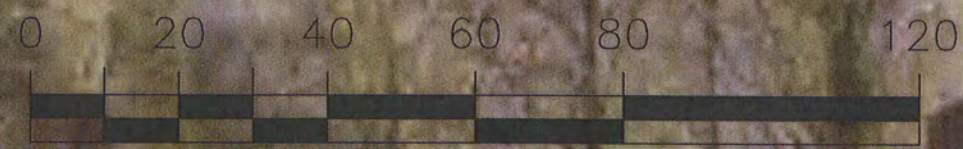
VILLAGE MANAGER'S RECOMMENDATION: (May be provided at the meeting)



Cosler Engineering, LLC
 3171 Beaver Vu Drive - Suite 1
 Beavercreek, Ohio 45434
 Ph (937)426-9913 - Fax 426-3390
 mcosler@sbcglobal.net



**WEST DAVIS STREET
 (60 FEET WIDE)**



GRAPHIC SCALE IN FEET

270 Kingsfield Court
Yellow Springs, OH 45387

September 10, 2013

To: Board of Zoning Appeals
Village of Yellow Springs, Ohio

Re. Drainage concerns at 335 W. Davis Street

I have been asked, as a professional engineer with expertise in drainage, to review the impact of installing a gravel parking pad in the front of 335 W. Davis Street on the possibility of additional flow of storm water onto the property immediately to the west.

I have visited the site and examined the existing topography. In addition I have conferred with the builder on the measures to be taken to ensure that no storm water runoff from the proposed parking pad will flow onto the neighboring property regardless of the details of the pad design or materials used. By installing a concrete walk from the Davis Street sidewalk to the front stoop at a grade higher than the ground on either side of the walk, the walk will act as a positive barrier to the westward flow of water. This will force all water from the parking pad toward Davis Street and into the adjacent catch basin at the southwest corner of the 335 W. Davis Street property.

I trust that this information will alleviate any concerns of the BZA regarding drainage from the proposed parking pad.

On a separate matter, I have also made recommendations to Home Inc. for mitigation of the drainage issues at the rear of 335 W. Davis Street. I am expecting to meet in the near future with the neighbors to explain how the proposed work will improve pre-existing standing water issues as well as mitigate the impact from the recent construction of the two homes by Home Inc.

If you have questions or need additional information, please feel free to contact me at 937-371-8931 or JohnEastman@sbcglobal.net.

Sincerely,

A handwritten signature in cursive script that reads "John A. Eastman". The signature is written in black ink and is positioned above the typed name and license information.

John A. Eastman, P.E.
Ohio License No. 52025



Strengthening community and diversity through permanently affordable housing

September 11, 2013

To: Board of Zoning Appeals, Village of Yellow Springs, OH:

Re. Drainage Concerns at 335 W. Davis Street

It has come to our attention that there is some concern over parking pad placement and drainage at the newly constructed home at 335 W. Davis Street. Unfortunately, the BZA meeting is scheduled for the same time and date as our Board meeting, so I will be unable to attend. My hope is that this letter, along with John Eastman's insights, will alleviate any concerns of the BZA with regards to site drainage.

Recently John Eastman, water engineer, recommended a drainage proposal plan for the West Davis Street project to the Board of Directors of Yellow Springs Home, Inc., which was adopted. The plan is being communicated to neighbors at an upcoming meeting.

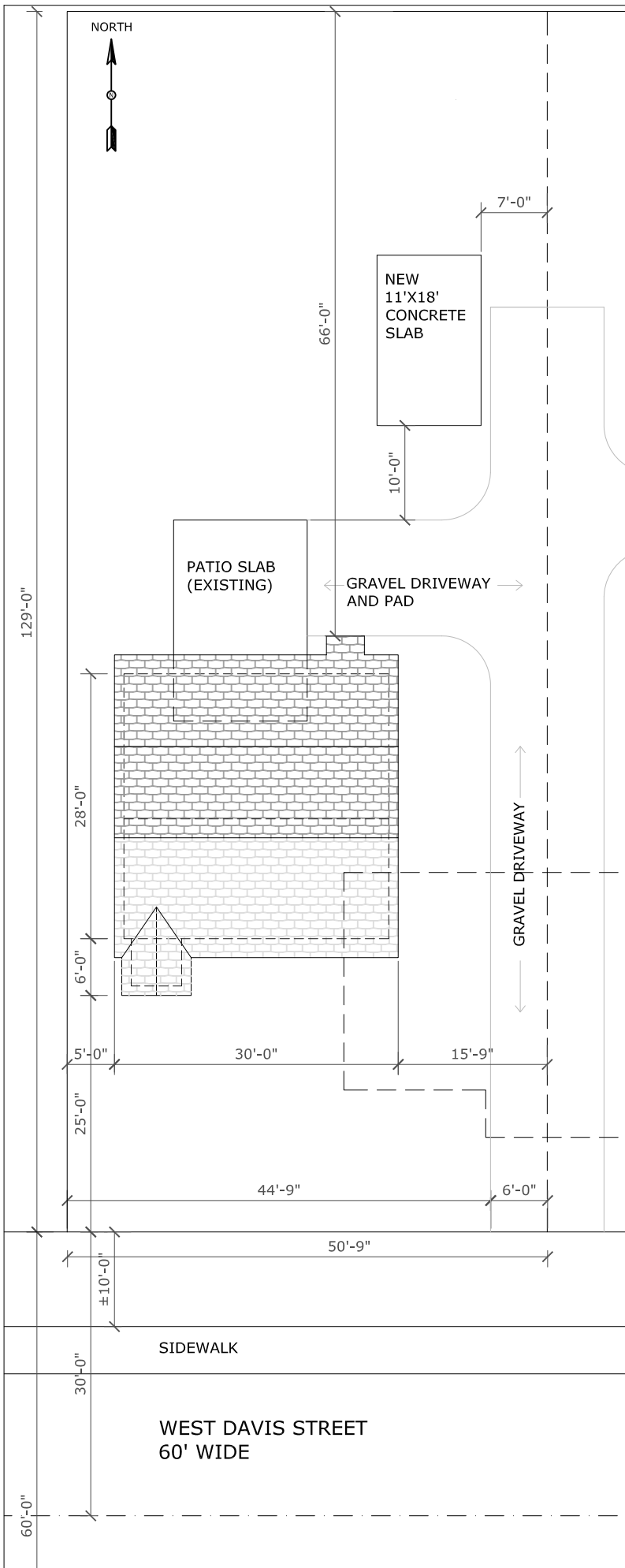
Please note that the parking pad will not cause further drainage issues—the adopted drainage plan will improve the existing drainage condition alongside accounting for increased water flow due to the current development.

If you have any questions or require additional information, please contact me at Yellow Springs Home, Inc. at 937-767-2790.

Best regards,

A handwritten signature in cursive script that reads "Emily Seibel".

Emily Seibel,
Executive Director



PROJECT SUMMARY

USE GROUP: R-3

CONSTRUCTION TYPE: 5B (UNPROTECTED)

SUMMARY:

THE NEW BUILDING IS TWO-STORY SINGLE-FAMILY RANCH HOME WITH A TOTAL SQUARE FOOTAGE OF 1232 SF. THE BUILDING IS A WOOD FRAME STRUCTURE WITH A CONCRETE BLOCK FOUNDATION. THIS BUILDING SHALL COMPLY WITH THE CURRENT YEAR OF ALL APPLICABLE NATIONAL, STATE AND LOCAL CODES INCLUDING (BUT NOT LIMITED TO):

OHIO RESIDENTIAL CODE
 N.F.P.A.
 N.E.C.
 CITY OF YELLOWSPRINGS BUILDING AND ZONING CODES

SITE PLAN NOTES

1. CONTROL THE PATH AND VELOCITY OF RUNOFF WITH SILT FENCING.
2. PROTECT ON-SITE STORM SEWER INLETS AND STREAMS WITH STRAW BALES OR SILT FENCING.
3. STOCKPILE AND PROTECT DISTURBED TOPSOIL FROM EROSION. LOCATE THE TOPSOIL IN TWO PILES, ONE AT THE FRONT AND ANOTHER AT THE BACK OF THE SITE. PROVIDE STRAW COVER AND SILT FENCE AROUND THE PILES TO PREVENT EROSION.
4. PROVIDE VEGETATED SWALES TO DIVERT SURFACE WATER AROUND THE HOME.
5. SHRUBS AND BUSHES TO BE PLANTED MINIMUM OF 24 INCHES FROM THE FOUNDATION.
6. ALL GUTTER, DOWNSPOUTS AND CONDUCTORS DIVERT THE WATER AWAY FROM THE FOUNDATION.
7. TOPSOIL WILL BE GRADED TO CREATE A MINIMUM SLOPE OF 5% (6") FOR THE FIRST 10 FT. AWAY FROM THE FOUNDATION OF THE HOME
8. WHERE WALKWAY/DRIVEWAY IS PROVIDED, THE SLOPE SHALL NOT BE STEEPER THAN 1:20
9. ALL NEW PLANTINGS OF TREES AND PLANTS ARE NATIVE SPECIES AND 100% APPROPRIATE TO THE SITE'S SOIL AND CLIMATE. THE LANDSCAPING DOES NOT INCLUDE ANY INVASIVE SPECIES.
10. ALL TURF IS DROUGHT-TOLERANT
11. NO SILVER MAPLE TREES WILL BE PLANTED
12. ALL EXISTING AREAS DISTURBED BY CONSTRUCTION SHALL BE RAKED FREE OF DEBRIS. TOP SOIL SHALL BE ADDED AND RE-SEEDED.

335 W. DAVIS STREET

YELLOW SPRINGS, OHIO 45387

YELLOW SPRINGS HOME INC.

SITE PLAN - BACK PAD OPTION

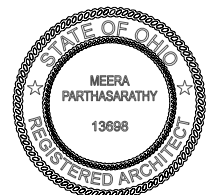
SCALE: 1/8" = 1'-0"

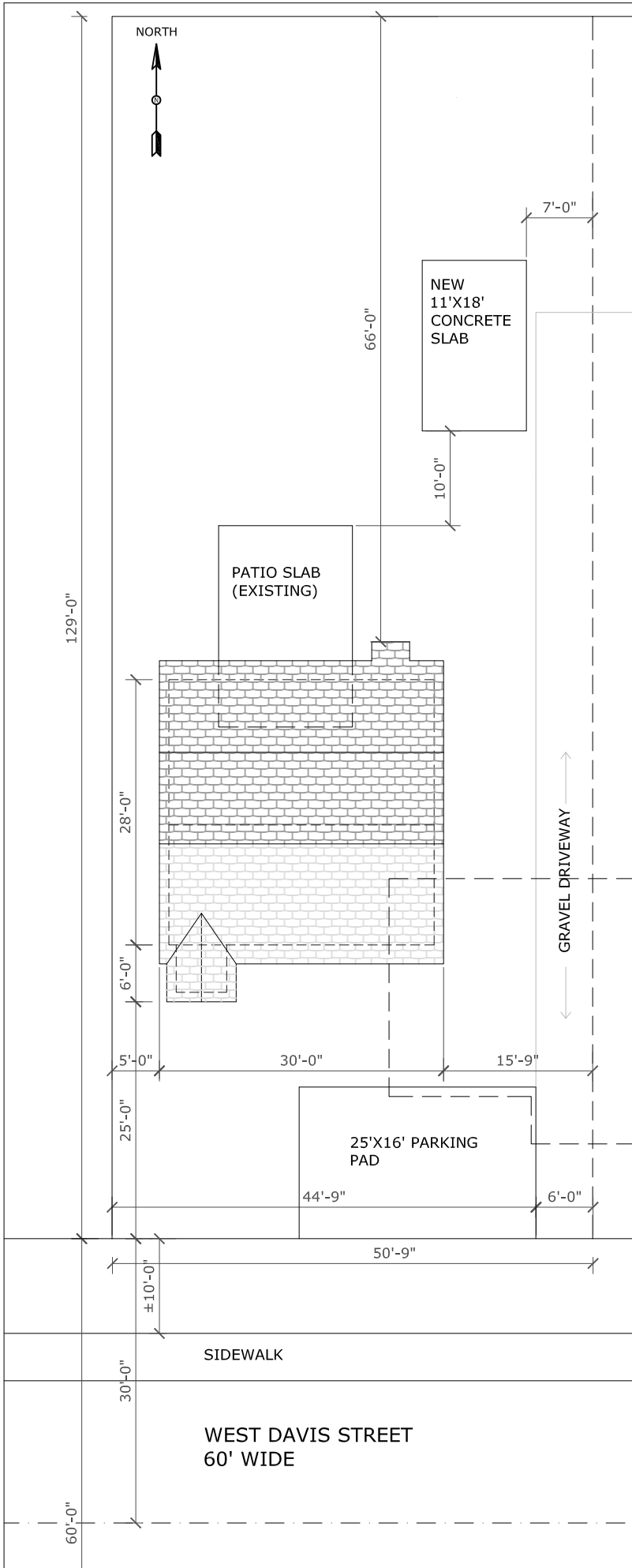
DATE: August 29, 2013

SPATIAL SYNERGY STUDIO LLC

7574 BEVELHYMER ROAD
 NEW ALBANY, OHIO 43054

P: (614) 855-8085
 meera@green-bldg.com





PROJECT SUMMARY

USE GROUP: R-3

CONSTRUCTION TYPE: 5B (UNPROTECTED)

SUMMARY:

THE NEW BUILDING IS TWO-STORY SINGLE-FAMILY RANCH HOME WITH A TOTAL SQUARE FOOTAGE OF 1232 SF. THE BUILDING IS A WOOD FRAME STRUCTURE WITH A CONCRETE BLOCK FOUNDATION. THIS BUILDING SHALL COMPLY WITH THE CURRENT YEAR OF ALL APPLICABLE NATIONAL, STATE AND LOCAL CODES INCLUDING (BUT NOT LIMITED TO):

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 CITY OF YELLOWSPRINGS BUILDING AND ZONING CODES

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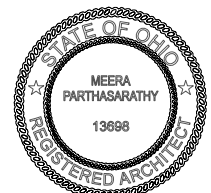
SITE PLAN - FRONT PAD OPTION

SCALE: 1/8" = 1'-0" DATE: August 29, 2013

SPATIAL SYNERGY STUDIO LLC

7574 BEVELHYMER ROAD
 NEW ALBANY, OHIO 43054

P: (614) 855-8085
 meera@green-bldg.com



BOARD OF ZONING APPEALS

MEETING DATE: September 18, 2013

STAFF REPORT; Tamara Ennist, Village Zoning Administrator

APPLICANT: Calvin D. Weaver; Owner of Dollar General Store

PROPERTY OWNER: Calvin D. Weaver

REQUESTED ACTION: 1) Request a special exception to enlarge a non-conforming structure [YSZC Sec. 1266.07(c)]. 2) Request for a variance to a required rear yard setback for the purpose of an addition to the principle structure [YSZC Sec. 1258.07(d)]. 3) Request for a variance to allow a parking lot over 15,000 square feet to extend into the front yard setback area [YSZC Sec. 1268.03(h)]. 4) Request for a variance to allow the width of the western most driveway curb opening to be greater than the thirty (30) feet maximum opening allowed [YSZC Sec. 1268.03(k)(2)].

Hearing notice: *“Calvin D. Weaver, owner of the Dollar General located at 1485 Xenia Avenue, has requested a special exception per the Village of Yellow Springs Zoning Code Section 1266.07(c) to allow an enlargement of a non-conforming structure. In addition, variances to the following sections of the Village of Yellow Springs Zoning Code; YSZC Sec. 1258.07(d) Rear Yard Depth and YSZC Sec. 1268.03(k)(2) Width of Driveway. The property is located within the General Business zoning district. Applicable Yellow Springs Zoning Code sections are: Sec. 1258.07, Sec. 1266.07(a); 1266.07(c), 1268.02(b), 1268.03 and 1268.06(c). The property is further identified as Greene County Parcel ID #F19000100060016800.”*

LOCATION: 1485 Xenia Avenue (U.S. 68), Yellow Springs, Ohio 45387

GREENE COUNTY PARCEL ID#: F19000100060016800.

EXISTING ZONING: The property is within the ‘General Business’ zoning district

STAFF ANALYSIS OF THE APPLICATION: The property owner is requesting a special exception to allow construction of an addition to the principle structure located on the property which has been determined to be a non-conforming structure in that it currently does not provide a rear yard of twenty-five (25) feet and a side yard of fifteen (15) feet. Construction of the requested addition would also require approval of a ten (10) feet variance to the required twenty-five (25) feet rear yard setback, YSZC Sec. 1258.07(d), so that the building addition can extend in line with the existing structure. In addition, the expansion of the store requires additional parking spaces and the parking lot design, which exceeds 15,000 square feet, cannot be configured without utilizing the front yard setback areas along both rights-of-way. This would require approval of a variance to YSZC Sec. 1268.03(h). The applicant also requests approval of an 8’ variance to allow a thirty-eight (38) feet wide curb opening for the western most driveway to accommodate the turn radius of their delivery trucks as they leave the site. The current code, YSZC Sec. 1268.03(k)(2), restricts the curb cut to a maximum of thirty (30) feet.

Property Information and analysis:

The property is located at the northeast corner of the intersection of 1485 Xenia Avenue (U.S. 68) and Kahoe Lane. This property was originally lots #6, 7, & 8 of the Southgate Subdivision but has recently been re-platted into one single lot, known as lot #7A of Southgate Two Replat. This lot has 225.14 feet of frontage along Xenia Avenue and 148.22 feet of frontage along Kahoe Lane. It is also bordered along the east boundary with Dawson Alley. The lot contains approximately .76 acres (33,300 square feet).

The General Business district requires a thirty (30) feet front yard setback, a twenty-five (25) feet rear setback and a minimum distance of fifteen (15) feet from the side lot line [YSZC Sec. 1258.07]. By definition, a corner lot has two front lot lines and the rear lot line is the lot line opposite from the shortest front lot line [YSZC Sec. 1240.09(61)(D)]. In the case of this new corner lot, the rear lot line would be the lot line opposite from the Kahoe Lane front lot line and the side lot line is along Dawson Alley. As such, the one principal structure located on the lot is situated within the required rear and side yard setbacks, creating a non-conforming structure [YSZC Sec. 1266.07].

It should be noted that, the property owner did do a replat of the original three lots to accommodate the proposed addition by removing a property line that the building was built over. However, if the replat had only combined the two interior lots into one lot then it would not be a corner lot and the proposed building addition, while still needing an exception to expand a non-conforming structure, due to the encroachment into the rear yard, would not need a variance for the side yard setback because the existing structure had already addressed the fifteen (15) feet side yard setback.

Regardless, now that the replat has switched the location of the rear and side lot lines and the rear yard setback requirement is greater than the side yard setback requirement, a ten (10) feet variance to the required twenty-five (25) feet rear yard setback will be necessary to accommodate the proposal in addition to the exception to allow the enlargement of the non-conforming structure [YSZC Sec. 1266.07(c)].

Because the addition will expand the floor area of the business, an additional eleven (11) parking spaces are required [YSZC Sec. 1268.06(e)]. A parking lot plan has been submitted that identifies the required forty-four (44) parking spaces, including the required four (4) handicapped spaces. Because this is an existing parking lot, it does not satisfy all of the current design requirements for a parking lot. The applicant is requesting a variance to YSZC Section 1268.03(h) which requires parking lots larger than 15,000 square feet to meet the applicable yard requirements for the principle building. When the area available for parking is calculated with the two thirty (30) feet front yard setbacks and the ten (10) feet setback from the building it leaves an area that is less square feet than is needed to accommodate the forty-four parking spaces and two drive aisles. In addition, the applicant is requesting a variance to the maximum width allowed for the first ten (10) feet of the western most drive way [YSZC Sec.

1268.03(k)(2)] to help accommodate the movement of the delivery trucks as they leave the site. In addition, because the existing parking lot does not satisfy the landscaping design requirements of the current zoning code and because there is an exceptionally wide right-of-way along Xenia Avenue, the Village Manager has been in conversation with the business owner regarding placement of landscaping along the Xenia Avenue side of the parking lot within this public right-of-way. An e-mail received from the Village Manager on August 28, 2013 states that the Village Manager is willing to provide a license to the landowner to put landscaping on Village property (adjacent to the western property boundary). This would help to screen the parking area from the Xenia Avenue right-of-way and improve this Village entry corridor.

Additional Information:

VARIANCE CRITERIA:

Section 1258.07 General Business District - Area, Yard and Height Requirements.

The following requirements shall be observed in a General Business District;

- (c) Side Yard Width. The least side yard width shall be not less than fifteen feet minimum and shall be a minimum of thirty feet when the lot adjoins a residential district or the Village corporation line.

(d) Rear Yard Depth. The rear yard depth shall be not less than twenty-five feet and shall be a minimum of thirty-five feet when adjoining a Residence District or the Village corporation line.

(e) Front Yard Depth. The least front yard depth shall be thirty feet.

(f) Lot Coverage. No building shall be established with lot area coverage of more than fifty percent, and total lot coverage by impervious surfaces shall not exceed eighty percent.

Section 1266.07 Nonconforming Structures

(a) No nonconforming structure shall be enlarged or increased, nor extended to occupy a greater area than was occupied at the effective date of this Zoning Code and its amendments, except as otherwise provided herein.

(c) The Board of Appeals may permit a nonconforming structure to be enlarged as a special exception provided that such enlargement meets the standards imposed by Section 1242.06(e)(1)D.

Section 1242.06(e)(1) Board of Appeals - Special Exceptions. Application for a special exception shall follow the same procedures outlined in Section 1242.05(f). A special exception may be granted to allow the following situations:

D. To permit the one-time enlargement of an existing nonconforming building upon the same lot occupied by such building or upon an adjoining lot, provided that such lot was under the same ownership as the lot upon which such nonconforming building existed at the time such building became nonconforming, and provided, further, that such enlargement is necessary and incidental to the existing use of such building. In addition, such enlargement shall conform to the height, yard and area requirements of the zoning district in which it is located, where such enlargement is not detrimental to present and potential surrounding uses, will be in harmony with the general purpose and intent of this Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the health, safety and general welfare of the residents of the Village.

Section 1240.09 DEFINITIONS;

(61) Lot measurements shall be defined as follows:

A. "Area" of a lot means the area contained within the lot lines.'

B. "Coverage" means the amount, usually states as a percentage, o lot area, measured on a horizontal plane, covered by a structure or part thereof from the ground upward.

C. "Frontage" of a lot means the portion nearest the public street right-of-way. In the case of corner lots, all sides of a lot adjacent to streets shall be considered frontage and yards shall be provided with reference to each right-of-way abutted.

D. "Lot Line" means the property lines bounding a lot, excluding any area within a public right-of-way. Specifically;

1. A front lot line separates a lot from a public street right-of-way.

2. A rear lot line is opposite and most distant from the shortest (reference corner lots) front lot line. (*By definition, the rear lot line would be opposite from Kahoe Lane.*)

3. A side lot line is any lot line other than a front or rear lot line. (*By definition, the side lot line would be opposite from Xenia Avenue.*)

- (67) **“Nonconforming Lot”** means a parcel which lawfully existed prior to the adoption, revision or amendment of this Zoning Code, but which fails to conform to the use district in which it is located.
- (71) **“Parking lot”** means an area not within a building where motor vehicles may be stored for the purpose of temporary, daily or overnight off-street parking.
- (72) **“Parking Space, Off-Street”** means an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but located totally outside of any street or alley right-of-way.
- (89) **“Setback”** means the required minimum horizontal distance between the building line and the related front, rear and side property line.
- (112) **“Special Exception”** means a use that would not be appropriate generally without restriction throughout a zoning district but which, if controlled to the number, area, location and/or relation to the neighborhood, would promote the public health, safety and general welfare.
- (120) **“Variance”** means a dispensation permitted on individual parcels of property as a method of alleviating unnecessary hardship by allowing reasonable use of a building, structure or property which, because of unusual or unique circumstances, is denied by the terms of this zoning code.

Pursuant to the requirements of Section 1242.06(d)(1)A of the Village Zoning Code, Variances from the terms of the Zoning Code shall be granted only where the property owner shows that the application of a zoning requirement to the property owner’s property is inequitable causing the property owner 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 owner’s 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; and
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

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 that the Board of Zoning Appeals approve the special exception to allow the one-time enlargement of the structure and the variance to the rear yard setback. In addition, staff recommends that the parking lot driveway be discussed and modified to allow for the minimum variance needed for the opening but would not recommend any opening wider than that shown for the aisle widths. Staff also would recommend approval of a variance to allow the continued parking of vehicles in the front setback area since that is the existing design of the parking lot and as long as an agreement is worked out to provide landscaping in the right-of-way that will be operated and maintained by the business owner.

VILLAGE MANAGER’S RECOMMENDATION: (May be provided at the meeting).

I agree with the staff recommendation with one comment on the landscaping requirement. The landscaping requirement could be met with an agreement by landowner to do landscaping as required by the then Village Manager in a 10 wide area parallel to his western lot line on Village property. There are already some trees in this area and it a future Village Manager could determine whether more landscaping is needed. For example, at this time, there is no residential development across the street and so the need for screening is minimal. Request BZA condition the Special Exception on the landowner complying with any future landscaping plan approved by the Village Manager. Maintenance is the responsibility of the landowner, again per approved plan. At this time, I do not see a need for further landscaping on the western property boundary.

The landowner has agreed to replace the non-conforming pole sign with a conforming monument sign and this should be placed per the site plan. Our thanks to the landowner for resolving this non-conformity.

PRELIMINARY SITE PLAN

CITY, STATE - STREET:

YELLOW SPRINGS, OH - XENIA AVE & KAHOE LN

PROTOTYPE: CONVENTIONAL

DEVELOPER

DESIGNER

DATE:

BLDG/SALES SF: ±8,803 SF

COMPANY:

PATTON DEVELOPMENT

COMPANY:

KB SELLARS ENGINEERING

08/30/13

ACREAGE:

NAME:

TAB PATTON

NAME:

KELLY SELLARS

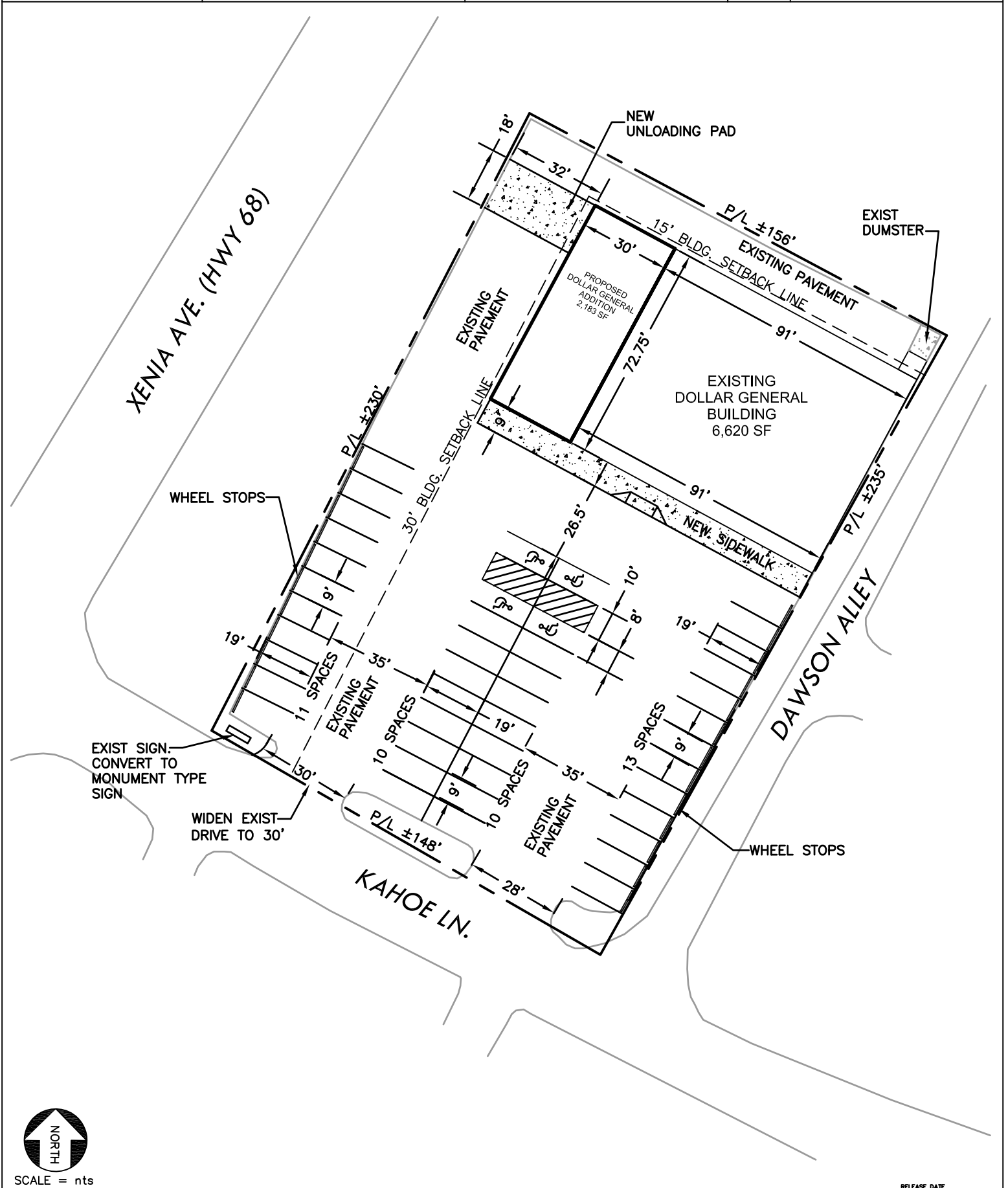
PARKING SPACES: 35

PHONE #:

864-444-3607

PHONE #:

864-699-9512



SCALE = nts

RELEASE DATE

-Public Notice-

**PUBLIC HEARING
YELLOW SPRINGS, OHIO
Board of Zoning Appeals**

Notice is hereby given that:

Calvin D. Weaver, owner of the Dollar General located at 1485 Xenia Avenue, has requested a special exception per the Village of Yellow Springs Zoning Code Section 1266.07(c) to allow an enlargement of a non-conforming structure. In addition, variances to the following sections of the Village of Yellow Springs Zoning Code; YSZC Sec. 1258.07(d) Rear Yard Depth and YSZC Sec. 1268.03(k)(2) Width of Driveway. The property is located within the General Business zoning district. Applicable Yellow Springs Zoning Code sections are: Sec. 1258.07, Sec. 1266.07(a); 1266.07(c), 1268.02(b), 1268.03 and 1268.06(c). The property is further identified as Greene County Parcel ID #F19000100060016800.

A PUBLIC HEARING WILL BE HELD ON THIS PETITION:

DATE: Wednesday, September 18, 2013. **TIME:** 7:00 p.m.

LOCATION: Council Chambers, 2nd Floor, Bryan Center, 100 Dayton Street, Yellow Springs, OH 45387

This notice provides you and every other interested party the opportunity to appear or have input at the hearing. You may come in person or have someone appear on your behalf. You may express your views in writing by providing a copy to the Clerk of Council for inclusion in the record of the hearing. The application, as prepared by the petitioners, may be examined at the office of the Village Planner on the 2nd floor of the Bryan Community Center, 100 Dayton Street, Yellow Springs, Ohio 45387. Questions regarding the applications, zoning code or procedures may be directed to the Village Zoning Office at the same address, or by calling 937-767-3702. Tamara Ennist, Village Zoning Administrator.