

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
February 17, 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 7:02 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. ELECTION OF OFFICERS

MOTION: Mr. Mail moved to move the Election of Officers to the end of the meeting.

Mr. Tipton seconded the motion.

VOTE: The motion carried 5-0.

V. 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."

VI. 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".

VII. NEW BUSINESS

**A. BZ20-004 Christopher Williams
212 E. Oak St.**

Section: 1161.14(a)

Request: The applicant is requesting the following:

- 1) An 8-foot variance from the 10-foot minimum side yard setback to allow an accessory building to be 2 feet from the side property line (Section 1161.14(a)), and
- 2) A 6.5-foot variance from the 10-foot minimum rear yard setback to allow an accessory building to be 3.5 feet from the rear property line (Section 1161.14(a)).

Christopher Williams, 212 E. Oak St., stated that the accessory building is already in place and he apologized for not obtaining a zoning permit. Mr. Williams explained that the new structure will replace an older dilapidated structure in a different location. He stated that the lot is narrow and deep and has some high water areas but the main reason for the new location is the line of site with the existing garage and to keep it from becoming an obstruction in the rear yard. Mr. Williams stated

that moving the structure to a different location at this point would be difficult given the foundation.

Mr. Mail questioned why they didn't put the structure in the same location as the old.

Mr. Williams stated that he would like to be able to see into the back yard as people use it as a cut through; they have kids and a dog and would like to be able to see who is there.

Mr. Sellman questioned if the neighbor who complained stopped by to discuss it with Mr. Williams.

Mr. Williams responded no and he had been working on the foundation for the last six months.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that it looks nice. Mr. Sellman stated that he noticed the low spot in the yard and agrees it is a narrow lot.

Mr. Mail agreed that it looked good and understands that the property dictated where the structure could be located. He stated that the practical difficulty is that there is a very wet area in the middle of the rear yard, which is also an extraordinary circumstance. Mr. Mail stated that the new shed is located in an area that is unobtrusive and unseen. Mr. Mail added that after the original garage is demolished, he feels that the new structure is an asset rather than a hindrance.

Mr. Tipton agreed with the previous comments and stated that he appreciates the thorough submission addressing the issues. He stated that he is in favor of the location as there is an existing fence and other structures located on the property line. Mr. Tipton stated that he feels that all of the criteria have been addressed.

Mr. Burton stated that the Board tries to approve the smallest variance possible and feels that with the existing fence and other buildings on the property line, the shed is not a detriment. Mr. Burton stated that it is a nice looking building.

Mr. Sahr stated that his concern is that it seems to be a large variance. Mr. Sahr questioned if the shed could be shifted to have 5' variances.

Mr. Williams stated that there is approximately a one foot border around the entire exterior of the shed.

Mr. Sahr questioned the applicant's knowledge of setback requirements.

Mr. Williams stated that he thought it was two feet based on internet research.

Mr. Sahr stated he is concerned about the number of cases that the Board of Zoning Appeals hears that have already been completed before they seek the appropriate variances. He is concerned that it sets a precedence and that they are being too

lenient. Mr. Sahr stated that the current applicant can meet the required setbacks without an issue. He feels that it is the duty of the Board to enforce the zoning code and not look for ways to create a variance.

Mr. Tipton stated that he understands Mr. Sahr's comments and noted that he struggled with a previous case, which was a much more permanent structure than this case. He agreed that they could ask the applicant to extend the gravel bed. Mr. Tipton stated that he is a little more lenient in this case due to the temporary nature of the structure and the placement and adjacency to other structures but is in full support of Mr. Sahr's suggestion to move the shed.

Mr. Sellman agreed that the Board's goal is to enforce the zoning code but also feels that the reason they exist is to allow exceptions to be made in specific situations. He stated that moving the structure out to meet the ten foot setbacks really takes a big chunk out of the lot and makes it unusable. Mr. Sellman stated that he feels that it is aesthetically pleasing and there aren't any neighbors present tonight to express concern.

Mr. Burton asked if Mr. Sahr is looking for a compromise with regards to the size of the variance request.

Mr. Sahr stated that he thinks that he would like to grant the requested rear yard setback as long as he can move it over. He stated that he can also see the value in keeping the shed at the rear of the lot as there is an existing fence but isn't sure if it merits granting both variances.

Mr. Mail stated that he understands Mr. Sahr's objections but doesn't feel that this project is obnoxiously obtrusive.

Mr. Sahr stated that he also feels that it is a nice shed and that he did a nice job with it, his concern is the general trend of the Board of find any reason to grant a variance especially when they are asking for variances after the fact.

The Board continued the discussion regarding variances being requested after the work is complete and the need for variances for this structure.

Mr. Tipton asked for clarification from Mr. Williams regarding the foundation and supports of the shed.

Mr. Williams complied.

Mr. Tipton wanted to verify that the construction of the supports would facilitate an easier move to the center of the yard.

Mr. Sellman stated that granting the rear variance and increasing the side yard setback would have less impact on the remainder of the back yard's usability.

The Board discussed the purpose of the Board and pros and cons of granting variances.

Mr. Sahr stated that he believes that the applicant has made a case for needing the rear yard setback but he does not believe that the side yard setback should be granted.

Mr. Tipton stated that if the shed had not already been built and there were no complaints from the neighbors, he would have granted a 2 foot variance based on the existing neighboring structure being on the property line. Mr. Tipton stated that he sympathizes with the applicant not knowing the rules for a temporary structure and may have done the same prior to his time on the Board.

Mr. Mail stated that he would feel the same if the shed did not currently exist and grant the variances to give him the maximum use of his yard.

Mr. Tipton stated that typically they try to reduce large variance requests where possible. Mr. Tipton added that the adjacent structure and slope of the property would still have been considerations.

Mr. Burton stated that he feels that with a variance request prior to the shed's construction, the Board would have questioned the large side yard variance request and whether or not it is appropriate. Mr. Burton stated that he would like to see a 50% variance and move the shed 3 feet.

Mr. Sahr agreed with Mr. Burton stating that he feels that it is reasonable.

Mr. Burton stated that he is also considering that someday those neighboring structures could be reconstructed and what those setback could be if the structure isn't built in the same location.

The Board continued their discussion regarding the variances.

MOTION: In Case BZ20-004, Christopher Williams, 212 E. Oak Street, Mr. Sahr moved that the Board of Zoning Appeals grant a 6 foot variance request from Section 1161.14(a) to allow an accessory building to be 4 feet from the side property line where a minimum setback of 10 feet is allowed.

Mr. Sellman seconded the motion.

VOTE: The motion carried 5-0.

MOTION: In Case BZ20-004, Christopher Williams, 212 E. Oak Street, Mr. Sahr moved that the Board of Zoning Appeals grant a 6.5 foot variance request from Section 1161.14(a) to allow an accessory building to be 3.5 feet from the rear property line where a minimum setback of 10 feet is allowed.

Mr. Mail seconded the motion.

VOTE: The motion carried 5-0.

VIII. **MEETING MINUTES**

A. January 27, 2020 meeting minutes

MOTION: Mr. Mail moved to approve the minutes of January 27, 2020, as submitted.

The motion was seconded by Mr. Sahr.

VOTE: The motion carried 5-0.

V. ELECTION OF OFFICERS

After the Board's discussion, the Election of Officers is as follows:

MOTION: Mr. Mail nominated Jona Burton for Chairperson.

Mr. Burton accepted the nomination. No other nominations were offered.

The vote carried 5-0.

MOTION: Mr. Burton nominated Dave Mail for Vice Chairperson.

Mr. Mail accepted the nomination. No other nominations were offered.

The vote carried 5-0.

MOTION: Mr. Sahr nominated Paul Sellman for Secretary.

Mr. Sellman accepted the nomination. No other nominations were offered.

The vote carried 5-0.

IX. OTHER BUSINESS

None

X. ADJOURNMENT

MOTION: Mr. Sellman moved to adjourn.

The motion was seconded by Mr. Burton.

VOTE: The motion carried 5-0.

The meeting adjourned at 8:16 pm.