

**Board of Zoning Appeals Agenda**  
**November 23, 2020**

Due to the Stay at Home Order issued by Governor Dewine, this meeting will be conducted via videoconference on Zoom at <https://us02web.zoom.us/j/82750344512> or call in at 312-626-6799.

**7:00 p.m.**

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Open Board of Zoning Appeals Meeting / Swearing in of Witnesses
5. Guests and Residents
6. New Business

**AGENDA ITEM #1**

Josh Schaad, property owner of 7379 Cornell Road, is requesting a variance from the minimum lot size requirement to allow for the modification of two existing single-family lots. The applicant proposes the updated single family lots to be 12,468 square feet and 12,467 square feet, where 15,000 square feet is the minimum required per Schedule 151.1004 of the Montgomery Zoning Code.

7. Other Business
8. Approval of Minutes
9. Adjournment

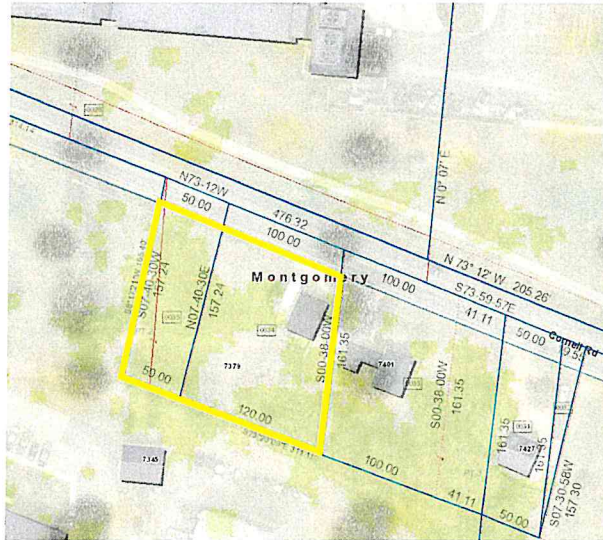
**Application for Variance: *Josh Schaad***  
***7379 Cornell Road***

**November 24, 2020**  
**Staff Report**

**Applicant:** Josh Schaad  
4430 Boardwalk Court  
Blue Ash, Ohio 45242

**Property Owner:** SAME

**Vicinity Map:**



**Nature of Request:**

The applicant is requesting a variance from the minimum lot size requirement to allow for the modification of two existing single-family lots. The applicant proposes the updated single family lots to be 12,468 square feet and 12,467 square feet, where 15,000 square feet is the minimum required for the 'B' District per Schedule 151.1004 of the Montgomery Zoning Code.

### Zoning:

This property is zoned 'B' - Single Family Residential and the eastern lot contains a freestanding garage and parking pad. All surrounding properties are also zoned 'B' single family residential. The property to the south is being used for public purposes, as the City of Montgomery Public Works, and the property to the north is also used for public purposes, as the Sycamore High School.

### Findings:

1. The address 7379 Cornell Road contains two lots. The western lot is currently 6,926 square feet and the eastern lot is 14,897 square feet in size. Both lots are legal non-conforming in size, as neither lot meets the 15,000 square foot minimum required in the 'B' District.
2. The western lot currently has a lot width of 50' which does not meet the required 70' lot width in the 'B' District. The proposed lot width is 77.03', which would bring the property into compliance.

The eastern lot currently has a lot width of 100' which exceeds the 70' requirement for the 'B' District. The proposed lot width is 77.03' which will meet the required minimum for the district. The proposed new division between the two lots will allow for both lots to meet the minimum width required.

3. A garage is currently remaining on the eastern lot and being used for storage. A single-family residence (built 1943) on the property was demolished in 2012 and the garage and parking pad remain.



2006 Aerial

## Variance Considerations:

Section 150.2010 allows the Board of Zoning Appeals to grant dimensional variances when the applicant can establish a practical difficulty. The City has established the following criteria for evaluating hardships:

1. *Whether special conditions and circumstances exist which are peculiar to the land and/or structure involved?*

The existing lots are -both legal non-conforming in size. A detached garage is currently located on one of the lots which is non-conforming with regards to setbacks, as well as not being an accessory to a main dwelling. The western lot is non-conforming in lot width.

2. *Will the property yield a reasonable rate of return without granting the variances?*

The western lot may not yield a reasonable rate of return due to the non-conformities, including lot width and size. These significantly limit the placement and size of a new single-family residence.

3. *Are the variances substantial/Are they the minimum necessary?*

The variances requested for each lot are substantial, as the applicant is requesting a 17% reduction in lot size. However, the applicant is proposing to modify the square footages of the two lots in order to more evenly divide the square footage of the lots. No additional buildable lot would be created.

4. *Will the character of the neighborhood be substantially altered?*

The character of the neighborhood would not be altered by granting the lot size variances. The properties are situated in front of the Montgomery Public Works property and directly across the street from Sycamore High School.

Several homes that are located on this section of Cornell Road are also non-conforming in lot size. This includes 7511, 7529, 7547, and 7575 Cornell Road, which are all approximately 13,503-13,939 square

feet in size. The lot two parcels to the east at 7427 Cornell Road is also non-conforming in lot size with 7,840 square feet.

5. *Would this variance adversely affect the delivery of government services?*

Government services would not be affected.

6. *Did the owner purchase the property with the knowledge of the zoning restraint?*

The owners were not aware of the zoning restraint.

7. *Whether special conditions exist as a result of the actions of the owner?*

There are no special conditions as a result of the current owners. The lots are currently both legal non-conforming buildable lots. The applicant is seeking to modify the division of the two lots to create uniformity in size.

8. *Whether the owner's predicament can be feasibly obviated through some other method?*

The applicant does have the option to have the lots remain at their current size. However, the lot to the west is only 6,926 square feet, 50' in width and immediately adjacent to a stormwater outlet. These non-conformities and public infrastructure hinder proper placement of a new single-family dwelling

The widening of the western lot would bring the property into compliance with the minimum width of the district and allow for more flexibility in the placement of a new single-family dwelling.

9. *Would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting the variance?*

The intent of the lot size requirement is to allow for uniformity of single-family lots within the area and provide for a sufficient building envelope. The adjustment of the property line will enlarge the building envelope for the western lot, while improving uniformity between the neighboring properties with regards to size.

Staff is of the opinion that the spirit and intent behind the lot size requirement would be observed and substantial justice done, as the request is for an adjustment to an existing lot line in order to better divide the two single-family lots more equally. In addition, the western lot would be brought into compliance in lot width, reducing one non-conformity.

*10. Would granting the variance confer on the applicant any special privilege that is denied to other properties in this district?*

Staff is not aware of any similar variance requests for a reduction in lot size in this area of the city. However, there are lots along this stretch of Cooper Road that do not meet the minimum 15,000 square foot requirement in the 'B' District. This property is unique, as it currently consists of two buildable lots, and the applicant is not requesting an additional lot. Therefore, Staff is of the opinion that granting the lot size variance would not confer on the applicant a special privilege.

### **Staff Comments and Recommendation**

Staff believes the modification of property lines to the existing two single-family lots would improve consistency of lot size and have no negative impacts on surrounding properties. The proposed lot widths will allow for a wider building envelope for the western lot, as well as bring the lot into compliance with the lot width requirement. The current lot width for the western lot is 50', which is significantly less than the required 80' and would severely restrict the size of a new single-family dwelling.

The variances to allow a lot size of 12,468 square feet for the western lot and 12,467 square feet for the eastern lot for property addressed 7379 Cornell Road can be justified based on criteria 1, - 10.



CITY OF

# MONTGOMERY

A CHARMING PAST. A GLOWING FUTURE.

## APPLICATION FORM

Meeting (Circle): Board of Zoning Appeals Planning Commission Landmarks Commission

Project Address (Location): 7379 Cornell Road

Project Name (if applicable): NA

Auditors Parcel Number: 603-0026-0034-00 + 603-0026-0035-00

Gross Acres: .57 Lots/Units 2 Commercial Square Footage NA

Additional Information: SF variance for proposed lot line change

PROPERTY OWNER(S) Josh Schaad Contact: Josh Schaad

Address 4430 Boardwalk Ct. Phone: 513-824-5774

City Blue Ash State OH Zip 45242

E-mail address joshschaad@twc.com

APPLICANT Same As Above Contact \_\_\_\_\_

Address \_\_\_\_\_ Phone: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail address \_\_\_\_\_

I certify that I am the applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand the City is not responsible for inaccuracies in information presented, and that inaccuracies, false information or incomplete application may cause the application to be rejected. I further certify that I am the owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent fully authorized by the owner to make this submission, as indicated by the owner's signature below.

Property Owner Signature [Handwritten Signature]

FOR DEPARTMENT USE

ONLY [Handwritten Signature]  
Print Name Josh Schaad

Date 9-15-20

Meeting Date:
Total Fee:
Date Received:
Received By:

### Consideration for Approval of Dimensional Variances

The following criteria will be used, along with other testimony provided at the public hearing to determine whether a practical difficulty exists that warrants a variance from the Zoning Code. Applicants should be prepared to respond to these issues.

1. Whether special conditions and circumstances exist which are peculiar to the land or structure and which are not applicable to other lands or structures in the same zoning district. Examples are narrowness, shallowness or steepness of the lot, or adjacency to non-conforming uses.

Yes, see attached narrative with numerous special conditions.

2. Will the property yield a reasonable rate of return if the variance is not granted?

No, see attached narrative.

3. Is the variance substantial? Is it the minimum necessary?

See attached narrative.

4. Will the character of the neighborhood be substantially altered?

No, see attached narrative.

5. Would this variance adversely affect the delivery of government services?

No





CITY OF

# MONTGOMERY

A CHARMING PAST. A GLOWING FUTURE.

6. Did the owner purchase the property with the knowledge of the zoning restraint?

No

7. Whether special conditions exist as a result of the actions of the owner?

No

8. Whether the owner's predicament can be feasibly obviated through some other method?

No

9. Would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting the variance?

Absolutely, see attached narrative.

10. Would granting the variance confer on the applicant any special privilege that is denied to other properties in this district?

No



## CONSENT OF OWNER(S) TO INSPECT PREMISES

To: City of Montgomery Board of Zoning Appeals Members and Staff  
City Hall  
10101 Montgomery Road  
Montgomery, Ohio 45242

Re: Review Subject Site

Dear Members and Staff:

As owner(s) of the property located at 1379 Cornell Road, we hereby grant permission to Members of the Board of Zoning Appeals and City of Montgomery Staff to enter the property for visual inspection of the exterior premises. The purpose of said inspection is to review the existing conditions of the subject site as they relate to the application as filed to the Board of Zoning Appeals.

Property Owner(s) Signature \_\_\_\_\_

Print Name Josh Schaad

Date 9-15-20

Board of Zoning Appeals Members:

Mary Jo Byrnes

Doug King

Tom Molloy

Bob Saul

Steve Uckotter

Richard White

Peter Fossett

Montgomery BZA

RE: 7379 Cornell Rd

Thank you for reviewing my variance requests for less than the minimum lot size for the two lots at 7379 Cornell Road (7379). My ownership information is below. Although both buildable lots are currently less than the minimum lot size and require no variances due to being grandfathered, I would like to be granted a variance for both lots so that I can redraw the lot lines (as noted in the sketch below) for the numerous beneficial reasons cited below.

I have owned both lots at 7379 for approximately 7 years and had planned to build my personal home over both lots while my children were in the Sycamore School System. Unfortunately, I was unable to get a sewer easement from either my neighbors at 7539 or Sycamore Schools. Soon after, I began the arduous process of petitioning MSD to extend the mainline for public sewer access. That process is finally nearing fruition, with a tentative extension of the mainline scheduled for installation in the summer of 2021.

Once the mainline extension is complete, my plan is to build two new homes on the two lots at 7379. One of the two lots (lot 2) is very narrow at 50', does not conform to the current width requirement of 70', will not conform to the current side set back requirement of 12' (unless I build a very odd looking 26' house), and I am concerned that any home built on lot 2 may have future issues as it would be extremely close to the Public Work's detention pond outlet pipe (pictured below). I had previously voiced my concerns about the rainwater runoff with the Public Works' expansion and the significant amount of water that was already being piped across the street from the High School. Attached is a picture of what it looked like almost every time we had a significant rain. Gary Heitkamp was gracious enough to meet with me to discuss my concerns and allowed my lots to be built up, which, to date, has helped prevent continued flooding.

If I could simply redraw the lot lines at 7379, lot 2 would then conform to the current 70' width requirement (going from 50' to 81.5'), it would then conform to the 12' side setback requirement, and it would be a much safer distance from the Public Work's detention pond outlet pipe. Lot 1 would continue to remain in compliance with the width and side setback requirements. In addition to these three main benefits, other community benefits (including the benefits of developing the lots) from granting the variances will include: 1. development would be more consistent with the size and design of the majority of homes on the street (note, none of the 5 closest homes that were built within the last 21 years comply with the City's minimum lot size requirement), 2.3.4. removing structures that are currently in the right of way/dangerously close to the road/an attractive nuisance for high school students, 5. promoting health and safety by removing two older septic systems, 6. building two new \$600-700k homes that would boost neighborhood property values, and 7. updating the outdated surface water drainage system.

In summary, the City's approval of my variance requests will only help me move more towards compliance with the City's own regulations, prevent future issues, produce numerous other positive benefits, and produce no negative effects.

Thank you for your consideration,  
Josh Schaad  
513-824-5774



**WEBSTER LAND SURVEYING, L.L.C.**

2940 Habern Park Drive, Ste 210 Hebron, KY 41048  
 brenn@websterlandsurveying.com 859.760.7194

SCALE: 1" = 30'  
 DRAWN BY: [Blank]  
 DATE: 10/29/2020  
 PROJECT NUMBER: 20200156  
 CLIENT: Josh School  
 7401 Cornell Road  
 Cincinnati, OH 45242

**MINOR SUBDIVISION PLAT**  
**SECTION 6, TOWN 4, ENTIRE RANGE 1**  
**MIAMI PURCHASE, SYCAMORE TOWNSHIP**  
**HAMILTON COUNTY, OHIO**

PROPERTY ADDRESS:  
 7401 Cornell Road  
 Cincinnati, OH 45242

**LAND SURVEYOR'S CERTIFICATE**  
 I hereby certify that, at the request of the owner, I have surveyed and platted the parcel or land shown hereon in accordance with the provisions of Chapter 173, of the Ohio Administrative Code, Monuments and Markers, as shown hereon. Dimensions are expressed in feet and decimals to the best of my knowledge and belief. Field survey completed on 10/28/2020. This plat is valid unless stamped and signed.

Brent M. Webster, P.S.  
 Professional Surveyor #8482  
 in the State of Ohio

**LAND SURVEYOR'S NOTES**  
 1. North and bearing system based on Grid North.  
 Horizontal Datum: NAD-83(2011) OHSPCS-South Zone.  
 2. This survey does not constitute a title search by the surveyor. All information regarding record easements, and other documents that might affect the quality of title to the parcel shown hereon can be obtained by the completion of a title search.  
 3. All data sources, documents and records shown hereon are on file in the office of the Hamilton County Recorder in Cincinnati, OH, unless otherwise noted.  
 4. All monumentation shown hereon is in good condition unless otherwise noted.  
 5. All surveyed property corners noted as set are 5/8" diameter iron pins, 30" in length, with cap stamped Webster Surveying OH-8482, unless otherwise noted.  
 6. No evidence of encroachments.

Parcel B Closure Report

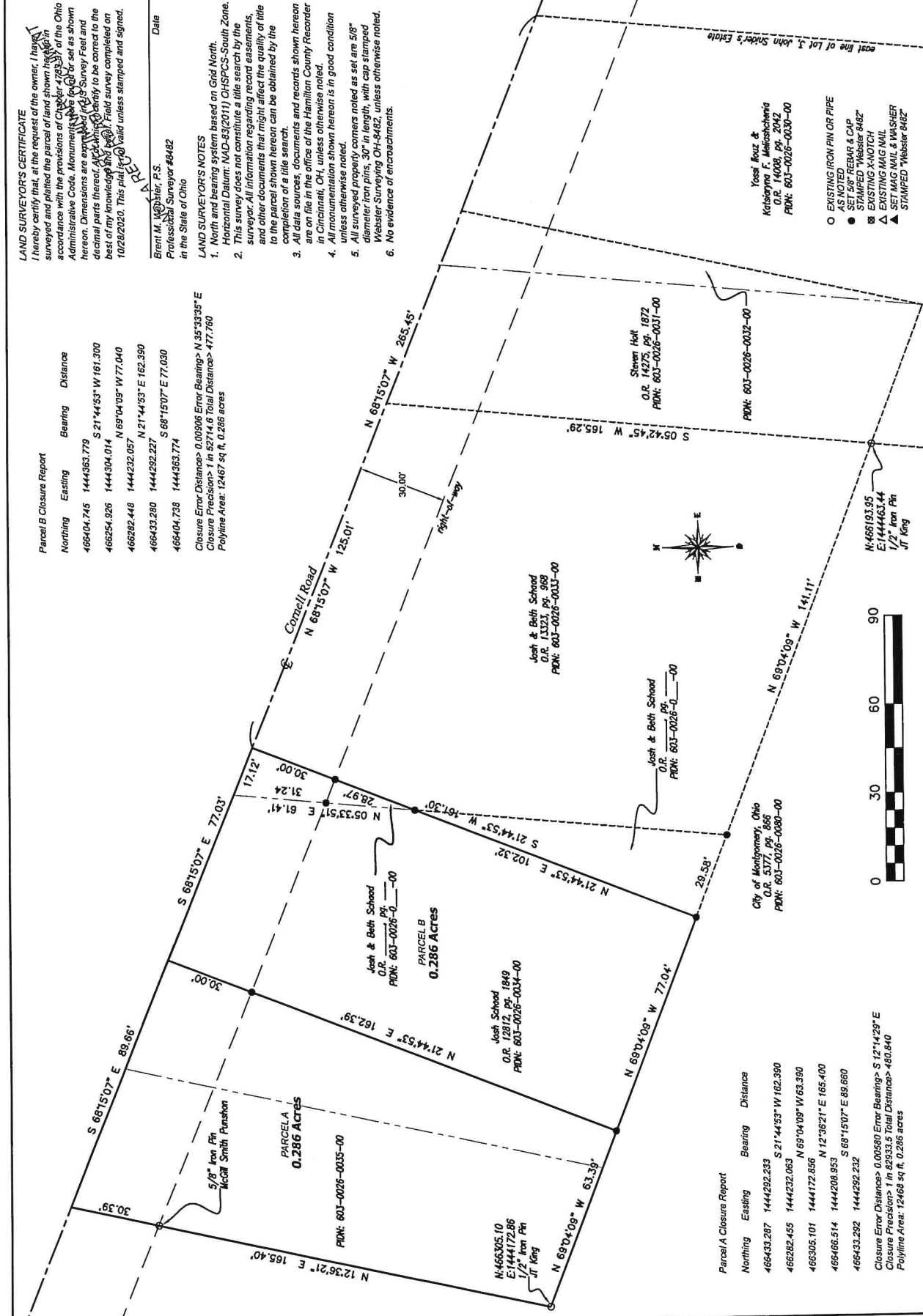
Northing	Easting	Bearing	Distance
466404.745	1444363.779	S 21°44'53" W 161.300	
466254.926	1444304.014	N 69°04'09" W 77.040	
466282.448	1444232.057	N 21°44'53" E 162.990	
466433.280	1444292.227	S 68°15'07" E 77.030	
466404.738	1444363.774		

Closure Error Distance > 0.00908 Error Bearing > N 35°33'38" E  
 Closure Precision in 1 in 52,168 Total Distance > 477.760  
 Polyline Area: 12467 sq ft, 0.286 acres

Parcel A Closure Report

Northing	Easting	Bearing	Distance
466433.287	1444292.233	S 21°44'53" W 162.390	
466282.455	1444232.063	N 69°04'09" W 63.390	
466305.101	1444172.856	N 12°36'21" E 89.660	
466466.514	1444208.953	S 68°15'07" E 89.660	
466433.292	1444292.232		

Closure Error Distance > 0.00580 Error Bearing > S 12°14'29" E  
 Closure Precision 1 in 82933.5 Total Distance > 480.840  
 Polyline Area: 12468 sq ft, 0.286 acres



- EXISTING IRON PIN OR PIPE
- AS SET
- SET 5/8" REBAR & CAP
- ⊗ STAMPED "Webster 8482"
- ⊗ EXISTING X-NOTCH
- ▲ SET 1/2" IRON PIN
- ▲ SET 1/2" IRON PIN
- ▲ STAMPED "Webster 8482"

east line of Lot 3, John Snyder's Estate

Steven Holt  
 O.R. 14275, ps. 1872  
 P.M.N.: 603-0026-0031-00

Josh & Beth School  
 O.R. 13121, ps. 968  
 P.M.N.: 603-0026-0033-00

Josh & Beth School  
 O.R. 13121, ps. 968  
 P.M.N.: 603-0026-0033-00

City of Montgomery, Ohio  
 O.R. 5377, ps. 866  
 P.M.N.: 603-0026-0080-00

Josh School  
 O.R. 12812, ps. 1849  
 P.M.N.: 603-0026-0034-00

N-466305.10  
 E-1444172.86  
 1/2" Iron Pin  
 JT King

N-466305.10  
 E-1444172.86  
 1/2" Iron Pin  
 JT King

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.  
 Formal adoption is noted by signature of the Clerk within the Minutes.*

**CITY OF MONTGOMERY  
 BOARD OF ZONING APPEALS REGULAR MEETING**

*Due to the Stay at Home Order issued by Governor DeWine,  
 this meeting will be in person at City Hall, 10101 Montgomery Road  
 and/or via videoconference on Zoom*

**August 25, 2020**

<u>PRESENT</u>		
<u>GUESTS &amp; RESIDENTS</u>		<u>STAFF</u>
<b>Meagan Combs</b> 2521 Lysle Lane Norwood, OH 45212	<b>Craig Margolis</b> Vice Mayor Montgomery City Council 8270 Mellon Drive, 45242	<b>Melissa Hays, Zoning and Code Compliance Officer</b> <b>Karen Bouldin, Secretary</b>  <u>ALL BOARD MEMBERS PRESENT</u> <b>Mary Jo Byrnes, Chairman</b> <b>Richard White, Vice-Chairman</b> <b>Peter Fossett</b> <b>Doug King</b> <b>Tom Molloy</b> <b>Bob Saul</b> <b>Steve Uckotter</b>
<b>Dana Darbyshire</b> 10872 Deerfield Rd., 45242	<b>Dean Whittfield</b> 10878 Deerfield Rd., 45242	
<b>Gregg Darbyshire</b> 10872 Deerfield Rd., 45242		

Chairman Byrnes called the meeting to order at 7:00 p.m.

Chairman Byrnes gave a brief explanation of tonight's proceedings: that this case will be presented in the public hearing, and then adjourn to the business session. She stated that Ms. Hays will review the Staff Report, the applicant will present their case, and questions and discussion will follow. Chairman Byrnes stated that the public hearing will then adjourn and the business session will open; the Board will discuss and decide on the application. She pointed out that once the public hearing has adjourned, the applicant is only permitted to answer questions from the Board. She noted that anyone on either side that does not agree with the board's decision has the option of appealing to Hamilton County Common Pleas Court within 6 months.

Chairman Byrnes asked that anyone planning to speak to the Board please stand to be sworn in. Chairman Byrnes swore in everyone planning to speak.

**Roll Call**

*The roll was called and showed the following responses:*

**PRESENT: Mr. Saul, Mr. King, Mr. Uckotter, Mr. White, Mr. Molloy, Mr. Fossett,**  
**Chairman Byrnes** (7)

**ABSENT:** (0)

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

33

### **Pledge of Allegiance**

34 All of those in attendance stood and recited the Pledge of Allegiance.

35

### **Guests and Residents**

36 Chairman Byrnes asked if there were any guests or residents who wished to speak about items that were not on the agenda. There were not.

37

38 Chairman Byrnes asked that all in attendance turn off their cell phones.

39

### **New Business**

40 *A request for a variance from Dana Darbyshire, property owner of 10872 Deerfield Road, to allow two light poles for a basketball court in the rear yard area to be a height of 18 feet, 9 inches, where 8 feet is the maximum height permitted, per Section 151.1009 (J)(3) of the Montgomery Zoning Code.*

41

### **Staff Report**

42 Ms. Hays reviewed the Staff Report dated August 25, 2020, "Application for Variance: 10872 Deerfield Road". She noted a correction where in the last sentence of the report the 6 should be a 2 for number of light poles.

43

44 Mr. Fossett was curious as to the amount of light that would emanate from both lights, and be visible from neighboring properties or from the street. Ms. Hays stated that there was not a photometric plan submitted with this application, to show exactly how the light would hit and how much. She deferred to the applicant.

45

46 **Dana Darbyshire, 10872 Deerfield Rd., 45242** wanted to make the Board aware of the topography of the land and how it sloped down in the rear yard. If they were to put lights at the front of the house at 8 foot (which met the code), those lights would be 7 feet taller in the front than what these proposed light poles would be in the back of the yard, due to the low area where the court sits. Right now, there could be flood lights on that court, which would produce more light than the two proposed light poles.

47

48 Ms. Darbyshire stated that they asked all of their neighbors that had adjoining properties to theirs, to ask for their permission, and sign a letter, especially the property that adjoins in the back (Dean Whittfield). His is only property that really would see the light, and the other properties would not be able to see the light, nor would you see it from the road.

49

50 **Megan Combs, 2521 Lysle Lane, Norwood, OH 45212** stated that she has been the construction manager of this project for the last year. She responded to the question regarding the lighting: the total output was 125 watts, and the total lumen output would be 15,159 lumens. She offered the specification sheet, if any member wanted to review it for further clarification.

51

52 Ms. Combs repeated Ms. Darbyshire's statement about the comparison of the pole in the front yard and the rear, noting that there was more than a 10 foot grade difference. She showed in-

53

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

78 person members a diagram. Ms. Combs referred to the first paragraph of page 2 of the Staff  
79 Report, "...the glare perceptible to persons operating motor vehicles on public ways". She felt  
80 this statement was not applicable in this situation because of how far back the lot was: there was  
81 a 250 foot driveway, and then the entire house -- and these poles were behind that.

82  
83 Ms. Combs stated that the light poles would not exceed the roofline, they were far below it.  
84 With regard to the variance that was not approved at 7714 Cooper Road, Ms. Combs stated that  
85 they had asked for 6 light poles, whereas the applicant was only asking for 2 light poles.

86  
87 Ms. Combs also felt that location was an important comparison between those two properties.  
88 The applicant's property sat far back, compared to the one on Cooper Road -- where you would  
89 be able to see the glare from the public way.

90  
91 Chairman Byrnes asked if the Board had any questions.

92  
93 Peter Fossett had concerns that there would be a cone of light coming up from the basketball  
94 court; and even if there was no direct glare on the street, perhaps someone in the neighborhood  
95 would see this light. He also wondered if this would impact the nearby Johnson Nature Preserve  
96 -- he did not know if there were animals that would be disturbed by that amount of light.  
97 Mr. Fossett would like to get a sense of what 15,159 lumens would look like at night.

98  
99 Tom Molloy stated that a very bright indoor light would be about 1000 lumens, so this was very  
100 bright, at 15,000 lumens for each light. The intent was to light up the court area, with the  
101 downward focus of the light. A standard light bulb might be 600 or 800 lumens.

102  
103 Doug King had hoped that the Planning Commission (PC) and City Council would have taken  
104 this under review and created some specific guidelines for basketball and tennis court lighting,  
105 when a similar application had come before the Board about 3 years ago -- and he had requested  
106 a review of the guidelines. He had asked that they look into this, and provide more specifics for  
107 the BZA. Mr. King stated that they may have thought that 8 feet was a judicial and common  
108 height, but in today's lighting, and where it is headed in the future, you could make this court  
109 look like daylight, without a single lumen going off the court. He believed that is what the goal  
110 should be.

111  
112 Mr. King asked the applicant if they were 200 feet away from the closest house to the west, and  
113 it looked like there were trees. He asked if the courtyard was visible from that house.

114 Ms. Combs confirmed the distance, and stated that there were some trees, but that it would be  
115 visible. She stated that Mr. Whitfield of 10878 Deerfield was present tonight (at City Hall), if he  
116 would like to speak about this. He did not ask to speak.

117  
118 Mr. Molloy asked when the applicant had learned of the limitation in the code, of the 8 foot  
119 height. Ms. Combs stated that when she had the meeting with Ms. Hays about one month ago, it  
120 was pointed out.

121

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

122 Mr. Saul asked how many houses had been built and had put in this type of lighting in a  
123 residential area. Ms. Combs stated that there was one home built prior to 2013, and it was at  
124 8008 Deersshadow Lane. She noted that they had 6 light poles that were over 8 feet in height.  
125 She thought this may have been grandfathered in. Ms. Combs noted another property that had  
126 one light pole exceeding the 8' requirement, as well.

127  
128 Ms. Darbyshire stated that the property at 8008 Deersshadow also backed up to the Nature  
129 Preserve, and they had 6 flood lights on their tennis court.

130  
131 Mr. Uckotter asked about the attaching lights to the back of the house. Ms. Darbyshire stated  
132 that they had lived in Montgomery before, in Terwilligers Run, and they did do that – they had a  
133 small court, and a flood light, and it was so dark, it barely lit the court. Ms. Combs stated that  
134 while this was mostly a basketball court, it also had the lines of other games on it, so it was not  
135 just for basketball.

136  
137 Ms. Combs stated that when they sent in the variance application to Melissa, they had shown the  
138 rebounders around the court – and those were 10 feet tall, but the height requirement for fencing  
139 was 15 feet tall, so the light height was 8, and the fencing was 15, they felt it was necessary to  
140 have rebounders to prevent the ball from going into the Nature Preserve.

141  
142 Ms. Hays stated that the fence could be taller because it was far enough from the property line; it  
143 was not at the property line.

144  
145 Mr. Fossett asked for clarification - that the requested lamps on the poles on the side of the court  
146 would throw less light than a flood light that you can attach to the house right now, without any  
147 kind of variance. Ms. Combs stated that it was more about the lumens, than about the direction.  
148 She stated that they can aim these downward towards the playing surface, whereas the flood  
149 lights would project in a general area, and cannot be directed straight down.

150  
151 Mr. Fossett asked if the proposed lights could be positioned down, would that minimize the  
152 umbrella of light you might see from the neighborhood, in general. Ms. Combs confirmed.

153  
154 Chairman Byrnes asked if these lights could be mounted on an 8 foot pole. Ms. Combs stated  
155 that they would have to be a different type of light than what was being proposed. The ones  
156 proposed, faced downward, and a basketball hoop is anywhere from 8 to 10 feet tall, depending  
157 on which level you are playing. For regulation, the hoops are to be 10 feet high, so having the  
158 lights at 8 feet would not make it possible to see a 10 foot hoop.

159  
160 Chairman Byrnes asked if there were any guests or residents who wished to speak.

161  
162 **Gregg Darbyshire, 10872 Deerfield Road, 45242** wanted to make an important point.  
163 He stated that in their other home in Montgomery, they did have flood lights off the side of their  
164 house, and they were intrusive to their neighbors. He stated that was one of the concerns he  
165 expressed to his current neighbor, Dean Whitfield – Mr. Darbyshire did not want flood lights  
166 shining onto Mr. Whitfield's property or home. He stated that they would not have requested



*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

167 this variance if they felt that this was not in the best interest of their neighbors. He wanted to be  
168 a good neighbor.

169

170 Mr. Darbyshire stated that this was the minimum height that you could have light for a basketball  
171 court, where it is also a sport court, in general. They would have gone with the 8 foot option, if  
172 that was feasible. He stated that he works in athletics, in sports, and unfortunately the proposed  
173 lights would not work at that 8 foot height.

174

### **Adjournment**

175 Mr. Saul moved to close the public hearing.

176 Mr. Molloy seconded the motion.

177 The public hearing adjourned at 7:34p.m.

178

179 Chairman Byrnes opened the business session at 7:34p.m.

180

181

### **Business Session**

182 *A request for a variance from Dana Darbyshire, property owner of 10872 Deerfield Road, to*  
183 *allow two light poles for a basketball court in the rear yard area to be a height of 18 feet,*  
184 *9 inches, where 8 feet is the maximum height permitted, per Section 151.1009 (J)(3) of the*  
185 *Montgomery Zoning Code.*  
186

187

188 Mr. Saul stated that this was in a residential neighborhood, and believed that it would change the  
189 character, and set a precedent. He stated that this was a very high light, and believed it would  
190 shine a long way, particularly at the power it was being used at. He felt that the applicant should  
191 stay within the lighting requirement, to keep it a residential neighborhood. He recognized that  
192 the court was far in the back, but the entire area was a residential area and should be kept that  
193 way.

194

195 Mr. White felt that the city ordinance was very clear, and was not in favor of this variance.

196

197 Mr. Molloy was very conflicted with this request because there have been advances in  
198 technology, and the type of lighting that they have, with an 80 degree cone coming off of the  
199 lighting, to light up the court with an LED bulb instead of a flood light, will really minimize the  
200 light that portrays out of the area, off of the court, and it is clearly not in violation of the code,  
201 which requires light shining onto the roadway to be adjusted. He pointed out that they are not  
202 even near the roadway. Mr. Molloy realized that this was a large variance, but he did understand  
203 the technology today, and believed that something like this would be much more preferable to  
204 them than using a half dozen 8-foot flood lights around the court, which will shine all over the  
205 place. "That is the dilemma we have here", he said.

206

207 Mr. King agreed with Mr. Molloy. He stated that requesting a photometric, or making sure that  
208 there was no light bleed off of the court – that should be the criteria, not an arbitrary height.  
209 He was disappointed that the PC had revised this as recently as 2013; he hoped that they would  
210 have been more technologically savant at that time. He stated that we don't have a community  
211 of 1100 and 1500 square-foot homes. Many of the larger homes want these amenities, and he

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

212 felt that we needed to look at how we can make this work. He did not feel there would be a  
213 precedent here, as he did not feel there would be another situation where they were 200 feet  
214 away from the closest house, and 250 feet away from the street, and bordering a Nature Preserve.  
215

216 Mr. Fossett asked if we could condition our motion based on a light study, or photometric that  
217 would demonstrate that the planned lighting was contained, the way that Mr. King and Mr.  
218 Molloy had suggested. He would feel much more comfortable moving forward with this, if he  
219 had a clear understanding of the light impact. He noted that if it could truly be contained, then  
220 he would be much less concerned about it, than it if wasn't.  
221

222 Mr. Molloy didn't disagree with that, but he felt that the issue was related to the success criteria  
223 for the line to be drawn – is it 2 light candles, 10 feet away, or is it 8 foot candles, 20 feet away?  
224 He understood Mr. Fossett's concern.  
225

226 Mr. King stated that full moon light was one foot candle, and in Anderson Township, he believed  
227 that the requirement was that it could not be over one foot candle, at the property line.  
228

229 Chairman Byrnes did not feel that this Board could interpret zoning through the lens of the  
230 change in technology since 2013. She didn't believe that would work, and felt this was a very  
231 slippery slope. She stated that they have the specifics of what they can and cannot do. For her to  
232 consider this, she would need to see what they are talking about, as she has no understanding of  
233 all of these lighting specifications and issues.  
234

235 Chairman Byrnes did have a concern with the Nature Preserve; and again, did not understand all  
236 of the implications it may or may not impose on it. She pointed out that with the code in place,  
237 she did not feel it was within their ability to look at the code from 2013 and interpret it based on  
238 technology from 2020. She felt that this code should be revisited by PC. Ms. Hays stated that  
239 PC could make a text amendment.  
240

241 Mr. Fossett respectfully disagreed with Chairman Byrnes, noting that the clarity of the code was  
242 not the issue, because, by definition, when the applicant comes before this Board, it is to request  
243 a variance – which is an exception to the code. He felt that it was the Board's purview to grant  
244 variances, and to consider other factors and the consequences. He felt that was entirely within  
245 their jurisdiction.  
246

247 Steve Uckotter stated that there were other ways to light the court, just not the same way that the  
248 applicant had chosen. He felt that the court could still be lit by other means.  
249

250 Tom Molloy agreed with Mr. Uckotter, but felt that those other ways would have much more  
251 light bleed than the high level LED directional lights proposed. He felt that 8 foot flood lights  
252 would be less acceptable to others in the neighborhood.  
253

254 Mr. Molloy agreed with Mr. King, that this would not create a precedent. He also had hoped that  
255 PC would have updated the text with more current technology, but that didn't happen, so we  
256 were stuck with a somewhat obsolete code. And Mr. Molloy will follow the code.

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

257

258 Chairman Byrnes felt that this would set a precedent. Mr. Saul agreed, stating that it would look  
259 like a courtyard, not a residence. Chairman Byrnes stated that what people chose to do with their  
260 residence was their choice. There was more discussion.

261

262 Mr. King liked the idea of having the applicant provide a photometric of the plan, showing the  
263 light spread. He also suggested that the PC made a code amendment.

264

265 Ms. Hays stated that it was 3 years ago, where an applicant had asked for (6) 10 foot light poles.  
266 She stated that all communities have different rules – some base it on foot candles.

267

268 Mr. Molloy asked if the applicant wished to table this motion, until the Board got more  
269 information to make a better informed decision, on the height, lumens and halo effect. Mr. King  
270 agreed with that. Chairman Byrnes stated that this application was just to consider the height  
271 and if there was a practical difficulty, that they could make an exception. She felt that the rest of  
272 it was outside of the Board's purview.

273

274 Mr. Fossett felt that the light on the light pole was an important consideration. Chairman Byrnes  
275 agreed, but stated that they were not being asked to decide on what kind of light was coming off  
276 of that. She agreed that we might be behind in our code regarding the technology, but that was  
277 not the BZA's responsibility at this time. She asked the Board to look at the case in front of  
278 them, and decide if it met any of the criteria for a practical difficulty. She believed that there  
279 was no practical difficulty here, it was just a preference.

280

281 Mr. Fossett asked if it wasn't a practical difficulty that they couldn't effectively light the court  
282 with an 8 foot lamp pole. Chairman Byrnes asked if they could do it with a 10 foot pole – did it  
283 have to be 18 feet? They were requesting more than 100% variance.

284

285 Mr. Fossett understood the point, but stated that we would do more damage if we forced the  
286 residents to use flood lights. We end up with a much more satisfying result for the neighbors and  
287 the community, if under these particular circumstances, we encouraged the residents to light their  
288 court in a way that was the least intrusive visually, in terms of the poles and the lights

289

290 More discussion ensued as to whether there was a practical difficulty or not.

291

292 Mr. King asked if the Board wanted to offer the applicant the opportunity to table the motion and  
293 bring back a photometric and a redesign. He noted that if this motion was denied, the applicant  
294 would need to wait another 6 months before they could return.

295

296 Ms. Hays stated that we could table the motion, and request additional information from the  
297 applicant. She did point out that the code read "...low intensity residential light." Mr. Molloy  
298 asked how to interpret that – at what point does it become high intensity? Mr. King pointed out  
299 that was part of the code that needed to be fixed.

300

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

**Board of Zoning Appeals Meeting**

August 25, 2020

301 Mr. White believed that the ordinance did not address a real solution with outside lighting --  
302 the height of a light was only one part of it. Chairman Byrnes stated that this was the only part  
303 that we have been asked to look at – the height.

304

305 *Mr. Molloy moved to approve the request for a variance from Dana Darbyshire, property*  
306 *owner of 10872 Deerfield Road, Montgomery, Ohio 45242 to allow two light poles for a*  
307 *basketball court in the rear yard area to be a height of 18.9 feet, where a maximum height of*  
308 *8 feet is permitted in the City of Montgomery Zoning Code Section 151.1009(J)(3), as*  
309 *described in the City of Montgomery Staff report, dated August 25, 2020, be approved.*

310

311 *This approval is in accordance with application and plans submitted on July 30, 2020.*

312

313 *This approval is justified by criteria # 5, 6 and 7 as outlined in the Montgomery Codified*  
314 *Ordinance, Chapter 150.2010 (d) for granting variances.*

315

316 *Mr. King seconded the motion.*

317

318 *The roll was called and showed the following vote:*

319

320 *AYE: Mr. Fossett, Mr. King, Mr. Molloy* (3)

321 *NAY: Mr. White, Mr. Saul, Mr. Uckotter, Chairman Byrnes* (4)

322 *ABSENT:* (0)

323 *ABSTAINED:* (0)

324

325 *This motion is denied.*

326

327 **Adjournment**

328 Mr. White moved to close the business session.

329 Mr. Uckotter seconded the motion.

330 The business session adjourned at 8:06p.m.

331

332 Chairman Byrnes opened the public hearing at 8:06p.m.

333

334 **Other Business**

335 There was no other business to report.

336

337 **Minutes**

338 Mr. White moved to approve the minutes of July 28, 2020, as written.

339 Mr. King seconded the motion.

340 The Board unanimously approved the minutes.

341

342

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

**Board of Zoning Appeals Meeting**

August 25, 2020

343 **Adjournment**

344 Mr. Saul moved to adjourn. Mr. Molloy seconded the motion.

345 The meeting adjourned at 8:08p.m.

346

347

348

349

350

351

352 \_\_\_\_\_  
Karen Bouldin, Clerk

\_\_\_\_\_  
Mary Jo Byrnes, Chairman

\_\_\_\_\_  
Date

353

354 /ksb

355

DRAFT

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.  
 Formal adoption is noted by signature of the Clerk within the Minutes.*

**CITY OF MONTGOMERY  
 BOARD OF ZONING APPEALS REGULAR MEETING**

*Due to the Stay at Home Order issued by Governor DeWine,  
 this meeting will be in person at City Hall, 10101 Montgomery Road  
 and/or via videoconference on Zoom*

**August 25, 2020**

<u>PRESENT</u>		
<u>GUESTS &amp; RESIDENTS</u>		<u>STAFF</u>
<b>Meagan Combs</b> 2521 Lysle Lane Norwood, OH 45212	<b>Craig Margolis</b> Vice Mayor Montgomery City Council 8270 Mellon Drive, 45242	<b>Melissa Hays, Zoning and Code Compliance Officer</b> <b>Karen Bouldin, Secretary</b>
		<u>ALL BOARD MEMBERS PRESENT</u>
<b>Dana Darbyshire</b> 10872 Deerfield Rd., 45242	<b>Dean Whittfield</b> 10878 Deerfield Rd., 45242	<b>Mary Jo Byrnes, Chairman</b> <b>Richard White, Vice-Chairman</b> <b>Peter Fossett</b>
<b>Gregg Darbyshire</b> 10872 Deerfield Rd., 45242		<b>Doug King</b> <b>Tom Molloy</b> <b>Bob Saul</b> <b>Steve Uckotter</b>

Chairman Byrnes called the meeting to order at 7:00 p.m.

Chairman Byrnes gave a brief explanation of tonight's proceedings: that this case will be presented in the public hearing, and then adjourn to the business session. She stated that Ms. Hays will review the Staff Report, the applicant will present their case, and questions and discussion will follow. Chairman Byrnes stated that the public hearing will then adjourn and the business session will open; the Board will discuss and decide on the application. She pointed out that once the public hearing has adjourned, the applicant is only permitted to answer questions from the Board. She noted that anyone on either side that does not agree with the board's decision has the option of appealing to Hamilton County Common Pleas Court within 6 months.

Chairman Byrnes asked that anyone planning to speak to the Board please stand to be sworn in. Chairman Byrnes swore in everyone planning to speak.

**Roll Call**

*The roll was called and showed the following responses:*

**PRESENT:** Mr. Saul, Mr. King, Mr. Uckotter, Mr. White, Mr. Molloy, Mr. Fossett,  
 Chairman Byrnes (7)

**ABSENT:** (0)

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

33

### **Pledge of Allegiance**

34 All of those in attendance stood and recited the Pledge of Allegiance.

35

### **Guests and Residents**

36 Chairman Byrnes asked if there were any guests or residents who wished to speak about items  
37 that were not on the agenda. There were not.

38

39 Chairman Byrnes asked that all in attendance turn off their cell phones.

40

### **New Business**

41 *A request for a variance from Dana Darbyshire, property owner of 10872 Deerfield Road, to  
42 allow two light poles for a basketball court in the rear yard area to be a height of 18 feet,  
43 9 inches, where 8 feet is the maximum height permitted, per Section 151.1009 (J)(3) of the  
44 Montgomery Zoning Code.*

45

### **Staff Report**

46 Ms. Hays reviewed the Staff Report dated August 25, 2020, "Application for Variance:  
47 10872 Deerfield Road". She noted a correction where in the last sentence of the report the 6  
48 should be a 2 for number of light poles.

49

50 Mr. Fossett was curious as to the amount of light that would emanate from both lights, and be  
51 visible from neighboring properties or from the street. Ms. Hays stated that there was not a  
52 photometric plan submitted with this application, to show exactly how the light would hit and  
53 how much. She deferred to the applicant.

54

55 **Dana Darbyshire, 10872 Deerfield Rd., 45242** wanted to make the Board aware of the  
56 topography of the land and how it sloped down in the rear yard. If they were to put lights at the  
57 front of the house at 8 foot (which met the code), those lights would be 7 feet taller in the front  
58 than what these proposed light poles would be in the back of the yard, due to the low area where  
59 the court sits. Right now, there could be flood lights on that court, which would produce more  
60 light than the two proposed light poles.

61

62 Ms. Darbyshire stated that they asked all of their neighbors that had adjoining properties to  
63 theirs, to ask for their permission, and sign a letter, especially the property that adjoins in the  
64 back (Dean Whittfield). His is only property that really would see the light, and the other  
65 properties would not be able to see the light, nor would you see it from the road.

66

67 **Megan Combs, 2521 Lysle Lane, Norwood, OH 45212** stated that she has been the  
68 construction manager of this project for the last year. She responded to the question regarding  
69 the lighting: the total output was 125 watts, and the total lumen output would be 15,159 lumens.  
70 She offered the specification sheet, if any member wanted to review it for further clarification.

71

72 Ms. Combs repeated Ms. Darbyshire's statement about the comparison of the pole in the front  
73 yard and the rear, noting that there was more than a 10 foot grade difference. She showed in-

74

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

78 person members a diagram. Ms. Combs referred to the first paragraph of page 2 of the Staff  
79 Report, "...the glare perceptible to persons operating motor vehicles on public ways". She felt  
80 this statement was not applicable in this situation because of how far back the lot was: there was  
81 a 250 foot driveway, and then the entire house -- and these poles were behind that.

82  
83 Ms. Combs stated that the light poles would not exceed the roofline, they were far below it.  
84 With regard to the variance that was not approved at 7714 Cooper Road, Ms. Combs stated that  
85 they had asked for 6 light poles, whereas the applicant was only asking for 2 light poles.

86  
87 Ms. Combs also felt that location was an important comparison between those two properties.  
88 The applicant's property sat far back, compared to the one on Cooper Road -- where you would  
89 be able to see the glare from the public way.

90  
91 Chairman Byrnes asked if the Board had any questions.

92  
93 Peter Fossett had concerns that there would be a cone of light coming up from the basketball  
94 court; and even if there was no direct glare on the street, perhaps someone in the neighborhood  
95 would see this light. He also wondered if this would impact the nearby Johnson Nature Preserve  
96 -- he did not know if there were animals that would be disturbed by that amount of light.  
97 Mr. Fossett would like to get a sense of what 15,159 lumens would look like at night.

98  
99 Tom Molloy stated that a very bright indoor light would be about 1000 lumens, so this was very  
100 bright, at 15,000 lumens for each light. The intent was to light up the court area, with the  
101 downward focus of the light. A standard light bulb might be 600 or 800 lumens.

102  
103 Doug King had hoped that the Planning Commission (PC) and City Council would have taken  
104 this under review and created some specific guidelines for basketball and tennis court lighting,  
105 when a similar application had come before the Board about 3 years ago -- and he had requested  
106 a review of the guidelines. He had asked that they look into this, and provide more specifics for  
107 the BZA. Mr. King stated that they may have thought that 8 feet was a judicial and common  
108 height, but in today's lighting, and where it is headed in the future, you could make this court  
109 look like daylight, without a single lumen going off the court. He believed that is what the goal  
110 should be.

111  
112 Mr. King asked the applicant if they were 200 feet away from the closest house to the west, and  
113 it looked like there were trees. He asked if the courtyard was visible from that house.

114 Ms. Combs confirmed the distance, and stated that there were some trees, but that it would be  
115 visible. She stated that Mr. Whitfield of 10878 Deerfield was present tonight (at City Hall), if he  
116 would like to speak about this. He did not ask to speak.

117  
118 Mr. Molloy asked when the applicant had learned of the limitation in the code, of the 8 foot  
119 height. Ms. Combs stated that when she had the meeting with Ms. Hays about one month ago, it  
120 was pointed out.

121



*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

122 Mr. Saul asked how many houses had been built and had put in this type of lighting in a  
123 residential area. Ms. Combs stated that there was one home built prior to 2013, and it was at  
124 8008 Deershadown Lane. She noted that they had 6 light poles that were over 8 feet in height.  
125 She thought this may have been grandfathered in. Ms. Combs noted another property that had  
126 one light pole exceeding the 8' requirement, as well.

127  
128 Ms. Darbyshire stated that the property at 8008 Deershadown also backed up to the Nature  
129 Preserve, and they had 6 flood lights on their tennis court.

130  
131 Mr. Uckotter asked about the attaching lights to the back of the house. Ms. Darbyshire stated  
132 that they had lived in Montgomery before, in Terwilligers Run, and they did do that – they had a  
133 small court, and a flood light, and it was so dark, it barely lit the court. Ms. Combs stated that  
134 while this was mostly a basketball court, it also had the lines of other games on it, so it was not  
135 just for basketball.

136  
137 Ms. Combs stated that when they sent in the variance application to Melissa, they had shown the  
138 rebounders around the court – and those were 10 feet tall, but the height requirement for fencing  
139 was 15 feet tall, so the light height was 8, and the fencing was 15, they felt it was necessary to  
140 have rebounders to prevent the ball from going into the Nature Preserve.

141  
142 Ms. Hays stated that the fence could be taller because it was far enough from the property line; it  
143 was not at the property line.

144  
145 Mr. Fossett asked for clarification - that the requested lamps on the poles on the side of the court  
146 would throw less light than a flood light that you can attach to the house right now, without any  
147 kind of variance. Ms. Combs stated that it was more about the lumens, than about the direction.  
148 She stated that they can aim these downward towards the playing surface, whereas the flood  
149 lights would project in a general area, and cannot be directed straight down.

150  
151 Mr. Fossett asked if the proposed lights could be positioned down, would that minimize the  
152 umbrella of light you might see from the neighborhood, in general. Ms. Combs confirmed.

153  
154 Chairman Byrnes asked if these lights could be mounted on an 8 foot pole. Ms. Combs stated  
155 that they would have to be a different type of light than what was being proposed. The ones  
156 proposed, faced downward, and a basketball hoop is anywhere from 8 to 10 feet tall, depending  
157 on which level you are playing. For regulation, the hoops are to be 10 feet high, so having the  
158 lights at 8 feet would not make it possible to see a 10 foot hoop.

159  
160 Chairman Byrnes asked if there were any guests or residents who wished to speak.

161  
162 **Gregg Darbyshire, 10872 Deerfield Road, 45242** wanted to make an important point.  
163 He stated that in their other home in Montgomery, they did have flood lights off the side of their  
164 house, and they were intrusive to their neighbors. He stated that was one of the concerns he  
165 expressed to his current neighbor, Dean Whitfield – Mr. Darbyshire did not want flood lights  
166 shining onto Mr. Whitfield's property or home. He stated that they would not have requested

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

167 this variance if they felt that this was not in the best interest of their neighbors. He wanted to be  
168 a good neighbor.

169  
170 Mr. Darbyshire stated that this was the minimum height that you could have light for a basketball  
171 court, where it is also a sport court, in general. They would have gone with the 8 foot option, if  
172 that was feasible. He stated that he works in athletics, in sports, and unfortunately the proposed  
173 lights would not work at that 8 foot height.

174

### **Adjournment**

175 Mr. Saul moved to close the public hearing.

176 Mr. Molloy seconded the motion.

177 The public hearing adjourned at 7:34p.m.

178

179 Chairman Byrnes opened the business session at 7:34p.m.

180

### **Business Session**

181  
182 *A request for a variance from Dana Darbyshire, property owner of 10872 Deerfield Road, to*  
183 *allow two light poles for a basketball court in the rear yard area to be a height of 18 feet,*  
184 *9 inches, where 8 feet is the maximum height permitted, per Section 151.1009 (J)(3) of the*  
185 *Montgomery Zoning Code.*  
186

187

188 Mr. Saul stated that this was in a residential neighborhood, and believed that it would change the  
189 character, and set a precedent. He stated that this was a very high light, and believed it would  
190 shine a long way, particularly at the power it was being used at. He felt that the applicant should  
191 stay within the lighting requirement, to keep it a residential neighborhood. He recognized that  
192 the court was far in the back, but the entire area was a residential area and should be kept that  
193 way.

194

195 Mr. White felt that the city ordinance was very clear, and was not in favor of this variance.

196

197 Mr. Molloy was very conflicted with this request because there have been advances in  
198 technology, and the type of lighting that they have, with an 80 degree cone coming off of the  
199 lighting, to light up the court with an LED bulb instead of a flood light, will really minimize the  
200 light that portrays out of the area, off of the court, and it is clearly not in violation of the code,  
201 which requires light shining onto the roadway to be adjusted. He pointed out that they are not  
202 even near the roadway. Mr. Molloy realized that this was a large variance, but he did understand  
203 the technology today, and believed that something like this would be much more preferable to  
204 them than using a half dozen 8-foot flood lights around the court, which will shine all over the  
205 place. "That is the dilemma we have here", he said.

206

207 Mr. King agreed with Mr. Molloy. He stated that requesting a photometric, or making sure that  
208 there was no light bleed off of the court – that should be the criteria, not an arbitrary height.

209 He was disappointed that the PC had revised this as recently as 2013; he hoped that they would  
210 have been more technologically savant at that time. He stated that we don't have a community  
211 of 1100 and 1500 square-foot homes. Many of the larger homes want these amenities, and he

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

212 felt that we needed to look at how we can make this work. He did not feel there would be a  
213 precedent here, as he did not feel there would be another situation where they were 200 feet  
214 away from the closest house, and 250 feet away from the street, and bordering a Nature Preserve.  
215

216 Mr. Fossett asked if we could condition our motion based on a light study, or photometric that  
217 would demonstrate that the planned lighting was contained, the way that Mr. King and Mr.  
218 Molloy had suggested. He would feel much more comfortable moving forward with this, if he  
219 had a clear understanding of the light impact. He noted that if it could truly be contained, then  
220 he would be much less concerned about it, than it if wasn't.

221

222 Mr. Molloy didn't disagree with that, but he felt that the issue was related to the success criteria  
223 for the line to be drawn – is it 2 light candles, 10 feet away, or is it 8 foot candles, 20 feet away?  
224 He understood Mr. Fossett's concern.

225

226 Mr. King stated that full moon light was one foot candle, and in Anderson Township, he believed  
227 that the requirement was that it could not be over one foot candle, at the property line.

228

229 Chairman Byrnes did not feel that this Board could interpret zoning through the lens of the  
230 change in technology since 2013. She didn't believe that would work, and felt this was a very  
231 slippery slope. She stated that they have the specifics of what they can and cannot do. For her to  
232 consider this, she would need to see what they are talking about, as she has no understanding of  
233 all of these lighting specifications and issues.

234

235 Chairman Byrnes did have a concern with the Nature Preserve; and again, did not understand all  
236 of the implications it may or may not impose on it. She pointed out that with the code in place,  
237 she did not feel it was within their ability to look at the code from 2013 and interpret it based on  
238 technology from 2020. She felt that this code should be revisited by PC. Ms. Hays stated that  
239 PC could make a text amendment.

240

241 Mr. Fossett respectfully disagreed with Chairman Byrnes, noting that the clarity of the code was  
242 not the issue, because, by definition, when the applicant comes before this Board, it is to request  
243 a variance – which is an exception to the code. He felt that it was the Board's purview to grant  
244 variances, and to consider other factors and the consequences. He felt that was entirely within  
245 their jurisdiction.

246

247 Steve Uckotter stated that there were other ways to light the court, just not the same way that the  
248 applicant had chosen. He felt that the court could still be lit by other means.

249

250 Tom Molloy agreed with Mr. Uckotter, but felt that those other ways would have much more  
251 light bleed than the high level LED directional lights proposed. He felt that 8 foot flood lights  
252 would be less acceptable to others in the neighborhood.

253

254 Mr. Molloy agreed with Mr. King, that this would not create a precedent. He also had hoped that  
255 PC would have updated the text with more current technology, but that didn't happen, so we  
256 were stuck with a somewhat obsolete code. And Mr. Molloy will follow the code.

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

257

258 Chairman Byrnes felt that this would set a precedent. Mr. Saul agreed, stating that it would look  
259 like a courtyard, not a residence. Chairman Byrnes stated that what people chose to do with their  
260 residence was their choice. There was more discussion.

261

262 Mr. King liked the idea of having the applicant provide a photometric of the plan, showing the  
263 light spread. He also suggested that the PC make a code amendment.

264

265 Ms. Hays stated that it was 3 years ago, where an applicant had asked for (6) 10 foot light poles.  
266 She stated that all communities have different rules – some base it on foot candles.

267

268 Mr. Molloy asked if the applicant wished to table this motion, until the Board got more  
269 information to make a better informed decision, on the height, lumens and halo effect. Mr. King  
270 agreed with that. Chairman Byrnes stated that this application was just to consider the height  
271 and if there was a practical difficulty, that they could make an exception. She felt that the rest of  
272 it was outside of the Board's purview.

273

274 Mr. Fossett felt that the light on the light pole was an important consideration. Chairman Byrnes  
275 agreed, but stated that they were not being asked to decide on what kind of light was coming off  
276 of that. She agreed that we might be behind in our code regarding the technology, but that was  
277 not the BZA's responsibility at this time. She asked the Board to look at the case in front of  
278 them, and decide if it met any of the criteria for a practical difficulty. She believed that there  
279 was no practical difficulty here, it was just a preference.

280

281 Mr. Fossett asked if it wasn't a practical difficulty that they couldn't effectively light the court  
282 with an 8 foot lamp pole. Chairman Byrnes asked if they could do it with a 10 foot pole – did it  
283 have to be 18 feet? They were requesting more than 100% variance.

284

285 Mr. Fossett understood the point, but stated that we would do more damage if we forced the  
286 residents to use flood lights. We end up with a much more satisfying result for the neighbors and  
287 the community, if under these particular circumstances, we encouraged the residents to light their  
288 court in a way that was the least intrusive visually, in terms of the poles and the lights

289

290 More discussion ensued as to whether there was a practical difficulty or not.

291

292 Mr. King asked if the Board wanted to offer the applicant the opportunity to table the motion and  
293 bring back a photometric and a redesign. He noted that if this motion was denied, the applicant  
294 would need to wait another 6 months before they could return.

295

296 Ms. Hays stated that we could table the motion, and request additional information from the  
297 applicant. She did point out that the code read "...low intensity residential light." Mr. Molloy  
298 asked how to interpret that – at what point does it become high intensity? Mr. King pointed out  
299 that was part of the code that needed to be fixed.

300

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

## **Board of Zoning Appeals Meeting**

August 25, 2020

301 Mr. White believed that the ordinance did not address a real solution with outside lighting --  
302 the height of a light was only one part of it. Chairman Byrnes stated that this was the only part  
303 that we have been asked to look at – the height.

304

305 *Mr. Molloy moved to approve the request for a variance from Dana Darbyshire, property*  
306 *owner of 10872 Deerfield Road, Montgomery, Ohio 45242 to allow two light poles for a*  
307 *basketball court in the rear yard area to be a height of 18.9 feet, where a maximum height of*  
308 *8 feet is permitted in the City of Montgomery Zoning Code Section 151.1009(J)(3), as*  
309 *described in the City of Montgomery Staff report, dated August 25, 2020, be approved.*

310

311 *This approval is in accordance with application and plans submitted on July 30, 2020.*

312

313 *This approval is justified by criteria # 5, 6 and 7 as outlined in the Montgomery Codified*  
314 *Ordinance, Chapter 150.2010 (d) for granting variances.*

315

316 *Mr. King seconded the motion.*

317

318 *The roll was called and showed the following vote:*

319

320 *AYE: Mr. Fossett, Mr. King, Mr. Molloy* (3)

321 *NAY: Mr. White, Mr. Saul, Mr. Uckotter, Chairman Byrnes* (4)

322 *ABSENT:* (0)

323 *ABSTAINED:* (0)

324

325 *This motion is denied.*

326

### **Adjournment**

328 Mr. White moved to close the business session.

329 Mr. Uckotter seconded the motion.

330 The business session adjourned at 8:06p.m.

331

332 Chairman Byrnes opened the public hearing at 8:06p.m.

333

### **Other Business**

335 There was no other business to report.

336

### **Minutes**

338 Mr. White moved to approve the minutes of July 28, 2020, as written.

339 Mr. King seconded the motion.

340 The Board unanimously approved the minutes.

341

342

*These Board of Zoning Minutes are a draft. They do not represent the official record of proceedings until formally adopted by the Board of Zoning Appeals.*

*Formal adoption is noted by signature of the Clerk within the Minutes.*

**Board of Zoning Appeals Meeting**

August 25, 2020

343 **Adjournment**

344 Mr. Saul moved to adjourn. Mr. Molloy seconded the motion.

345 The meeting adjourned at 8:08p.m.

346

347

348

349

350

351

352 \_\_\_\_\_  
Karen Bouldin, Clerk

\_\_\_\_\_  
Mary Jo Byrnes, Chairman

\_\_\_\_\_  
Date

353

354 /ksb

355

DRAFT