

10101 Montgomery Road • Montgomery, Ohio 45242 • (513) 891-2424

Board of Zoning Appeals Agenda October 26, 2021 City Hall 7:00 p.m.

- 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

9978 Knollbrook Terrace. Property owners Andrew McMath and Melissa House request a variance to allow an accessory off-street parking area to be 0' from the front property line where 25' is required per Schedule 151.1009(B) of the Montgomery Zoning Code.

Agenda Item 2

7379 Cornell Road. Property owner Josh Schaad requests the following variances: 1) A variance to allow an accessory off-street parking area to be 15' from the front property line where 25' is required per Schedule 151.1009(B) of the Montgomery Zoning Code. 2) A variance to allow a new single-family dwelling to have a front yard setback of 40' where 50' is required in the 'B' District per Schedule 151.1005 of the Montgomery Zoning Code.

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



BOARD OF ZONING APPEALS DIOI Montgomery, Road • Montgomery, Ohio 45242 • (513) 891-2424

Application for Variance: Andrew McMath and Melissa House

October 18, 2021 Staff Report

Applicant: Andrew McMath and Melissa House

9978 Knollbrook Terrace Montgomery, Ohio 45242

Property Owner: SAME

Vicinity Map:



Nature of Request:

The applicants are requesting a variance to allow an accessory off-street parking area to be 0' from the front property line where 25' is required per Schedule 151.1009(B) of the Montgomery Zoning Code.



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Zoning:

This property is zoned 'B' - Single Family Residential and is used for a single-family residence. All surrounding properties are also zoned 'B' single family residential and used for single family residences.

Findings:

- 1. The lot is 0.351 acres or approximately 15,289 square feet, which meets the 15,000 square foot lot minimum in the district.
- 2. The house was built in 1970 and is located on the northeast corner of Knollbrook Terrace and Jolain Drive. The house fronts Knollbrook Terrace with a front-loading two car garage. On-street parking is available on both Knollbrook Terrace and Jolain Drive.
- 3. Schedule 151.1009(b) of the Montgomery Zoning Code requires accessory off street parking to be located 25' from the front property line or the right-of-way line if the property line runs to the centerline of the street.
- 4. The current house is legal non-conforming in both front yard setbacks. The house has a front yard setback of 40' from Knollbrook Terrace and 49.88' from Jolain Drive. The minimum front yard setback in the 'B' District is 50'.
- 5. The existing driveway is approximately 16' in width.
- 6. There is currently a gravel pad 18' x 12' in the location of the proposed new accessory off street parking space.

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?



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The property has two legal non-conforming front yard setbacks on both Knollbrook Terrace and Jolain Drive. The proposed accessory off street parking is located on the Knollbrook Terrace side and the current setback is 40'. Therefore, the maximum length of an accessory off street parking space permitted by right would be 15'. The design standards in the Zoning Code require a minimum of 18' for the length of a parking.

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

Staff is of the opinion that there would be a reasonable rate of return if the variance is not granted, due to the existing two car garage, driveway, and availability of on street parking.

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

The variance is substantial, as the applicant is proposing the driveway expansion to begin just behind the sidewalk. While there is a triangular shaped portion allowing access to the larger parking pad, the parking pad itself is proposed to be approximately 16' from the right of way. The length of the proposed off-street parking is 24' and staff is of the opinion that this may not be the minimum necessary, as a typical parking space is approximately 19-20' feet in length.

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

Staff is of the opinion that the neighborhood would not be substantially altered by granting the variance, as this is the only driveway located on the eastern side of Knollbrook Terrace between Jolain Drive and Trailwind Drive. In addition, the proposed expansion would be located behind the sidewalk and the current driveway apron would not be expanded.

- 5. Would this variance adversely affect the delivery of government services?
 - Government services would not be affected by granting the variance.
- 6. Did the owner purchase the property with the knowledge of the zoning restraint?

The applicant has stated that they were not aware of the zoning restraint.



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

No special conditions exist as a result of the actions of the owner.

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

The applicant could extend the driveway along the north side of the house; however, a fence currently surrounds the rear yard area. In addition, the topography of the property slopes to the north. While onstreet parking is permitted along Knollbrook Terrace, the applicant has expressed concern with traffic and the nearby intersections.

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

The intent of the accessory off street parking setback is to reduce visual clutter by requiring parking pads to be located closer to the house and to provide for safe travel by requiring the parking pad to be located 25' from the right-of-way. This property does have a sidewalk located in front, as well as a legal non-conforming front yard setback. In addition, the applicant has expressed concern with on-street parking due to the close proximity of two intersections and the volume of traffic on Knollbrook Terrace.

Staff does not believe that it is the intent of the zoning code to inhibit improvements to an existing property, if the improvement would not be detrimental to the surrounding properties or character of the neighborhood, the request is reasonable and a practical difficulty has been established.

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

A variance for 9991 Zig Zag Road to allow an accessory parking area to be 0' from the right of way was granted October 23, 2018. The practical difficulties associated with the justification of this variance request were topography, existing vegetation, and a utility pole.

Staff Comments and Recommendations



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Staff believes that the variance request is reasonable and would not be detrimental to the surrounding properties or the character of the neighborhood. A practical difficulty has been established due to the legal non-conforming front yard setback which limits the placement of an accessory parking space.

Approving an accessory off-street parking area to be 0' from the front property line where 25' is required per Schedule 151.1009(B) of the Montgomery Zoning Code and in substantial compliance with the site plan submitted September 7, 2021 could be justified by criteria #1, 4, 5, 6, 7 and 8.



Meeting (Circle): Board of Zoning Appeals Planning Commission Landmarks Commission
Project Address (Location): 9978 Knollbrook Terrace
Project Name (if applicable):
Auditors Parcel Number:
Gross Acres: <u>. 351</u> Lots/Units <u>III</u> Commercial Square Footage NA
Additional information:
PROPERTY OWNER(S) Andrew McMath + Mclissa House Contact 859-652-4001
Address 9978 Knellbrook Terrace Phone: 859-652-4001
City Maktgomery State Ott Zio 45242
E-mail address memath Home Improvement @ Goman 1. com
APPLICANT Andrew Melhoth + Melisse House ontact Andrew + Melisse
Address 9978 Knullbrook Terrace Phone: 859-652-4001
City Montgenery State Ott Zip 45242
E-mail address _ memoth 5335@ Gmail.com
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 Dwng Signature FOR DEPARTMENT USE
ONLY POR DEPARTMENT OSE
Print Name Andrew John Meurat
Date 9-7-202(



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

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6.	Did the owner purchase the property with the knowledge of the zoning restraint?
7.	Whether special conditions exist as a result of the actions of the owner?
8.	Whether the owner's predicament can be feasibly obviated through some other method?
9.	Would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting the variance? Hes, cor Kept off Street, visual things would lack wher.
10.	Would granting the variance confer on the applicant any special privilege that is denied to other properties in this district?

To Whom it May Concern,

We are requesting a dimensional variance for our driveway at 9978 Knollbrook Terrace. Our current driveway width barely accommodates our two vehicles side by side, often leading to tire tracks being left in our yard, which results in mud tracks on the sidewalk and ruining the look of our grass. We also have full time in home childcare, and her vehicle is often parked on the street, causing traffic disruptions on Knollbrook. Our street is very high traffic volume. Due to this, we are requesting to widen the driveway, as well as add a third car parking pad proximal to the house. Not only would this benefit the general look of our home and the neighborhood, it would assist with traffic flow and allow for less vehicles to be parked on the street on a day to day basis. The parking pad could provide for a safe, flat surface for our children to play further away from the street.

Thanks,

Andrew McMath & Melissa House

Melissa Hays

From:

Justin Lawler < jlawler4@gmail.com>

Sent:

Thursday, October 14, 2021 3:26 PM

To:

Melissa Hays Katie Lawler

Cc: Subject:

Response to Zoning Request at 9978 Knollbrook Terrace

Hi Melissa,

This email is to recommend APPROVING the zoning variance request for the off-street parking area at 9978 Knollbrook Terrace. The paved drive will be more aesthetically pleasing than the gravel that is there now, and I assume the purpose is to allow parking of his truck and/or trailer which is often on the street. This will improve the look of the neighborhood to have the vehicle(s) off the street and will be safer for both vehicle and pedestrian traffic.

Thanks for considering us in this request.

Justin & Katie Lawler 7559 Trailwind Dr.



Application for Variance: Josh Schaad

October 26, 2021 Staff Report

Applicant: Josh Schaad

7379 Cornell Road

(Parcel 060300260086)

Property Owner: SAME

Vicinity Map:



Nature of Request:

The applicant is requesting a variance to allow an accessory off-street parking area to be 15' form the front property line where 25' is required per Schedule 151.1009(B) of the Montgomery Zoning Code.

The applicant is requesting a second variance to allow a new single-family dwelling to have a front yard setback of 40' where 50' is required in the 'B' District per Schedule 151.1005 of the Montgomery Zoning Code.



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Zoning:

This property is zoned 'B' - Single Family Residential and is used for a single-family residence. All surrounding properties are also zoned 'B' single family residential. A vacant lot is located to the east of the property. Sycamore High School is located to the north and the City of Montgomery Public Works facility is located to the south and west.

Findings:

- 1. The lot is approximately 12,467 square feet. This property received a variance for lot size on November 24, 2020, as the minimum required for the 'B' District is 15,000 square feet. This was part of an overall reallocation of land in order to more equally divide existing lots.
- 2. Schedule 151.1009(b) of the Montgomery Zoning Code requires accessory off street parking to be located 25' from the front property line or the right-of-way line if the property line runs to the centerline of the street.
- 3. Schedule 151.1005 of the Montgomery Zoning Code requires a front yard setback of 50' for single-family dwellings.
- 4. A two-story home with a two-car attached garage is being proposed for the lot.
- 5. On-street parking is not permitted on Cornell Road, which is also defined as a Collector Road.

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?



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The property is located adjacent to and across from two community facilities: Sycamore High School and City of Montgomery Public Works. The lot is also located on a Collector Road as depicted on the Hamilton County Thoroughfare Plan. There is no on-street parking permitted along Cornell Road. In addition, right of way for this road classification is 80', which is greater than the typical subdivision street right of way of 50'. The topography of the lot also slopes downward from the south to the north.

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

Staff is of the opinion that there may not be a reasonable rate of return if the variances are not granted. The accessory off-street parking space will allow for additional parking as well as provide a turnaround area for vehicles. Backing out onto Cornell Road can be challenging during school opening and closing, and no on-street parking is permitted further limiting the parking of vehicles.

The applicant has concern about uses associated with the Public Works facility and allowing for the house to be located 40' from the right of way would allow for the existing buffer to remain. The existing foliage will continue to serve as a visual and sound buffer between the residential use and the Public Works facility.

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

The front setback variance is substantial, as the applicant is requesting a 20% reduction. However, Cornell Road has a larger than typical right of way, the lot size is less than the minimum required, there is significant slope to the north, and the rear of the property abuts the Public Works facility. Staff is of the opinion that some amount of variance would allow for the proposed dwelling to be situated on the lot with less disturbance to the existing foliage along the southern property line, as well as minimize the amount of grading into the hillside.

The accessory off-street parking variance request is substantial as the applicant is requesting a 40% reduction. However, the variance would not be visually substantial, as there is a significant amount of right of way along Cornell Road. In addition, the applicant is proposing the width of the parking area be only 12', which is the minimum space needed for a single vehicle. Staff is of the opinion that this is the minimum necessary



to allow for one additional vehicle to be parked and/or this area to be used a turnaround space for vehicles.

- 4. Will the character of the neighborhood be substantially altered?
 - Staff is of the opinion that the neighborhood would not be substantially altered by granting the variances, as there are very few homes located along this stretch of Cornell Road and there is not a defined street wall.
- 5. Would this variance adversely affect the delivery of government services?

 Government services would not be affected by granting the variance.
- 6. Did the owner purchase the property with the knowledge of the zoning restraint?
 - The applicant has stated that they were not aware of the zoning restraint.
- 7. Whether special conditions exist as a result of the actions of the owner?

 No special conditions exist as a result of the actions of the owner.
- 8. Whether the owner's predicament can be feasibly obviated through some other method?

The applicant could locate the new dwelling further back on the lot; however, the applicant has explained that he intends to keep as much of the existing foliage to aid in screening the Public Works property. In addition, the proposed placement will minimize the amount of grading necessary.

The accessory off-street parking variance could be shifted back on the lot in order to meet the 25' setback requirement. However, by moving it further north, this would allow for a vehicle to be backed out of the garage in order to turn around and eliminate the need for backing out onto Cornell Road.



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

The spirit and intent of the front yard setback requirement is to create uniformity with regards to setbacks and to develop a consistent street wall. This section of Cornell Road is unique, in that there are few homes along this portion and these few single family lots are surrounded by community uses which are setback significantly off the street. Therefore, there is not a strongly defined street wall. In addition, there is a large amount of right of away along Cornell Road.

The intent of the accessory off street parking setback is to reduce visual clutter by requiring parking pads to be located closer to the house and to provide for safe travel by requiring the parking pad to be located 25' from the right-of-way. Cornell Road has a large amount of right of way and there is no sidewalk on the south side of the street.

Staff does not believe that it is the intent of the zoning code to inhibit improvements to an existing property, if the improvement would not be detrimental to the surrounding properties or character of the neighborhood, the request is reasonable and a practical difficulty has been established.

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

There have been numerous front yard setback variances granted throughout the city. The following are variances in proximity of the one being requested:

An 11.5' front yard setback variance was granted for 7709 Cornell Road on July 12, 1999. This request was as a result of the tornado.

A 9' front yard setback variance was granted for 7612 Lakewater Drive on August 23, 1999. This request was as a result of the tornado.

A 10' front yard setback variance was granted for 7599 Lakewater Drive on October 5, 1999. This request was as a result of the tornado.

A 10' front yard setback variance was granted for 7591 Lakewater Drive on January 27, 2000.



With regards to accessory off-street parking, the following variance has been approved:

A variance for 9991 Zig Zag Road to allow an accessory parking area to be 0' from the right of way was granted October 23, 2018. The practical difficulties associated with the justification of this variance request were topography, existing vegetation, and a utility pole.

Staff Comments and Recommendations

Staff believes that the variance requests are reasonable and would not be detrimental to the surrounding properties or the character of the neighborhood. A practical difficulty has been established due to the lot size, location along a collector road, large amount of public right of way, proximity to community uses, and topography.

Approving an accessory off-street parking area to be 15' from the front property line where 25' is required per Schedule 151.1009(B) of the Montgomery Zoning Code and in substantial compliance with the site plan submitted September 7, 2021 could be justified by criteria #1-10.

Approving a variance to allow a new single-family dwelling to have a front yard setback of 40' where 50' is required in the 'B' District per Schedule 151.1005 of the Montgomery Zoning Code could be justified by criteria #1-10.



APPLICATION FORM

Meeting (Circle): (Board of Zoning Appeals) Planning Commission Landmarks Commission					
Project Address (Location): 7379 Cornell Road					
Project Name (if applicable): <u>1357 Cornell</u>	Road				
Auditors Parcel Number: 603-0026-608	Auditors Parcel Number: 603-0026-6086-00				
Gross Acres: 286 Lots/Units Commercia	al Square Footage				
Additional Information:					
PROPERTY OWNER(S) Josh Schaad Contac	ct Josh Schaad				
Address 4430 Boardwalk Ct Phone	e: 513-873-8000				
City Blue Ash State OH	zip 45242				
E-mail address 105hschaad@twc.c	DM				
E-mail address Joshschaade twc. 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 ONLY FOR DEPARTMENT USE					
Print Name	Meeting Date:				
JOSY SUNDOW	Total Fee: 300.00 cash				
Date Oct. 7, 2021 Date Received: 10/8/2/					
	Received By: 🐧 🔥				



CONSENT OF OWNER(S) TO INSPECT PREMISES

Board of Zoning Appeals Members:

Mary Jo Byrnes

Doug King

Tom Molloy

Bob Saul

Steve Uckotter

Richard White

Peter Fossett



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)
2.	Will the property yield a reasonable rate of return if the variance is not granted?
	No (see attached)
3.	Is the variance substantial? Is it the minimum necessary? No. (See attached)
4.	Will the character of the neighborhood be substantially altered?
	yes, for the better
5.	Would this variance adversely affect the delivery of government services? $\c N_0$



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?
	None
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?
	100
	Ves -
	Would granting the variance confer on the applicant any special privilege
2	that is denied to other properties in this district?
	No

Montgomery BZA:

RE: 7379 Cornell Rd minimum front setback and parking pad variance

Thank you for reviewing my variance request for:

- 1. a 40' front setback in lieu of the current requirement of 50' and,
- 2. a 15' parking pad setback in lieu of the current requirement of 25'.

Attached is a copy of my site plan (Exhibit 1), with my home design from Schumacher Builders (Exhibit 2).

My variance request is unique in that:

- 1. Neither of the two closest homes within 360' of frontage comply with the current setback requirement (7401 is 20' from the ROW and 7427 is 45' from the ROW). My request of 40' is well above their average of 33'.
- 2. The four lots that make up 7379, 7401, and 7427 have shallow lot depths that may have likely occurred long ago because of the widening of Cornell Rd for Sycamore High School.
- 3. 7379 borders on the rear by the Public Works facility who recently built a 7,000+ square foot parking/storage area which is visible from the street and my property. Without a variance, I will have to cut into the natural screening and not be able to maintain the existing vegetation.
- 4. Cornell is a very busy road and it is an important public safety issue that driveways have a suitable turn around area (like almost all of the other homes on Cornell) so that backing out into busy traffic is not necessary. Having to back vehicles onto Cornell endangers the safety of not only the residents but all vehicular traffic that travels along Cornell. This is especially true during peak school traffic hours as my property is directly across from Sycamore High School.

Attached is a photo of the Public Works facility when I purchased my property in 2015 (Exhibit 3). The Public Works facility was expanded several times since that date with public hearings and Board approval. In 2019, a parking/storage area was built which borders my property. It was not approved by the Board. As you can see from pictures taken from my property (Exhibits 4, 5, 6, 7, 8), the parking/storage area is used for parking vehicles and the storage of stacked orange cones, piles of street signs, used tires, tanks, dumpsters, drainpipes, storage containers, stacked picnic tables, and other materials. Since the parking/storage area is in a residential zone along-side my property, I am not sure how it was properly approved without complying to code, a hearing, and Board approval. Aside from the code requirements which call for a 6-foot high masonry fence, administrative approval would still have required the parking/storage area to be a minor alteration that had no impact on neighboring properties. Obviously, as you can see in the photos, it does have an impact on my property.

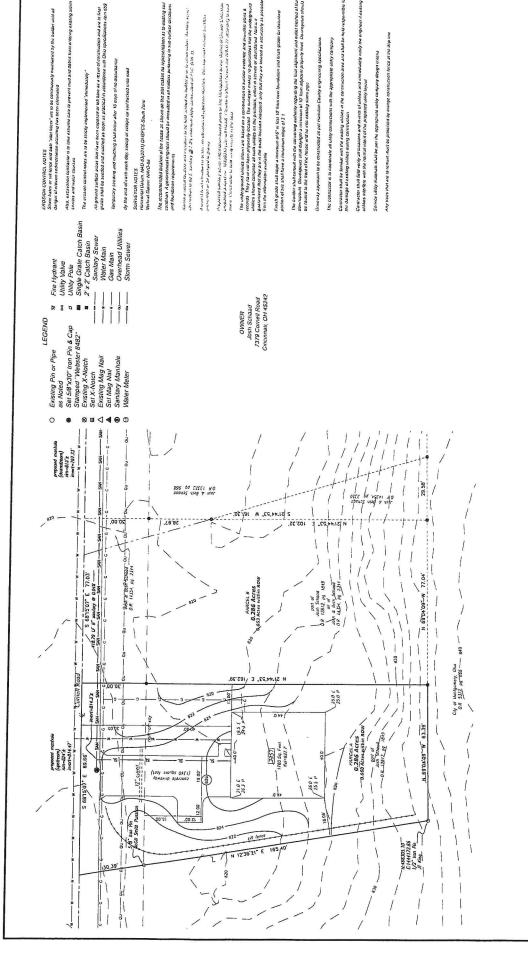
During the summer, the natural screening in the rear of my property comes close to hiding the Public Works parking/storage area. Even though I have picked one of the shallowest site plans available, without the variance, I would have to cut into the natural screening that helps partially hide the parking/storage area in the summer.

In summary, allowing me a 10' difference in my front setback and a 10' difference on my parking pad setback allows me to:

- 1. blend into the neighboring properties with similar size lots (shallow),
- 2. place a home in a location well within the average front setback of the two closest existing homes,
- 3. maintain the existing vegetation and not have to remove any of the natural screening in the back of my property that would further expose the Public Works parking/storage area, and
- 4. protect anyone having to back onto Cornell Rd including all vehicular traffic that travels along that section of the road, especially during peak school traffic.

Thank you for your consideration,

Josh Schaad 513-873-8000



150 SILT FENCE DETAIL ∢ 77.5 ;

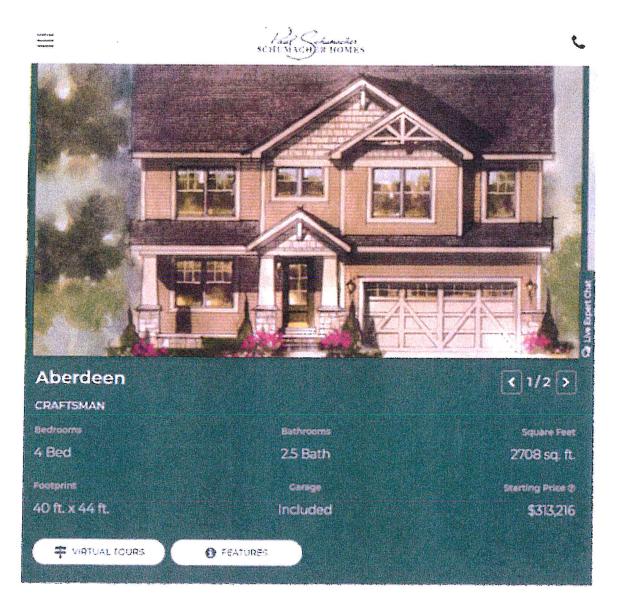
WEBSTER LAND SURVEYING, L.L.C. 7357 Carnell Hood Cincinnut, OH 45242 PROPERTY ADDRESS BUILDING PERNIT PLAN
7357 CORNELL ROAD, CITY OF MONTGOMERY
SECTION 6, TOWN 4, ENTIRE RANGE 1
SYCAMORE TOWNSHIP HAMILTON COUNTY, OH 2940 metron rais time, sur 210 metron JS79 Canest Road Concentol, OH 45247 MANN BY BAIN 09/25/2021 1" = 20"

OSPSS2021

Brent Websier, P.S. Professional Surveyor #8482 in the State of Other

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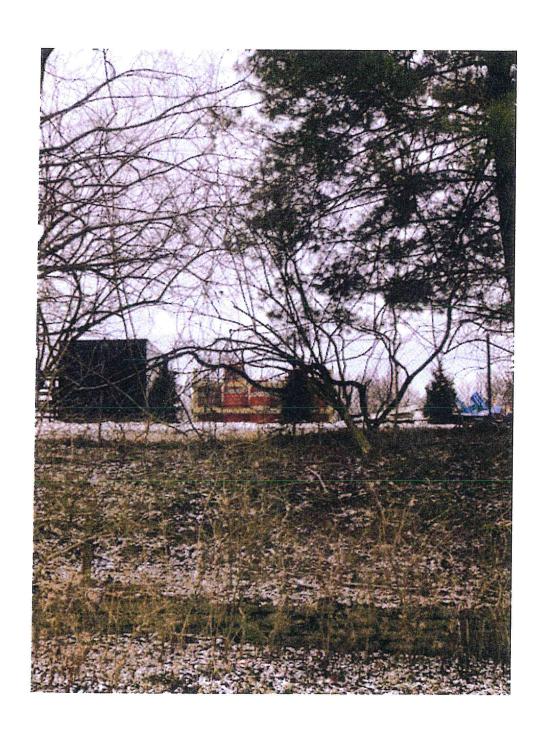




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10.00









CITY OF MONTGOMERY BOARD OF ZONING APPEALS REGULAR MEETING

City Hall 10101 Montgomery Road Montgomery, OH 45242

September 28, 2021

<u>Present</u>				
GUESTS & RES	IDENTS_	STAFF		
Larry Hatfield, AIA Principal North Shore Design 430 Reading Road Fourth Floor Cincinnati, OH 45202 Michael Kubicki Kubicki Real Estate Partners 8455 Kugler Mill Rd, 45242	Craig Margolis Vice Mayor Montgomery City Council 8270 Mellon Drive, 45242	Tracy Henao, Assistant City Manager / Acting Community Development Director Karen Bouldin, Secretary ALL BOARD MEMBERS PRESENT Mary Jo Byrnes, Chairman Richard White, Vice-Chairman Peter Fossett Bob Saul Jade Stewart Steve Uckotter MEMBERS NOT PRESENT Tom Molloy		

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

12 13 **Roll Call**

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2324

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The roll was called and showed the following responses:

PRESENT: Ms. Stewart, Mr. Fossett, Mr. Uckotter, Mr. White, Mr. Saul,
Chairman Byrnes (6)
ABSENT: Mr. Molloy (1)

Pledge of Allegiance

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

Chairman Byrnes gave a brief explanation of tonight's proceedings: She stated that tonight the Board will be conducting one public hearing. A public hearing is a collection of testimony from City Staff, the applicant, and anyone wishing to comment on the case. All discussions by the

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

September 28, 2021

- 27 Board of Zoning Appeals and all decisions will take place within the business session of this
- meeting, which immediately follows the public hearing. Everyone is welcome to stay for the 28
- 29 business session of the meeting, however, the Board will not take any further public comment
- during the portion of the meeting, unless clarification is needed by a Board member. 30
- 31 Chairman Byrnes noted that anyone not agreeing with the Board's decision has the option of
- 32 appealing to Hamilton County Common Pleas Court, under the procedures established by that

33 court.

34 35

She asked all guests to turn off their cell phones.

36 37

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

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Guests and Residents

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.

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- New Business (1)
- A request from North Shore Design, 430 Reading Road, Fourth Floor, Cincinnati, OH 45202
- for the property owner, Book Park, 1699 Pierce Drive, Beavercreek, OH 45432, and situated 46
- at 5017 Cooper Road, Montgomery, OH 45242, for a variance of 9 feet, from the required 15 47 48
- foot rear yard parking setback, and for a variance of 5 feet, from the required 5 foot east side 49 yard setback, in order to allow for an expanded parking lot, for a proposed retail-use at 5017
- 50 Cooper Road.

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Staff Report

- 53 Ms. Henao reviewed the Staff Report dated September 28, 2021, for the applicant, North Shore
- 54 Design, and the Property Owner, Book Park. She noted that she had received 3 emails regarding
- 55 this request – all from property owners in the Cooper Creek Condominiums and Apartments: at
- 56 5017 Cooper, 5345 Cooper, Unit J and Unit C. She stated that most of the concerns related to
- 57 maintaining as many trees as possible in the buffer area. Ms. Henao also received a phone call
- 58 today from the property owner at 5345 Cooper, Unit J, who indicated that she was also opposed
- 59 to the side-yard setback variance because she was concerned with cars pulling directly onto the
- 60
- private drive. Another phone call was received from an owner in Cooper Creek Condominiums,
- 61 who did not have any objections, after Ms. Henao had answered her questions.

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Ms. Henao asked if there were any questions, pointing out that the applicant was also available to answer questions.

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- 66 Mr. Fossett asked for details about the additional parking required by the Zoning Code.
- 67 Ms. Henao stated that the Zoning Code required more spaces for a retail use than for an
- 68 automobile use. The application was proposing one additional parking space over the minimum
- 69 requirement. Mr. Fossett asked if it would it still meet the requirement if the side parking was
- 70 kept at two spaces. Ms. Henao confirmed that it would.

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Ms. Stewart asked if we had measured the back to see if the mature trees along the rear property line could be kept with the new plan. According to the drawing on page 19, Ms. Stewart felt that the trees on the eastern side could be maintained, but she wondered if the drawing was truly consistent with the actual tree size. Ms. Henao showed some photos on the large screen; she believed that there were a couple of trees on the east side that very likely could be kept. She was unsure about the west side and felt that there would probably be disturbance near the trees due to the construction that would ultimately cause the trees to die. Ms. Henao pointed out that the

applicant had stated that they planned to replace trees that must be removed.

Ms. Stewart asked if the City had an assessment of which trees could be kept. She wondered if the motion needed to specifically state that they needed to preserve healthy, mature trees or if they needed to identify the trees to be kept. Ms. Henao suggested that the Board approve the language without identifying specific trees. She noted that the Planning Commission will require the landscaping plan to be approved by the City Arborist. Then, the City Arborist would meet with the applicant and Ms. Henao, assess the health of the trees, and determine which ones could be kept. She explained that general language provides flexibility to allow for an inspection by the City Arborist.

Mr. White asked about the big tree on the east side, located on the island in the parking lot - and if it would have to come out. Ms. Henao confirmed that it would need to come down to put additional parking spaces there. The applicant proposed new landscaping in a landscaped island that would be parallel to Cooper Road.

Chairman Byrnes referred to the drawing and asked if there were trees proposed in that landscape island to shield the cars from Cooper Road. Ms. Henao agreed and pointed out that the landscaping would also beautify the new entry to the building. The proposed new entry feature will have added trees and landscaping to improve the aesthetics as you enter.

Chairman Byrnes asked if the applicant would like to speak.

Larry Hatfield, AIA, Principal, North Shore Design, 430 Reading Road, Fourth Floor, Cincinnati, OH 45202 stated that he is an architect, representing his client who intends to purchase the property. He felt that Ms. Henao covered the facts well. Regarding the planting that would be to the east of the entrance, the intent would be to increase the focus on that facade entrance, and to screen the condominiums in the back.

Mr. White noted that the back parking lot had lots of dips; he asked if it would be leveled off. Mr. Hatfield stated that it would. He also stated that they will remove the dumpster in the back.

111 Ms. Stewart asked if they were committed to maintaining any healthy trees along the back 112 property setback, as well as replacing any trees that must be replaced. Mr. Hatfield confirmed.

- 114 Chairman Byrnes asked about any environmental issues if there was any storage of old oil.
- 115 Ms. Henao stated that there was no indication of underground storage tanks. She thought the

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- hydraulic lifts would need to come out so any potential for leaking hydraulic fluid could be
- avoided. She did not believe there were any environmental issues on the site.
- 119 Mr. White asked if there was any problem with impervious surfaces. Ms. Henao stated that the
- impervious surface coverage regulation did not apply in this situation because this is
- 121 commercially zoned. The impervious surface regulation is typically for conditional uses in a
- residential district. In the General Business district, the only coverage requirement for setbacks
- and to break up parking lots with interior landscape islands. She pointed out that in this
- situation, the parking areas are small without much room for interior parking lot landscape
- island. The requirements are different because of the smaller size of the lots.

127 **Adjournment**

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- 128 Mr. White moved to close the public hearing.
- 129 Mr. Uckotter seconded the motion.
- 130 The public hearing adjourned at 7:25 p.m.
- 132 Chairman Byrnes opened the business session at 7:25 p.m.

Business Session (1)

- 135 A request from North Shore Design, 430 Reading Road, Fourth Floor, Cincinnati, OH 45202
- 136 for the property owner, Book Park, 1699 Pierce Drive, Beavercreek, OH 45432 and situated at
- 137 5017 Cooper Road, Montgomery, OH 45242, for a variance of 9 feet, from the required 20
- 138 foot rear yard parking setback, and for a variance of 5 feet, from the required 5 foot east side
- yard setback, in order to allow for an expanded parking lot, for a proposed retail use at
- 140 *5017 Cooper Road.*141
- Ms. Stewart felt that this was an upgrade for the City. She encouraged all to stay committed to
- maintaining as many mature trees as possible and would like to put this as a condition. She
- believed that would satisfy any rear resident issues. Ms. Stewart stated that she had visited the
- area in the afternoon, pointing out that Pipkin's was very busy, and there was no visual buffer.
- She believed that whatever visual disturbances this lovely building would have on the residents
- would be far less than the current ones, given the stock and customers at Pipkin's.
- Mr. White felt this was a very appropriate use and was surprised they could convert this into a
- diamond store.
- 152 Chairman Byrnes agreed that it would be a great improvement.
- Mr. Fossett was concerned with the 3 parking spots on the side that require customers to back-
- out onto the shared driveway. He was concerned if you were pulling in there, the trees would
- screen your view making an unsafe situation. He understood that the newer features on cars had
- visuals to help with backing out; however, he was concerned with a potential unsafe situation
- that did not currently exist. He felt it would be safer to keep the 2 spots instead of reconfiguring
- the spaces as proposed.

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- 161 Chairman Byrnes asked if those spaces were to be used by staff. Mr. Hatfield stated that it could
- be. Chairman Byrnes stated that they could just ask if staff could back-in to those spots. 162
- 164 Michael Kubicki, Kubicki Real Estate Partners, 8455 Kugler Mill Rd, 45242 stated that it
- 165 was a jewelry store, so it was an extremely low intensive use. People will not be coming and
- 166 going all the time. He didn't feel this parking issue would present a problem.
- 167 168 Ms. Stewart agreed that it was a potential safety issue. Mr. Saul suggested a sign be placed in
- 169 front of the parking spot. Mr. Fossett felt it would be safer to keep the current two spots, and
- 170 that re-orienting it to 3 spaces created a potential safety issue. There was more discussion.
- 172 Mr. Kubicki pointed out that they were 40 feet from the road, so the traffic was not travelling
- 173 fast, and it was far enough from the intersection that you could see the parking. He also noted
- 174 that this would be a day-time use: their hours would be 9 a.m. to 6 p.m., allowing for good
- 175 visibility. This would be the same issue you might see at any shopping mall; and was extremely
- 176 low use.

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- 178 Mr. Fossett stated that the major difference was the placement of the landscaped screening, right
- 179 by that one parking spot. Mr. Kubicki understood the concern for visibility and stated that they
- 180 would take it into account as they designed the landscaping.
- 182 Ms. Henao noted that one option, would be to make all the landscaping in this island lower than
- 183 4 feet (i.e. shrubs). Another option would be to utilize a tree that limbs up high (limbs up 5 to 6
- 184 feet). These could be put as conditions and the City Arborist could make a recommend about the
- 185 landscaping so as not to cause a visual obstruction. Chairman Byrnes felt this should be left up
- 186 to the City Arborist, and not determined by the Board.
- 188 Ms. Henao pointed out that typically a design is created around a 4-foot level, because when you
- 189 are sitting in a vehicle, that is where your eye level is. You either want to go above that, or
- 190 below it. She stated that the arborist and traffic engineer could assist since this was a concern.
- 192 Mr. White didn't feel we should get into too many details.
- 194 Mr. Uckotter understood and agreed with Mr. Fossett's concern; however, he felt it was
- 195 outweighed by the fact that they were trying to create an ambiance there at the new entryway.
- 196 You would be looking out at shrubs, rather than cars, which would soften that corner.
- 198 Ms. Stewart suggested that our proposed motions needed to include the 2 conditions suggested
- 199 on page 7 of the Staff Report.
- 201 Mr. Uckotter moved to approve the request from North Shore Design, 430 Reading Road,
- 202 Fourth Floor, Cincinnati, OH 45202 for the property owner, Book Park, 1699 Pierce Drive,
- 203 Beavercreek, OH 45432, and situated at 5017 Cooper Road, Montgomery, OH 45242, to
- 204 allow for a rear yard setback of 11 feet, for a portion of the parking lot, where a 15 foot rear
- 205 yard parking setback is required, per Schedule 151.1207 of the Montgomery Zoning Code, as

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206 described in the City of Montgomery Staff Report dated September 28, 2021, with the 207 following conditions: 208 209 1) A Final Development Plan, including a final landscape plan be approved by the 210 Planning Commission and the City Arborist. 211 212 2) Every effort be made to preserve any healthy, mature trees along the rear property line. 213 214 This approval is justified by criteria # 1, 2, 3, 4, 5, 7, 8, 9 and 10, as outlined in Montgomery 215 Codified Ordinance Chapter 150.2010 (d) for granting variances. 216 217 Mr. Saul seconded the motion. 218 219 The roll was called and showed the following vote: 220 221 AYE: Ms. Stewart, Mr. Fossett, Mr. White, Mr. Saul, Mr. Uckotter, Chairman Byrnes **(6)** 222 NAY: (0)223 ABSENT: Mr. Molloy **(1)** 224 ABSTAINED: (0)225 226 This motion is approved. 227 228 Mr. Uckotter moved to approve the request from North Shore Design, 430 Reading Road, 229 Fourth Floor, Cincinnati, OH 45202 for the property owner, Book Park, 1699 Pierce Drive, 230 Beavercreek, OH 45432, and situated at 5017 Cooper Road, Montgomery, OH 45242, to 231 allow for a side yard setback of 0 feet, where a 5 foot side yard setback is required, per 232 Schedule 151,1207 of the Montgomery Zoning Code, as described in the City of Montgomery 233 Staff Report dated September 28, 2021, with the following conditions: 234 235 1) A Final Development Plan, including a final landscape plan be approved by the 236 Planning Commission and the City Arborist. 237 238 2) Every effort be made to preserve any healthy, mature trees. 239 240 This approval is justified by criteria # 1, 4, 5, 7, 9 and 10, as outlined in Montgomery Codified 241 Ordinance Chapter 150.2010 (d) for granting variances. 242 243 Mr. Saul seconded the motion. 244 245 The roll was called and showed the following vote: 246 247 **(6)** AYE: Mr. Fossett, Mr. White, Mr. Saul, Mr. Uckotter, Ms. Stewart, Chairman Byrnes 248 *NAY*: **(0)** 249 ABSENT: Mr. Molloy **(1)** 250 ABSTAINED: (0)

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This motion is approved.

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Mr. Fossett asked if the Planning Commission would be advised of tonight's discussion around the safety concerns of the parking. Ms. Henao stated that tonight's meeting minutes would be included in the Planning Commission's packet.

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Adjournment

- 259 Mr. Uckotter moved to close the business session.
- 260 Mr. Saul seconded the motion.
- 261 The business session adjourned at 7:45 p.m.

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Chairman Byrnes opened the public hearing at 7:45 p.m.

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Other Business

Mr. Margolis reported on his recent attendance at the celebration of General Montgomery Day in Montgomery, New York. While it is a rural and agrarian area, many of the surrounding counties join in the celebration - there were about 150 floats in the 2 ½ hour parade. He spoke with their historian, gathering some research and ideas for our city's possible History Club, which was still in the incubation stage.

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Mr. Margolis touched on the upcoming election, pointing out that there were several candidates, including BZA member Steve Uckotter. He reminded all members that every election is important.

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276 Mr. Margolis asked if there were any questions.

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Chairman Byrnes asked if it would be possible to provide safety training for Board members, at some point. Ms. Henao stated that the COVID pandemic disturbed this training schedule; however, she would follow-up and get this training back on the agenda.

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282 **Minutes**

- 283 Mr. Saul moved to approve the minutes of August 24, 2021, as written.
- 284 Mr. White seconded the motion.
- 285 The Board unanimously approved the minutes.

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Adjournment

- 288 Mr. Uckotter moved to adjourn. Ms. Stewart seconded the motion. 289
 - The meeting adjourned at 7:50 p.m.

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294 Karen Bouldin, Clerk 295

Mary Jo Byrnes, Chairman

Date

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