

Board of Zoning Appeals Agenda
March 28, 2023
City Hall
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

10301 Peachtree Lane – Nu Era Development, LLC, on behalf of property owner, Itay Azouz, is requesting a variance to allow a covered front porch to have a setback of 11' where 15' is required per Schedule 151.1005 of the Montgomery Zoning Code.

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

**CITY OF MONTGOMERY
BOARD OF ZONING APPEALS**

**Application for Variance: *Itay Azouz*
10301 Peachtree Lane**

**March 28, 2023
Staff Report**

Applicant: Nu Era Development, LLC
8944 Dallasburg Road
Morrow, Ohio 45152

Property Owner: Nurit and Itay Azouz
10301 Peachtree Lane
Montgomery, Ohio 45242

Vicinity Map:



Nature of Request:

Nu Era Development, LLC, on behalf of property owner, Itay Azouz, is requesting a variance to allow a covered front porch to have a setback of 11' where 15' is required per Schedule 151.1005 of the Montgomery Zoning Code.

Zoning:

This property is zoned 'A' single family residential and is being used for a single family residence. The properties to the west, east and south are also zoned 'A' single family residential and are being used for single family dwellings. The property to the north is zoned 'A' single family residential and is a church.

Findings:

1. The lot size is 20,037 square feet and meets the minimum lot size requirement in the 'A' district of 20,000 square feet.
2. The property is located at the end of a cul-de-sac and is pie shaped, with a width of 38.51' at the right of way. The minimum lot frontage required for a cul-de-sac lot in the 'A' District is 50' in accordance with Schedule 151.3004. Therefore, this lot has a legal non-conforming lot frontage.
3. The applicant is proposing a 20.5' x 10' covered porch extend in front of the house. Front porches are permitted to encroach into the front yard setback a maximum of 10' in accordance with Schedule 151.1009(C). The applicant is proposing a setback of 44.5' for the porch which meets code. There is currently a small front porch on the house.



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 lot is non-conforming in lot width at the right of way by 11.49'. This non-conformity narrows the lot significantly towards the street, reducing the lot width at the building line of 90' down to 38.51' at the street.

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

Staff believes that the property would yield a reasonable rate of return without the variance, as many houses do not have a covered front porch.

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

Staff believes that the variance is substantial, as the request is for the covered porch to encroach 4' into the side setback at the closest point. However, this is the minimum necessary to keep the roof line flush with the existing house. Due to the side property line running at an angle, the covered porch setback starts at 15.5' and goes down to 11'.

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

Staff is of the opinion that the character of the neighborhood would not be substantially altered as the variance being requested is to allow for the addition to be in line with the existing house. With it being an open covered porch, the visual impact is also minimal.

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 property owner was 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 actions of the owner.

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

The predicament could be feasibly obviated by reducing the width of the covered front porch to meet the 15' setback. However, the applicant is attempting to keep the addition flush with the house and not block the existing window.

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

The intent of the side yard setback requirement for structures is to allow for enough separation between structures, as well as provide for a more uniformed neighborhood image. 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. Staff is of the opinion that the setback encroachment would not alter the character of the neighborhood. Staff does have some concern about setting a precedence; however, the lot is legal non-conforming in width at the right of way line, creating an even more enhanced pie shape than what is typical for a cul-de-sac lot. As previously stated, the applicant is requesting the variance for only a portion of the open covered porch.

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

Staff is concerned that granting the variance could confer on the applicant a special privilege; however, this triangular shaped encroachment for covered porch on a pie shaped lot with a non-conforming lot width at the right of way line is unique.

A previous variance was approved for 7781 Remington Road which allowed for a 3' side yard setback encroachment of a covered porch for a length of 21'. This lot has a reduced lot width and overall square footage.

A variance of .3' for a length of 15.3' for a side yard setback encroachment of an open covered porch was approved for 9860 Tollgate Lane.

Staff Comments and Recommendations

While a variance for this lot may be justified due to the non-conforming lot width at the right of way and pie shape, Staff is concerned that there may be other design options that meet the Zoning Code requirements. However, Staff does recognize that the applicant is attempting to maximize the amount of outdoor space, stay flush with the existing house, and work with the existing window placement. Staff is of the opinion that the encroachment is relatively minimal and would not cause any negative impact to adjacent properties.

Granting the would be justified by criteria #1, 4, 5, 6, 7, and 9.



APPLICATION FORM

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

Project Address (Location): 10301 Peachtree Ln. Montgomery, OH 45242

Project Name (if applicable): _____

Auditors Parcel Number: 603-0012-0021-00

Gross Acres: .46 Lots/Units Lot 9 Commercial Square Footage _____

Additional Information: _____

PROPERTY OWNER(S) Itay Azouz Contact _____

Address 10301 Peachtree Ln Phone: 513-410-9551

City Montgomery State OH Zip 45242

E-mail address itayazouz272@gmail.com

APPLICANT Nu Era Development, LLC Contact Eric Meade

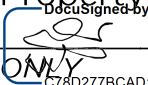
Address 8944 Dallasburg Rd. Phone: 859-393-9977

City Morrow State OH Zip 45152

E-mail address emeade25@yahoo.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 Owner Signature



DocuSigned by:
ONLY
C78D277BCAD14C8...

FOR DEPARTMENT USE

Print Name
Itay Azouz

Date 2/4/2023

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




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 10301 Peachtree Ln. Montgomery, OH 45242, 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 Itay azouz

Date 2/4/2023

Board of Zoning Appeals Members:

Mary Jo Byrnes

Tom Molloy

Catherine Mills Reynolds

Bob Saul

Jade Stewart

Steve Uckotter

Richard White



CITY OF

MONTGOMERY

A CHARMING PAST. A GLOWING FUTURE.

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.

The owners feel that because their house is in a culdesac and in the very front of a pie shaped lot, they are limited to options they have to better the curb appeal of their home.

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

This home is comparable to other home's in the area of the same age. However, newer homes and homes being remodeled are adding porches to the front of their homes. If Mr. and Mrs. Arzone lived on a square lot this plan wouldn't be a problem.

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

No, this variance is not substantial and would only be encroaching into the side setback by four feet. The design of the porch in relation to the house is to minimize obstruction from the front window and allow adequate room for seating. Therefore, it is the minimum size.

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

No, if anything this addition to the front of the home would add curb appeal and value to this and surrounding homes.

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

No



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A CHARMING PAST. A GLOWING FUTURE.

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

The owner was aware of the zoning department but was not aware of the exact property line location or the minimum set backs to the property until they wanted to add a covered back deck. They then learned of the minimums required.

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

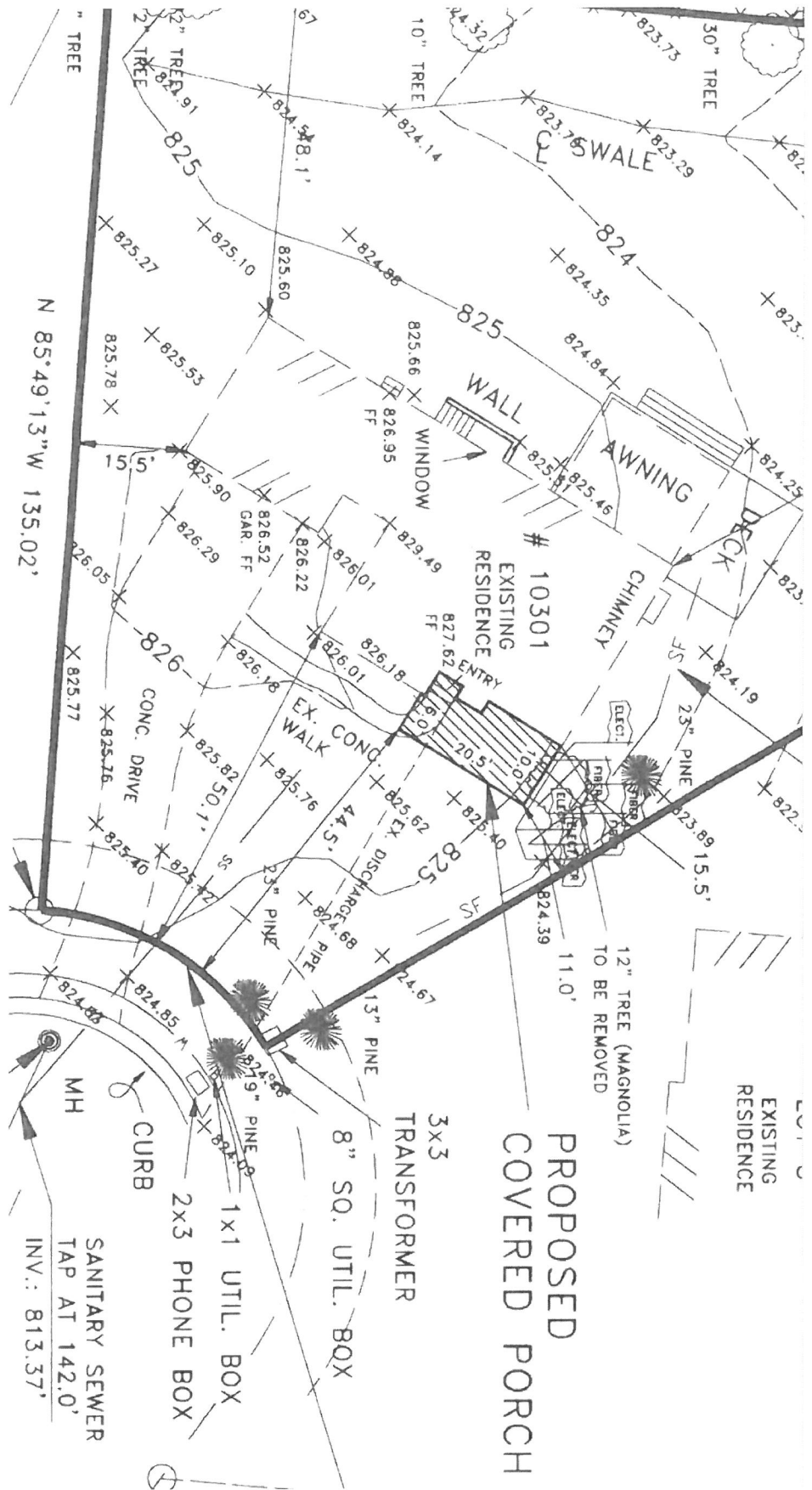
No special conditions exist.

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?

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

No



EXISTING RESIDENCE

PROPOSED COVERED PORCH

3X3 TRANSFORMER

8" SQ. UTIL. BOX

1X1 UTIL. BOX
2X3 PHONE BOX

SANITARY SEWER TAP AT 142.0'
INV.: 813.37'

N 85°49'13" W 135.02'

10301
EXISTING RESIDENCE

12" TREE (MAGNOLIA)
TO BE REMOVED

CHIMNEY

AWNING

DECK

WALL

WINDOW

ENTRY

EX. CONC. WALK

CONC. DRIVE

MH

CURB

TREE

TREE

TREE

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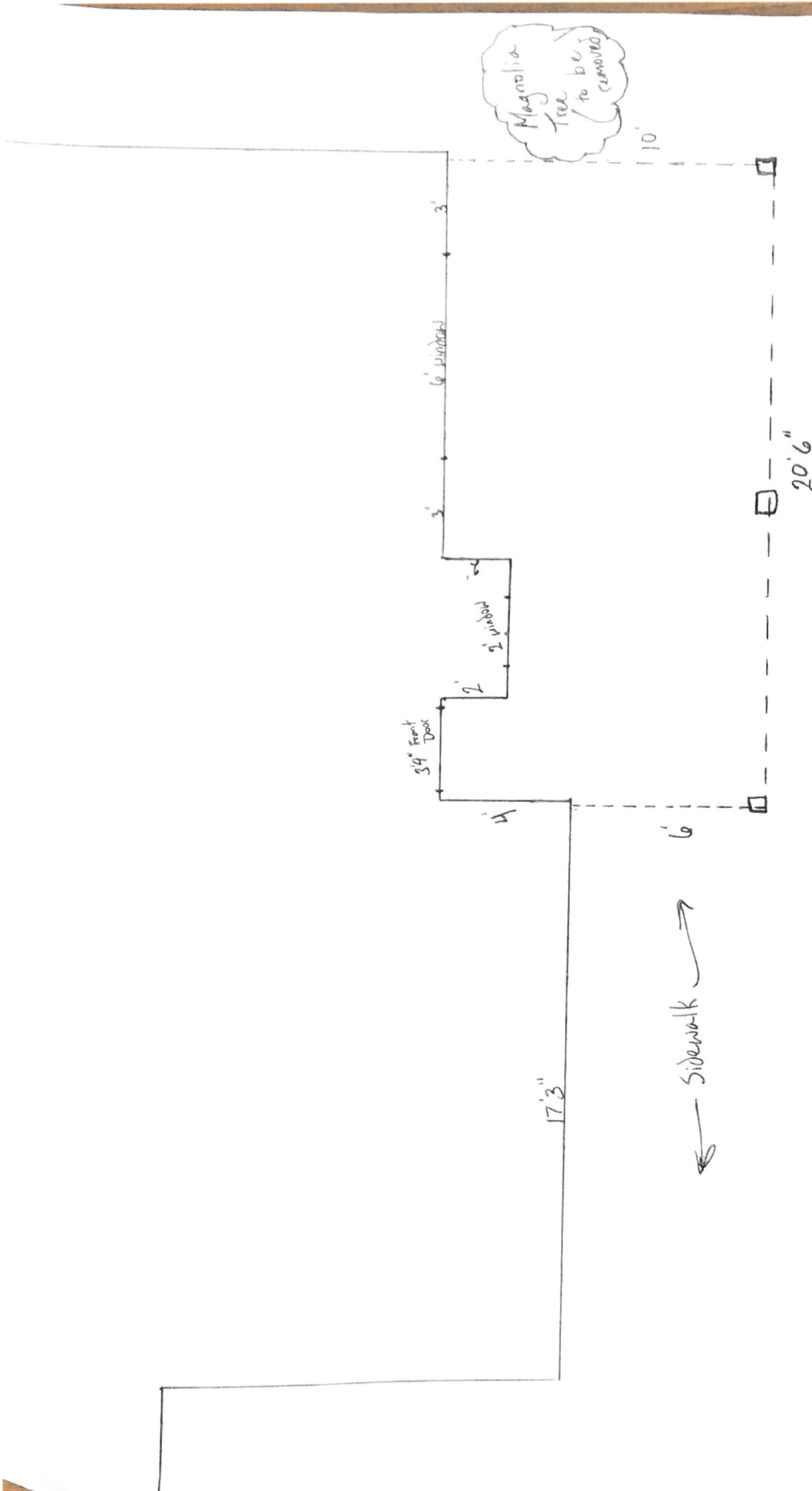
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5/12 MAX Roof Pitch

$$\frac{1}{4}'' = 1'$$

2x6 Ledger Board

5" x #40
Structural screws
1/4" OC Applied to
Wall studs or
2nd Floor
board board

Existing
Horse

5/12 max roof pitch must remain 6" under 2nd floor windows
standing seam metal roof
Ice + water underlayment
7/16 OSB sheathing

2x6 roof Rafter @ 24" OC
2x6 ceiling Rafter @ 24" OC

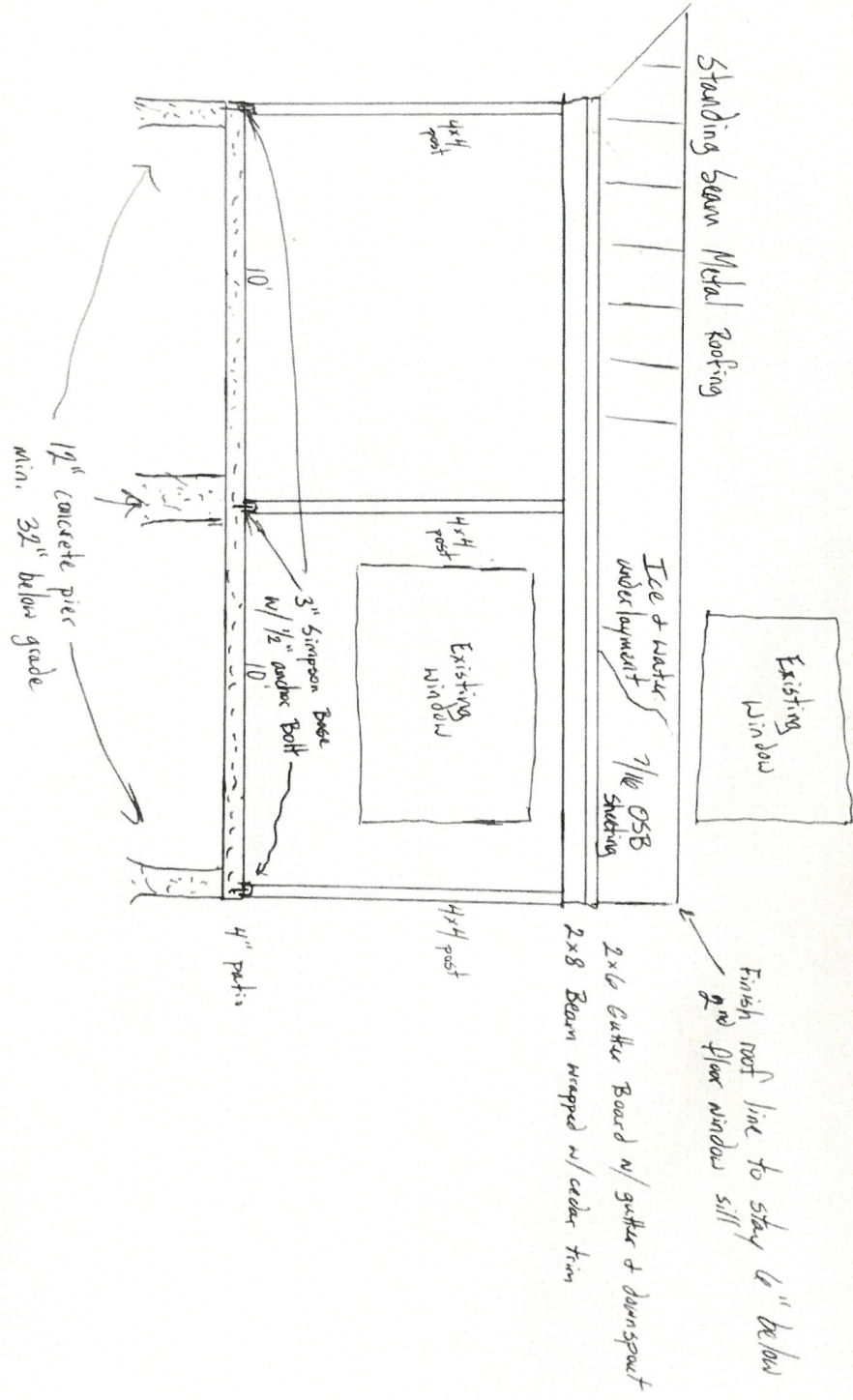
2x6 face w/ Aluminum gutter as needed
2x8 beam notched into post
3" x #40 Structural Screws
through beam + post

4x4 post

1/2" rebar pinned to existing foundation
10-8" on center

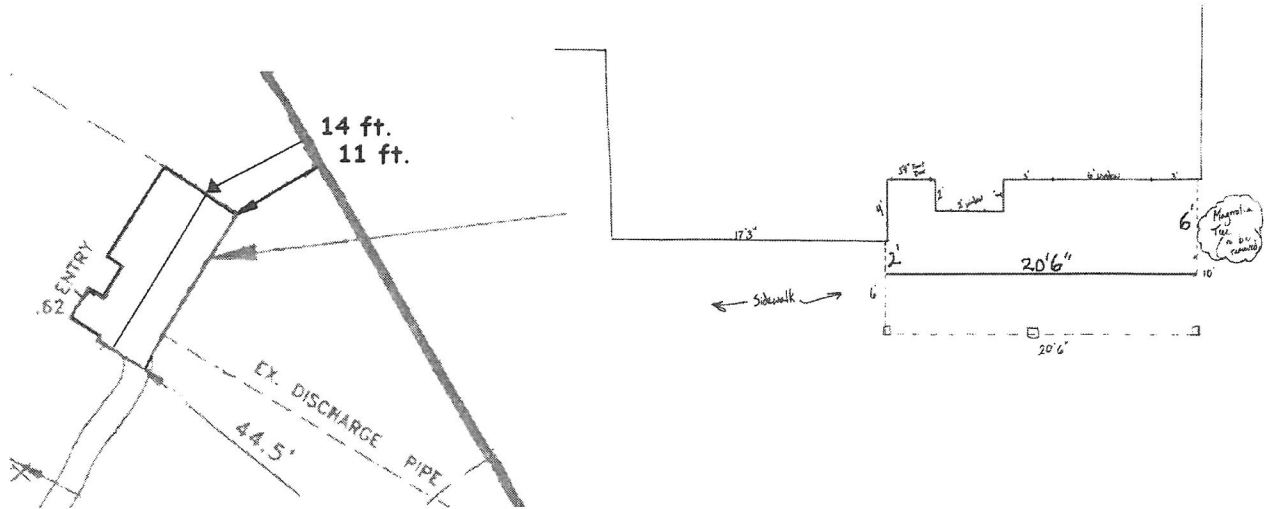
3" Simpson Base w/ 1/2" anchor bolt
New 4" concrete patio w/ 1" slope per 10'
12" concrete pier
Min. 32" below grade
1/2" = 1'

3

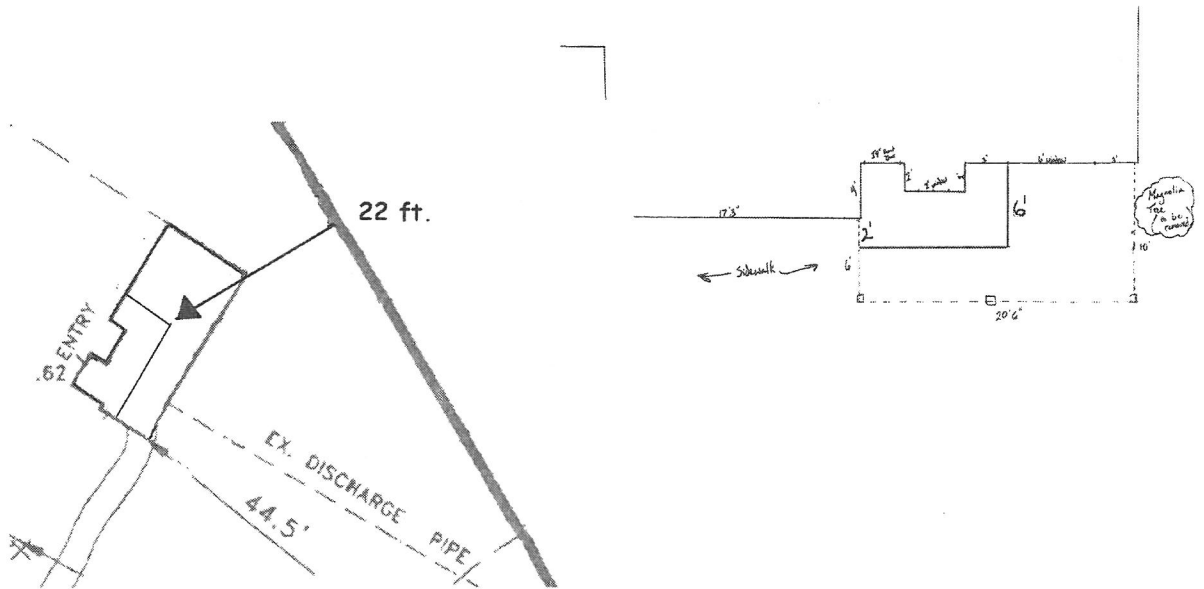


Rec. from Mr. John Golubieski - 10305 Peachtree

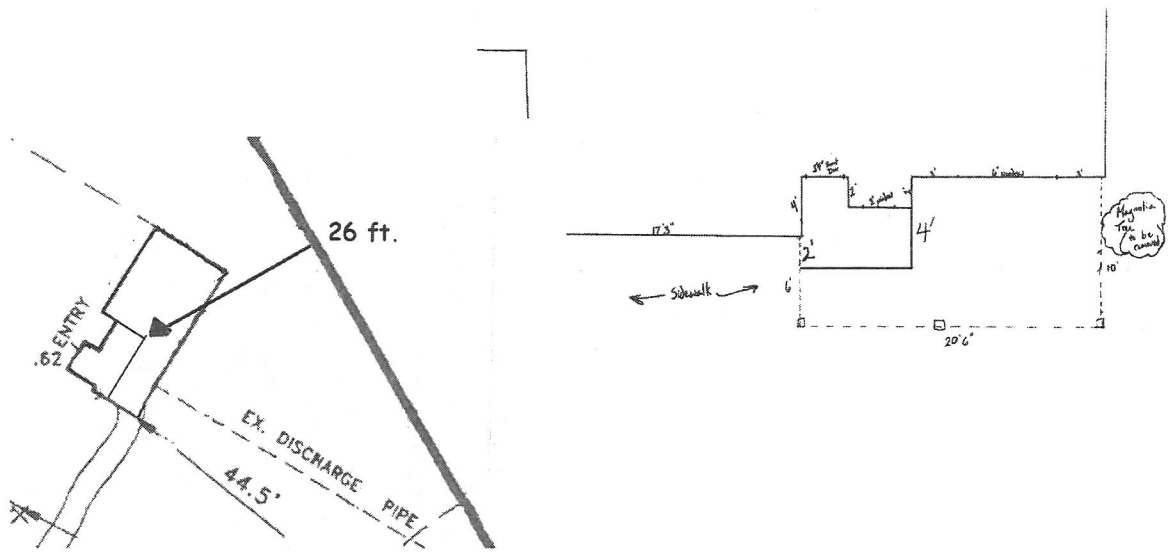
10301 Peachtree Lane, Montgomery



10301 Peachtree Lane, Montgomery



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

February 28, 2023

<u>PRESENT</u>		
<u>GUESTS & RESIDENTS</u>		<u>STAFF</u>
Lee Ann Bissmeyer Vice Mayor City Council	Paul Schoenberger 10357 Birkemeyer Dr., 45242	Melissa Hays, City Planner Karen Bouldin, Secretary
Linda & George Georgilis 10329 Birkemeyer Dr., 45242	Sidney W. Smith 10345 Curt Lane, 45242	<u>ALL BOARD MEMBERS PRESENT</u> Mary Jo Byrnes, Chairman Richard White, Vice-Chairman Bob Saul Jade Stewart Steve Uckotter
Linda Hussey 10343 Birkemeyer Dr., 45242		<u>MEMBERS NOT PRESENT</u> Catherine Mills Reynolds Tom Molloy

Election of Officers

Mr. Saul nominated Ms. Byrnes for Chairman for a period of one (1) year, beginning February 1, 2023.

Mr. Uckotter seconded the motion.

No other nominations were brought to the floor.

Mr. Saul moved to close nominations. Mr. Uckotter seconded the motion.

The Board unanimously approved the motion to close the nominations.

The Board unanimously approved the motion for Ms. Byrnes to be Chairman.

Mr. Uckotter nominated Mr. White for Vice-Chairman for a period of one (1) year, beginning February 1, 2023.

Mr. Saul seconded the motion.

There were no other nominations brought to the floor.

Ms. Stewart moved to close the nominations.

Mr. Saul seconded the motion.

The Board unanimously approved the motion to close the nominations.

The Board unanimously approved the motion for Mr. White to be Vice Chairman.

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Board of Zoning Appeals Meeting

February 28, 2023

27 Chairman Byrnes presented the Rules of Order and Procedure governing the Board of Zoning
28 Appeals of the City of Montgomery, Ohio, originally adopted in March, 2002. She asked all
29 members if there was any discussion or changes. There was none.

30

31 Mr. Saul moved to affirm the Rules, as presented.

32 Mr. Uckotter seconded.

33

34 Chairman Byrnes called the meeting to order at 7:03 p.m.

35

Roll Call

37

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

39

40 ***PRESENT: Mr. Uckotter, Mr. White, Mr. Saul, Ms. Stewart, Chairman Byrnes*** (5)

41 ***ABSENT: Ms. Mills Reynolds, Mr. Molloy*** (2)

42

Pledge of Allegiance

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

45

46 Chairman Byrnes gave a brief explanation of tonight's proceedings: She stated that tonight the
47 Board will be conducting one public hearing. A public hearing is a collection of testimony from
48 City Staff, the applicant, and anyone wishing to comment on the case. All discussions by the
49 Board of Zoning Appeals and all decisions will take place within the business session of this
50 meeting, which immediately follows the public hearing. Everyone is welcome to stay for the
51 business session of the meeting, however, the Board will not take any further public comment
52 during the portion of the meeting, unless clarification is needed by a Board member.

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

56

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

58

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

61

Guests and Residents

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

65

Old Business

67 There was no old business to discuss.

68

69

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Board of Zoning Appeals Meeting

February 28, 2023

70 **New Business (1)**

71 *A request for a variance from George Georgilis, 10329 Birkemeyer Drive to allow an attached*
72 *garage addition to have a setback of 12.8 feet, where 15 feet is required, per Schedule*
73 *151.1005 of the Montgomery Zoning Code.*

74

75 **Staff Report**

76 Ms. Hays reviewed the Staff Report dated February 23, 2023, “Application for Variance:
77 George Georgilis”.

78

79 She indicated that there had been no calls or emails received regarding this application.

80

81 Mr. White noted that there were several options (A-D) in the packet, as to where the garage was
82 being placed, and he asked which one was being proposed tonight. Ms. Hays stated that it was
83 Option A.

84

85 Chairman Byrnes asked if the applicant wished to speak.

86

87 **George Georgilis, 10329 Birkemeyer Drive, Montgomery, OH 45242** explained why they
88 wanted to build an addition to their garage. He stated that his neighborhood is composed of
89 several ranch homes, similar to his home; and added that many have been torn down.

90 He believed that his home was the only one that did not have a basement, so the only storage
91 they had was in the space above their existing garage. The access to that space is a narrow,
92 pull-down ladder.

93

94 Mr. Georgilis noted that when they purchased the property about 10 years ago, they had planned
95 on this being the home they wished to retire in. Mr. Georgilis stated that they utilize the services
96 of a company called Confident Living, whose mission is to assist people with aging in their own
97 home. Once a year, they come to his home and assess any safety issues, and continue to ask him
98 if they have boarded up the attic – this is the purpose of the proposed garage. Items kept in their
99 attic are items that would normally be stored in a basement. They felt that if they made this extra
100 storage look like a garage, it would blend in with the home.

101

102 There were no questions from the Board.

103

104 Chairman Byrnes asked if any guests or residents had comments.

105

106 **Sidney Smith, 10345 Curt Lane, Montgomery, OH 45242** stated that he lived diagonally
107 across the street from Mr. Georgilis. He stated that George was a fine neighbor, and he was
108 proud to be a neighbor of his. Mr. Smith pointed out that he probably has more of a view of
109 George’s house than anyone else, and would be able to see the entire area where the proposed
110 addition would be. He has no problem with this proposal. He stated that George meticulously
111 takes care of his property, always improving things to make it look nice. He supported this
112 application.

113

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Board of Zoning Appeals Meeting

February 28, 2023

114 **Linda Hussey, 10343 Birkemeyer Drive, Montgomery, OH 45242**, stated that she is a
115 neighbor, to the east. She wanted to echo what Mr. Smith said, and felt that George was a good
116 neighbor. She agreed with Mr. Georgilis' thinking of aging in place, and was in favor of any
117 effort to make them safe, living in their own home. She did not feel it would alter the quality of
118 the neighborhood and thought it would look great.

119

Adjournment

121 Mr. Saul moved to close the public hearing.

122 Mr. White seconded the motion.

123 The public hearing adjourned at 7:20p.m.

124

125 Chairman Byrnes opened the business session at 7:20p.m.

126

Business Session (1)

128 *A request for a variance from George Georgilis, 10329 Birkemeyer Drive to allow an attached*
129 *garage addition to have a setback of 12.8 feet, where 15 feet is required, per Schedule*
130 *151.1005 of the Montgomery Zoning Code.*

131

132 Ms. Stewart had no comment.

133

134 Chairman Byrnes felt strongly that we needed to keep the ranch-style homes in the City of
135 Montgomery. In previous years, she had suggested a tax abatement to City Council. Many of
136 these ranch homes were being torn down and replaced with 2,000 square foot homes consisting
137 of young parents with children. She was in favor of doing anything we could to preserve the
138 empty-nester homes in Montgomery. She did not see any issues with this application.

139

140 Mr. Uckotter stated that he was initially concerned with the possibility of setting precedent,
141 because they were conforming homes, and now we were making them non-conforming. He then
142 reconsidered, because in this situation, and in many of the homes in this neighborhood, the
143 homes sit at an angle on their sites. He felt that this was a minimal variance, just like the
144 previous home that was approved; and also because this home was on a slab, pushed to the west
145 side of the lot.

146

147 Chairman Byrnes did not feel this would interfere with any privacy issues, nor would it be a
148 noise issue, or a drainage issue.

149

150 *Mr. Uckotter moved to approve the request for a variance from George Georgilis, for the*
151 *property situated at 10329 Birkemeyer Drive, Montgomery, Ohio 45242 to allow for a*
152 *side-yard setback of 12 feet 8 inches, where 15 feet is the minimum required, per Schedule*
153 *151.1005 of the Montgomery Zoning Code, as described in the City of Montgomery Staff*
154 *Report, dated February 23, 2023.*

155

156 *This approval is justified by criteria # 1, 4, 5, 6, 7 & 9, as outlined in Montgomery Codified*
157 *Ordinance Chapter 150.2010 (d) for granting variances.*

158

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Board of Zoning Appeals Meeting

February 28, 2023

159 **Mr. Saul seconded the motion.**

160

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

162

163 **AYE: Ms. Stewart, Mr. Uckotter, Mr. White, Mr. Saul, Chairman Byrnes** (5)

164 **NAY:** (0)

165 **ABSENT: Mr. Molloy, Ms. Mills Reynolds** (2)

166 **ABSTAINED:** (0)

167

168 **This motion is approved.**

169

170 **Adjournment**

171 Mr. Saul moved to close the business session.

172 Mr. Uckotter seconded the motion.

173 The business session adjourned at 7:25p.m.

174

175 Chairman Byrnes opened the public hearing at 7:25p.m.

176

177 **Council Report**

178 Ms. Bissmeyer had no business to report.

179

180 **Other Business**

181 Ms. Hays stated that we will most likely have a meeting next month.

182

183 Chairman Byrnes proposed a 6:00p.m. start time for future Board meetings, instead of the
184 current 7:00p.m. time. There was some discussion. Some members were in favor, some neutral
185 and two other members did not feel they could make that time. It was determined to continue to
186 start all future meetings at 7:00p.m., and look at this idea again in 2024.

187

188 **Minutes**

189 Mr. Saul moved to approve the minutes of January 24, 2023, as amended.

190 Mr. Uckotter seconded the motion.

191 The Board unanimously approved the minutes.

192

193 **Adjournment**

194 Ms. Stewart moved to adjourn. Mr. White seconded the motion.

195 The meeting adjourned at 7:30p.m.

196

197

198 _____
Karen Bouldin, Clerk

Mary Jo Byrnes, Chairman

Date

199

200 /ksb