

**Board of Zoning Appeals Agenda**

**January 24, 2023**

**City Hall  
6:00 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. Other Business
  1. Legal Training provided by Terry Donnellon, Law Director
7. Approval of Minutes
8. Adjournment

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

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**CITY OF MONTGOMERY**  
**BOARD OF ZONING APPEALS REGULAR MEETING**  
CITY HALL · 10101 MONTGOMERY ROAD · MONTGOMERY, OH 45242

*November 22, 2022*

<u>PRESENT</u>		
<u>GUESTS &amp; RESIDENTS</u>		<u>STAFF</u>
<b>Chris Lenahan</b> <b>8755 Monte Dr., 45242</b>		<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>Catherine Mills Reynolds</b>
		<b>Tom Molloy</b>
		<b>Bob Saul</b>
		<b>Jade Stewart</b>
		<b>Steve Uckotter</b>

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

**Roll Call**

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

**PRESENT:** *Ms. Mills Reynolds, Mr. Uckotter, Mr. White, Mr. Saul, Mr. Molloy,* (7)  
*Ms. Stewart, Chairman Byrnes*

**ABSENT:** (0)

*All members were present.*

**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 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

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28 business session of the meeting, however, the Board will not take any further public comment  
29 during that portion of the meeting, unless clarification is needed by a Board member.

30 Chairman Byrnes noted that anyone not agreeing with the Board's decision has the option of  
31 appealing to Hamilton County Common Pleas Court, under the procedures established by that  
32 court.

33

34 She asked all guests to turn off their cell phones.

35

36 Chairman Byrnes asked that anyone planning to speak to the Board please stand to be sworn in  
37 (which includes the applicant). Chairman Byrnes swore in everyone planning to speak.

38

### **Guests and Residents**

40 Chairman Byrnes asked if there were any guests or residents who wished to speak about items  
41 that were not on the agenda. There were none.

42

### **Old Business**

44 There was no old business to discuss.

45

### **New Business**

47 *A request for a variance from Chris Lenahan, property owner, 8755 Monte Drive,  
48 Montgomery, OH 45242 to allow for fencing four feet in height in the front yard area, along  
49 Coopermeadow Lane, where Section 151.1009(I)(1) of the Montgomery Zoning Code does not  
50 permit fences over two feet in height in the front yard.*

51

### **Staff Report**

53 Ms. Hays reviewed the Staff Report dated November 22, 2022, "Application for Variance:  
54 Chris Lenahan".

55

56 She showed drawings on the wide screen for all to see, to provide more understanding of the  
57 Staff Report. She indicated that there had been emails received, in support of this application.

58

59 Mr. Molloy pointed out that the house just to the south of them, which is legal, non-conforming,  
60 and set back 25 feet, was constructed prior to 2002. Ms. Hays confirmed.

61

62 **Chris Lenahan, 8755 Monte Drive, Montgomery, OH 45242** handed out several photos to the  
63 Board, showing various views of the yard, and spoke to each one of them. He showed them a  
64 fence similar to what he proposed – black matte. He noted that because there was a row of  
65 evergreens on the side of the house, the fence would not be seen; it would be inside the tree line,  
66 and not highly visible from the road. He noted that both of his neighbors, one on the north, the  
67 other on the west, were supportive of his request. He mentioned that he owned two dogs, and this  
68 would be helpful. If he were to put the fence in, flush to the side of the house, according to the  
69 zoning code, and given the current landscaping, the fence would be in the center of his backyard.

70

71 He noted that the previous fence, 10 years ago, was a split-rail fence; he felt that this fence  
72 presented a much better appearance. He asked if there were any questions.

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## **Board of Zoning Appeals Meeting**

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73

74 Mr. Molloy referred to the west side, looking at the stakes, and asked if that was the property  
75 line. Mr. Lenahan confirmed. Mr. Molloy asked how he would maneuver around the trees that  
76 were right in line with the stakes. Mr. Lenahan stated that his neighbor approved of him going  
77 into their property, 8 or 10 inches, to avoid the tree roots and keep a straight line.

78

79 Mr. White asked if he had considered an authorized 2 foot fence, noting that higher shrubbery  
80 right behind it could prohibit the dogs from jumping through. Mr. Lenahan did not feel it would  
81 work.

82

83 Mr. Saul asked if he had looked at the code before he started all of this. Mr. Lenahan stated that  
84 he had moved in, unknowing of this zoning code.

85

86 Mr. Uckotter asked if he had an invisible fence, or if he had considered one. Mr. Lenahan stated  
87 that he was advised not to use it with his Whippet. He was also concerned that coyotes could  
88 enter more easily with an invisible fence; he noted that his dogs were smaller – 30 pounds and  
89 under.

90

### **Adjournment**

92 Mr. Saul moved to close the public hearing.

93 Mr. Uckotter seconded the motion.

94 The public hearing adjourned at 7:30p.m.

95

96 Chairman Byrnes opened the business session at 7:30p.m.

97

### **Business Session**

99 *A request for a variance from Chris Lenahan, property owner, 8755 Monte Drive,*  
100 *Montgomery, OH 45242 to allow for fencing four feet in height in the front yard area, along*  
101 *Coopermeadow Lane, where Section 151.1009(I)(1) of the Montgomery Zoning Code does not*  
102 *permit fences over two feet in height in the front yard.*

103

104 Ms. Stewart noted that the Code was changed 20 years ago in 2002, to specifically prohibit this  
105 height of fence. She felt that it was important to keep in mind our goal. She could not document  
106 a practical difficulty due to landscaping. She did not believe there had been an allowance of this  
107 kind, five feet from the property line, for a fence four feet in height, since the 2002 change.

108 Ms. Stewart felt that this would set a precedent.

109

110 Several of the Board members had the same situation (corner lots), and they understood  
111 Mr. Lenahan's dilemma, but felt that the Code needed to be adhered to. There was some  
112 discussion about past cases that had not been approved.

113

114 Mr. Saul agreed with Ms. Stewart's comment, and was not in favor of this variance.

115

116 Ms. Hays pointed out a case in 2017 or 2018, where a fence was in the front yard, and the  
117 owners had removed it and wanted to replace it. The owner sought to have the code changed.

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## **Board of Zoning Appeals Meeting**

November 22, 2022

118 She pointed out that there was fairly recent discussion on the code being changed for front yard  
119 requirements for fencing. At that time, the Planning Commission decided not to modify it.

120

121 Ms. Mills-Reynolds did understand that you would not see the fence at all, if you were driving  
122 by that property, but she could not find a practical difficulty to allow it. There was more  
123 discussion, and the Board agreed that they needed to abide by the requirements of the Code.

124 Mr. Saul stated that we did not want to set a precedent.

125

126 The Board suggested that Mr. Lenahan speak with the Planning Commission, as the next step  
127 would be to change the code. This Board could not make an exception. Mr. Uckotter noted that  
128 Mr. Lenahan could put the fence further in.

129

130 *Mr. Molloy moved to approve the request from Chris Lenahan, property owner, 8755 Monte*  
131 *Drive, Montgomery, OH 45242 for a variance to allow for a front yard fence along*  
132 *Coopermeadow Lane to be four feet in height, where Section 151.1009(I)(1) of the City of*  
133 *Montgomery Zoning Code does not permit fences over two feet in height in the front yard, as*  
134 *described in the City of Montgomery Staff Report, dated November 22, 2022.*

135

136 *This approval is in substantial accordance with the survey and Layout Drawing submitted with*  
137 *this variance request.*

138

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

141

142 *Mr. Saul seconded the motion.*

143

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

145

146 *AYE:* (0)

147 *NAY: Ms. Stewart, Ms. Mills Reynolds, Mr. Uckotter, Mr. White, Mr. Saul, Mr. Molloy* (7)

148 *Chairman Byrnes*

149 *ABSENT:* (0)

150 *ABSTAINED:* (0)

151

152 *This motion is denied.*

153

### **Adjournment**

155 Mr. Saul moved to close the business session.

156 Ms. Stewart seconded the motion.

157 The business session adjourned at 7:45p.m.

158

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

160

161

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**Board of Zoning Appeals Meeting**

November 22, 2022

162 **Council Report**

163 There was no business to report.

164

165 **Minutes**

166 Mr. Molloy moved to approve the minutes of October 25, 2022, as amended.

167 Mr. Uckotter seconded the motion.

168 The Board unanimously approved the minutes.

169

170 **Adjournment**

171 Mr. White moved to adjourn. Mr. Molloy seconded the motion.

172 The meeting adjourned at 7:47p.m.

173

174

175

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178

179 \_\_\_\_\_  
Karen Bouldin, Clerk

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

\_\_\_\_\_ Date

180

181 /ksb

182

DRAFT

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

City Hall · 10101 Montgomery Road · Montgomery, OH 45242

**November 29, 2022**

<u>PRESENT</u>		
<u>GUESTS &amp; RESIDENTS</u>		<u>STAFF</u>
Lee Ann Bissmeyer Vice Mayor City Council	Kathy Saul 7610 Shadowhill Way, 45242	Melissa Hays, Zoning and Code Compliance Officer
		Karen Bouldin, Secretary
Brooke Alini Atlantic Sign Company 2328 Florence Avenue Cincinnati, OH 45206		<u>BOARD MEMBERS PRESENT</u> Mary Jo Byrnes, Chairman Richard White, Vice-Chairman Tom Molloy Bob Saul Jade Stewart Steve Uckotter
		<u>MEMBERS NOT PRESENT</u>
		Catherine Mills Reynolds

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

**Roll Call**

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

**PRESENT: Mr. Uckotter, Mr. White, Mr. Saul, Mr. Molloy,**  
**Ms. Stewart, Chairman Byrnes** (6)  
**ABSENT: Ms. Mills Reynolds** (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 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

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November 29, 2022

27 business session of the meeting, however, the Board will not take any further public comment  
28 during the portion of the meeting, unless clarification is needed by a Board member.  
29 Chairman Byrnes noted that anyone not agreeing with the Board's decision has the option of  
30 appealing to Hamilton County Common Pleas Court, under the procedures established by that  
31 court.

32

33 She asked all guests to turn off their cell phones.

34

35 Chairman Byrnes asked that anyone planning to speak to the Board please stand to be sworn in  
36 (which includes the applicant). Chairman Byrnes swore in everyone planning to speak.

37

### **Guests and Residents**

39 Chairman Byrnes asked if there were any guests or residents who wished to speak about items  
40 that were not on the agenda. There were none.

41

### **New Business**

43 *A request from Atlantic Sign Company, 2328 Florence Avenue, Cincinnati, OH 45206, for*  
44 *the property located at 9689 Montgomery Road, Montgomery, OH 45242, owned by Pond*  
45 *Realty, to allow for a wall sign to be located higher than the head of the second story window.*  
46 *Section 151.3012(b)(5) of the Montgomery Zoning Code states that wall signs shall not be*  
47 *higher than the head of the second story window, as measured from the building grade line to*  
48 *the top of the sign.*

49

### **Staff Report**

51 Ms. Hays reviewed the Staff Report dated November 29, 2022, "Application for Variance:  
52 Atlantic Sign Company, 9689 Florence Avenue, Cincinnati, OH 45206."

53

54 She showed drawings on the wide screen for all to see, to provide more understanding of the  
55 Staff Report. She indicated that there had been no calls or emails received regarding this  
56 application.

57

58 Mr. Saul asked if this was something that came up during the construction. Ms. Hays stated that  
59 it did not come up during the construction. The sign is actually in place now, but the company is  
60 merging with Visual Comfort and Co. It is a new name and a different type of sign, internally lit.

61

62 Ms. Hays noted a correction in the last paragraph, on the last page of her Staff Report: the  
63 drawings dated September 13, 2022 (not May 13, 2022).

64

65 Mr. Uckotter asked if the only change is that this sign is internally illuminated, because we had  
66 approved the unlit sign, previously. Ms. Hays confirmed, noting that this does not require a  
67 variance, this is simply a large enough change that it needed to come before the Board.

68

69 Mr. White stated that the total size of the two signs added up to slightly over 60 square feet, and  
70 felt this might be a problem. Mr. Molloy stated that this sign was smaller than the sign that was  
71 approved, but also had concerns about the total signage.



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## **Board of Zoning Appeals Special Meeting**

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72

73 Ms. Hays stated that the sign is only measured by the lettering, not the entire face of the free  
74 standing sign. The total of both signs did not come near the 60 square feet for total signage.

75

76 Mr. White asked if the free standing sign required street numbers. Ms. Hays confirmed that it  
77 did, even though it did not show it, in the picture. She noted that it does not count toward the  
78 total sign footage.

79

80 Mr. White asked if there was any concern about the brightness of the lighting. Ms. Hays stated  
81 that backgrounds were required to be opaque; it will have to adhere to all of the lighting  
82 requirements for wall signage.

83

84 Mr. Byrnes asked if the applicant wished to speak.

85

86 **Brooke Alini, Atlantic Sign Company, 2328 Florence Avenue, Cincinnati, OH 45206**  
87 stated that Circa Lighting got bought out by Visual Comforting Co. They were planning on  
88 completing the merger later in 2023, but it happened earlier; hence, the need to change the sign.  
89 The current sign is not illuminated, and they are proposing to replace it with the new internally  
90 illuminated sign. She pointed out that many other signs in the area were also illuminated.

91

92 Mr. White asked if they intended to add the street address on the monument sign. Ms. Alini  
93 confirmed that they would. She noted that the store was not open for business yet.

94

95 Chairman Byrnes asked if any guests or residents had comments. There were none.

96

### **Adjournment**

98 Mr. Saul moved to close the public hearing.

99 Mr. Molloy seconded the motion.

100 The public hearing adjourned at 7:15p.m.

101

102 Chairman Byrnes opened the business session at 7:15p.m.

103

### **Business Session**

105 *A request from Atlantic Sign Company, 2328 Florence Avenue, Cincinnati, OH 45206, for*  
106 *the property located at 9689 Montgomery Road, Montgomery, OH 45242, owned by Pond*  
107 *Realty, to allow for a wall sign to be located higher than the head of the second story window.*  
108 *Section 151.3012(b)(5) of the Montgomery Zoning Code states that wall signs shall not be*  
109 *higher than the head of the second story window, as measured from the building grade line to*  
110 *the top of the sign.*

111

112 There was no discussion from the Board.

113

114 *Mr. Molloy moved to approve the request from Atlantic Sign Company, 2328 Florence*  
115 *Avenue, Cincinnati, OH 45206, for the property located at 9689 Montgomery Road,*  
116 *Montgomery, OH 45242, owned by Pond Realty, to allow for a wall sign to be located higher*

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**Board of Zoning Appeals Special Meeting**

November 29, 2022

117 *than the head of the second story window, as measured from the building grade line to the top*  
118 *of the sign, where the height of the sign is limited to the height of the second story window*  
119 *head, per Section 151.3012(b)(5) of the City of Montgomery Zoning Code, as described in the*  
120 *City of Montgomery Staff Report, dated November 29, 2022.*

121  
122 *This approval is in accordance with the Storefront Elevation Drawing, dated September 13,*  
123 *2022.*

124  
125 *This approval is justified by criteria # 1, 2, 3, 4, 5, 6, 7, 8, 9 &10, as outlined in Montgomery*  
126 *Codified Ordinance Chapter 150.2010 (d) for granting variances.*

127  
128 *Mr. Saul seconded the motion.*

129  
130 *The roll was called and showed the following vote:*

131  
132 *AYE: Ms. Stewart, Mr. Uckotter, Mr. White, Mr. Saul, Mr. Molloy,*  
133 *Chairman Byrnes* (6)  
134 *NAY:* (0)  
135 *ABSENT: Ms. Mills Reynolds* (1)  
136 *ABSTAINED:* (0)

137  
138 *This motion is approved.*

139  
140 **Adjournment**

141 Mr. Saul moved to close the business session.  
142 Mr. Uckotter seconded the motion.  
143 The business session adjourned at 7:20p.m.  
144  
145 Chairman Byrnes opened the public hearing at 7:20p.m.

146  
147 **Council Report**

148 Ms. Bismeyer stated that there will be the Christmas tree lighting this Saturday.  
149 There was no other business to report.

150  
151 **Minutes**

152 The November 22, 2022 minutes will be approved at the next meeting.

153  
154 **Adjournment**

155 Mr. Saul moved to adjourn. Mr. White seconded the motion.  
156 The meeting adjourned at 7:30p.m.

157  
158  
159  
160 \_\_\_\_\_  
161 Karen Bouldin, Clerk  
/ksb

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