

VILLAGE OF YELLOW SPRINGS
BOARD OF ZONING APPEALS
AGENDA

The Village of Yellow Springs Board of Zoning Appeals will convene on Wednesday, June 19, 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 BZA Meeting of May 8, 2013
- 7:10 PUBLIC HEARING
640 Limestone Street: Variance Request
305 North Walnut Street: Variance Request
- 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

-Public Notice-
PUBLIC HEARING
YELLOW SPRINGS, OHIO

Board of Zoning Appeals

Notice is hereby given that:

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. **A PUBLIC HEARING WILL BE HELD ON THIS PETITION: DATE:** Wednesday, June 5, 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.



Village of Yellow Springs

BOARD OF ZONING APPEALS APPLICATION FOR VARIANCE

Name of Applicant: Gerald W. Matthews Contractor + Builder, LTD.

Phone: 937-372-3901 Email: hanna@matthewscontractor.com

Property Owner: Otha + Margaret Davenport

Phone: 937-372-1422 Email: davenpob@earthlink.net

Address of Proposed Project: 640 W. Limestone Street

Greene County Parcel I.D. #: F19000100040000400

Description of Proposed Project: Master bedroom suite addition

On 4/29/13 (date), Gerald Matthews

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 does

not comply with the require front yard setback of 25'.

Fee: \$35.00 Paid on: 5/3/13 (date) Attach copy of check or receipt

Zoning Administrator: Tamara J. Kinnel Date: 5/30/13



Greene County GIS

Owner Information

Owner Name DAVENPORT OTHA B
 Owner Cont & MARGARET A
 Mailing Addr 2385 CLARK RUN RD
 XENIA OH 45385

Property Information

Parcel ID F19000100040000400
 Address 640 LIMESTONE
 District YELLOW SPRINGS VIL
 Acres PHILLIPS 2 ALL
 Description LOT 4
 640 W LIMESTONE ST

Building Information

Story 1
 Construction BRICK
 Style RANCH
 Year Built 1956
 Sq Ft 1556
 Total Rooms 5
 Bedrooms 2
 Family Room 1
 Full Baths 1
 Half Baths 1
 Basement CRAWL
 Fire Place 1
 Grade Mt Adj C+
 Land Use 510
 Heat Fuel GAS
 Heating CENTRAL

Values

Category	Appraised	Assessed
Land	\$89,600.00	\$31,350.00
Building	\$87,840.00	\$30,740.00
Total	\$177,440.00	\$62,100.00

Taxes

Category	1st Half	2nd Half
Delinquent	\$0.00	\$1,912.74
Real	\$0.00	\$1,912.74
Special	\$0.00	\$0.00
Total	\$0.00	\$1,912.74
Total Taxes	\$3,825.48	
Due	\$1,912.74	

Sales

Price	Date
\$130,000.00	02/02/07

1 inch = 30 Feet

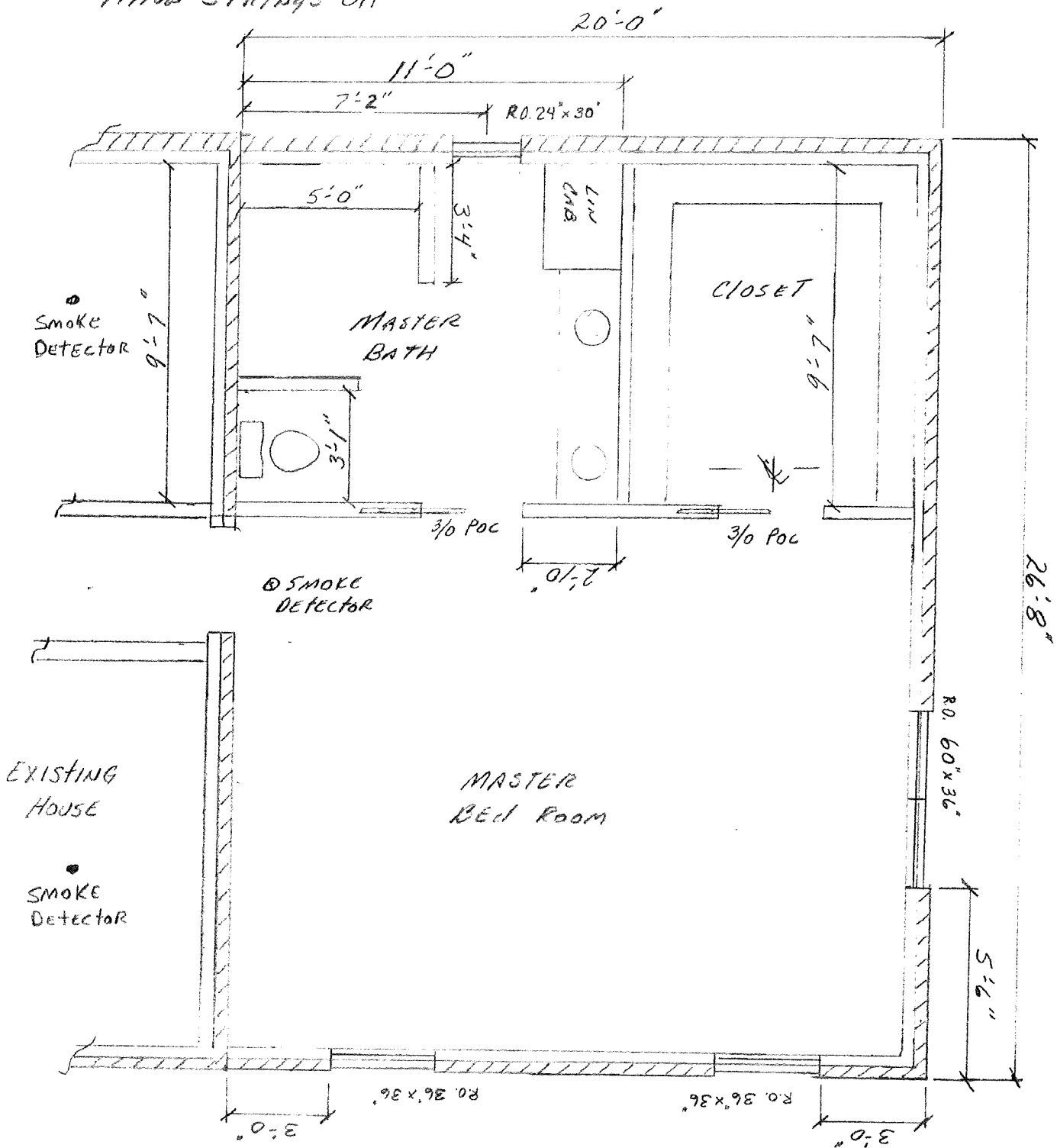


F190001000400004000 03/10/2012

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MATTHEWS Contr
 DAVENPORT JOB
 640 W. LIMESTONE ST.
 Yellow Springs OH

4-24-13

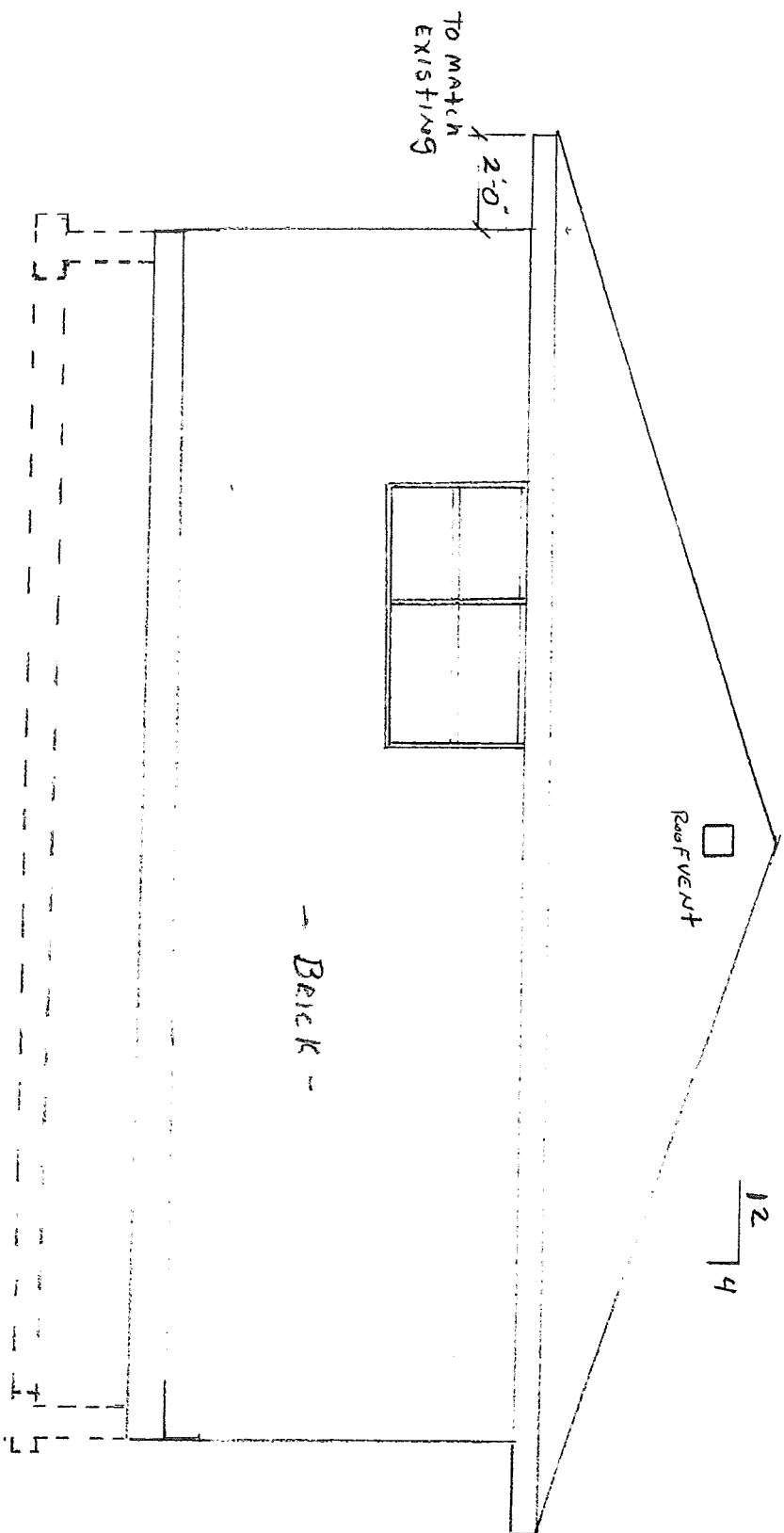


FLOOR PLAN

SCALE: 1/4" = 1'-0"

MOHRENS CONFR
DAVENPORT 708
640 W. LIMESTONE ST
YELLOW SPRINGS OH

4.24.13

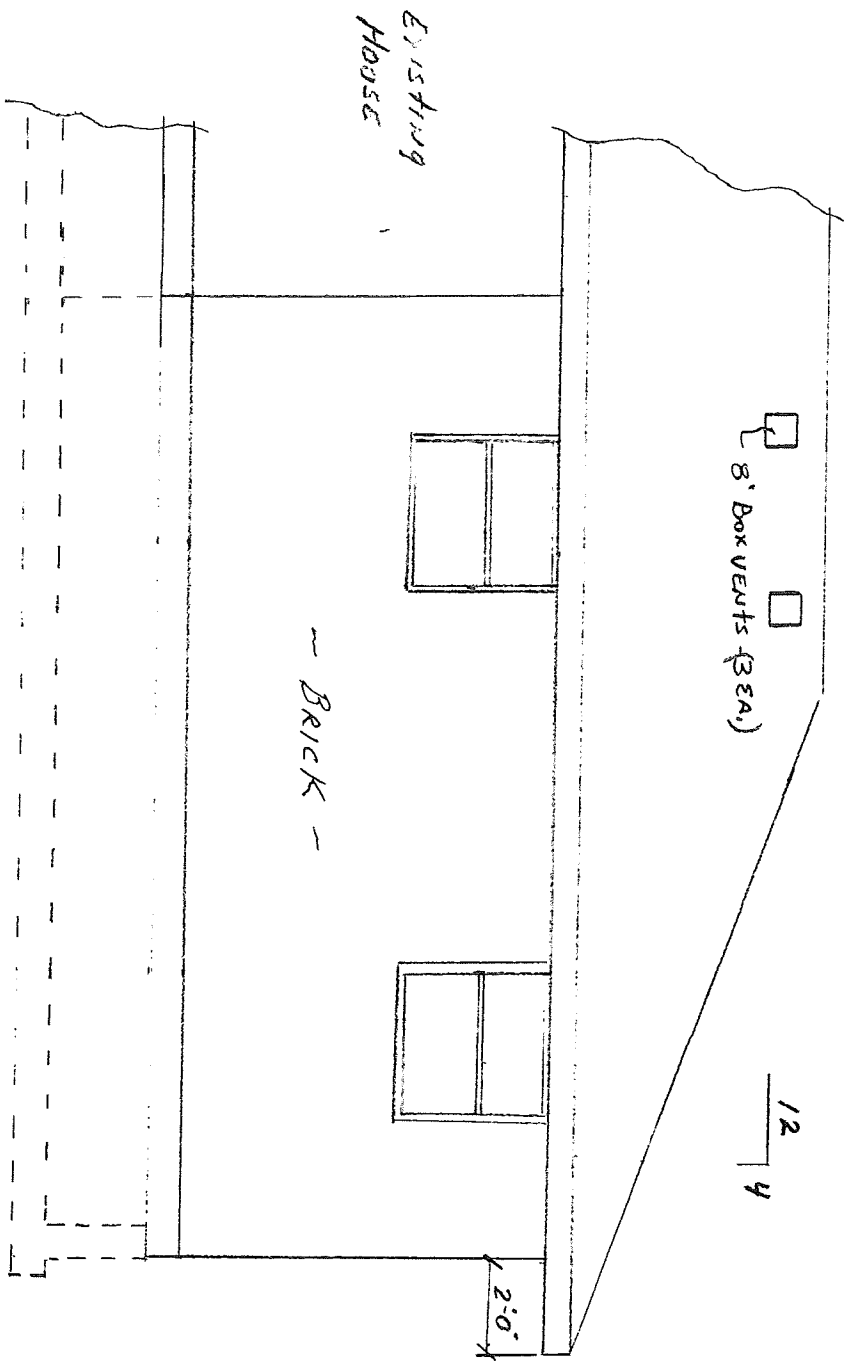


SIDE ELEVATION

SCALE - 1/4" = 1'-0"

MATTHEWS CONCRETE
DAVENPORT IOWA
640 W. LIMESTONE ST
YELLOW SPRINGS OH

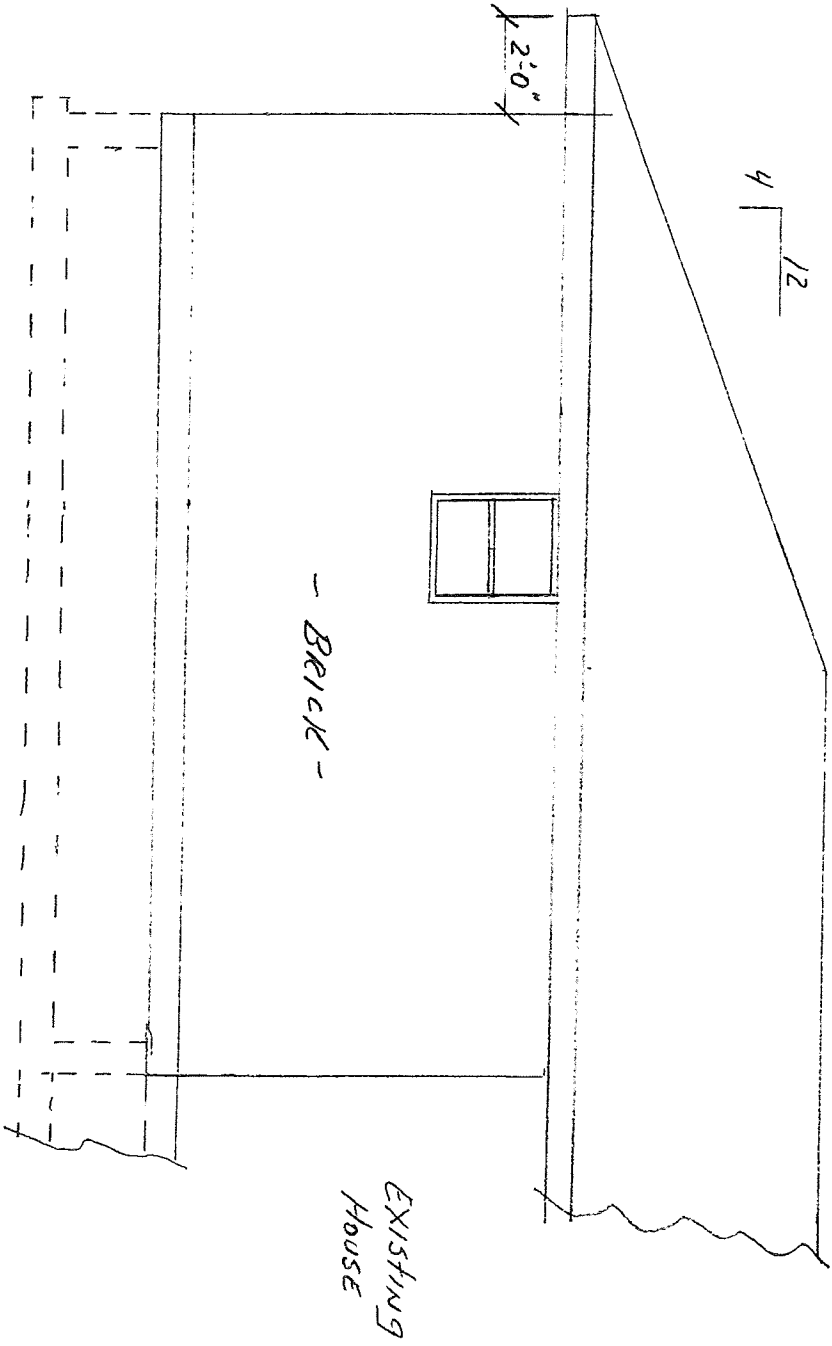
4-24-13



SCALE 1/4" = 1'-0"

MATHERS LOWE
DOVERPORT RD
640 W Limeston St
WILLOW SPRINGS OH

4.24.13



FRONT ELEVATION

SCALE - 1/4" = 1'-0"

PG-5

BOARD OF ZONING APPEALS

MEETING DATE: June 5, 2013

STAFF REPORT; Tamara Ennist, Village Zoning Administrator

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 feet 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 W. 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.**

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 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.

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

-Public Notice-
PUBLIC HEARING
YELLOW SPRINGS, OHIO

Board of Zoning Appeals

Notice is hereby given that:

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 Spring 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 as Greene County Parcel ID #F19000100110025900. **A PUBLIC HEARING WILL BE HELD ON THIS PETITION: DATE:** Wednesday, June 5, 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.

BOARD OF ZONING APPEALS
MEETING DATE: June 5, 2013
STAFF REPORT; Tamara Ennist, Village Zoning Administrator

APPLICANT: Ted Donnell; Yellow Springs Brewery
PROPERTY OWNER: Millworks Development Corp.
REQUESTED ACTION: Request for.

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.)*

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 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.

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



Village of Yellow Springs

BOARD OF ZONING APPEALS APPLICATION FOR VARIANCE

Name of Applicant: YELLOW SPRINGS BREWERY / TED DONNELL

Phone: 937.654.7501 Email: TDONNELL@YELLOWSPRINGS.COM

Property Owner: MILLWORKS DEV. CORP.

Phone: 937.767.9338 Email: _____

Address of Proposed Project: N. WALNUT ST. YELLOW SPRINGS

Greene County Parcel I.D. #: _____

Description of Proposed Project: DECK / PATIO ADDITION TO REAR YARD & ENTRY INTO BREWERY TASTING ROOM.

On May 23, 2013 (date), Ted Donnell

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 project does not

comply with the rear setback requirement in the Light Industrial District which requires a ^{rear} setback of 25'. (Section 1260.06(F))

Fee: \$35.00 Paid on: 5-17-13 (date) Attach copy of check or receipt Rebelick
CHECK 1476 4500 PERMIT FEE 40.00
Zoning Administrator: Jamara Emmitt Date: 5/23/13

Date: May 16, 2013

Submitted By:

**Ted Donnell Architect
Axis Architecture, Inc.
150 Railroad Street
Yellow Springs, Ohio 45387
TDonnell@YellowSprings.com
Phone: 937-654-7501**

Project :

**Alteration to building shell
New Window Wall
Patio/deck addition**

Location:

**Yellow Springs Brewery
Mill Works Development
North Walnut Street
Suite B
Yellow Springs, Ohio 45387**

BZA Variance Request – response to Variance Standards

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:

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;

Answer: The property in its entirety was created as an industrial manufacturing facility. The rear of the property was adjacent to the railroad line. Access to the building from the rail line was used for bulk deliveries and thus unfriendly to pedestrians and bicycles. Since that time the rail line has been converted to a regional bike way with great potentials for commerce along the bike way. The proposed patio addition offers access to the bike way and new visual frontage along the bike way is encouraged by the Greene County Parks and Trails and Village of Yellow Springs.

2. Whether the variance is substantial;

Answer: This Variance is not substantial in that it is an individually unique situation.

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;

Answer: The character of this area would be improved by the proposed patio addition. The rear of the building faces a large wooded area owned by the Village. The activity created by the patio addition will reduce a vulnerable security area behind the building.

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;

Answer: The storm water problems that exist now in the rear of the building will be improved by this project. There are no other governmental services within the area.

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

Answer: The Owner at time of purchase did not anticipate the potentials of the bike way to new Tenants in the development nor could they anticipate the trends in Yellow Springs for the types of businesses that choose to locate in Mill Works. These trends postdate the Zoning designations for this district.

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

Answer: The Owner id not convert the railroad line into a bike way. The Owner cannot rearrange the orientations of the development to accommodate the bike way access.

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

Answer: The Variance would greatly improve the existing condition of the facility to allow pedestrian and bicycle access to the Brewery without traversing the large truck and automobile oriented gravel parking and driveway.

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.

Yellow Springs Brewery
Deck Project
5/1/13

FLOOR PLAN
1/8" = 1'-0"

PROP. PARK CANOPY

BRWERY

RESTING ROOMS

PROPOSED DOOR
MINIMUM SYSTEM

20
20

EXIST. BUILDING

PROPERTY LINE

EXIST. STORM
OUTLET

PROP. PARK
CANOPY

PROPOSED
DECK
(544 sq ft)

PROPOSED TERRACE AREA

EXIST. CON. CURB

EXIST. BIKE PATH

EXIST. STORM
HEAD
WALL

16'-0"

8'-0"

7'-0"

10'-0"

