

VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on Wednesday, July 17, 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
425 Phillips Street
107 Tower Court
345 Spring Glen Drive
305 N. Walnut Street, Suite 1 & J
- 8:45 AGENDA PLANNING
- 9:00 ADJOURNMENT

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

IN COUNCIL CHAMBERS @ 7:00 P.M.

Wednesday May 8, 2013

CALL TO ORDER

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

ROLL CALL

Ted Donnell, Ellis Jacobs, and Alternate Dan Reyes were present, as was the Zoning Administrator for the Village, Stephen Anderson. Village Manager Laura Curliss was also in attendance. Steve Conn, Chris Peifer and Kingsley Perry were unable to attend.

REVIEW OF AGENDA

There was no review of the agenda.

REVIEW OF MINUTES

Jacobs MOVED and Reyes SECONDED a MOTION to APPROVE the Minutes for January 9, 2013. The MOTION PASSED 3-0.

PUBLIC HEARING

Donnell opened the Public Hearing for 315 Elm Street. Anderson reviewed the particulars as follows:

LOCATION: 315 Elm Street

ZONING DISTRICT: Residence 'B'

APPLICANT: Les Gilford

PROPERTY OWNER: Judith Hempfling

REQUESTED ACTION: Request for a variance to Yellow Springs Zoning Ordinance Sections 1250.06(a) and 1268.05 in order to reduce the off-street parking requirements associated with the conversion of an accessory structure to a dwelling unit as permitted in Section 1278.02(e).

HEARING NOTICE: *“Les Gilford, acting with acknowledgement of the property owner, Judith Hempfling, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Sections 1250.06(a) & 1268.05 in order to reduce the parking required for a new dwelling unit proposed within an existing accessory structure located at 315 Elm Street. The property is located within the Residence ‘B’ zoning district which permits an accessory residence providing that 2 off-street parking spaces are provided.*”

GREENE COUNTY PARCEL ID: #F19000100100013000.

STAFF ANALYSIS OF THE APPLICATION: The applicant is requesting relief from the strict requirements of the off-street parking regulations as it applies to a residential dwelling unit.

Property Information and analysis:

The property, located at 315 Elm Street, is lot #79 of the Yellow Springs Subdivision and it measures 70.50' X 120', equaling 8460 square feet (approximately .2-acre). Currently, this lot contains a two-family residential principle structure and a detached two car garage accessory structure. The owner has

applied for a zoning permit to allow the accessory structure to be converted into a dwelling unit as permitted by Section 1278.02(e).

Variance Criteria

Yellow Springs Zoning Ordinance, Section 1250.06(a) identifies that, “All residential structures shall provide two off-street spaces per dwelling unit. All other uses are structures are subject to the parking requirements set forth in Chapter 1268.

Yellow Springs Zoning Ordinance, Section 1268.05 identifies that, “The following residential establishments shall have the following number of off-street parking spaces; (c) “One and two-family housing dwelling units - 2.0 off-street parking spaces per dwelling unit...

NOTE: This application was previously submitted to the Board of Zoning Appeals for their review on March 21, 2012. At that meeting the Board of Zoning Appeals approved the application as a special exception per Yellow Springs Zoning Ordinance Section 1242.06(e)(1)E.

However, Yellow Springs Zoning Ordinance, Section 1242.06(c)(3) states, “Every special exception or variance granted by the Board shall expire and be of no force or effect after twelve months from the date of granting by the Board unless the beneficiary of such special exception or variance shall have made a substantial start toward putting the property affected to the use permitted within such time period.”

Yellow Springs Zoning Ordinance, Section 1242.06(e)(1)E states; “Special Exemptions. (1) 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:

E. To vary parking and loading-unloading regulations whenever the character or use of the building is such as to make unnecessary the full provision of parking and loading-unloading facilities or when such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

Anderson referenced a letter from then-Village Solicitor John Chambers which was written for the initial variance request of March 21, 2012. There were two phrases in that letter which caused Anderson to look further at the request, Anderson stated. The letter, he said, refers to two residential dwelling units contained in the primary structure on the property, and later states that “having three dwelling units on a lot is a permitted use in R-B so long as all conditions are met. You advise me that all zoning conditions are met except for the off-street parking requirements.”

Anderson noted that he then began to look closely at the definition of “dwelling unit,” which by definition of the current code is “a building”. He then read through his memo on the subject as follows:

The Zoning Code for the Village of Yellow Springs, Section 1250.01(b) Residence “B” states as follows: “The Residence “B” district provides space in the Village for medium-density single, two and three-family and multifamily residential development, as well as row house residential development. Land in this district shall be served with public water and sewer services.

The property measures 70.5+/- ft. along Elm Street and 120+/- ft. along South Stafford Street and equals 8,460+/- square feet in size. Currently, the lot contains a two-family residential structure (principle structure) and a detached two car garage (accessory structure).

Anderson then quoted Section 1250.02 Permitted uses; lot size and bulk requirements, as follows:

Single-family dwelling, District “B”, minimum lot area per dwelling: 7,500 square feet
Two-family dwelling, District “B”, minimum lot area per dwelling: 6,000 square feet
Multi-family dwelling, District “B”, site plan only, minimum lot area per dwelling: 6,000 square feet (6,000 sq. ft. per unit)

Section 1240.09 definitions

(1) “Accessory structure” means a subordinate structure detached from, but located on the same lot as, the principal structure, the use of which is incidental and accessory to that of the principal structure.

(35) “Dwelling” means a building, or portion thereof, used exclusively for residential occupancy, including one-family, two-family and multifamily dwellings, but not including hotels, lodging or boarding houses or tourists homes.

- A. Dwelling, single-family” means a building consisting of a single dwelling unit only, separated from other dwelling units by open space.
- B. “Dwelling, two-family” means a building consisting of two dwelling units or designed for or used by two families or housekeeping units.
- D. “Dwelling, multifamily” means a building or portion thereof consisting of three or more dwelling units with varying arrangements of entrances and party walls, including a row dwelling.

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

The applicant is requesting that an accessory structure be allowed to be converted to a dwelling unit as permitted by Section 1278.02(e)

(e) Dwelling units are permitted in accessory structures only in Residence Districts and only when the following conditions are met:

- (1) The established density of the Residence District where the dwelling is proposed is maintained.
- (2) The total habitable space in the accessory structure does not exceed 750 total gross square feet.
- (3) No new curb cuts are permitted in conjunction with the dwelling.

Anderson stated that since there is not an overall given density for the Residence “B” District, other than medium density, he has based his opinion on lot area per dwelling as identified in section 1250.02.

Currently, the lot in question contains a two-family residential structure (principle structure) and a detached two car garage (accessory structure). Both structures meet the current definition in the zoning code and are both allowed within the Residence “B” zoning district.

Anderson stated that he is not sure when the house was converted to a two-family residential structure. Based upon the minimum lot area per dwelling, he stated, (with the dwelling being a building) the current configuration complies with the 6,000 square feet per two-family dwelling since the lot equals 8,460+/- sq. ft. However if the dwelling unit is added to the accessory structure, the lot size would need to be 13,500 square feet or greater (assuming the proposed dwelling unit in the accessory structure is a single-family, requiring 7,500 sq. ft.) therefore the density requirement of the Residence “B” District will not be maintained for this lot.

Anderson concluded that the conversion of the existing accessory structure to a dwelling unit will exceed the Residence “B” density requirement.

Donnell stated that the initial variance is now null and void, having exceeded the one-year period within which building must commence. Donnell stated that there is now another issue on the table with regard to density, and characterized the hearing as one in which two decisions must be made, the first regarding density, and the second regarding off-street parking.

Jacobs sought clarification, and asked what could be done to address the situation as it currently stands.

Donnell opined that the BZA can issue a variance for density, but wondered whether the house’s status as a double might interfere with that process. Donnell asked Les Gilford whether he knew when the structure was converted from a single into a double unit. Gilford did not know, but stated that the house was a double at the time it was purchased by the current owner.

Donnell stated that he had inquired with Greene County to see whether they had an occupancy permit for a double for the 315 Elm Street address. There was no record of such. Donnell noted that this means that the building was not previously zoned as a double. He stated that therefore the BZA is dealing with not only a non-conforming lot, but also an illegal double.

Jacob’s asked that the Board consider the issues one at a time. He asked whether those present dissented with the idea that theoretically a size variance could be issued.

Curliss stated that she considers this a legal matter, and would need to obtain a legal opinion as to whether the issue is more properly a use variance, which is not legal, or is a size variance, which is legally permissible.

Reyes raised the issue of noticing, observing that the hearing has been noticed as a request for a parking variance, rather than as a request for a size variance.

There was general agreement with Reyes’ observation.

Curliss asked for clarification from Anderson for meeting the definition of multi-family.

Anderson stated that in his interpretation, if the density requirement were met, all three units would need to be housed in a single structure to be considered a multi-family unit. He added that a three-unit multi-family dwelling would require 18,000 square feet of lot size.

Jacobs called attention to the matter of whether the double is an illegal or a non-conforming use, stating that the original letter from Chambers seems to address this: based upon lack of information as to when the structure was converted, the assumption is for the property owner.

Jacobs pointed out a seeming inconsistency, noting that if the structure in question is to qualify as an accessory dwelling unit, it must encompass no more than 750 square feet, yet the area requirement being imposed by Anderson is that of a single family house.

Anderson agreed that it is a difficult matter, but that the zoning code does not provide a lot requirement for the conversion of an accessory structure to a dwelling structure.

Anderson responded to a question from Donnell, stating that the draft code does provide a definition of "accessory dwelling," and gives a district requirement regarding lot size. The current code gives only a "number of units per acre". Anderson noted that even in the proposed code, the lot at 315 Elm would be inadequate in terms of square footage.

Anderson stated that the proposed code would require that the primary structure have 4,500 square feet per unit, while the accessory structure must have 6000 square feet. This means a total lot size requirement of 15,000 square feet.

Donnell stated that there seems to be no advantage to the applicant to wait for adoption of the new code.

Anderson concurred, stating that unless the text of the draft is modified to decrease lot minimums, there is no advantage to the applicant to await the new code.

Donnell opined that the BZA cannot entertain the variance request for lot size because that aspect of the request was not advertized. He considered further that there would be no point in ruling on the parking variance given the lack of certainty regarding whether a variance would be possible for lot size.

Jacobs differed, suggesting that a decision regarding how to proceed be left to the applicant.

Gilford stated that he did not understand the radical departure from Chambers' initial finding that the matter was only that of a parking variance, and the current interpretation that it is in fact either a size or a use variance in addition to a parking variance.

Jacobs determined that the only issue at hand regarding a permitted use as an accessory structure as a dwelling under 1240.09 is the condition that “the established density of the resident district where the dwelling is proposed is maintained.”

Jacobs asked whether there is an alternative manner of looking at established density.

Donnell stated his opinion that different blocks have different patterns of density, and those patterns might be taken into consideration when determining established density, infill, additions, etc.

Gilford stated that he and the applicant are attempting to use the structure and the lot to their fullest potential, and to provide housing options within walking distance to town. Gilford noted that there are a number of other homes within proximity that sit on very small lots. He opined that the fabric of the area would not then be changed, but would be enhanced in that an unused accessory structure would become a useful dwelling.

Jacobs opined that perhaps established density means the established fabric of the existing neighborhood where the structure exists rather than what the code tries to create.

Jacobs read the definitions of net density versus gross density.

Curliss then asked how one gives effect to section 1250.02, and commented that it did not seem to her to be permissible to intentionally create a non-conformity where conformity currently exists.

Gilford asked how this is possible, given that those non-conformities do in fact exist in that neighborhood. He explained further that this is established within the neighborhood, and in his mind this creates an area in which this density is the norm. Gilford expressed his understanding that the BZA looks at the spirit of the law rather than at the letter of the law.

Reyes noted that the board had considered the best use of the property within the existing neighborhood when it had granted the parking variance, but noted that this variance brings a higher threshold for cooperation with the neighbors.

Donnell noted that the BZA must establish the facts of the existing condition, and determine where those facts differ from what the code requires. The BZA must then make a determination as to how it can interpret those facts into permissible exceptions.

Donnell commented that the code is in fact specific regarding intent, and that is the task of the BZA, is to move the applicant in the direction of the comprehensive plan.

Jacobs asked for interpretation regarding the permission given in the new code for converting accessory structures into dwellings.

Donnell stated his opinion that it reflects a trend backed by a need, and noted that there were many requests for this option under the existing code, and the new code reflects this reality.

Donnell sought to open a door for granting a continuation of the recently expired variance, asking Gilford whether he has submitted an architectural plan or whether he has obtained a building permit to date.

Gilford stated that he did not, within the given year, apply for a building permit. This seemed to close the door to this option.

Jacobs noted that it is unclear whether how to interpret established density, and it is unclear whether the application is rightly a use variance. Given the situation, Jacobs stated, the BZA cannot properly consider the issue of a size variance, but could consider the issue of a special exception regarding parking.

Donnell noted that the Board cannot act on the density issue, but it can act upon the issue on the table which is the special exception to parking.

Gilford responded that the parking matter is of lesser importance, and obtained clarification that he needs to reapply for a size variance.

Curliss agreed, noting that she needs to obtain a legal opinion regarding whether the variance can in fact be granted by the BZA before the matter can reasonably proceed.

Donnell suggested to Gilford that if BZA tables the request, that will put the matter on the agenda for June.

Jacobs suggested that in the interim, Gilford file for an area variance so that the matter will be in front of the BZA in June.

The Clerk received clarification that Curliss should obtain a legal opinion before Gilford attempts to file for an area variance. Curliss stated that she would obtain the opinion as soon as possible, and that it should not take long.

Donnell called for a motion to table. Jacobs **MOVED TO TABLE THE SPECIAL EXCEPTION TO PARKING REQUIREMENT**. Donnell **SECONDED**. The **MOTION PASSED 3-0 ON A ROLL CALL VOTE**.

Donnell announced an upcoming Chamber Chat dealing with zoning requirements relating to fire safety.

ADJOURNMENT

There being no further business, Jacobs **MOVED** and Reyes **SECONDED** a **MOTION** to adjourn. The **MOTION PASSED 3-0**. Meeting **ADJOURNED** at 7:47 pm.

Ted Donnell, Chair

Attest: Judy Kintner, Clerk

DRAFT

VILLAGE OF YELLOW SPRINGS
Board of Zoning Appeals
NOTICE OF PUBLIC HEARING

Notice is hereby given that:

Four owners of property or businesses in the Village have requested variances from provisions of the Village of Yellow Springs Zoning Code;

- 1) **425 Phillips Street** (Residence 'B' District) – Owners, Sheila & Dean Pallotta, request a variance to Section 1250.02 to allow a reduction of a side yard setback requirement for the addition of an attached garage; a variance to Section 1278.02(a) & 1278.03(b)(5) to allow an accessory pool and a patio to extend into a front yard setback area; and a variance to Section 1278.04(a)(1) to allow a six foot fence in a front yard.
- 2) **107 Tower Court** (Residence 'B' District) – Melanie Ricart, for Children's Montessori Cooperative, requests a variance to Section 1250.03 to allow a reduced side-yard setback and a reduced lot area; and a variance to Section 1272.05 for an access variance, in pursuit of a conditional use permit for operation of a Montessori style pre-school within a residence district.
- 3) **345 Spring Glen Drive** (Residence 'A' District) – Owners, Christopher & Kathleen Hamilton, request a variance to Section 1278.04 to allow an eight feet high fence in a rear yard.
- 4) **305 N. Walnut Street, Suite 1 & J** (Light Industrial District) – Meg Solomon-Gujer, Business Manager, acting with acknowledgement of the property owner, Millworks Development Corp. for the structure operated by 'S and G Artisan Distillery', has requested a variance to Section 1260.03(c) in order to allow up to 25% of the ground floor to be used for retail sales of goods produced on site conditioned upon approval of a conditional use permit.

A PUBLIC HEARING WILL BE HELD ON THIS PETITION BY THE VILLAGE OF YELLOW SPRINGS BOARD OF ZONING APPEALS:

DATE: Wednesday, July 17, 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 applications, as prepared by the petitioners, may be examined at the office of the Village Manager 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 Manager at the same address, or by calling (937) 767-1279.

Tamara Ennist
Village Zoning Administrator

YS News: Publish July 4, 2013, Provide affidavit.

Village of Yellow Springs

BOARD OF ZONING APPEALS APPLICATION FOR VARIANCE

6/13/13
Permit # 2013-16

Name of Applicant: Sheila + Dean Pallotta
 Phone: 767-2100 Email: Sheila@DunphyRealEstate.com
 Property Owner: Sheila + Dean Pallotta ESTATE.COM
 Phone: 767-2100 Email: Sheila@DunphyRealEstate.com
 Address of Proposed Project: 425 Phillips St Estate.com
 Greene County Parcel I.D. #: E1900010009002300
 Description of Proposed Project: Build an attached 20' x 35' garage where the existing sun porch is located on the east side of our house for storage + shelter for our vehicles & for a pool & surrounding patio & 6' fence in front yard area.
 On 6/13/2013 (date), Dean Pallotta

first approached my office applying for a zoning permit for the project described above. The application for permit was denied for the following reasons: Sec. 1250.02 - Requires 5' side setback for the attached garage. Sec. 1278.02(a) - Restricts all accessory structures to the rear yard. Sec. 1278.02(b)(5) - Patios can be in the rear yard. Sec. 1278.04(a)(1) - Fences in front yards are limited in height to four (4) feet.


Fee: \$35.00 Paid on: 6/20/13 (date) Attach copy of check or receipt CH# 1597 US Bank

Zoning Administrator: Tamara Bonnick Date: 6/20/13

Residence 'B'

Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

Tamara Ennist

From: Sheila Pallotta [sheila@dunphyrealestate.com] **Sent:** Thu 6/27/2013 1:16 PM
To: Tamara Ennist; tennist@co.greene.oh.us
Cc: sheila@dunphyrealestate.com
Subject: RE: Site plan for 425 Phillips St
Attachments:  fence information.pdf(162KB)

Hi Tamara;

Please see the attached drawing highlighting the information to be added to our variance request.

The requested variance for a 6' fence where the current existing 4' fence is the remainder in front of the house will be 4'.

The fence will be wood privacy fence

There will be a self-closing / locking gate on the Phillips St side of the property and by the driveway

The fence will be 1' off the Phillips St. lot line as per code

The outdoor shower structure will be an unroofed stall like structure with wooden walls (open to the sky)

The spa will be placed on the ground (grade level)

Please let me know I you need any other information.

Take care,

Sheila

From: Sheila Pallotta [mailto:sheila@dunphyrealestate.com]
Sent: Thursday, June 27, 2013 11:12 AM
To: Tamara Ennist (tennist@yso.com); 'tennist@co.greene.oh.us'

Village of Yellow Springs Zoning Code Section 1242.06(d) - Variances

- A. Variance standards. 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:

Thank you for reviewing our request for a variance to build up to what we believe to be 2' from the property line to the east of our home. This would require a variance for an additional 3' of building surface. We would like to replace the attached porch on the east side of our home with a deep 2 car garage (20' x 35') to line up with the lines of the home and allow for storage. This will allow us to keep the cars in the garage as well as store important items critical to upkeep of the home and yard (mower, gardening tools, bikes, etc...). We had Richard Zopf locate the pins to determine the property lines.

We worked with an architect to determine the best location that will have the least amount of impact to neighbors as well as governmental services.

We have 2 possible options to build a garage:

1. The one being requested which is replace the current porch 10 x 24' porch with a 20' x 35' attached garage utilizing the existing driveway.
2. Request a driveway and garage that will go in the northeast corner of the lot. This option will require a new driveway, block the sunlight to the garden of our neighbors to the north as well as the driveway and structure would be built over storm sewer access, water lines, next to the electric pole servicing several homes.

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;

The addition of an attached 2 car garage will increase the property value of the home and allow for storage of mowers, equipment, bikes etc. in addition to protecting our vehicles by keeping them out of the elements. All this contributes to a tidier, cleaner area overall.

2. Whether the variance is substantial;

This is not a substantial variance – the request is for an attached 2 car garage to be built in place of the existing porch with some expansion to accommodate 2 vehicles and store lawn equipment, bikes, tools etc....

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;

The essential character of the neighborhood will not be substantially altered with the addition of an attached 2 car garage to the east side of our home. Nor will the adjoining properties suffer. This should be a welcome for the property to our west. There is a very thick over grown row of honeysuckle between the 2 properties which we have been working on cleaning up. Also, our porch faces the west side of the adjoining property which is their bedrooms. By putting a garage on the east side of our home it will reduce noise on the west side of our neighbors home which is their sleeping quarters. We will be moving the outdoor porch to the north side of the home so it faces the yard instead a house.

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;

There will be no impact to the various governmental services listed. If we were to request the second option above this would be the case. This way we can use the existing driveway and not impact current services.

5. Whether the property owner purchased the property with knowledge of the zoning restriction;

Yes – we knew the porch faced the west side of our neighbors home and purchased the home with the understanding that the porch would need to be removed and a garage possibly added, replaced or re-built. We are requesting additional space to build a structure that will accommodate our needs and improve the property value as well as look appropriate for the home.

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

Per the information above, we worked with a professional architect and Richard Zopf (locate pins) to determine the best location for a 2 car garage on the property with the least amount of impact the neighbors and property.

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

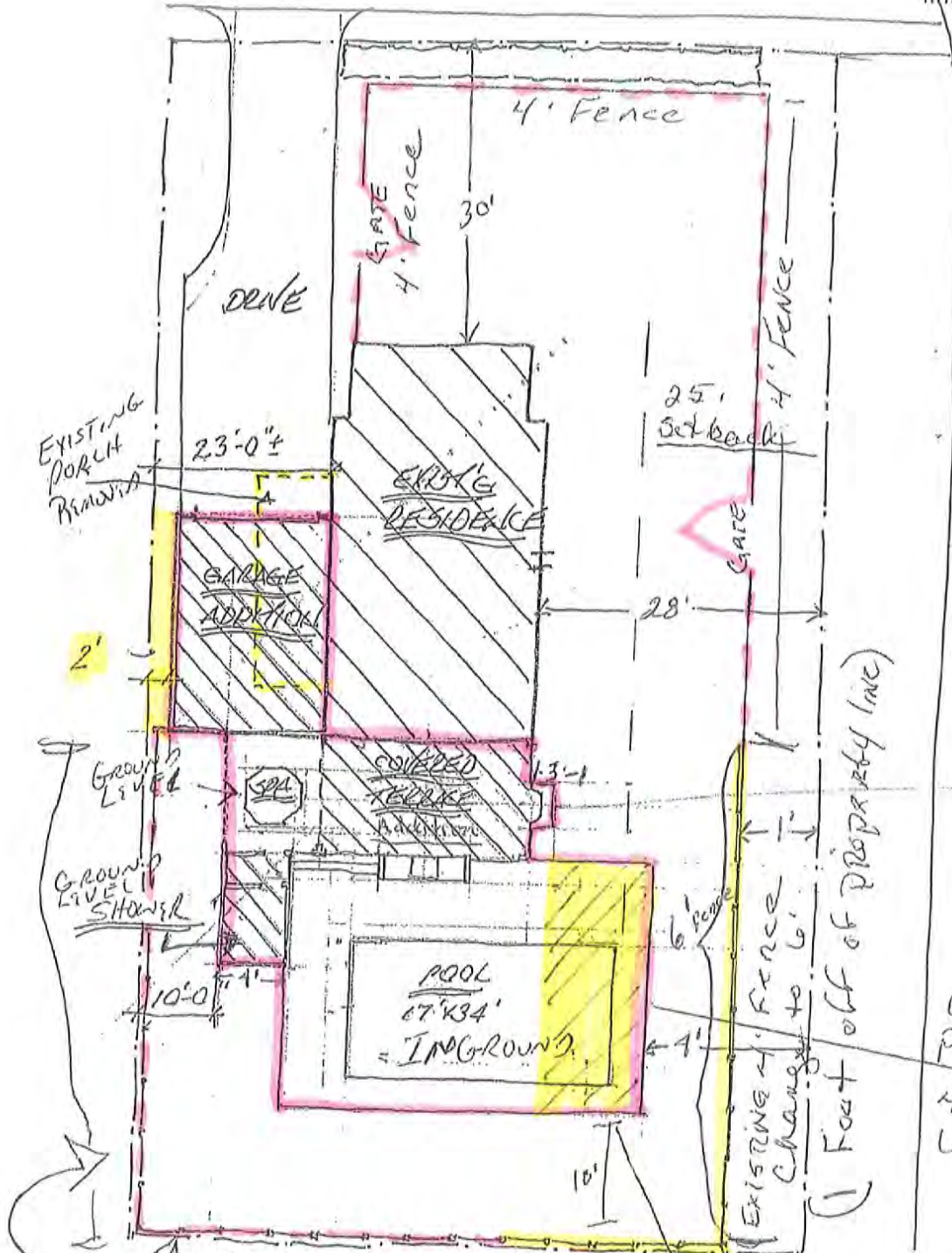
We intend to build a garage to house our cars and store our tools, bikes and mowers. By having a structure out of the way to store everything this will keep the yard and property tidier and cleaner for all. As well the garage will provide additional protection in colder months for the east side of the home.

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.

W. DAVIS

Gary J. Alexander
Architect

1324 Dublin Road, Columbus, Ohio
(614) 487-0637 Fax (614)



PHILLIPS

Fireplace
Chimney

Grade level
Pool Apron
4' INSIDE PROPERTY
LINE

EXISTING 4' Fence
change to 6' Fence

Pool 10' FROM
PROPERTY LINE
PALLOTTA RESID
SITE PLAN
1"=20'-0" 02.27
425 Phillips St

Greene County GIS

Owner Information

Owner Name PALLOTTA, DEAN A
 & SHEILA N
 Owner Cont 425 PHILLIPS ST
 Mailing Addr YELLOW SPRINGS OH 45387

Property Information

Parcel ID F19000100090023700
 Address 425 PHILLIPS
 District YELLOW SPRINGS VIL
 Acres COLLEGE PARK ALL
 Description LOT 7
 425 PHILLIPS ST

Building Information

Story 1.5
 Construction FRAME
 Style CAPE COD
 Year Built 1932
 Sq Ft 2074
 Total Rooms 6
 Bedrooms 4
 Family Room 0
 Full Baths 2
 Half Bath 0
 Basement FULL
 Fire Place 1
 B-
 Mkt Adj 510
 Land Use GAS
 Heat Fuel CENTRAL
 Heating

Values

Land	Appraised	Assessed
\$57,720.00	\$138,590.00	\$20,200.00
Building	\$196,310.00	\$48,510.00
Total		\$68,710.00

Taxes	Delinquent
Real \$0.00	1st Half \$1,795.49
Special \$0.00	2nd Half \$1,795.49
Total \$0.00	\$0.00
	\$1,795.49
	Total Taxes \$3,590.98
	Due \$1,795.49

Sales	Price
	\$236,500.00
	Date 07/25/12

The information contained on this aerial map is used to locate, identify and describe parcels of land in Greene County for appraisal and taxing purposes only and is NOT to be construed as an official survey. It is the responsibility of the user to verify the accuracy of the information. Any errors or omissions should be reported to the Greene County Auditor's Office. This information is not guaranteed. Any errors or omissions, including but not limited to, incorrect boundaries, incorrect information, lines of boundary information, or other property lines that might occur from the use of this map or the information it contains.

1 inch = 35 Feet



F19000100090023700 03/12/2012



BOARD OF ZONING APPEALS

MEETING DATE: July 17, 2013

STAFF REPORT; Tamara Ennist, Village Zoning Administrator

APPLICANT: Sheila and Dean Pallotta

PROPERTY OWNER: Dean A & Sheila N. Pallotta

REQUESTED ACTION: Request for a variance to a side yard setback for an addition of an attached garage. Also, request for variances to allow an accessory structure (in-ground pool and concrete patio) and a six (6) feet high fence associated with the pool to be located within a required front yard area.

HEARING NOTICE: Sheila & Dean Pallotta, acting as the property owner, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Section 1250.02(Table) in order to construct a garage addition along the east side of the single-family principle structure located at **425 Phillips Street** within a required side yard setback. The property is located within the Residence 'B' zoning district and a side yard of no less than five (5) feet is required for a principally permitted structure. The applicant is requesting a variance of three (3) feet to allow the addition to be setback two (2) feet from the side property line. In addition, the applicants will be constructing an in-ground pool on the north portion of the lot and would like to request variances to Section 1278.02(a) that restricts accessory structures to the rear yard area, Section 1278.03(b)(5) that allows patios in the rear yards and Section 1278.04(a)(1) that restricts the height of a fence to four (4) feet in yards other than the rear or side yards in order to permit the in-ground pool with a surrounding patio and a six (6) feet high privacy fence within a portion of the front yard area along Phillips Street. Applicable Yellow Springs Zoning Code sections are: Sec. 1250.02(Table); Sec. 1240.09(61)C; Sec. 1240.09(61)D; Sec. 1240.09(61)D1; Sec. 1240.09(61)D2; Sec. 1240.09(61)D3; Sec. 1278.01; Section 1278.03(b)(5); Sec. 1278.04(a)(1); 1278.04(b); Sec. 1240.09(122)A-D.

LOCATION: 425 Phillips Street

GREENE COUNTY PARCEL ID#: F19000100090023700.

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

STAFF ANALYSIS OF THE APPLICATION: Property Information and analysis:

The property, located at 425 Phillips Street is lot #7 of College Park Subdivision and measures 80.00' (W) X 150.00'(D), equaling 12000 square feet (approx. 0.275 acre). Currently, this lot contains a one-family residential principle structure with an attached screened porch. The owners would like to remove the twelve (12) feet wide screened in porch from the east side of the principal structure and add a twenty-two (22) feet wide garage addition in its place. The addition would be set two (2) feet from the side lot line, requiring a variance of three (3) feet from Section 1250.02(Table) which requires a minimum side yard setback of five (5) feet.

In addition, the owners would like to construct a covered terrace to the north end of the existing principal structure and to site an in-ground pool with a surrounding patio in the yard area on the north side of their lot. A hot tub and an unroofed shower area are also planned near the pool area. According to the applicant, due to the location of a water main easement along the rear lot line and the location of the water lateral from the water main to the northeast portion of the

house, a portion of the pool and the surrounding patio would extend into the front yard area along Phillips Street as well as a portion of the six (6) feet tall fence. The material submitted by the applicant identifies that the fence would be placed one (1) foot behind the front lot line and the nearest edge of the patio surrounding the pool will be set four (4) feet back from the front lot line along Phillips Street. This would require a variance from Section 1278.02(a) that restricts all accessory structures to the rear yard and from Section 1278.03(b)(5) that allows patios within rear yards as close as three (3) feet to any adjacent property line. In addition, the applicant would like the fence around the portion of the yard where the pool will be located to be six (6) feet high and would like to request a variance to Section 1278.04(a)(1) which limits the height of a fence within the front yard area to four (4) feet.

Also, the dimensions for the pool given in the submitted site plan are a little vague in that there is no dimension for the width of the pool apron. According to the applicant, the exact location of the pool will be determined based on the water lateral location and the need to protect the root system of a large tree located in the front yard area along Phillips Street. Based on the lot width and the dimensions shown for the pool and the proposed setbacks, the total width of the pool apron on the east and west side of the pool could be twenty-eight (28) feet and the total width of the pool apron on the south and north side of the pool could be thirty-seven (37) feet. If the site is developed as shown in the submitted site plan, a variance to Maximum Lot Coverage, Section 1250.02 Table, would be needed as the current layout appears to exceed the 40% maximum lot coverage allowed by 7% .

VARIANCE CRITERIA: Additional Information.

SECTION 1240.04 COMPLIANCE GENERALLY

Except as hereinafter specifically provided:

(b) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building be used:

(3) Except in conformity with the area, yard and coverage regulations of the district in which such building is located;

SECTION 1250.01(b) Residence “B”. The Residence “B” District provides space in the Village for medium-density single, two and three-family and multifamily residential development, as well as row house development. Land in this District shall be served with public water and sewer services.

SECTION 1250.02 PERMITTED USES; LOT SIZE AND BULK REQUIREMENTS.

TABLE – *Single-family dwellings* in the Residence ‘B’ zoning district have the following requirements;

Maximum Lot Coverage – 40% (*Current coverage is approximately 13%; Proposed Coverage would be approximately 47%*)

Minimum Lot Area – 7,500 square feet (*Current lot area is 12,000 square feet*)

Minimum Lot Width – 50 feet (*Currently the lot width is 80 feet.*)

Minimum Front Setback – 25 feet (*Current front setback is approximately 30 feet*)

Minimum Side Setback – 5 feet min. /15 feet total (*Current side setback is approximately 12 feet (east side); Proposed side yard setback would be two (2) feet*) [*Note: A corner lot has only one side yard.*]

Minimum Rear Setback – 25 feet (*Current rear setback is approximately 64 feet*)

Maximum Building Height – 35 feet (*Current building height is less than 35 feet*)

Maximum # Stories Height – 2½ Stories (*Current building is 1½ story*)

SECTION 1250.05 ACCESSORY USES

(c) No accessory use shall be located in a required front yard, as provided for in Chapter 1278.

SECTION 1250.06(c) Double Frontage / Corner Lots. Where lots have street frontage on more than one side, as a corner lot or a double frontage lot does, the required front yard shall be provided on both streets. The buildable width of a lot shall not be reduced to less than forty feet.

SECTION 1278.01 SWIMMING POOLS.

Private swimming pools, outside completely enclosed principal structures, shall be allowed in any Residence District **as an accessory use,** and such pools **shall comply with the following conditions and requirements:**

(a) Such pools must be intended and used primarily for the enjoyment of the occupants of the principal use of the property on which they are located.

(b) Such pools may not be located closer than ten feet from any side lot line of the property on which they are located.

(c) Such pools must meet applicable Building Code standards relating to structural safety and must meet or exceed Building Code user safety standards, such as fencing and electrical installations.

(d) Such pools shall be completely enclosed by a fence not less than four feet in height. The fence shall be so constructed as not to allow a five-inch diameter sphere to pass through the fence. A principal or accessory building may be used as part of the enclosure.

(e) All gates or doors opening through an enclosure, except those used for vehicles, shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use, except that the door of any building which forms a part of the enclosure need not be so equipped. Any other gates or openings shall be kept securely closed at all times when not in actual use.

(f) All pools that have been constructed prior to the adoption of subsections (d) and (e) hereof shall comply with said regulations no later than ninety days following the adoption of said regulations. Existing pools which are substantially in compliance with subsections (d) and (e) hereof need not be modified; however, upon fence replacement, any new fencing must be installed in full compliance with this section.

(g) Enclosed pools shall meet applicable standards for accessory structures.

SECTION 1240.09 (DEFINITIONS).

(1) “Accessory structure” means a subordinate structure detached from, but located on the same lot as, the principal structure, the use of which is incidental to that of the principal structure.

(2) “Accessory use” means a use incidental to, and on the same lot as, a principal use.

(3) **“Addition”** means any construction which increases the size of a building or facility in terms of site coverage, height, length, width or gross floor area, such as a porch, attached garage or carport, or a new room or wing.

(37) **“Easement”** means the right of a person, government, agency or public utility company to use public or private land owned by another for a specific purpose.

(43) **“Fence”** means an enclosure or barrier, the purpose of which is to physically and/or visually contain certain uses and activities which are carried out on a particular lot.

(46) **“Garage, private”** means a detached accessory building or portion of a principal building for the parking or temporary storage of automobiles, recreational vehicles and/or incidental personal property of the occupants of the premises.

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

B. **“Coverage”** means the amount, usually stated as a percentage, of 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 lot) front lot line.
3. A **side lot line** is any lot line other than a front or rear lot line.

(63) **“Lot types”** shall be defined as follows:

A. **“Corner lot”** means a lot located at the intersection of two or more streets.

(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.* Devices used for the support of wires and appurtenances supplying public utility services shall not be considered as structures under this Zoning Code.

(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. (See Appendix A following the text of this Zoning Code.) 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 rear 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.

D. “Width of a yard” means the lot width of any yard which shall be measured at right angles to the lot line and to the nearest building edge.

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 and review each variance request separately, keeping in mind that only the minimum variance necessary should be considered. In addition, staff recommends that the Board may want the applicant to further clarify the pool apron dimensions and more accurately identify the location of the pool prior to granting a carte blanche variance to the required front yard area. Furthermore, when granting this or any variance the Board should carefully word the approval so that the variance is specific and identifies the actual area that the variance will apply to on the lot.

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



Village of Yellow Springs

BOARD OF ZONING APPEALS APPLICATION FOR VARIANCE

Residence 'B'

Name of Applicant: Melanie R Ricart for Children's Montessori Cooperative

Phone: (931) 367-2659 Email: ys.cmco@gmail.com

Property Owner: Bruce Morgan

Phone: (530) 559-3535 Email: brucemgv@yahoo.com

Address of Proposed Project: 107 Tower Court, Yellow Springs

Greene County Parcel I.D. #: F19000100080000400

Description of Proposed Project: We would like to use this location as a small, private Montessori school.

The structure of the building/lot will not be altered. Our operating hours are M-F, 8am-4pm,

student hours are 830am-330pm.

On May 20, 2013 (date), Melanie Ricart

first approached my office applying for a zoning permit for the project described above. The

application for permit was denied for the following reasons: The proposal will require a

conditional Use Permit from the Planning Commission as well as variances for;

1) Sideyard setback (north) variance, 15' required (section 1250.02 TABLE)

2) Lot area (Sec. 1250.03)

3) Direct access to a non-local street (Sec. 1242.05(A)1

Fee: \$35.00 Paid on: May 28, 2013 (date) Attach copy of check or receipt Check - US Bank Edward J. Ricart III

Zoning Administrator: Jamona Fennist Date: 7-3-13

Greene County GIS

Owner Information

Owner Name MORGAN BRUCE R TRUSTEE
 Owner Cont 11585 ALLISON DITCH RD
 Mailing Addr GRASS VALLEY CA 95949

Property Information

Parcel ID F19000100080000400
 Address 107 TOWER
 District YELLOW SPRINGS VIL
 Acres TOWER COURT ALL
 Description LOT 4
 107 TOWER CT

Building Information

Story 1
 Construction BLOCK
 Style RANCH
 Year Built 1949
 Sq Ft 1660
 Total Rooms 6
 Bedrooms 3
 Family Room 1
 Full Bath 1
 Half Bath 0
 Basement NONE
 Fire Place NONE
 Grade C0
 Mkt Adj 510
 Land Use GAS
 Heat Fuel CENTRAL
 Heating

Values

Assessed
 Land \$45,500.00
 Building \$91,150.00
 Total \$136,650.00

Taxes

Delinquent 1st Half \$1,473.20
 Real \$0.00
 Special \$0.00
 Total \$1,473.20
 Total Taxes \$2,946.40
 Due \$0.00

Sales

Price \$40,000.00
 Date 04/01/85

The information contained on this computer map is used to locate, identify, and inventory parcels of land in Greene County for purposes of taxation. This information is subject to the accuracy but is not guaranteed. Any errors or omissions are the responsibility of the user. The user agrees to hold the Greene County GIS office harmless for any and all consequences, including those of cost, that may result from the use of this information, or other property data, in any way.

1 inch = 48 Feet



F19000100080000400 03/10/2012



Greene County GIS

Owner Information

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 Owner Cont
 Mailing Addr 11585 ALLISON DITCH RD
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 Bedrooms 3
 Family Room 1
 Full Baths 1
 Half Bath 0
 Basement NONE
 Fire Place
 Grade C0
 Mkt Adj
 Land Use 510
 Heat Fuel GAS
 Heating CENTRAL

Values

Assessed	
Land	\$15,900.00
Building	\$31,900.00
Total	\$47,800.00
Delinquent	
Real	1st Half \$1,473.20
Special	2nd Half \$1,473.20
Total	\$0.00
Total Taxes	\$1,473.20
Due	\$2,946.40

Sales

Price	\$40,000.00
Date	04/07/86

The information contained on this document map is used to locate, locate and temporary records of land in Greene County. This information is not to be used for any other purpose and is NOT to be construed as a legal description. Any information on this map is for informational purposes only. For more information, please contact the Greene County Assessor's Office. It is noted that the Greene County Assessor's Office does not provide any warranty, representation, or other information. Any information on this map is for informational purposes only.

1 inch = 14 Feet



F19000100080000400 03/10/2012



BOARD OF ZONING APPEALS

MEETING DATE: July 17, 2013

STAFF REPORT; Tamara Ennist, Village Zoning Administrator

APPLICANT: Melanie R. Ricart for Children's Montessori Cooperative

PROPERTY OWNER: Bruce R. Morgan, Trustee

REQUESTED ACTION: Request for a variances to allow the establishment of a Montessori style pre-school within an existing structure. The variances needed are; 1) a 10' variance to a side yard setback, a 2,650 square feet variance to the lot area and an exception to the access requirement to a non-local street.

HEARING NOTICE: Melanie R. Ricart, acting with acknowledgement of the property owner, Bruce Morgan, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Section 1250.03 (Table) in order to establish a Montessori style pre-school in a Residence 'B' zoning district. The property is located at **107 Tower Court**, Yellow Springs. Section 1250.03 identifies that a school located within the Residence 'B' zoning districts should be on a parcel having 10,000 square feet of lot area and a minimum side yard setback of fifteen (15) feet. The applicant is requesting a variance of 2,650 square feet for the existing 7,350 square feet lot area and a variance of ten (10) feet for the existing five (5) feet side yard setback. In addition, the applicant requests a variance from Section 1272.05(d)1 that requires school to have direct access to a primary, secondary or collector thoroughfare with no more than one access point onto any local street. Applicable Yellow Springs Zoning Code sections are: Sec. 1250.03(Table); Sec. 1240.09(28); Sec. 1272.05(d); Sec. 1272.05(d)1; Sec. 1240.09(25); Sec. 1240.09(25) A-C .

LOCATION: 107 Tower Court

GREENE COUNTY PARCEL ID#: F19000100080000400.

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

STAFF ANALYSIS OF THE APPLICATION: Property Information and analysis:

The property, located at 107 Tower Court is lot #4 of Tower Court Subdivision and it measures approximately 75.00'-80.00' (W) X 98.00'(D), equaling approximately 7660 square feet (approx. 0.176 acre). Currently, this lot contains a one-family residential principle structure (1660 sq. ft.) with an attached one car garage (280 sq. ft.). The applicant applied to the Village Planning Commission for the conditional use to allow the property to be used for a Montessori type pre-school and the public hearing was held at their June 10, 2013 meeting. The application for the conditional use was conditionally approved pending the outcome of the Board of Zoning Appeals hearing.

VARIANCE CRITERIA: Additional Information.

SECTION 1250.03 CONDITIONAL USES; LOT SIZE AND BULK REQUIREMENTS.

TABLE - Schools and Cultural Buildings in the Residence 'B' zoning district shows the following requirements;

Maximum Lot Coverage – 50% [40% max for single-family residence] (*Current coverage is under 35%*)

Minimum Lot Area – **10,000 square feet** [7,500 sq. ft for single-family residence] (*Current lot area is approximately 7660 square feet. Note: the proposed revised zoning code will only require 6,000 min. lot area for single-family dwellings in an R-B district and does not specify alternative area and setbacks measurements for schools.* **[Note: The applicant is applying to the BZA for a variance from this standard.]**)

Minimum Lot Width – **75 feet** [Single-family residence – Min. 50 feet] (*Currently the front lot width is 80+ feet.*)

Minimum Front Setback – **30 feet** [Single-family residence – Min. 25 feet] (*Current front setback is approximately 20 feet – See Section 1278.03(b)(1)2 - Exceptions to area, yard and height requirements*)

Minimum Side Setback – **15 feet** [Single-family residence – 5 feet min. / 15 feet total] (*Current side setbacks are approximately 5 feet (north side) / approximately 18 feet (south side).* **[Note: The applicant is applying to the BZA for a variance from this standard.]**)

Minimum Rear Setback – **30 feet** [Single-family residence – 25 feet min.] (*Current rear setback is approximately 32 feet*)

Maximum Building Height – **60 feet** [Single-family residence – 35 feet] (*Current building height is less than 20 feet*)

Maximum # Stories Height – **Four (4)** [Single-family residence - 2½ story max.] (*Current building is 1 story*)

SECTION 1272.05 STANDARDS FOR SPECIFIC CONDITIONAL USES

(d) Churches and similar places of worship, *schools*, cultural buildings and other government buildings (conditional in Residence “A-1,” “A,” “B” and “C” Districts) may be approved if they meet the following conditions: (*The proposed draft zoning code, further classifies “schools” to mean ‘elementary, middle, and high’ under Specific Requirements of Conditional Uses.*)

(1) These uses shall have direct access to a primary or secondary or collector thoroughfare, as determined by the Village of Yellow Springs Thoroughfare Plan, and shall have no more than one access point onto any local street (if the applicant can give a reason why this will not cause a negative traffic impact on the adjacent neighborhood). (*Given the proposed changes shown in the draft zoning code, this condition may be directed more toward elementary, middle, and high schools.* **[Note: The applicant is applying to the BZA for a variance from this standard.]**)

SECTION 1240.09 (DEFINITIONS).

(25) “Child care facility (day care center)” shall be defined as follows;

A. “Family child care home” means a private residence where care, protection and supervision are provided, for a fee, at least twice a week and to no more than six children at one time, including the children of the adult provider;

B. “Group child care center, Class A” means a building or structure where care, protection and supervision are provided, on a regular schedule, at least twice a week to at least seven and no more than twelve children, including children of the adult provider;

C. “Group child care center, Class B” means a building or structure where care, protection and supervision are provided on a regular schedule, at least twice a week to more than twelve children, including children of the provider.

(28) “Conditional use” means a use that, owing to some special characteristics attendant to its operation or installation, is permitted in a district subject to approval by the Village Planning Commission and subject to special requirements which are different from those usual requirements for the district in which the conditional use may be located.

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

(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 consider this application with the understanding that the current zoning code clearly does not differentiate between requirements for a public school (elementary, middle school and high school) and a small private pre-school.

VILLAGE MANAGER'S OBSERVATIONS: The building size and dimensions will not change. The rationale for school lot size to be a minimum of 10,000 s.f. (2600+ more than exists on this single family lot) is likely due to the view that providing outdoor play space for children is important, room for off-street parking. Speaking of which, BZA may inquire as to the adequacy of the off-street parking for school use.

The most significant impact is likely to be the amount of traffic that will be arriving twice a day minimum to the pre-school and that there will be two points of ingress/egress onto a local street. The Zoning Code requires "schools" to be on primary or secondary or collector streets for this reason, the higher volume of traffic. The impact on the neighborhood traffic will be significant.

BOARD OF ZONING APPEALS

MEETING DATE: July 17, 2013

STAFF REPORT; Tamara Ennist, Village Zoning Administrator

APPLICANT: Christopher Hamilton

PROPERTY OWNER: Christopher & Kathleen Hamilton, 345 Spring Glen Drive

REQUESTED ACTION: Request for a two feet variance to allow a fence on the rear lot line with a height of eight feet.

HEARING NOTICE: *Christopher & Kate Hamilton, acting as the property owner, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Section 1278.04(b) in order to construct an eight (8) feet tall fence along the rear lot line of the property located at 345 Spring Glen Drive. The property is located within the Residence 'A' zoning district and a fence is restricted to no more than six (6) feet in the side and rear yards. The applicant is requesting a variance of two (2) feet to allow the extra height. Applicable Yellow Springs Zoning Code sections are: Sec. 1278.04.*

LOCATION: 345 Spring Glen Drive

GREENE COUNTY PARCEL ID#: F19000100170007300.

EXISTING ZONING: The property is located within the Residence "A" zoning district.

STAFF ANALYSIS OF THE APPLICATION: Property Information and analysis:

The property, located at 345 Spring Glen Drive is lot #8 of Hugh T. Birch 3 Section 1 and contains .652 acres. It is situated at the end of a cul-de-sac style street and shares a rear lot line with a 2.253 area parcel that's addressed as 300 Orton Road and with lot #14 of Glenside Section One that's addressed as 8 Helen Court. The property is encumbered with a twenty (20) feet wide conservation use area easement along the rear lot line. In addition, a ten (10) feet wide drainage easement runs perpendicular to the rear lot line, approximately forty (40) feet from the southwest property corner, before making a ninety degree turn to the south and narrowing to a six (6) feet wide drainage easement. Lt. Col. Hamilton stated in the application that they are planning to construct a six (6) feet high fence around their side yard and would like to increase the height of the fence to eight feet along the rear lot line shared with 300 Orton Road. The application states that the owner of the property at 300 Orton, Alan Brunsman, suggested the higher fence because he has a sand volleyball court approximately six (6) feet from the rear lot line and the eight feet height will help keep the volleyballs from going over the fence.

VARIANCE CRITERIA: Additional Information.

SECTION 1250.01 PRINCIPALLY PERMITTED USES; PUBLIC WATER AND SEWER SERVICES. (a) The Residence "A" District provides space in the village for medium-density single-family detached residential development. Land in this District shall be served with public water and sewer services.

SECTION 1278.04 FENCES, WALLS AND FOLIAGE. Notwithstanding other provisions of this Zoning Code, fences, walls and foliage are permitted in required yards under the following conditions:

(a) (1) Such fence or wall shall not exceed a height of four feet.

- (2) All fences, walls and foliage adjacent to any public sidewalk shall be set back at least one foot from said sidewalk.
- (3) No fence, wall or foliage shall be permitted to interfere with visibility to or from a driveway.
- (b) Within a side or rear yard in a Residence District, no fence or wall shall be permitted to exceed a height of six feet.
- (c) No fence in a nonresidential district shall exceed eight feet in height, and for each foot in height exceeding six feet, there shall be a one and one-half foot offset from side property lines.
- (d) The use of barbed wire or electrically charged fences shall be limited to nonresidential districts, and the electrically charged or barbed section of any fence shall be limited to heights greater than seven feet above grade.
- (e) Fences, walls or foliage erected or maintained over or in utility easements at the owner's risk shall be subject to removal, as required to provide access to such easements.

SECTION 1240.09 - DEFINITIONS;

- (29) **“Conservation Area”** means an environmentally sensitive land protected from activities that would significantly alter its ecological integrity, balance or character.
- (30) **“Conservation Easement”** means an easement granting the right or interest in real property that is appropriate to retaining land or water areas predominantly in their natural, scenic, open or wooded condition.
- (34) **“Drainageway”** means a watercourse, gully, dry stream, creek or ditch which carries storm water runoff, which is subject to flooding or ponding, which is fed by street or building gutters, or by storm water sewers, or which serves the purpose of draining water from the lands adjacent to such watercourse, gully, dry stream, creek or ditch.
- (37) **“Easement”** means the right of a person, government, agency or public utility company to use public or private land owned by another for a specific purpose.
- (43) **“Fence”** means an enclosure or barrier, the purpose of which is to physically and/or visually contain certain uses and activities which are carried out on a particular lot.
- (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 consider this application and determine whether the variance is warranted. In addition, staff recommends that the two easement areas are discussed to determine if construction or placement of fencing will cause any interference with storm water drainage or the conservation area.

VILLAGE MANAGER'S RECOMMENDATION: Fence variances (and variances in general) create a multiplier effect for administration because of the "me too" effect (well, they got one, why not us). In this case, the concern seems to be that a neighbor's (Brunsman's) stray volleyballs may come into the yard of the applicant. Staff wonders whether some type of netting could be used instead of a higher, non-residential scale fence. Additionally, the volleyball trespass issue is for the trespasser to resolve (is responsible to make sure balls don't go over the neighbor's fence). Perhaps Brunsman could install netting to prevent the volleyballs from bothering the applicants. Adding two feet to the rear fence may not be effective (e.g., balls that bounce over at 8.5 feet and higher).

Per the restrictive covenants for the Birch III subdivision, the fence would be built in the "Conservation Use Area" of the Birch III development. Whether this fence is permitted according to that restriction may be a matter for private interpretation and enforcement.



Village of Yellow Springs

BOARD OF ZONING APPEALS APPLICATION FOR VARIANCE

Name of Applicant: Christopher Hamilton

Phone: 571-205-4240 Email: topherbone@hotmail.com

Property Owner: Christopher and Kate Hamilton

Phone: _____ Email: _____

Address of Proposed Project: 345 Spring Glen Drive

Greene County Parcel I.D. #: F19000100170007300

Description of Proposed Project: We are constructing a 6' fence around our side yard and meeting up with a proposed 8' fence along our back property line with Alan Brunzman's yard. Mr. Brunzman requested the higher fence and is willing to pay the difference in price for the higher fence line. The Brunzman property has a sand volleyball court approximately 6' from the property line and the higher fence will prevent volleyballs from continually going over the fence into our yard. We have discussed the higher fence with our immediate side neighbor, Paco and Jill Labrador. We have an empty lot on the other side of our home

On 7-3-13 (date), Christopher Hamilton first approached my office applying for a zoning permit for the project described above. The

application for permit was denied for the following reasons: Sec. 127B.04(b) -

Fences within a side or rear yard are not permitted to exceed a height of six (6) feet.

Fee: \$35.00 Paid on: _____ (date) Attach copy of check or receipt

Zoning Administrator: Lamar J. Ernest Date: 7-10-13

Greene County GIS

Owner Information

Owner Name HAMILTON CHRISTOPHER E
 & KATHLEEN E
 Owner Cont 2829 LA CRESTA
 Mailing Addr DAYTON OH 45431

Property Information

Parcel ID F19000100170007300
 Address 345 SPRING GLEN
 District YELLOW SPRINGS VIL
 Acres
 Description HUGH T BIRCH 3 SECTION 1
 LOT 8 .652AC
 SPRING GLEN DR

Building Information

Story
 Construction
 Style
 Year Built
 Sq Ft
 Total Rooms
 Bedrooms
 Family Room
 Full Baths
 Half Bath
 Basement
 Fire Place
 Grade
 Mkt Adj
 Land Use
 Heat Fuel
 Heating

Values

Appraised \$68,570.00
 Land \$0.00
 Building \$68,570.00
 Total \$68,570.00

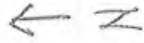
Taxes

Delinquent \$0.00
 Real \$0.00
 Special \$0.00
 Total \$0.00

1st Half \$739.23
 2nd Half \$739.23
 Total Taxes \$1,478.46
 Due \$739.23

Sales

Price \$72,000.00
 Date 06/25/12



1 inch = 43 Feet

No Image Is Available

The information contained on this cadastral map is used to locate, identify and inventory parcels of land in accordance with the provisions of the Ohio Revised Code. It is not to be construed or used as a legal description. Any information is addressed to be accurate but is not guaranteed. The user assumes all responsibility for the use of this information. In no event will Greene County be liable for any pecuniary loss that might arise from the use of this map or the information it contains.



PLOT & GRADING PLAN

FOR: SUGARTREE HOMES

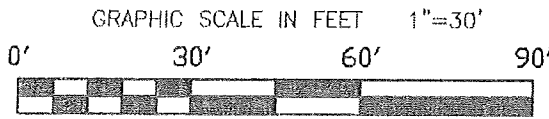
LOCATION: HUGH T. BIRCH SUB NO. 3
SECTION ONE ~ LOT B
VILLAGE OF YELLOW SPRING
GREENE COUNTY
STATE OF OHIO

ADDRESS: 345 SPRING GLEN DR.

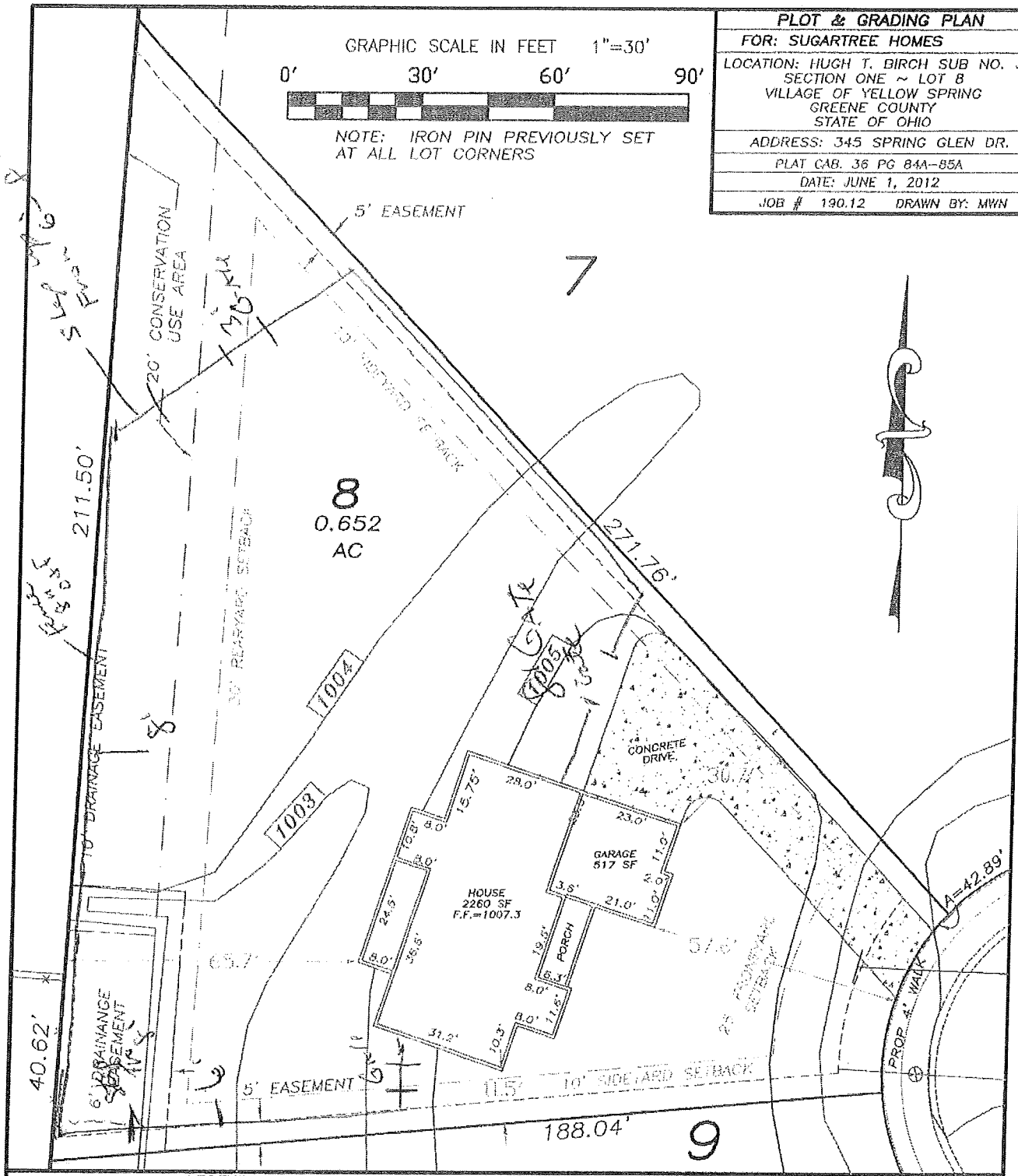
PLAT CAB. 36 PG 84A-85A

DATE: JUNE 1, 2012

JOB # 190.12 DRAWN BY: MWN



NOTE: IRON PIN PREVIOUSLY SET AT ALL LOT CORNERS



LEGEND

- 1003 ELEVATION FROM GRADING PLAN
- EX. WATER LATERAL & METER PIT
- EX. SANITARY LATERAL
- WATER MAIN
- SANITARY MAIN

LOT COVERAGE = 17.6%

**BRUMBAUGH
ENGINEERING &
SURVEYING, LLC**
1105 SOUTH MIAMI STREET
WEST MILTON, OHIO 45383
(937) 688-3000

THIS PLOT PLAN IS PREPARED ONLY FOR USE BY THE LOCAL BUILDING DEPARTMENT AND WAS NOT PREPARED FOR THE OWNER OR THE USE OF THE OWNER FOR ANY OTHER PURPOSE.

BOARD OF ZONING APPEALS

MEETING DATE: July 17, 2013

STAFF REPORT; Tamara Ennist, Village Zoning Administrator

APPLICANT: Meg Solomon-Gujer, Business Manager, S and G Artisan Distillery

PROPERTY OWNER: Millworks Development Corporation

REQUESTED ACTION: Request for a variance to the 10% floor area limit allowed for a conditional use permit that allows accessory retail sales of goods produced on site.

HEARING NOTICE: *“Meg Solomon-Gujer, Business Manager, acting with acknowledgement of the property owner, Millworks Development Corp. for the structure operated by **S and G Artisan Distillery**, has requested a variance to the Village of Yellow Springs Zoning Ordinance, Section 1260.03(c) in order to allow up to 25% of the ground floor to be used for retail sales of goods produced on site. The business is located in Suite 1 and Suite J of the Millworks Development at 305 N. Walnut Street. The property is located within the Light Industrial zoning district and as a conditional use, Section 1260.03(c), Accessory retail sales of goods produced on site can be permitted for no more than 10% of the ground floor area.”*

LOCATION: 305 N. Walnut Street, Suite 1 and Suite J

GREENE COUNTY PARCEL ID#: F19000100110025900.

EXISTING ZONING: The property is located within the ‘Light Industrial’ zoning district.

STAFF ANALYSIS OF THE APPLICATION: Property Information and analysis:

The property, located at 305 N. Walnut Street, contains 2.997 + acres. It is situated between N. Walnut Street and the Little Miami Scenic Bike Path midway between Cliff Street and Yellow Springs-Fairfield Road. The property, owned by Millworks Development Corporation, contains multiple buildings operated independently by various businesses. The S and G Artisan Distillery occupies two buildings, suites #1 and #J, allowing for a state requirement for a separation between a distillery operation and any public areas. S and G Artisan Distillery would like to provide a tasting room for their clientele and will be applying to the Village of Yellow Springs Planning Commission for a conditional use permit to allow accessory sales of goods produced on site. However, the Zoning Code Section 1260.03(c) states that, ‘Accessory retail sales of goods produced on site can be permitted for no more than 10% of the ground floor area’ and the applicant would like a variance to allow up to 25% of the floor area to be used for retail sales of their product conditional on a conditional use permit from the Planning Commission.

VARIANCE CRITERIA: Additional Information:

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 1260.02 (Light Industrial District) Principally Permitted Uses. (a) Light manufacturing and assembly plants, machine shops, *food* or pharmaceutical *processing and other operations for making, repairing, finishing, converting or storing of items*, provided that all resulting cinders, dust, flashing light, fumes, gases, odors, refuse matter, smoke or vapor are effectively confined to the premises and that no noise or vibrations is perceptible outside such premises.

SECTION 1260.03 (Light Industrial District) 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.*

SECTION 1260.04 PROHIBITED USES. (b) Retail stores, banks *or other activities tending to create direct consumer traffic*, such as barber or beauty shops, gift shops, grocery, hardware, clothing or drug stores, laundry service, dry cleaning, automobile service stations, garages or sales room, theaters, bowling alleys, amusement parks or other equivalent recreational uses.

Section 1240.09 DEFINITIONS;

- (2) **“Accessory Use”** means a use incidental to, and on the same lot as, a principal use.
- (13) **“Bar”** means a lounge, tavern, beer parlor, night club, or similar establishment principally operated for the sale of alcoholic beverages to be served on the premises.
- (21) **“Building, principal”** means a building in which is conducted the main or principal use of the lot on which said building is located, ordinarily the largest building on a lot and ordinarily the use conducted on the first story of such building, above the basement.
- (28) **“Conditional Use”** means a use that, owing to some special characteristics attendant to its operation or installation, is permitted in a district subject to approval by the Village Planning Commission and subject to special requirements which are different from those usual requirements for the district in which the conditional use may be located.
- (79) **“Principal Use”** means the main use of land or structures, as distinguished from a secondary or accessory use.

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 and determine whether allowing an additional amount of floor area for retail sales would minimize what the principally permitted use is and verify that the proposed increase of the accessory use will be done in a manner that will not create a retail establishment that encourages direct consumer traffic beyond what is reasonable for the specific site.

VILLAGE MANAGER'S RECOMMENDATION: The BZA granted a similar variance request from the YS Brewery just a few months ago. To date, the Village administration has not had any complaints about the increased retail traffic related to the expansion of retail floor space at the YS Brewery. Neither have we had complaints about traffic on Walnut Street, with one exception (a request to eliminate one parking space just to the south of the Millworks drive for line of sight visibility). Under the draft Zoning Code, the amount of floor space that could be dedicated to the accessory use of retail related to manufacturing is 30% (p. 1258-1). This request is within that 30% which, *to date*, has been approved by Planning Commission and Council.



Village of Yellow Springs

BOARD OF ZONING APPEALS APPLICATION FOR VARIANCE

Name of Applicant: Meg Solomon-Gujer, Business Mgr, SAG Artisan Distillery

Phone: (937) 623-6814 Email: gujerm@woh.rr.com

Property Owner: Millworks Development Corp.

Phone: (937) 767-9338 Email: _____

Address of Proposed Project: 305 N. Walnut St., Suite I & Suite J

Greene County Parcel I.D. #: F19000100110025900

Description of Proposed Project: Request to operate a tasting room that will exceed the allowed 10% of the ground floor area. Request is to allow 25% of the ground floor area to be used as a tasting room

On 5/10/13 (date), Meg Solomon-Gujer

first approached my office applying for a zoning permit for the project described above. The

application for permit was denied for the following reasons: Sec. 1260.03(c)

restricts the floor area used for retail sales to 10% within an Light Industrial zoning district.

Fee: \$35.00 Paid on: _____ (date) Attach copy of check or receipt

Zoning Administrator: Larissa J. Fennell Date: 7-10-13



305 N. Walnut Street, Suite J
Yellow Springs, OH 45387

May 10, 2013

Village of Yellow Springs
Village Zoning Administrator
100 Dayton Street
Yellow Springs, OH 45387

Attention: Ms. Tamara Ennist

Subject: Request for Conditional Permit and Variance for Tasting Room

Dear Ms. Ennist:

Pursuant to our location meeting last week, May 2, 2013, at the Millworks Business Center, please accept this letter as S and G Artisan Distillery's official request for a conditional permit to operate our tasting room (allowable in accordance with our State Division of Liquor Control A3a Permit) in Suite 1 of the Millworks Development Center.

The S and G's Spirits of Yellow Springs Tasting Room currently utilizes Suite 1 of the development center and is only indirectly attached to Suite J, which houses the distillery operation, as permitted by the Ohio Division of Liquor Control. This letter also officially requests a variance to allow for the square footage of the tasting room of 350 square feet, approximately 25% of our current square footage currently leased at the development center and 15% over the 10% allowable by the current zoning code.

Please feel free to contact me at (937) 623-6814 should you have any questions or require additional information. Thank you in advance for your prompt attention to this request.

Respectfully,

Meg Solomon-Gujer
Business Manager

Greene County GIS

Owner Information

Owner Name MILLWORKS DEVELOPMENT CORPORAT
 Owner Cont
 Mailing Addr 305 N WALNUT ST
 YELLOW SPRINGS OH 45387

Property Information

Parcel ID F19000100110025900
 Address 303 WALNUT
 District YELLOW SPRINGS VIL
 Acres 2.997
 Description 8-4-20 N END
 DP&L EASEMENT
 305 N WALNUT ST

Building Information

Story
 Construction
 Style
 Year Built
 Sq Ft
 Total Rooms
 Bedrooms
 Family Room
 Full Baths
 Half Bath
 Basement
 Fire Place
 Grade
 Mkt Adj
 Land Use
 Heat Fuel
 Heating

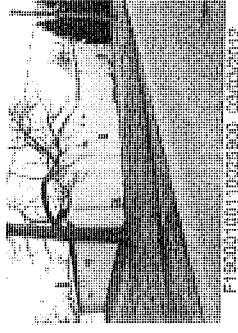
Assessed
 \$52,030.00
 \$84,040.00
 \$136,070.00

Delinquent
 1st Half \$5,201.55
 Real \$0.00
 Special \$0.00
 Total \$5,201.55
 2nd Half \$5,201.55
 \$0.00
 \$5,201.55
 Total Taxes \$10,403.10
 Due \$0.00

Sales Price \$225,000.00
 Date 03/26/92

The information contained on this computer map is used to locate, identify and inventory parcels of land in Greene County for appraisal and taxing purposes only and is NOT to be considered any part of a deed or other legal instrument. It is believed to be accurate but accuracy is not guaranteed. Any errors or omissions should be reported to the GIS office. The user assumes all liability for any damages, including loss of data, lost profits, business interruption, loss of business information, or other pecuniary loss that might arise from the use of this map or the information it contains.

1 inch = 65 Feet



F19000100110025900 04/24/2012



Greene County GIS

Owner Information
 Owner Name MILLWORKS DEVELOPMENT CORPORAT
 Owner Cont 305 N WALNUT ST
 Mailing Addr YELLOW SPRINGS OH 45387

Property Information
 Parcel ID F19000100110025900
 Address 303 WALNUT
 District YELLOW SPRINGS VIL
 Acres 2.897
 Description 6-4-20 N END DP&L EASEMENT 305 N WALNUT ST

Building Information

Story
 Construction
 Style
 Year Built
 Sq Ft
 Total Rooms
 Bedrooms
 Family Room
 Full Baths
 Half Bath
 Basement
 Fire Place
 Fire Grade
 Mkt Adj
 Land Use
 Heat Fuel
 Heating

Values
 Land \$148,670.00
 Building \$240,120.00
 Total \$388,790.00

Taxes
 Delinquent \$0.00
 Real \$0.00
 Special \$0.00
 Total \$0.00

1st Half
 \$5,201.55
 \$0.00
 \$5,201.55

2nd Half
 \$5,201.55
 \$0.00
 \$5,201.55

Total Taxes
 \$10,403.10

Due
 \$10,403.10

Sales
 Price \$225,000.00
 Date 03/26/92

This information is for informational purposes only and is not intended to be used for legal, financial, or insurance purposes. It is not intended to be used as a substitute for professional advice. The information is provided as a courtesy and is not guaranteed. The information is provided as a courtesy and is not guaranteed. The information is provided as a courtesy and is not guaranteed.

1 inch = 66 Feet



F19000100110025900 03/03/2012



MILLWORKS TENANTS/USES
 1/19/13
 ENVIROFLIGHT (R&D)
 JONES STUDIO (ARTIST)
 KELLEYS (WHLS/DISTR)
 HAWLEY (WOODWORKING)
 HIINTINGTON (STORAGE)
 SCULPTOR (ARTIST)
 CASSELLI (ARTIST)
 S&G (DISTILLERY)
 VITRUVIAN (BREWERY)
 BROWN (ROOFING)