

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
January 27, 2020**

MEMBERS PRESENT: Tim Sahr
Dave Mail
Jona Burton
Paul Sellman
Benjamin Tipton

STAFF PRESENT: Heather Heckman, Development Planner
Bridget Susel, Community Development Director
Eric Fink, Assistant Law Director

I. CALL TO ORDER

Mr. Burton called the meeting to order at 7:01 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Jona Burton, Dave Mail, Tim Sahr, Benjamin Tipton, and Paul Sellman were present.

IV. PREAMBLE

Variance requests will be considered in the order that they appear on the agenda. Each variance applicant or their representative will first explain the request to the Board and will respond to Board questions. The Board will then hear statements from persons supporting the variance, followed by statements from those persons opposing the variance. All persons making statements will do so under oath and shall state their name and address for the record. Their testimony shall be directed to the Board and not to the audience. If a member of the audience wishes to ask a question of one of the speakers, he or she shall first be recognized by the Chair of the Board and direct the question to the Chair. The Chair will then direct the question to the appropriate witness. This will allow the meeting to be conducted in an orderly manner. If written statements have been provided to the Board, they will be included in the record of this meeting. At the Chair's discretion, they may be read into the record during the meeting. After all testimony has been taken, the Board will discuss and review the request. Generally, the Board of Zoning Appeals will decide to approve or deny each requested variance at the meeting that it hears the testimony. Some decisions may be continued for further review.

Mr. Fink read the General standards from Section 1109.09 that the Board of Zoning Appeals follows in the granting of any variance. "In every instance where the Board grants or recommends a variance, there must be a finding by the Board that: (1) The strict application of the provisions of the Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Ordinance. (2) There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses within the same zoning district. (3) The granting of such variances will not be of substantial detriment to the public interest or to adjacent property owners or improvements in such districts in which the variance is sought and will not materially impair the purpose of the Zoning Ordinance."

Mr. Burton read the following statement that summarizes the Board's authority: "The Board of Zoning Appeals operates according to the provisions of the Kent City Zoning Code which provides for the establishment of the Board. Members of the Board, Kent citizens serving without pay, visit sites and hear evidence both pro and con at public meetings before carefully and conscientiously rendering a decision. After a decision has been made, the case is closed for the Board, as there is no provision in the code for the Board to reopen a case. If the petitioner disagrees with the findings of the Board, there are only two proper procedures. One is to resubmit a revision of the request that is more compatible with the code and the second is to institute legal procedures in the Common Pleas Court."

V. ADMINISTRATION OF OATH

Mr. Fink instructed members of the audience wishing to be heard on any of the cases presented at this meeting to rise and raise their right hand. Mr. Fink administered the oath, "Do you swear or affirm that the testimony that you are about to give this evening is the truth, the whole truth, and nothing but the truth, so help you God? Please say "I do". The participants responded, "I do".

VI. NEW BUSINESS

**A. BZ20-001 Huber Concrete/David Sears
 1168 Windward Lane**

Section: 1161.27(a)

Request: The applicant is requesting an 8-foot, 7-inch variance from the 24-foot maximum driveway width to allow a driveway to be 32-feet, 7-inches wide.

Terrance Michael Meloy, Jr., 1056 Meredith St., stated that he works for Huber Concrete. Mr. Meloy explained that the homeowner has a new driver in the house and wanted to widen the driveway to make it easier to maneuver cars in the driveway and avoid having to park in the road. He stated that they widened the driveway to go straight into the three car garage. Mr. Meloy stated that there are many cars parked on the road in that neighborhood and it creates a danger for kids who are walking and riding their bikes.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that he visited the site and found that the street is somewhat narrow and that there are several houses in the area that have three car garages with wide driveways. He stated that while he feels that they should have asked before construction, it is not offensive to look at, the contractor did a good job, and it doesn't hurt the neighborhood.

Mr. Fink stated that the contractor was notified by city staff that they needed a variance while they were laying the concrete forms.

Mr. Meloy stated that he did submit an application for a permit to Jennifer Barone, Development Engineer who was out of the office. He stated that city staff came out

for an inspection and that is when they saw the forms. Mr. Meloy took responsibility for not following up and getting the permit, but he was unaware at that time that a variance would be needed.

Mr. Sellman asked why they didn't wait a few days to pour.

Mr. Meloy stated that weather is always a concern and they had also already cut the curb. Mr. Meloy stated that he should have checked further regarding the requirements. He stated that the work looks beautiful and would hate to see it ripped out and also has a letter from the neighbor commenting on the drive. He presented the Board with a copy of the letter, as well as some pictures for the file.

Mr. Sahr questioned Mr. Meloy about how long he has been doing concrete work and why he didn't get the appropriate permits.

Mr. Meloy admitted that he did know to get a permit and that he should have verified it was complete before starting work.

Mr. Sellman noted that this isn't the homeowners fault; they rely on the contractor to obtain the necessary approvals. Mr. Sellman doesn't feel that it is fair to penalize the owners.

Mr. Burton agreed and added that if this came to the Board before work was completed, there is a strong likelihood that it would be approved given the other driveways nearby that are extra wide with three car garages. Mr. Burton stated that codes are in place for a reason.

Mr. Sahr stated that regardless if the contractor knew about the zoning requirements, if proper procedure for a permit was followed, the zoning issue would have been caught at that time. Mr. Sahr agreed that the homeowner shouldn't be penalized but the contractor should.

Ms. Susel stated that the contractor registration process does have a penalty process.

There was discussion with the Board and the applicant regarding the necessity and purpose of the wide driveway.

Mr. Tipton stated that the Board has gone both ways with these types of variance requests and the outcome has a lot to do with neighborhood character. Mr. Tipton stated that it is a very wide driveway and may have voted against it if it would have come before construction. Mr. Tipton stated that he is stuck on the hardship to the homeowner on this one.

Mr. Sahr stated that he doesn't think that this is a hardship to the owners as the contractor would likely be the one responsible for the costs; financial hardship is not a criteria to consider anyway. Mr. Sahr stated that the need for more parking with a three car garage is an inconvenience and not necessarily a hardship.

Mr. Mail stated that he feels that they should not make them tear up the driveway but does feel that the contractor should be penalized. Mr. Mail stated that it doesn't look

bad, it isn't unusual for the neighborhood, it is probably a safer configuration, and doesn't negatively affect the neighborhood. He stated that the unusual circumstance is that they have a three car garage and a two car driveway.

David Sears, 1168 Windward Lane, owner, provided photos of other houses with similar driveways.

Mr. Sahr stated that he doesn't have an issue with the driveway, but does have an issue with procedures not being followed; it doesn't look bad and it is well constructed.

Mr. Sellman stated that the neighbors are not objecting to the new driveway.

MOTION: In Case BZ20-001, Huber Concrete/David Sears, 1168 Windward Lane, Mr. Sellman moved that the Board of Zoning Appeals grant the 8-foot, 7-inch variance request from Section 1161.27(a) to allow a driveway to be 32-feet, 7-inches wide where a maximum width of 24-feet is allowed.

Mr. Sahr seconded the motion.

VOTE: The motion carried 5-0.

**B. BZ20-002 Peter Paino
1501 Fairchild Ave.**

Section: 1132.04(B)

Request: The applicant is requesting a 4.5 acre variance from the 10 acre minimum area requirement to apply the preservation alternate chapter of the zoning Code for the development of the 5.5 acre parcel at the northeast corner of Newcomer Road and Fairchild Avenue.

Peter Paino, 1258 Windward Ln., reviewed the request for the parcel and the Preservation Alternate chapter. Mr. Paino stated that he used the Preservation Alternate chapter when he constructed Cottage Gates condominium project. Mr. Paino presented possible options for his proposed project and stated that he would meet the open space requirement. Mr. Paino stated that the exceptional circumstance is that he feels that a 5 ½ acre development can be as nice as a 10 acre development. Mr. Paino stated that he feels that this is the best use for this parcel of land and will create a nice community. Mr. Paino explained that when the Preservation Alternate was created many years ago, there were 10 acre parcel available. He stated that the parcel is already zoned R-2 and there are two other projects in this area that used the Preservation Alternate: Cottage Gate and Lakes at Franklin Mills. Mr. Paino stated that he doesn't feel that granting the variance would be a detriment to the surrounding neighborhood or impair the spirit or purpose of Chapter 1132.

Mr. Fink stated that Mr. Paino does have a contract, which gives him legal control of the property and the ability to seek the variance despite his role on the Planning Commission.

Mr. Tipton inquired about the units and sidewalks.

Mr. Paino responded that they will be two bedroom units and he will discuss sidewalks with Ms. Barone although they did install sidewalks at Cottage Gate. Mr. Tipton questioned the size of Cottage Gate and Lakes at Franklin Mills.

Mr. Paino responded that Cottage Gate was 10 acres and the Lakes at Franklin Mills was approximately 50-80 acres.

Mr. Burton questioned if this new development would provide any opportunities for low or fixed income housing.

Mr. Paino stated that he wasn't sure but probably not. Mr. Paino explained that he still needs to do research to find the construction of the units.

Mr. Burton asked if Mr. Paino has tried to acquire more property from the owners to the east.

Mr. Paino stated that there isn't any property available to purchase.

Mr. Tipton questioned what makes up the 30% open space.

Mr. Paino stated that natural features are to be preserved but does not include streets, drives, sidewalks, etc. Mr. Paino stated that he would like to create a community with possibly gardens, greenhouse, etc.

Ms. Susel stated that typically unless developers get official low income housing tax credits, affordable housing is really not something a developer can usually do; it isn't because there isn't interest but rather the market doesn't allow it.

Mr. Mail asked about the orchard.

Mr. Paino stated that presently he would like to save the orchard as well as the pole barn.

Mr. Mail suggested the street layout have a turnaround at the end of the street. Mr. Mail stated that he likes the idea of the project.

Mr. Sellman stated that he likes the idea of getting more high quality single family housing in Kent.

Mr. Tipton noted that it is also in close proximity to all the amenities.

Mr. Burton stated that it is also near a traffic light.

PUBLIC COMMENTS

Lucien Pruszynski, 4658 Bassett Rd, Atwater, stated that he is a real estate agent and noted that one of the challenges in the market is that there is a lack of supply of housing due to the cost of construction. Mr. Pruszynski stated that he sees this as a needed benefit for the community.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that Kent could use some good quality single family homes.

Mr. Mail stated that initially he felt it was a large variance but after looking at the larger picture, he feels that it is a good idea.

Mr. Tipton appreciates the compact nature of the proposal and feels that it promotes community. Mr. Tipton stated that he feels that the criteria was adequately addressed.

Mr. Burton stated that the proposed development still allows larger areas around the units than some houses in Kent.

Mr. Sahr stated that the practical hardship that 10 acres of land is difficult to find in Kent. Mr. Sahr stated that it is an attractive layout and as long as the other requirements are adhered to, this is a good plan.

Mr. Burton stated that this is a good use of the property.

MOTION: In Case BZ20-002, Peter Paino, 1501 Fairchild Avenue, Mr. Mail moved that the Board of Zoning Appeals grant the 4.5 acre variance request from Section 1132.04(B) to apply the preservation alternate chapter of the zoning code for the development of the 5.5 acre parcel at the northeast corner of Newcomer Road and Fairchild Avenue where a 10 acre minimum is required.

Mr. Sellman seconded the motion.

VOTE: The motion carried 5-0.

**C. BZ20-003 Lucien Pruszynski
526-528 West Main Street**

Section: 1169.12

Request: The applicant is requesting a substitution of a non-conforming use from a business and apartment to two residential units (duplex).

Lucien Pruszynski, 4658 Bassett Rd, Atwater, stated that he has a legal contract to purchase the subject property. Mr. Pruszynski stated that the property is currently has a business on the first floor and an apartment on the second floor. He explained that substituting a residential use for the current commercial use on the first floor is more in tune with the neighborhood and would not be a detriment. Mr. Pruszynski stated that there is already ample parking both in front and behind the building and the only modification to the lower unit would be to install a kitchen and expand the bathroom.

Mr. Tipton questioned the required parking.

Mr. Fink stated that there isn't a parking requirement for a non-conforming use.

Ms. Heckman stated that in other districts, required parking for a duplex is 2 spaces for each unit.

Mr. Pruszynski stated that he feels that the parking for the current uses is relatable to the proposed uses.

Mr. Tipton questioned the layout and building access.

Mr. Pruszynski stated that he believes that he will probably install a shower without a tub. He also stated that the entrances of the building will not be changing; lower unit has two entrances and the upper unit has a set of stairs that lead directly into the apartment.

Mr. Mail questioned the requirement for closets.

Mr. Pruszynski stated that they will need to construct closets. Mr. Pruszynski stated that while he does not do student housing, if he has student renters there will only be two unrelated and the third room will become a study and not need a closet.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton reviewed the criteria for a substitution and stated that the applicant has presented a strong case.

Mr. Tipton stated that the traffic would be less with residential and no more intrusive than the commercial use. Mr. Tipton questioned the need for the front yard parking, as he feels that eliminating or reducing it would better meet the criteria.

Mr. Sahr agreed with Mr. Tipton, but is concerned that the access for the upper unit is from the front parking lot.

Mr. Pruszynski stated his concern for turning around in the rear parking lot if there are four cars parked there. He stated that he is concerned about creating a safety issue.

Mr. Mail stated that the upper unit would need parking in the front and suggested half of the parking area stay.

Mr. Tipton agreed.

Mr. Mail stated that the best use of the property is to go back to single family but realizes that that is not going to happen due to the cost of property.

Mr. Tipton stated that in practical purposes, the structure is already unitized.

The Board members agreed.

Mr. Pruszynski stated that the upper unit has three bedrooms and it could hypothetically be needed by a teenaged family member, live-in mother, etc.; he suggested reducing the front lot by one.

MOTION: In Case BZ20-003, Lucien Pruszynski, 526-528 West Main Street, Mr. Mail moved that the Board of Zoning Appeals grant the substitution of a non-conforming use from Section 1169.12 from a business and apartment to two residential units (duplex).

Mr. Sellman seconded the motion.

The Board discussed the motion and the lack of a condition addressing the front parking lot.

VOTE: The motion was denied 1-4.

Mr. Tipton questioned Mr. Pruszynski about his openness to change the front parking area.

Mr. Pruszynski stated that he is open to changing the front parking lot and asked if they could reduce the parking by one space.

The Board discussed a reduction of the front parking.

MOTION: In Case BZ20-003, Lucien Pruszynski, 526-528 West Main Street, Mr. Tipton moved that the Board of Zoning Appeals grant the substitution of a non-conforming use from Section 1169.12 from a business and apartment to two residential units (duplex) with the condition that the front yard parking be reduced to two spaces.

Mr. Sellman seconded the motion.

VOTE: The motion carried 5-0.

VII. MEETING MINUTES

A. November 18, 2019 meeting minutes

MOTION: Mr. Burton moved to approve the minutes of November 18, 2019, as submitted.

The motion was seconded by Mr. Mail.

VOTE: The motion carried 5-0.

VIII. OTHER BUSINESS

None

IX. ADJOURNMENT

MOTION: Mr. Sellman moved to adjourn.

The motion was seconded by Mr. Sahr.

VOTE: The motion carried 5-0.

The meeting adjourned at 8:39 pm.