
Board of Zoning Appeals Agenda

October 24, 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

Jim E. Sluka, requests a variance to allow a covered porch in conjunction with a new single-family dwelling to have a rear yard setback of 22.3' where 30' is the minimum required per Schedule 151.1005 of the Montgomery Zoning Code.

Agenda Item 2

Michael J. Sweeney and Natalia Zimina, are requesting a variance to allow fence 4' in height in the front yard at 10700 Deersadow Lane, where 2' is the maximum height permitted per Schedule 151.1009(I)(1) of the Montgomery Zoning Code.

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

CITY OF MONTGOMERY
BOARD OF ZONING APPEALS

Application for Variance: *James E. Sluka*
Parcel ID 060300240367 – Hightower Court

October 24, 2023
Staff Report

Applicant: James E. Sluka
4041 Ledgewood Drive #2
Cincinnati, Ohio 45229

Property Owner: Same as above

Vicinity Map:



Nature of Request:

The applicant is requesting a variance to allow a covered porch in conjunction with a new single-family dwelling to have a rear yard setback of 22.3 where 30' is the minimum required for a covered porch per Schedule 151.1005 of the Montgomery Zoning Code.

Zoning:

The property is zoned 'C' Single and Two Family Residential. The property to the north is zoned 'C' with a single-family residence. The properties to the south and west are zoned 'C' with two family

residential buildings. The properties to the east are within the Township and contain single family residences.

Findings:

1. The lot has an irregular shape. The north side property line is 112.55' in length (lot depth) and the south side property line is approximately 97.1'. With the 30' rear setback and 50' front setback, the buildable depth at the south side yard setback line is 17.1'.
2. The lot is 0.276 acres or approximately 12,023 square feet and is slightly over the 12,000 square foot minimum required in the 'C' District.
3. The lot was previously denied a 12' variance from the 30' rear yard setback in July of 2006 for a new two-family residence.
4. The lot was previously granted a 1.5' variance from the 50' front yard setback and a 4.5' variance from the 30' rear yard setback in September of 2006 for a new two-family. The duplex was never built, and the variance expired.
5. The lot was previously granted a rear yard setback variance to allow a setback of 23' where 30' is required February 22, 2022. The single-family dwelling was never built, and the variance expired.
6. The lot was previously approved a variance to allow a proposed new single-family residence to have a rear yard setback of 23.9' where 30'. At the time, the covered porch was not proposed.
7. The proposed covered porch is 6'5" x 11'6" and does not go past the rear plane of the house.
8. The house to the rear of the lot at 9245 E. Kemper Road is approximately 100' from the proposed covered porch.

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 layout of the entire Hightower subdivision is unusual, with lots of varying sizes and setbacks. There is a large electric transmission line that runs through the subdivision which does not directly impact this lot; however, it probably explains the layout and why lots #1, 2, & 3 have a shallow depth. In its absence, the road could have been re-aligned to the west and provided greater depth to the lots on the east.

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

The applicant would not be able to build on the lot without a variance of some level, as the building envelope is extremely narrow. The proposed covered porch would not extend past the rear plane of the house; however, due to the eastern property line running at an angle, a small portion would encroach into the previously approved setback variance for the main dwelling. The applicant does have the right to build an uncovered porch in the proposed location without a variance.

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

The variance from the required rear yard setback is substantial as the applicant is requesting a 25.7% reduction in the setback requirement. However, the rear property line runs at angle and the proposed covered porch would not extend past the rear plane of the house. In addition, the home most impacted by this rear yard setback variance request would be 9245 Kemper Road, which has a rear yard setback of approximately 46', creating a distance of approximately 100' between structures.

While the request is substantial, Staff is of the opinion that this may be the minimum necessary to build a small, covered porch onto the rear of the house.

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

Staff does not believe the character of the neighborhood would be substantially altered by granting the variance. The first three lots along the east side of Hightower Court are shallower than the other lots within this subdivision. The applicant is proposing to

meet the 50' front yard setback requirement which will align with the neighboring houses on the east side of Hightower Court, providing for a consistent street wall. The proposed covered porch is small in size and will not be visible from the street.

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

Delivery of governmental services would not be impacted by granting the variance.

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

The property owner has stated that they were not aware of the zoning restraint at the time of purchase.

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?*

Any covered porch additions along the back of the house would require a variance. It is Staff's opinion that the applicant has proposed a size and location that is small and works with the existing footprint of the house.

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

This parcel is unusual in its dimensions and does create a practical difficulty in creating a new single-family dwelling. The amount of variance being requested for the covered porch is small. A precedent would not be set, as the house two doors to the north at 10206 Hightower Court has rear yard setback of approximately 4'. In addition, front yard setback variances were granted in 1986 for 10213, 10217 and 10223 Hightower Court.

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

As mentioned above, the overall subdivision layout on Hightower Court consists of varying lot sizes and dimensions, creating challenging building envelopes to build within. Many of the homes are either legal non-conforming in setbacks or have received setback variances when they were originally built.

Staff Comments and Recommendations

The lot has peculiar dimensions which create a practical difficulty. Staff is of the opinion that the applicant has proposed a covered porch which attempts to work with the previously approved single-family house by not extending past the rear plane. Staff believes the proposed covered porch is small in size, 6'5" x 11'6" and will not impact character of the neighborhood, as many the lots within the subdivision differ in size, dimensions, and layout.

Staff believes that the variance to allow the proposed covered porch to have a rear yard setback of 22.3' where 30' is the minimum required and in accordance with the site plan dated 8/24/2023 would be justified by criteria numbers 1-10.

Mr. James E. Sluka
7208 Maryland Avenue
Apartment 2
Cincinnati, Ohio 45236

October 4, 2023

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

Dear City of Montgomery Board of Zoning Appeals Members and Staff,

To remind you, I submitted variance requests in January 2022 and August, 2023. On both occasions, you approved them.

After my Architect and I did a thorough re-evaluation of my layout plan to get it ready for bidding, I decided to add a small back Covered Patio outside of my Bedroom. Of course, this meant for me to submit another variance request to you. Someone once said: "the third time's a charm", so, hopefully, this will be my last visit to your Committee.

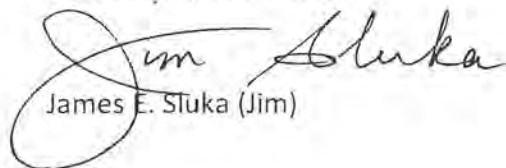
Let me review the square foot violations for each of the three requests:

- a) My 2093 square foot home layout had a square foot violation of 362.47.
- b) My 1538 square foot home had a square foot violation of 275.0655.
- c) The same 1538 square foot home WITH A BACK COVERED PORCH, has a square foot violation of 348.8576 – which is still below the original request.

Because of building costs and my budget, I was not able to build my original 2093 square foot designed home. In having to reduce the square footage, my goal has still been to have a nicely laid out, practical and functional plan. I believe the covered back porch will be an enhancement if I choose to ever sell my home.

The answers to the Application questions will delineate other factors involved in asking for my variance request. In every way, my Architect and I were as conservative and reasonable as possible in designing this home. I am asking for the bare minimum in variances in trying to build a quality ranch home. Because of the odd-shaped and irregular lot, I am hopeful that the suggested variance request will again meet with your approval. Thank you for your time and consideration.

Respectfully submitted,


James E. Sluka (Jim)



CITY OF MONTGOMERY

A CHARMING PAST. A GLOWING FUTURE.

APPLICATION FORM

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

Project Address (Location): Part Lots 2 & 3 (See Exhibit A)
Lot is between 10212 Hightower Court AND 10220 Hightower Court
Project Name (if applicable): 45249

Auditors Parcel Number: 603-24-367

Gross Acres: .2761 (Lots) Units one Commercial Square Footage —

Additional Information: 1538 Square Feet
(See History and Background of my Lot)

PROPERTY OWNER(S) James E. Sluka Contact Jim Sluka
Address 7208 Maryland Avenue Phone: (513) 295-8888
Apt. 2

City Cincinnati State OH Zip 45236

E-mail address Jesluka0422@gmail.com

APPLICANT James E. Sluka contact —

Address — Phone: above

City same as above 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 James E. Sluka FOR DEPARTMENT USE ONLY

Print Name James E. Sluka

Date 10/1/23

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 Part lots 2 & 3
Between 10212 Hightower Court and
10220 Hightower Court 45249
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

James E. Sluka

Print Name

James E. Sluka

Date

10/1/23

Board of Zoning Appeals Members:

Mary Jo Byrnes

Tom Molloy

Catherine Mills Reynolds

Bob Saul

Jade Stewart

Steve Uckotter

Richard White

HISTORY AND BACKGROUND OF MY LOT

(in the following information, my directional indications are as if I was standing on the street looking at my lot)

I've owned this property since 1999, and, at that time, it consisted of 20,000 square feet of land. I had Schmidt Builders build the home at 10212 Hightower Court (the two-story home to the left). I always knew that I would build another home next to me, to the right, so Schmidt Builders placed my home at the farthest point to the left of the property. My next door neighbors to the left (at the time), Dale and Carol Adkins, wondered why I had not placed the home more in the center of the lot as they were hoping to have more distance between our homes. I told them that I would be building another home or two-family home on the lot, once I acquired more property.

The original lot I bought was 20,000 square feet. I went through a very arduous process to add 4,000 square feet of land to the property – making a total of 24,000 square feet of land. Because this particular street only requires 12,000 square feet for a buildable lot, I then subdivided the lot into two 12,000 square foot lots. I paid my neighbor for the extra land I had supposedly bought from him, but, he sold his Condo without deeding the property to me, for some unknown reason. This neighbor filed bankruptcy and never paid me back the money he owed me. This action necessitated me having to buy the additional property I needed from the people who bought his Condo for triple the amount I had originally paid.

The 12,000 square foot lot at 10212 Hightower Court was sold. Since I have owned the extra 12,000 square foot lot, I have hired Architects to design a two family, several two-story plans and, two years ago, a ranch style. However, in each case, my life circumstances, jobs and family responsibilities and cost to build factors have prevented me from building my home.

As you might guess, I have put considerable time and effort into this investment, having paid taxes and mowing the lawn for 24 years - plus the Architects', Surveyors' and City of Montgomery fees. The time is now right, in every way, for me to build a home that I can "age in place" and enjoy being a resident of this wonderful community.



2 WA
1
2
over
2

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.

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

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

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

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

11-1-11
→

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?

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

SLUKA HOUSE PROJECT APPLICATION QUESTIONS

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.

I definitely believe I have a set of very unusual circumstances that warrant presenting my issues to the Board of Zoning Appeals Committee.

- My lot is a very irregular lot with a very severe angled back boundary – from left to right the depth ranges from 30.93' to 18.17'. (See Exhibit E). As a result, very few house plans will fit on this lot creating a need for a custom design. Believe me, I have looked at hundreds. Variances are needed for even a basic Ranch plan to have at least one extra bedroom on the first floor for my family, friends and senior overnight guests.
 - The other side of the street does not have a utility easement of ten feet, therefore, they only have a 50 foot setback requirement. Because my lot has a ten foot utility easement, my setback requirement is 60 feet. Having that extra ten feet would have made this meeting unnecessary, and considerable time and expense would have been saved.
2. Will the property yield a reasonable rate of return if the variance is not granted?
 - I have tried to sell my lot several times, and was offered very low amounts of \$20,000 and \$40,000. It had been appraised in 2008 for \$80,000. So, I decided that my investment was more profitable by building a home on it.
 3. Is the variance substantial? Is it the minimum necessary?

- I believe the variances I'm requesting are minimal for a basic Ranch plan and very reasonable. My main rooms are pretty basic:
 - a. The Guest Bedrooms are 11 ½' x 10'. (I've never had bedrooms this small)
 - b. The Family Room is about 16' x 14' (when you take into consideration the fireplace). Without a variance, it would be smaller, which would make it the size of a bedroom.
 - c. The Dining Area is a conservative 10' x 11'.
 - d. The Master is 12' x 15' – a nice size, without being extravagant.
 - e. I asked my Designer to incorporate basic amenities into the plan that would be enjoyable for me and good for re-sale – such as a Jack and Jill Guest Bathroom,

door from the Master Bedroom out to the Covered Porch, a decent sized pantry, pocket door from the Master Bedroom closet to the laundry area (and a few other pocket doors as well), and interior French Doors at the Living Room entrance, etc.

- f. Considering future development on the street, and wanting to fit in with the City of Montgomery Community standards, this plan has been very thoughtfully and carefully designed to be conservative, but yet functional.

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

- The ambiance of my home and the curb appeal it will provide, will substantially enhance the neighborhood. I believe it will be a stimulus for future development and renovation.
- As you are aware, two Townhomes at 10209 and 10211 Hightower Court are almost ready for occupancy. My home would add to that development, and, other properties will follow suit when the time is right.
- I haven't taken a survey, but in the past, I have talked to homeowners on the street (some of whom were my former neighbors) who have said that they would really like to see a home on the lot rather than have it empty. I believe it completes the street.
- Of course, the City of Montgomery will enjoy the extra income taxes. 😊

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

- The variance would NOT affect the delivery of government services in any way.

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

- I bought this property in 1999. My original lot was 20,000 square feet. My original intent was always to buy more land and build another home or two family on the lot. At the time, I was not aware of all of the intricacies of building a home, lot restrictions and setbacks. I just thought that if you purchased a lot, one could build a home on it. Once I got involved in the process, I found out that there were many details to be considered, that I really wasn't aware of when I bought my property. Would I do it again? That's a tough question to answer because of the hundreds of hours invested in this project. I probably would not do it all over again because of the complexity of the project and the expenditure of time, energy and resources. But, now that I'm full speed into the project, I want to succeed in building this home.

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

- My lot was already odd shaped to begin with. I didn't change anything.

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

- I would like to "age in place", and a two-story does not meet my needs.
- Because I am now 24 years older, my needs have changed. I simply do not have the time or energy to build a "market" home on my present lot and with the proceeds buy another lot (without any extreme setback restrictions) and go through the process again.

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

- None of my variances extend past the 30 foot depth marker that I am allowed at the left end of my property.
- Most people view lots as more rectangular versus angled, so they wouldn't even notice a variance had been granted unless they knew the size of the lot.
- 45 feet of my house is between the two homes in the back of my lot.
- Since I'm allowed a 5 feet encroachment for the stairway, this factor would minimize the effect of the variance
- The variances would hardly be noticed because of the bushes in the back yard (and/or a privacy fence that I will be putting on the back of my property).
- The street, being an older street in Montgomery, is ripe for development. A well-designed ranch home would be a very desirable addition.
- I believe this is a win-win for the neighborhood and me. I get a nice home, and I give back to the neighborhood a beautifully designed and well-crafted home that will enhance its surroundings and inspire future development.

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

- I am not privy to other people that have been denied their requests, but, as I have driven around the city of Montgomery, I see a few unusual situations that don't really enhance the neighborhood. Of course, I don't know how the zoning requirements are determined OR do I know what they are for each neighborhood.
- As mentioned before, I believe it will be an enhancement to the neighborhood, cause property values to increase PLUS, maybe start some new development on the street.

Exhibit A

DESCRIPTION ACCEPTABLE
HAMILTON COUNTY ENGINEER.

EXHIBIT "A"

Tax Map - 2/21/02 21

CAGIS - _____

LEGAL DESCRIPTION
For JAMES & DAVID SLUKA
PART LOTS 2 & 3 (0.2761 ACRE)

Situated in Section 29, Town 5, Fractional Range 1, Symmes Township, City of Montgomery, Hamilton County, Ohio, and being part of Lots 2 & 3 of the Hightower Estates Subdivision, as recorded in P.B. 203, Pg. 83, Recorders Office, Hamilton County, Ohio, and being more particularly described as follows:

Beginning at a 5/8" iron pin set (capped) in the easterly right-of-way line of Hightower Court (50 foot right-of-way), said point lying N02°42'51"W, along said right-of-way line, a distance of 74.17 feet from the southwest corner of said Lot 2 and northwest corner of said Lot 3, said point being the Point of Beginning;

Thence, from said Point of Beginning, departing the aforesaid right-of-way line with a new division line through the aforesaid Lot 2, N87°17'09"E, a distance of 112.55 feet to a 5/8" iron pin set (capped) in the easterly line of the aforementioned Lot 2;

Thence, along the easterly lines of Lot 2 and Lot 3, S04°57'15"W, passing a 1/2" iron pin found (capped) at the southeast corner of Lot 2 and the northeast corner of Lot 3 at a distance of 74.84 feet, a total distance of 115.79 feet to a 1/2" iron pin found (capped);

Thence, departing said easterly line of Lot 3 with a division line through said Lot, S87°17'09"W, a distance of 97.10 feet to a 1/2" iron pin found (capped) in the easterly right-of-way line of Hightower Court;

Thence, along said right-of-way line, N02°42'51"W, passing a 1/2" iron pin found (capped) at the southwest corner of Lot 2 and the northwest corner of Lot 3 at a distance of 40.58 feet, a total distance of 114.75 feet to the Point of Beginning.

Containing 7,977 square feet of land within said Lot 2 and 4,051 square feet of land within said Lot 3, totaling 12,028 square feet of land, which is 0.2761 acre, being subject to all legal highways, right-of-ways, easements, covenants and / or restrictions of record.

Being part of the same premises conveyed to James E. and David Sluka in Official Record Book 10202, Page 2742, Recorder's Office, Hamilton County, Ohio and all of the same premises conveyed to James E. and David Sluka in Official Record Book 10443 Page 2748, Recorder's Office, Hamilton County, Ohio.

Being the result of a field survey and plat dated February 5, 2007, made under the supervision of Kevin J. Richardson, P.S., Registration No. 8011 in the State of Ohio.

41 603-24-367

Richardson Surveying

10921 Reed Hartman Highway, #114 • Cincinnati, Ohio 45242 • Voice: 513.297.4925 • Fax: 513.297.4926

11283 2191

10478 2114

11986 1652

- Exhibit B -

Exhibit "B"

The Trustee is authorized and empowered with respect to any property, real or personal, to assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of the Trust, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of the Trust, invest, lease, manage, mortgage, hypothecate, encumber, grant and exercise option with respect to, take possession of, pledge, receive, release, repair, sell, convey, sue for, guarantee the obligations of the Trust, make distributions in cash or in kind or partly in each without regard to the income tax basis of such asset, all for and in behalf of the Trust.

NON-CONFORMING DOCUMENT
ADDITIONAL RECORDING FEE
(ORC §17.114)

REC'D FOR TM

2012 APR -5 PM 10:39

POST OFFICE
MAIL CENTER
HAMILTON COUNTY, OH

4
- Exhibit C -

Wayne Coates
Hamilton County Recorders Office
Doc #: 12-0044457 Type: AFF
Filed: 04/09/12 10:49:56 AM \$44.00
Off.Rec.: 11986 01650 F L24 4 384



AFFIDAVIT OF TRUST

STATE OF KENTUCKY, COUNTY OF CAMPBELL, SS:

James E. Sluka, Affiant herein, after being duly cautioned and sworn, states as follows:

1. That this Affidavit of Trust is made and executed this 30 day of March, 2012 by James E. Sluka, Trustee of the Hightower Revocable Trust Agreement, dated 3/30/12 (the "Trust Agreement").

2. The name and address of the Grantor of the Trust created under this Trust Agreement is:

James E. Sluka
10555 Montgomery Road, Unit 1
Cincinnati, Ohio 45242

3. The name and address of the Trustee of the Trust created under the Trust Agreement is:

James E. Sluka
10555 Montgomery Road, Unit 1
Cincinnati, Ohio 45242

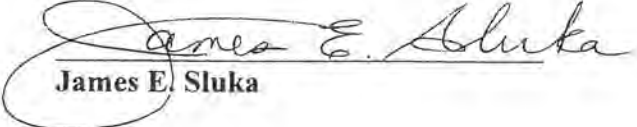
4. The Trust Agreement was executed by the Grantor and the Trustee on March 30, 2012.

11986 1650

- Exhibit C₂ -

5. The real property described below described in Exhibit "A" attached hereto and made a part hereof is subject to the Trust created by the Trust Agreement.
6. The provisions of the Trust Agreement which set forth the powers specified in the Trust Agreement relative to the acquisition, sale or encumbering of real property by the Trustee, and any restrictions upon those powers, are set forth in Exhibit "B" attached hereto and made a part hereof.

Further Affiant sayeth naught.


James E. Sluka

Sworn to and subscribed before me a notary public in and for said county and state this
30 day of March, 2012 by James E. Sluka



Notary Public
ulalis

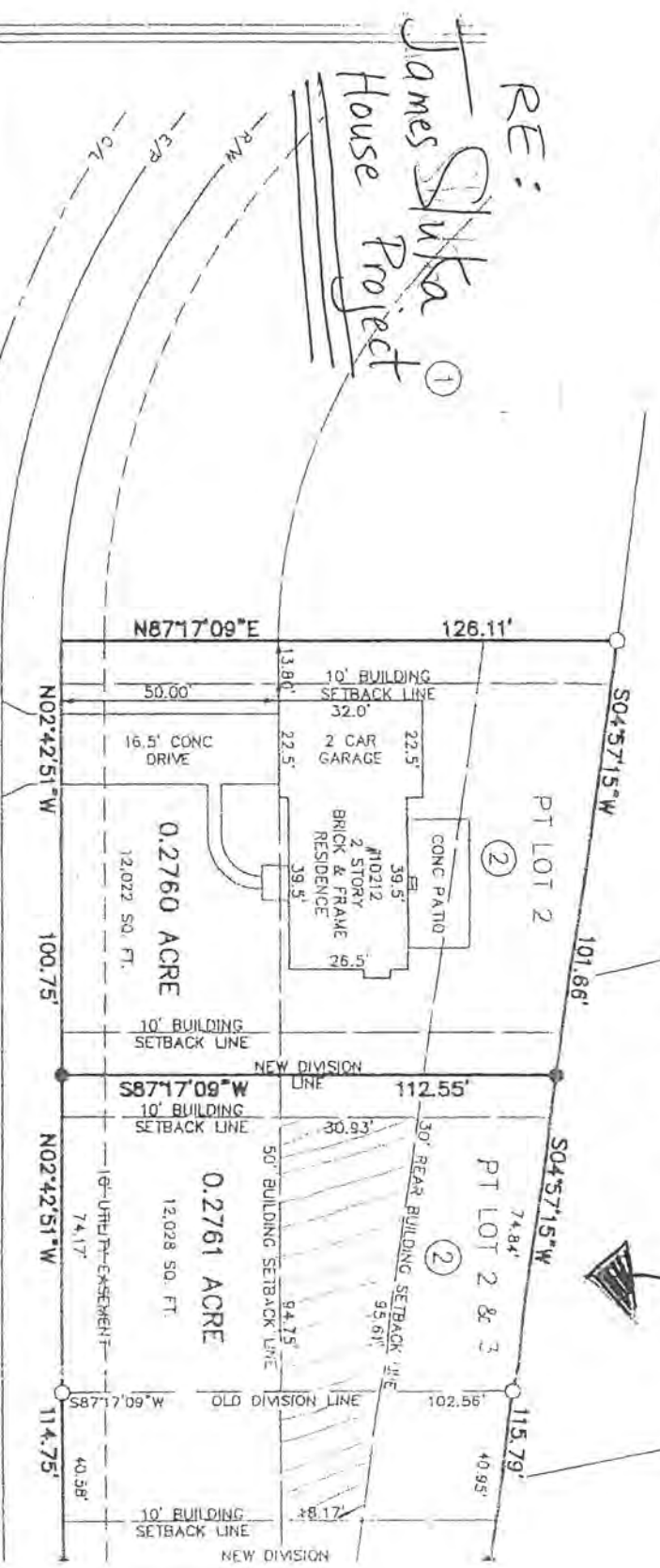
Exhibit D

John J. Duffy and
Associates Survey
(sent in an email)

Exhibit ③

Why the need for the Variance: ⑦

RE: James Sluka House Project ①



- OWNERS:
- ① DALE & CAROL ADKINS
D.B. 4292, PG. 1946 O.R.
 - ② JAMES E. & JOCELYN A. SLUKA
D.B. 8156, PG. 2885 O.R.
 - ③ STEVE M. RECKERS
D.B. 7519, PG. 637 O.R.
 - ④ RAM KUNAR & SERENA K. KURUMETTY
D.B. 8360, PG. 278 O.R.
 - ⑤ PHILIP MARC & KIRA USA NOVICK
D.B. 6443, PG. 698 O.R.
 - ⑥ KATHLEEN R. LARSON
D.B. 6265, PG. 712 O.R.
 - ⑦ LINDA L. STRAWSER
D.B. 8036, PG. 2014 O.R.
 - ⑧ DENNIS J. & CAROLYN M. KOSSEN
D.B. 4413, PG. 1537 O.R.

- LEGEND:
- 1/2" IRON PIN SET (CAPPED)
 - 1/2" IRON PIN FOUND (CAPPED)
 - NAIL FOUND
 - △ RAILROAD SPIKE FOUND

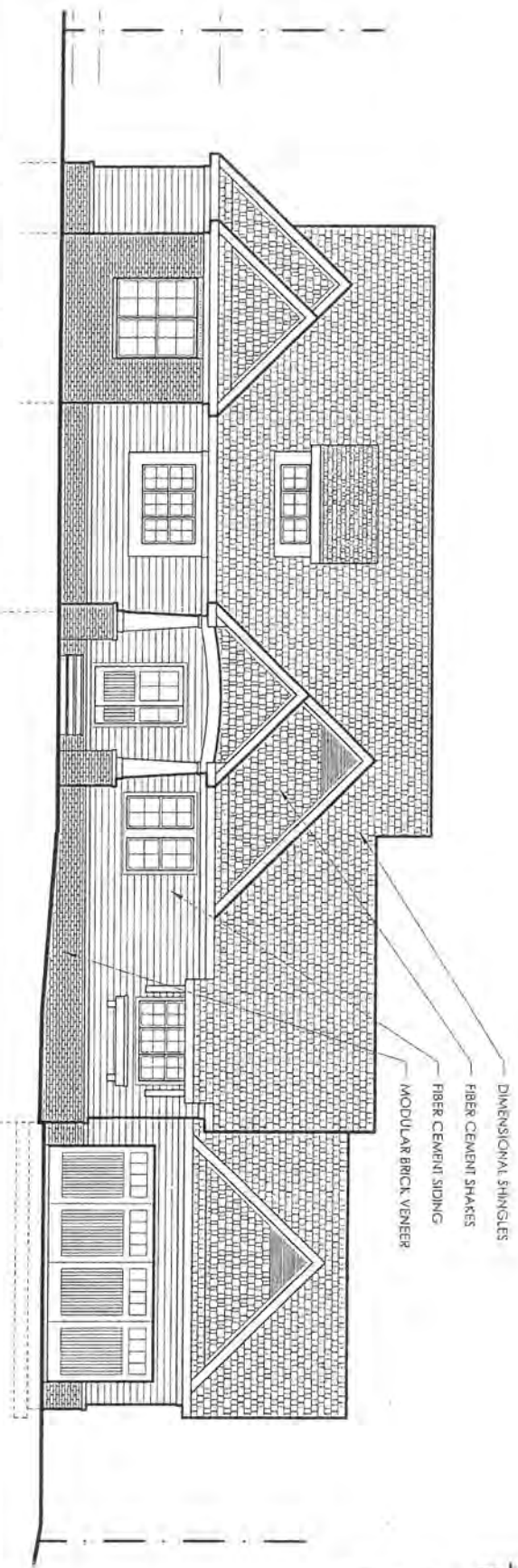
SURVEYORS NOTES:

NORTH DIRECTION AND BEARING SYSTEM BASED UPON HIGHTOWER ESTATES SUBDIVISION AS RECORDED IN PLAT BOOK 203, PAGE 83. RECORDS OF THE RECORDER'S OFFICE, HAMILTON COUNTY, OHIO. IN THIS FIELD SURVEY BY KEVIN RICHARDSON, REG. SURVEYOR NO. 9011 IN THE STATE OF OHIO ON SEPTEMBER 28, 2002



PLAT OF SURVEY for JAMES E. & JOCELYN A. SLUKA

Exhibit F



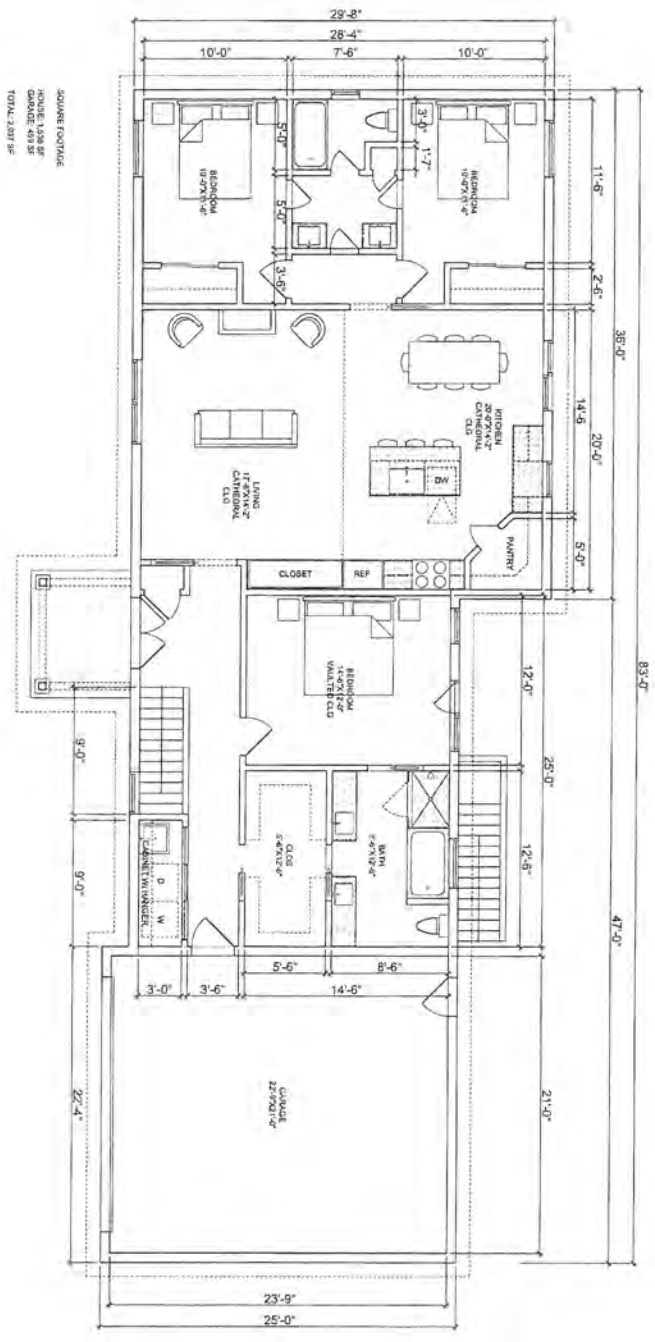
Elevation will be modified

Only 3-4 Gables
No Dormer
Pitch: 8:12
Windows changed

SLUKA RESIDENCE
HIGHTOWER CT
CINCINNATI, OH
2021-DEC-08

 rob
McKELVEY
architect

EROS



SQUARE FOOTAGE
HOUSE 1298 SF
GARAGE 451 SF
TOTAL 1749 SF



JIM SLUKA
313 283-8888
jim@sluka.com

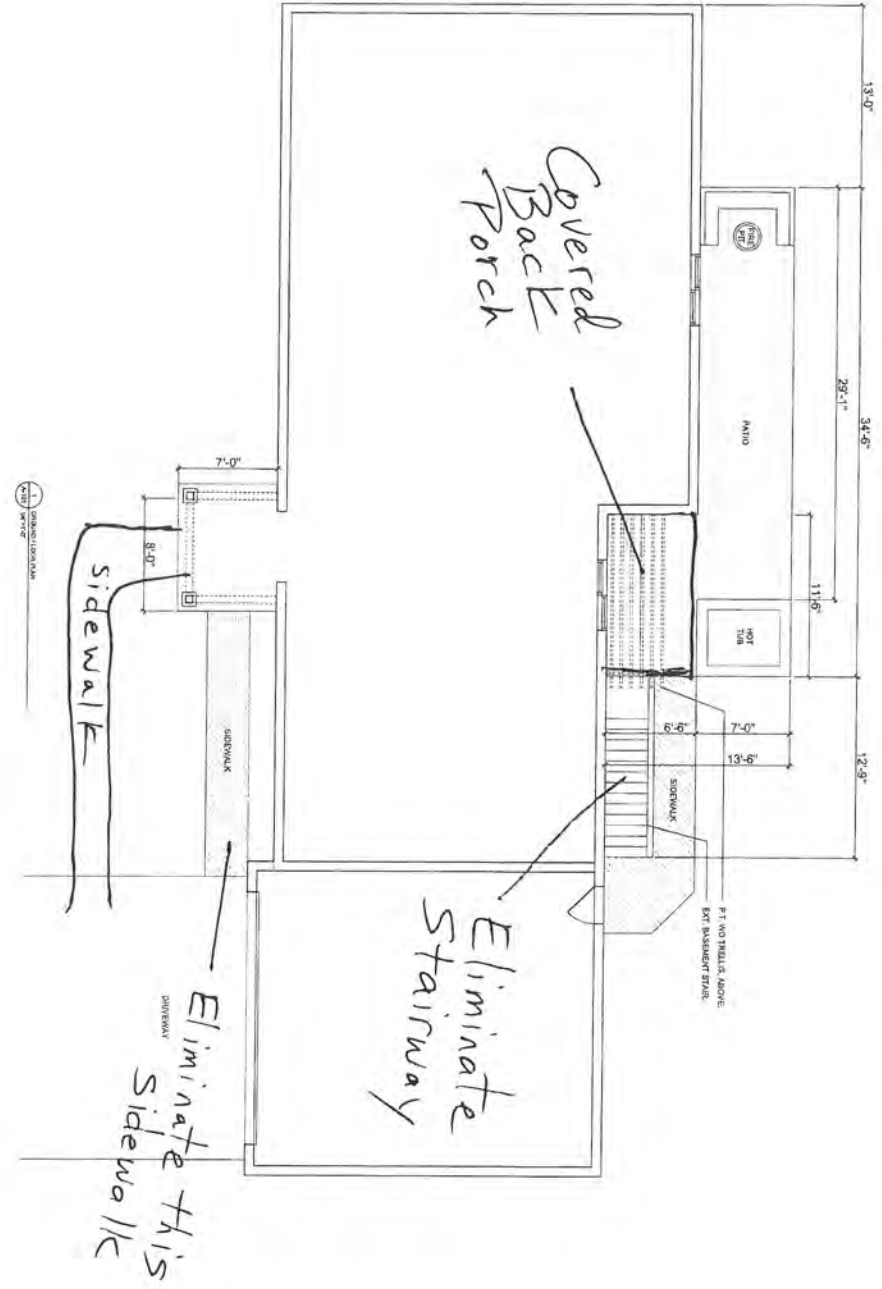
REVISIONS	
1	9/22/23 PRELIMINARY PLAN

SLUKA
HOUSE

ARCHITECTURAL
PLANS

A-101

EVANS + H



JIM SLUKA
11.20.2008
100.444.2200@evansh.com

REVISIONS

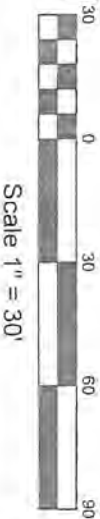
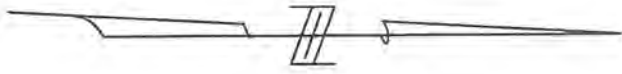
NO.	DATE	DESCRIPTION
1	02/20/08	PRELIMINARY PLAN

SLUKA
HOUSE

HARDSCAPE
PLAN

A-102

NOTE: The professional surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership, title evidence, or any facts that an accurate and current title search may disclose.



PROPOSED ZONING VARIANCE
PT. LOTS 2 & 3 OF
HIGHTOWER ESTATES SUBDIVISION
SECTION 29, TOWN 5, F. RANGE 1
SYMMES TOWNSHIP
CITY OF MONTGOMERY
HAMILTON COUNTY, OHIO

MATTHEW B. & NICOLETTA TRENT
 620-170-4727

RYAN J. WERNER
 620-170-22

CINCINNATI METROPOLITAN HOUSING AUTHORITY
 603-24-990.2761 ACRE

QUAN & FANG ZEION WANG
 603-24-98



JOHN J. DUFFY & ASSOCIATES, INC.	
ENGINEERS-SURVEYORS	
4830-E DUFF DRIVE CINCINNATI, OHIO 45246	
(513) 874-1811 Email: jiduffy@usa.net	
SCALE: 1"=30'	DRAWN: M.C.F.
DATE: 1-04-22	CHECKED: JMD
JOB NO.: 21-175	

REV 1-20-22 M.C.F. REV 8-1-23 M.C.F. REV 8-22-23 M.C.F.

CITY OF MONTGOMERY BOARD OF ZONING APPEALS

Application for Variance: *Michael Sweeney and Natalia Zimina*

October 24, 2023
Staff Report

Applicant: Michael Sweeney and Natalia Zimina
10700 Deershadow Lane
Montgomery, OH 45242

Property Owner: Same as above

Vicinity Map:



Nature of Request:

The applicant is requesting a variance to allow fencing 4' in height in the front yard area along Shadowhill Way, where Section 151.1009(I)(1) of the Montgomery Zoning Code does not permit fences over two feet in height in the front yard.

Zoning:

This property is zoned 'A' single family residential. All the adjoining properties are zoned 'A' single family residential and used for single family residences.

Findings:

1. The property is approximately 19,994 square feet in size, which is just under the 20,000 square foot minimum for the 'A' District. Therefore, the property is non-conforming in lot size.
2. The house was built in 1973 and conforms to all setback requirements in the 'A' District.
3. The property is a corner lot on Deershadow Lane and Shadowhill Way, with two front yards. The driveway is located on Deershadow Lane.
4. Chapter 151.1009 of the Montgomery Zoning Code states that fences and walls over 2 feet high may not be located in any part of the front yard.
5. The zoning code was changed in 2002 to limit the height of fences in the front yard to 2 feet. Prior to the code change, fences could be a maximum of 4 feet in height in front yards.
6. A split rail fence was previously located in the front yard area and was replaced. The original fence was legal non-conforming. Since the fence was completely removed, it would have been required to meet today's code.

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 legal non-conforming in lot size, as it is 19,994 square feet where 20,000 square feet is the minimum required. In addition, the front yard portion along Shadowhill Way has a steep slope down towards the sidewalk (topography map for reference below). In addition, there are existing retaining walls in the rear yard that would limit the placement of a fence due to the changes in topography.



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

The property will yield a reasonable rate of return without granting the variance, as many corner lots within the City do not have fencing located in the front yard.

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

The variance is substantial because the applicant is proposing a fence which is two times taller than what is allowed in the front yard by the zoning code. However, a fence has been located in the front yard area for many years without any issues or complaints. Aerials show the fence in this location back to 1996. In addition, sidewalk was not installed on Shadowhill Way until sometime after

the fence was installed. Below is a sketch of the approximate location fencing above 2' in height would be permitted.



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

Staff does not believe the character of the neighborhood would be substantially altered by permitting the fence, as the same type of fence has been in this location for many years. However, the fence has been legal non-conforming since 2002 and many fences in the front yards have been removed or never installed on corner lots since the code change.

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

Local 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 owners have stated they were unaware 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 erect a fence which is only two feet in height or a fence in the rear yard area only. However, the applicant is seeking to fence in a larger portion of their property. In addition, existing retaining walls and the topography of the lot does present some challenges for fence installation to meet the code requirement.

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

It is clear in section 151.1009 that fences should not exceed two feet in height in the front yard. The intent of this regulation is to keep the front yards of lots within the City open and un-cluttered, while still allowing for taller fences to be erected in the side and rear yard to provide for private or enclosed outdoor spaces. While Staff recognizes that fencing in an area of the front yard along Shadowhill Way would give the applicant additional space to enclose their yard, Staff is of the opinion that the intent of the zoning regulation would not be observed by granting variance which allows a 4' high fence to extend out to the front property line.

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

The following requests for a variance regarding fence height in the front yard have been considered by the Board of Zoning Appeals since the adoption of the regulation in 2002:

- A variance to allow a wrought-iron fence four feet in height was granted for a property located at 7942 Cooper Road on

May 22, 2007. This property is zoned 'A' Single Family Residential and is located in the Heritage District. Since this variance request, the Zoning Code has been changed to allow for four foot wrought-iron fences in the front yard in the Heritage District.

- A variance to allow a split rail fence four feet in height was denied for a property located at 10016 Zig Zag Road on February 26, 2008. This property was also zoned 'A' Single Family Residential and was adjacent to the I-71 sound wall. The applicant was proposing to erect the fence in the front yard approximately 23' from Zig Zag Road.
- In September 2013, the Board of Zoning Appeals granted a variance to allow for a 6' high fence/wall in the front yard along Ted Gregory Lane for the new home being constructed at 7813 Remington Road. This property is a through lot and abutted commercially zoned property.
- In October 2013, the Board of Zoning Appeals granted a variance to allow for a 6' high fence/wall in the front yard along Ted Gregory Lane for the new home being constructed at 7797 Remington Road. This property is a through lot and abutted commercially zoned property.
- In January 2016, the Board of Zoning Appeals granted a variance to allow a 4' high split rail fence be located along the front yard property line at 7820 Campus Lane. This was a corner lot with non-conforming side yard setbacks, square footage and front yard setbacks.
- In May 2016, the Board of Zoning Appeals denied a variance to allow a 4' high fence to be located in the front yard area of a corner lot surrounding a pool at 8611 Hetheridge Lane.
- In November 2017, the Board of Zoning Appeals approved a variance to allow 94' of fencing, 3' in height in the front yard area of 10538 Adventure Lane. The fence was a replacement of an existing legal non-conforming fence that was located approximately 35' from the front property line.
- In January 2021, the Board of Zoning Appeals approved a variance to allow a 4' high fence to extend a 10' into the front setback in order to go around an existing pine tree at 10658

Weil Road. The fencing was located approximately 55' from the front property line.

- In October 2022, the Board of Zoning Appeals denied a variance to allow a 4' high fence in the front yard at 8755 Monte Drive.

Staff Comments and Recommendations

Staff recognizes that fencing in an area of the front yard along Shadowhill Way would provide the applicants a larger enclosed space than what is permitted as of right, and that a fence has been in this location for at least 27 years without any issue. In addition, the lot is non-conforming in lot size and there are existing topography issues that may impact the installation of fencing and limit the amount of usable backyard space. However, Staff does have some concern that granting the requested amount of variance in accordance with the submitted site plan would not preserve the intent of the zoning regulation and may set a precedent for other lots within the City.

Granting the variance to allow the proposed fence to be four feet in height in the front yard at 10700 Deersadow Lane would be justified by criteria #1, 4, 5, 6, 7, and 8.

APPLICATION FOR A DIMENSIONAL ZONING VARIANCE

10700 DEERSHADOW LANE
CINCINNATI OH
45242

Property Owners:

Michael J Sweeney (513) 910-7497
Natalia Zimina (Kalinina) (513) 675-2847

LIST OF DOCUMENTS:

1. Application Form
2. Consent of owners to inspect the premises form
3. Proof of ownership
4. Descriptions:
 - a. ...of property or portion thereof
 - b. ...of nature of variance requested
5. Narrative statements establishing and substantiating the justification for the variance
6. Site plans:
 - a. 2006 aerial photography
 - b. 2023 aerial photography
 - c. topography and property map
 - d. fencing map
7. Supplementary material: precedents



CITY OF MONTGOMERY

A CHARMING PAST. A GLOWING FUTURE.

APPLICATION FORM

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

Project Address (Location): 10700 DEERSHADOW LANE 45242

Project Name (if applicable): _____

Auditors Parcel Number: 6030016010100

Gross Acres: 0.46 Lots/Units _____ Commercial Square Footage _____

Additional Information: ZONING A (KALININA)

PROPERTY OWNER(S) MICHAEL SWEENEY Contact NATALIA ZIMINA

Address 10700 DEERSHADOW LN Phone: (513) 910-7497

City CINCINNATI State OH Zip 45242

E-mail address NCRANSE@YAHOO.COM

APPLICANT NATALIA ZIMINA Contact _____

Address 10700 DEERSHADOW LN Phone: _____

City CINCINNATI State OH Zip 45242

E-mail address NCRANSE@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

Michael J. Sweeney

ONLY

FOR DEPARTMENT USE

Print Name

Michael J. Sweeney

Date 9/15/23

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



CITY OF

MONTGOMERY

A CHARMING PAST. A GLOWING FUTURE.

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 _____,
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

Michael J. Sweeney *Natalia Finina*

Print Name

Michael J. Sweeney

Natalia Finina

Date

9/15/23 *9/15/23*

Board of Zoning Appeals Members:

Mary Jo Byrnes

Tom Molloy

Catherine Mills Reynolds

Bob Sauli

Jade Stewart

Steve Uckotter

Richard White

DESCRIPTION OF THE PROPERTY OR PORTION THEREOF:

The address of the property is 10700 Deersshadow Lane, Cincinnati OH 45242

This is a corner yard, located at the intersection of Deersshadow Lane and Shadowhill Way, on the north side of the intersection.

The house is set near the rear of the yard (with only 16 feet to the corner of the building) due, we believe, to the configuration of adjacent streets and the 50 feet front yard setback requirement.

As a corner lot, the property has two front yards, a small backyard and one side yard. The area to the north of the house (side yard) is mostly occupied by a concrete driveway and has a very small, grassed area, too small to be feasibly fenced. The area at the rear of the house (backyard) has a steep slope contained by the retaining wall and a line of trees. The portion of the backyard outside of the retained area continues to slope to the fence line, which is a property of the neighbor to the east. That sliver of land is unusable for recreational use and serves as a buffer zone. The portion of the yard to the south of the house facing Shadowhill Way (front yard), was fenced by previous owners, and the fence was in place at the time of our purchase of the property.

DESCRIPTION OF NATURE OF VARIANCE REQUESTED:

We are asking for a variance to the City of Montgomery Zoning Code that considers portion of the property facing the Shadowhill Way a front yard and does not permit a fence more than 2 feet high on that portion of the yard. We believe that the strict compliance with this ordinance prevents improvement of the property in reasonable and customary manner; the removal of the fence and absence of thereof will cause us, owners, a practical difficulty due to the significant expense to construct and then destroy an attractive feature of the property, and mostly due to its future total absence. While the majority of the neighborhood' properties have configuration that favors a fenced area in the back yar, we have not, due to the combination of parcel's unique configuration, its setback requirements, existing features and grade (the detailed description is in the Appendix). We were not informed by the previous owner of the fact that the fence is not in compliance with the code and therefore cannot be replaced but can only be repaired. I believe, that during my phone conversation with the City of Montgomery representative about 15 years ago, a person has confirmed to me that a portion of the property facing Shadowhill Way is considered as a side-yard, therefore a fence is permitted. If we would have known that we cannot replace the fence, or have a fenced yard, we would not have purchased the property due to the fact that we had four small children and a dog. Please consider a variance to a Zoning Code which would allow us to a have a decent fenced portion of our property.

NARRATIVE STATEMENTS ESTABLISHING THE JUSTIFICATION FOR THE VARIANCE PURSUANT.

1. Whether spatial 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 nonconforming uses.

Please refer to enclosed CAGIS maps:

It is clear from the topography map, that the backyard of our parcel is narrow and very steep, the retaining wall was constructed by the previous owner to stop erosion and to create a narrow level areas; the grade, however, drops about four-five feet at the wall, which breaks the backyard even more. The side yard to the north of the building is mostly occupied by a large area of paved driveway and leaves a very small area which is allowed to be fenced, fencing there is not feasible considering the cost. The only area that could be fenced and used as a side yard is to the south of the building, i.e., the area in question. We are a family of four children and a family dog, two teenage boys use the side yard for their games, and dog needs a fenced yard to run. In addition, our neighbor trains and boards multiple dogs at the time. They exchange barks with our dog and may cause disturbance to the neighborhood; hence, the fenced side yard is the only place our dog can escape the neighbor's dogs. We plan to stay in our house for a long time to come and hope to raise our grandchildren here, and the fenced yard is essential for a child's safety.

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

When we bought the property, we noticed that the back yard was almost absent. However, the area to the south of the building was not as steep, and it was fenced. Even if a fence looked already old at the time, we decided to rebuild it when it will start collapsing. The previous owners failed to warn us of a zoning requirement that grandfathered the fence in. If we would have known that it is not in compliance, we would have not bought the house. A four-bedroom house is designed for a family with multiple children of various ages. In case its yard cannot be fenced, fewer families would be willing to buy it, and the property' value must be reduced significantly in order to be sold.

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

We believe, if granted, the variance will be a substantial measure to reduce the hardship of the existing steep slope and of the other yard conditions particular to this property.

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

Please refer to the pictures taken in close proximity to our property. The extended fence line is a common feature on corner yard properties in our neighborhood. We propose to decorate our fence line with landscaping and flower beds and to extend pavement adjacent to a school bus-stop public way, as a gift to our community. In addition, our fence is constructed of a higher quality material and craftsmanship than the ones on the pictures, piece milled from old and new elements. The new fence replicates the removed fence line precisely, in-fact the fenced area has

become slightly less. We believe, the neighborhood would not suffer, but would benefit from the fence' appearance.

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

It would not. The fence is constructed after the utilities were marked by the city' officials and it is far from any delivery routes.

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

We were not aware of the restraint at the purchase of the property. In fact, the previous owner did notify us of the sliver of our parcel donated to the neighbor, which, of course, we accepted, but they failed to inform us of the restraint and of the fact that we cannot replace the existing fence.

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

It does not. The grade was sloping steeply in the backyard, the outline of the parcel and a location of the house on the property have not changed since we purchased the property. We have not caused a special condition (please refer to the aerial maps dated 2006 and 2023)

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

Please refer to the enclosed site plan. There is no other area of our parcel that can be feasibly fenced due to parcel' configuration and slope. The fenced area is necessary to contain our dog, to keep him away from neighbor' dogs, and to offer a safe playground for our children and future grandchildren.

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

We believe that the spirit and intent of the zoning requirement is entirely consistent with our request for a variance. The spirit and intent of the zoning requirement are directed to uniformity of appearance, beauty, and allowance to use one's property for normal family purposes. Our front yard complies totally with the zoning requirement. Our side yard complies in terms of beauty. The current fence is more beautiful than the old fence. In fact, the property is more beautiful with this fence than without it. Without the fence, normal usage of the property is impossible, so we are in compliance with the spirit and intent of the zoning requirement. This is due to the unusual topography of our yard, which will not then be the basis for establishing a universal precedent for future zoning decisions. The spirit and intent of the zoning requirement is also not to produce an unreasonable financial burden. We acted in good faith when the fence was replaced. Destroying the fence will be an extraordinary financial burden for us. The spirit and intent of the zoning requirement are not to crush citizens financially.

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

It would not: we are asking for a basic need of a private side yard, which most properties in the neighborhood already have. Most properties have **two side yards**, decent size **backyard** and **one front yard**. Currently, without the variance, we must comply with **two front yards set back** requirements, we have only **one small side yard** and a **small backyard** area. We are petitioning to ease a hardship caused by the current zoning requirements and our unusual circumstances.

09.15.2023



2006 AERIAL PHOTOGRAPHY



2023 AERIAL PHOTOGRAPHY



TOPOGRAPHY AND
PROPERTY MAP

FENCING MAP

BLUE - NEIGHBOR' FENCE

YELLOW - REMOVED
EXISTING FENCE

GREEN - NEW FENCE-LINE

RED - FENCE-LINE PER
CURRENT ZONING





7635 SHADOWHILL WAY





7728 SHADOWHILL WAY





7690 DEERFIELD RD



August 28, 2023

Michael J Sweeney & Natalia L Kalinina
10700 Deershadown Lane
Montgomery, Ohio 45242

Subject: New Fence

Dear Property Owners,

It has come to our attention that the newly installed fence on your property is not in compliance with the City of Montgomery Zoning Code. Unfortunately, the previous fence was considered legal non-conforming in accordance with Section 151.5003 of the Montgomery Zoning Code. With the fence being completely removed, it is required to be brought up to today's code, which does not permit fencing above 2' in height in the front yard as outlined in Section 151.1009(I) of the Montgomery Zoning Code. Please see the sketch below indicating where fencing is permitted.



Please either bring your property into compliance or submit for a variance request no later than September 15, 2023. If you have any questions, please feel free to contact me at 513-792-8347. Thank you in advance for your cooperation.

Sincerely,

Melissa Hays, AICP

City Planner

To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deershadon Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

Name Yuko and Nathan Scott

Address 8024 Deershadon Ln, Cincinnati, OH



To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deersshadow Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

Mary J Gentile
Name

7802 Shadowhill Way
Address



To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deersshadow Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

Kristina Tarai

Name

8028 Deersshadow Lane 45242

Address



To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deersshadow Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

Joshua + Erin Sprang
Name

10698 Deersshadow Ln; Montgomery, OH 45242
Address



The new fence looks great. We have zero issues with it and hope the city allows our neighbors to keep it.

Thanks!

Erin Sprang
Joshua Sprang

To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deersadow Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

IN FACT, THE FENCE MUST STAY WHERE IT IS!

THEODORE & MARY VERNARDAKIS

Name

7726 SHADOWHILL WAY

MONTGOMERY, OH 45242-4230

Address

TEL.: 513-793-1147

(I, THEODORE, SHALL
ATTEND THE MEETING
ON TUE, OCT. 24, 2023
AT 7:00 PM).



To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deersshadow Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

Edward M. Roberts

Name

7727 Shadowhill Way

Address

*ceddy come to property
with zoning issue. I see no problem
with it.
E.M.R.*



To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deersshadow Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

James B. Dewkes - Barbara J. Dewkes

Name

8023 DEERSHADOW LN.

Address



To The City of Montgomery Board of Zoning Appeals Committee:

As an owner of property located within 300 feet of 10700 Deershadown Lane, which has requested a variance for their already constructed fence, we have been invited to comment on the petition. We do not object to the recently replaced fence, which is marked in red on the map below.

The new fence looks lovely and is only replacing an older worn out fence. This is not a front yard

Roxanne Rutherford

Name

10901 Windhaven Ct

Address



Melissa Hays

From: Dave Goodwin <desertvista77@gmail.com>
Sent: Wednesday, October 18, 2023 7:59 PM
To: Melissa Hays
Subject: Notice of Public Meeting 10/24/23 for Variance Request at 10700 Deersshadow Lane

Hi Melissa,

My wife and I cannot attend the meeting due to a class we are attending.

We have no objections to their current fence. We're not clear what the variance for 2' is about as we've seen two other fences along Deersshadow Lane go up in the backyard that are 6' solid fences and we've not been asked to attend other zoning meetings. Not sure if it's because these owners in question sit on a corner lot?

I think the split rail that this property owner (10700 Deersshadow Lane) put in in their backyard is nice and done tastefully and we have no objections.

I think if a variance needs to be made that it indicate that a split rail fence only is allowed at this corner for aesthetic reasons. We don't think a solid fence would look right on this corner. I also think the 4' limit is also a max height that fits this property location.

Could you clarify why other backyard fences would have gone up without a variance discussion?

Thank you,

Dave Goodwin
10693 Deersshadow Lane

C: 513-371-2713

Melissa Hays

From: Beth Mountjoy <bethmountjoy@gmail.com>
Sent: Friday, October 20, 2023 2:59 PM
To: Melissa Hays
Subject: Variance for fence at 10700 Deersshadow Lane

Hi Melissa. Thanks for the info regarding the variance request for 10600 Deersshadow Lane. I think the new fence looks great, and hope that you will grant the variance.

Have a great weekend!

Beth Mountjoy
10695 Deersshadow Lane

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

**CITY OF MONTGOMERY
BOARD OF ZONING APPEALS REGULAR MEETING
CITY HALL • 10101 MONTGOMERY ROAD • MONTGOMERY, OH 45242
August 22, 2023**

<u>PRESENT</u>		
<u>GUESTS & RESIDENTS</u>		<u>STAFF</u>
Ron Messer Member, City Council		Melissa Hays, City Planner
		Karen Bouldin, Secretary
Brandon Endres 9121 Forestknolls Dr., 45242	James E. Sluka 7208 Maryland Ave, Unit 2 Cincinnati, OH 45236	<u>BOARD MEMBERS PRESENT</u> Mary Jo Byrnes, Chairman Richard White, Vice-Chairman Catherine Mills Reynolds Bob Saul Jade Stewart Steve Uckotter
		<u>MEMBERS NOT PRESENT</u> Mr. Molloy

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,
Ms. Stewart, 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 two public hearings. 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 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.

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

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

Board of Zoning Appeals Meeting

August 22, 2023

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

30
31 She asked all guests to turn off their cell phones.

32
33 Chairman Byrnes asked that anyone planning to speak to the Board please stand to be sworn in
34 (which includes the applicant). Chairman Byrnes swore in everyone planning to speak.

Guests and Residents

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

Old Business

41 There was no old business to discuss.

New Business (1)

44 *A request for a variance from James E. Sluka for the property situated at Parcel ID*
45 *060300240367 - Hightower Court, Montgomery, Ohio 45242 to allow for a rear yard setback*
46 *of 23.9 feet, where 30 feet is the minimum required, per Schedule 151.1005 of the*
47 *Montgomery Zoning Code.*

Staff Report

50 Ms. Hays reviewed the Staff Report dated August 22, 2023 "Application for Variance:
51 James E. Sluka Parcel ID 060300240367 Hightower Court."

52
53 She showed drawings on the wide screen for all to see, to provide more understanding of the
54 Staff Report. She indicated that an email was received, not in favor of this application, from the
55 neighbor in the rear, on 9245 E. Kemper Road, 45140

56
57 Ms. Hays asked if the Board had any questions. There were none.

58
59 Chairman Byrnes asked if the applicant wished to speak.

60
61 **James (Jim) Sluka, 7208 Maryland Avenue, Unit 2, Cincinnati, OH 45236** stated that he was
62 living at this address temporarily until his new home is built. He noted that he has been working
63 on this project for 23 years; he has owned the land since 1999. He explained that in January of
64 2022, he came before this Board and received approval for a variance request for a 2,093 square
65 foot home, however, after he received all of the quotes, he discovered it would be too expensive.

66
67 Mr. Sluka now has reduced his plan to 1538 square feet, and this reduced the amount of square
68 foot violation by 87 square feet. He stated that this would be a great retirement home.
69 He described his proposed home, noting that for the future, it will be very marketable.

70
71 He asked for any questions from the Board.

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

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

Board of Zoning Appeals Meeting

August 22, 2023

72
73 Ms. Stewart asked if he was seeking a smaller variance than his 2022 variance. Mr. Sluka
74 confirmed, noting that the previous variance was 369.27 square feet, and this request was for 87
75 square feet less. He believed this was very practical and did not feel it would be a problem with
76 the back yard, which had many trees in the back, between the two homes. He stated that he had
77 just received the letter from the property owner in the rear. He did not have a chance to research
78 it, as he received the letter today.

79
80 Ms. Stewart asked if he had received suitable quotes for this plan. Mr. Sluka confirmed, noting
81 that he is on the final stages of the bidding process.

82
83 Mr. Saul asked if he had access to full city services of water and electric. Mr. Sluka stated that
84 he did; he actually built the home next to this one, at 10212 Hightower Court.

85
86 Ms. Mill-Reynolds asked if the neighbor in the back had submitted a letter in 2022, or if this was
87 the first response he had received from them. Ms. Hays wasn't sure. She had spoken with the
88 neighbor in the field in 2022, walking the property with her, and showing her where the proposed
89 house would be. Mr. Sluka stated that they did not receive a letter in 2022.

90
91 Chairman Byrnes asked if Ms. Hays spoke with the Trents about this application. Ms. Hays
92 stated that she did not. Chairman Byrnes stated that maybe the neighbor was concerned that this
93 home would be rented. Mr. Sluka noted that he planned to live there.

94
95 Chairman Byrnes asked if any guests or residents had comments. There were none.

96
97 **Adjournment**

98 Mr. White moved to close the public hearing.

99 Mr. Uckotter seconded the motion.

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

101
102 Chairman Byrnes opened the business session at 7:20p.m.

103
104 **Business Session (1)**

105 *A request for a variance from James E. Sluka for the property situated at Parcel ID*
106 *060300240367 Hightower Court, Montgomery, Ohio 45242 to allow for a rear yard setback of*
107 *23.9 feet, where 30 feet is the minimum required, per Schedule 151.1005 of the Montgomery*
108 *Zoning Code.*

109
110 Ms. Stewart stated that she attempts to be sensitive to other residents and their complaints, but
111 the buffer between these two homes is greater than if they both were at the minimum required, so
112 it is hard to change the decision when a smaller variance was already approved, when many
113 properties have even smaller buffers in between them.

114
115 Mr. Saul felt that we made a mistake then.

116

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

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

Board of Zoning Appeals Meeting

August 22, 2023

117 **Mr. Uckotter moved to approve the request from James E. Sluka for the property situated at**
118 **Parcel ID 060300240367 - Hightower Court, Montgomery, Ohio 45242 to allow for a rear**
119 **yard setback of 23.9 feet, where 30 feet is the minimum required, per Schedule 151.1005 of**
120 **the Montgomery Zoning Code, as described in the City of Montgomery Staff Report, dated**
121 **August 22, 2023.**

122

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

125

126 **Mr. Saul seconded the motion.**

127

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

129

130 **AYE: Mr. White, Mr. Saul, Ms. Stewart, Ms. Mills Reynolds, Mr. Uckotter,**
131 **Chairman Byrnes** (6)

132 **NAY:** (0)

133 **ABSENT: Mr. Molloy** (1)

134 **ABSTAINED:** (0)

135

136 **This motion is approved.**

137

Adjournment

139 Mr. Saul moved to close the business session.

140 Mr. Uckotter seconded the motion.

141 The business session adjourned at 7:24p.m.

142

143 Chairman Byrnes opened the public hearing at 7:24p.m.

144

New Business (2)

146 **A request for a variance from Eleanor and Brandon Endres, property owners of**
147 **9121 Forestknolls Drive, Montgomery, OH 45242 to allow a new detached structure, 24 feet by**
148 **24 feet, to have a side yard setback of 7.5 feet, where 15 feet is the minimum required, per**
149 **Schedule 151.1009 (B) of the Montgomery Zoning Code.**

150

Staff Report

152 Ms. Hays reviewed the Staff Report dated August 22, 2023, "Application for Variance: Eleanor
153 and Brandon Endres, 9121 Forestknolls Drive, 45242".

154

155 She showed drawings on the wide screen for all to see, to provide more understanding of the
156 Staff Report. She indicated that there had been no calls, but received one letter of opposition.

157

158 Ms. Hays asked if the Board had any questions.

159

160 Mr. White asked if this was the optimum placement of this garage on the property, given the
161 location of the large tree. Ms. Hays pointed out on the wide screen, and felt that it was, in order

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

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

Board of Zoning Appeals Meeting

August 22, 2023

162 to keep most of the construction out of the drip line of the tree; although some of it will be under
163 the drip line, but the applicant did not see that part as being detrimental. Chairman Byrnes
164 pointed out that having the heavy equipment rolling over that area was not good, and they
165 wanted to avoid that.

166
167 Ms. Hays also noted that there is a drainage channel that goes through there, and if this is
168 approved, Staff recommends that she review the drainage plan to be sure it still functions
169 properly, and doesn't dam up the water flow. It is a swale, not a pipe. She stated there was no
170 easement.

171
172 Ms. Stewart referred to the 8924 East Kemper Road property, which had a zero foot setback.
173 She asked if it was visible from the street, and asked for any details. Mr. Uckotter remembered
174 that application, stating that it entailed a lawsuit between the neighbors, where the garage was
175 built into the neighbor's yard. They went to court, and through mediation, they agreed to
176 subdivide the lot. The neighbor bought the land, up to the zero line. The garage had already
177 been built, and had been there for years. Staff stated that she was not sure how that got
178 approved. It was an existing situation. Mr. Uckotter stated that it was not visible from the street,
179 because it sat way back; it was a panhandle lot.

180
181 Chairman Byrnes asked if the applicant wished to speak.

182
183 **Mr. Brandon Endres, 9121 Forestknolls Drive, Montgomery, OH 45242** stated that their
184 intention was to have a 2-car garage placed, to allow the most likely success of the oak tree,
185 which is the cause for the variance. They have tried to move it as far to the left of the tree.
186 He noted that there was a fence on his property, also. He noted that the tree was very healthy,
187 and provided a great amount of shade for them.

188
189 Mr. Endres stated that he was building this garage at the maximum allowable size permitted.
190 If he reduced the size, he would still request the same variance, to keep the distance from the tree
191 -- for its' protection.

192
193 To address the rear, there is a 35 foot setback, and they would not encroach the drainage area.
194 Mr. Endres stated that there were a lot of rocks to allow the drainage to come through – they
195 break down the velocity. He pointed out that it becomes a river, at times, going through his yard
196 and the neighbor's yard to the south, as well.

197
198 Mr. Endres stated that they intended to match the materials and structure of the home. He stated
199 that the home was built in 1976 and cars were much smaller then; that is the reason they wanted
200 this 2-car garage. Their SUV does not fit into the current structure, and this would keep their car
201 from being parked on the street.

202
203 Ms. Stewart stated that the Board needed to use specific criteria to base their decision on. One of
204 them is that it must be the minimum necessary; she asked why they needed this size, as opposed
205 to something smaller, to satisfy the minimum necessary. Mr. Endres stated that was the size
206 needed for a 2-car garage. She asked if it could be smaller than that. Mr. Endres stated that they

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

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

Board of Zoning Appeals Meeting

August 22, 2023

207 could have a one-car garage, but he would still need the setback, to keep the tree protected.

208
209 Ms. Stewart asked if the structure could be oriented another way so that 2 vehicles could fit in
210 the other direction. Mr. Endres stated that they currently have a rear-entry garage; he referred to
211 his drawing, stating that a side-loading garage would not be feasible. You would have to have
212 approximately 25 feet of driveway on the side, in addition to this – which would encroach further
213 on the tree.

214
215 Ms. Hays stated that 576 square feet was the standard for a two-car garage, minimum.

216
217 Ms. Catherine Mills Reynolds asked if they were doing some other work there, as well.
218 Mr. Endres stated that they were, and their addition to the back of the structure did not need any
219 variances.

220
221 Chairman Byrnes asked if this was a kit package that would be built for the garage. Mr. Endres
222 stated that it was not, and pointed them to the rendering in their packet, showing the architectural
223 drawings.

224
225 Mr. White asked if the side wall had trees along it. Mr. Endres stated that there were trees along
226 the back, the southern part. Along the northern property, there was a fence.

227
228 Ms. Catherine Mills Reynolds asked if they would maintain the fence, after the structure was
229 built, or would it go away. Mr. Endres stated that they will keep the fence. The structure, the
230 footers and the brick wall will be setback 9 feet, the overhang is the 7.5 feet.

231
232 Ms. Mills Reynolds asked about all of the landscaping – the trees. Mr. Endres noted that it will
233 all be retained, all the way back. Right now, it is open green space, and will be kept.

234
235 Mr. Uckotter asked about the 7.5 foot setback for the drip-line to the property line. Mr. Endres
236 explained that the requested 7.5 feet was so the drip-line would be where the gutters were. The
237 easement will come out 18 inches to 2 ½ feet. The wall will be about 9 ½ feet from the property
238 line. He didn't want the overhang to be inside of the requested setback, and therefore, be in
239 violation, so he requested 7.5 feet, which would account for where the gutter stops. Ms. Hays
240 stated that he intentionally gave himself some wiggle room. Mr. Uckotter stated that it was
241 actually less, because the overhang didn't count. Ms. Hays confirmed.

242
243 Chairman Byrnes asked if any guests or residents had comments. There were none.

244 245 **Adjournment**

246 Mr. Saul moved to close the public hearing.

247 Mr. Uckotter seconded the motion.

248 The public hearing adjourned at 7:45p.m.

249
250 Chairman Byrnes opened the business session at 7:45p.m.

251

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

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

Board of Zoning Appeals Meeting

August 22, 2023

252 **Business Session (2)**

253 ***A request for a variance from Eleanor and Brandon Endres, property owners of 9121***
254 ***Forestknolls Drive, Montgomery, OH 45242 to allow a new detached structure, 24 feet by 24***
255 ***feet, to have a side yard setback of 7.5 feet, where 15 feet is the minimum required, per***
256 ***Schedule 151.1009 (B) of the Montgomery Zoning Code.***

257
258 Ms. Milld-Reynolds liked this better because it was 7.5 feet and not 9. She also liked that the
259 fence was staying there. She was aware of the neighbor in opposition, but she also noted that
260 there was a tree line and a fence, which meant that this situation did not drastically change.

261
262 Ms. Mills-Reynolds did agree that this was a large structure and was not in favor of the way it
263 had to be built; she felt that it would be more aesthetically pleasing if you could turn it.
264 Chairman Byrnes agreed that this was a large structure.

265
266 Mr. Saul pointed out that trees were important, but also were temporary. He felt this was a
267 temporary situation with the tree maintenance.

268
269 Mr. Uckotter asked if there was a practical difficulty. He felt this difficulty was self-created.
270 He understood the applicant wanting to protect the tree, and to also have a two-car garage.
271 The fact is that most residents do not have that; Mr. Endres' situation was self-created. Because
272 it was self-created, Mr. Uckotter did not feel that he could support this. He felt that this was a
273 want, and not a need.

274
275 Chairman Byrnes understood and agreed. There is no guarantee that this tree will live through
276 all of this. She did not feel it was right to put so much emphasis on a tree, and if it will live or
277 not. If the garage was there, she felt it would be very difficult to take the tree down, if anything
278 happened to it. You would need a crane.

279
280 Mr. Uckotter felt that this application could meet code, but the roots of the tree create collateral
281 damage.

282
283 Ms. Stewart felt that the Board's responsibility was to follow the code. She did not feel the
284 applicant has met these requirements, and was concerned that this was a very, very intrusive
285 structure --and would be, from the street. She was not in favor of allowing this variance, noting
286 that this was the largest request (except for the one that went to court). She felt that this would
287 set a huge precedent.

288
289 Mr. Saul agreed that it would certainly be visible.

290
291 Mr. Uckotter stated that they could have the structure, they can move the structure or make it
292 smaller – there were many options.

293
294 Mr. White agreed that there were other options.

295

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

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

Board of Zoning Appeals Meeting

August 22, 2023

296 ***Mr. Uckotter moved to approve the request for a variance from Eleanor and Brandon Endres,***
297 ***property owners of 9121 Forestknolls Drive, Montgomery, OH 45242 to allow a new detached***
298 ***structure, 24 feet by 24 feet, to have a side yard setback of 7.5 feet, where 15 feet is the***
299 ***minimum required, per Schedule 151.1009 (B) of the Montgomery Zoning Code, as described***
300 ***in the City of Montgomery Staff Report, dated August 22, 2023.***

301
302 ***This approval is justified by criteria # 1, 5, 6 and 7 as outlined in Montgomery Codified***
303 ***Ordinance Chapter 150.2010 (d) for granting variances.***

304
305 ***Mr. Saul seconded the motion.***

306
307 ***The roll was called and showed the following vote:***

308
309 ***AYE:*** (0)

310 ***NAY: Mr. Saul, Ms. Stewart, Ms. Mills Reynolds, Mr. Uckotter, Mr. White,***
311 ***Chairman Byrnes*** (6)

312 ***ABSENT: Mr. Molloy*** (1)

313 ***ABSTAINED:*** (0)

314
315 ***This motion is denied.***

316
317 Mr. Endres stated that he understood their decision. He could still move the structure within the
318 setback to meet the code. He appreciated the Board's time and decision.

Adjournment

321 Mr. Saul moved to close the business session.

322 Mr. Uckotter seconded the motion.

323 The business session adjourned at 7:50p.m.

324
325 Chairman Byrnes opened the public hearing at 7:50p.m.

Council Report

328 Ron Messer was in attendance, representing City Council.

329
330 He noted that Vegas in the Village will be held on Thursday, Sept 7 – and will be bigger than last
331 year. Elvis is coming!

332
333 Mr. Messer provided an update on Council items and answered questions from the Board.

Minutes

336 Mr. Uckotter moved to approve the minutes of June 20 2023, as written.

337 Mr. Saul seconded the motion.

338 The Board unanimously approved the minutes.

339
340

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

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

Board of Zoning Appeals Meeting

August 22, 2023

341 **Adjournment**

342 Mr. Saul moved to adjourn. Mr. Uckotter seconded the motion.

343 The meeting adjourned at 8:10p.m.

344

345

346

347

348

349

350 _____
Karen Bouldin, Clerk

Mary Jo Byrnes, Chairman

Date

351

352 /ksb

DRAFT