

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
July 20, 2020**

MEMBERS PRESENT: Jona Burton
Dave Mail
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 7:09 p.m.

II. PLEDGE

The pledge was suspended for tonight's remote meeting.

III. ROLL CALL

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

MOTION: Mr. Sellman moved to excuse Tim Sahr from the July 20, 2020 meeting. Mr. Mail seconded the motion. The motion carried 4-0.

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. Fink 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 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 affirmatively.

VI. NEW BUSINESS

**A. BZ20-017 SUE MOTTL
 1005 KEVIN DRIVE**

Section: 1161.14(a)

Request: The applicant is requesting a 5-foot variance from the 10-foot minimum side yard setback requirement to allow a detached garage to be 5 feet from the side (south) property line (Section 1161.14(a)).

Sue Mottl, 1005 Kevin Dr. reviewed her case as presented. Ms. Mottl explained her lot restrictions and added that the proposed location would minimize the amount of concrete she would need to add.

PUBLIC COMMENTS

Ms. Susel stated that she received an email from the neighbor at 1017 Kevin Dr., who supports Ms. Mottl's variance request.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that he feels that the new garage will fit nicely behind the existing cement apron and would not be a detriment to the neighbors.

Mr. Mail stated that he agrees with Mr. Sellman and feels that it is a reasonable request. He stated that a 5 foot setback still gives the fire department access and also fits with the character of the neighborhood; makes a better use of the property without covering more ground.

Mr. Tipton stated that he generally agrees with the other Board members with regards to trying to minimize the variance while still leaving a setback.

Mr. Burton stated that he agrees with Mr. Mail as he also visited the neighborhood and feels that more concrete would be more of a detriment than the granting of the variance.

MOTION: In Case BZ20-017, Sue Mottl, 1005 Kevin Drive, Mr. Sellman moved that the Board of Zoning Appeals grant a 5 foot variance request from Section 1161.14(a) to allow a detached garage to be constructed 5 feet from the side (south) property line where a minimum of 10 feet is required.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

**B. BZ20-018 KENT CO-OPERATIVE HOUSING
609 FRANKLIN AVENUE**

Section: 1109.10(b)

Request: The applicant is appealing the Community Development Department's decision to deny a non-conforming use certificate for a rooming house with no more than 4 unrelated residents.

Fred Pierre, representative of Kent Co-Operative Housing, presented his case and provided history of the Co-Op. Mr. Pierre stated that the house was purchased at a Sheriff's Sale in 1983 by the Co-Op and has been operating as a rooming house licensed by the Health Department for 4 people since that time. He stated that they have invested more than \$60,000 in the property including installing solar power, replacing the cedar siding, shingles, interior staircase, ADA ramp, back porch addition, and other general maintenance. He stated that they do not park cars in the garage but there is a driveway next to the house. Mr. Pierre stated that a couple years ago, they were notified that they were not in compliance with the zoning and asked him to provide documentation that shows that it was used as a legal rooming house in 1983. He stated that he also has a letter from the previous owner that states that it was a rental property when they purchased it. Mr. Pierre stated that they would like to continue operating as a rooming house. He added that they have architect plans to create a bathroom on the first floor. He stated that financially they need to rent to at least 3 people; it is the company's mission to provide low cost rent.

Mr. Burton questioned the number of people being requested.

Mr. Pierre stated that they would be okay with 3 people although 4 is what they have had.

Mr. Tipton questioned the relationship of the current tenants.

Mr. Pierre stated that currently there are 2 brothers living in the house with the possibility of one of their friends moving in.

Mr. Mail questioned the rental rate.

Mr. Pierre stated that rent is \$250 per room plus utilities.

Mr. Tipton questioned who maintains the exterior of the property.

Mr. Pierre stated that they have a lawn service to mow and they offer a discount on rent for tenants in exchange for maintenance work; other contractors do maintenance work as well.

Mr. Sellman questioned the number of bathrooms.

Mr. Pierre stated that this house only has one bathroom currently, which they recently enlarged and updated.

Mr. Tipton questioned the delay in filing their appeal.

Mr. Pierre stated that they are coming before them now because they had a deadline but they didn't want to spend the money to do so. He stated that he doesn't understand why they are being scrutinized now.

Mr. Sellman stated that the earliest license that he sees is 1983.

Mr. Pierre stated that they had difficulty finding earlier documentation. He stated that he does have a letter from the previous owner stating that it was a rental when he purchased it. Mr. Pierre stated that he has addressed the neighbor's complaint letter.

Mr. Fink stated that the property is zoned R-C: Residential Commercial, in which a rooming house is a conditionally permitted use. Mr. Fink clarified that the case today is to repeal Community Development's 2017 decision that this property does not meet the legal standard for a rooming house as a pre-existing non-conforming use. Mr. Fink stated that the applicant needs documentation that goes back to 1971 that will show rooming house status, however, none can be found. He continued that the City has provided a document from 6/8/83 showing that it was determined to be a pre-existing non-conforming use as a single family dwelling; not a rooming house. Mr. Fink stated that the city could not determine that it was used as a rooming house beginning in 1971 without interruption. Mr. Fink added that no building permits were acquired for the bathroom expansion. He stated that the Board can make a determination whether to approve the applicant's appeal or sustain the decision made by the Community Development Department.

Mr. Burton questioned if the applicant would need to seek a certificate of non-conforming use if the Board agreed with the City that the preponderance of evidence does not support the applicant's claim.

Mr. Fink stated that the applicant can go before the Planning Commission for a conditionally permitted use as stated in the city's letter from 2017.

Mr. Mail questioned the Health Department's license and how the occupancy number is determined.

Mr. Fink reminded the Board that the standard of proof when the City makes a decision is a higher standard of clear and convincing as opposed to when the Board makes a decision based on a preponderance of evidence.

Mr. Mail asked if the applicant's other rental properties in the City of Kent are licensed.

Mr. Pierre stated that their property on Dodge Street was in question but they have documentation for that property. He added that the house that was demolished to make way for the police department was also a licensed rooming house; the City hasn't challenged the other properties.

PUBLIC COMMENTS

Letter from the neighbor regarding property maintenance.
Letter from the applicant in response to that neighbor's letter.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that he is uncomfortable overturning a decision of the Community Development Department. He stated that potential buyers of rooming houses need to ensure that they have documentation stating the legal use.

Mr. Sellman stated that many of these cases are due to an increase in enforcement by the City, as some properties have been running illegally. Mr. Sellman agreed that this would be more appropriate for the Planning Commission to hear rather than overriding a clear code violation.

Mr. Tipton stated that he does not see any evidence supporting a rooming house. He added that the most convincing evidence was the document stating it was single family residence. Mr. Tipton stated that the neighbor's strongly worded letter also gives him pause as well. He stated that he walked the property and found that the exterior is poorly maintained. Mr. Tipton stated that he doesn't feel that there was enough evidence presented to make him feel comfortable enough to rescind the City's decision.

Mr. Burton stated that he also was taken back by the strongly worded letter from the neighbor but was disappointed with the lack of timeline details, which would have added merit. He stated that he was less than impressed with the maintenance of the property. Mr. Burton agreed that the conditions have not been met for a rooming house status due to the gaps in the evidence. Mr. Burton questioned how a potential buyer would know the legal use of a property.

Mr. Fink stated that in 2011 an ordinance was passed requiring that the seller of a property must provide a zoning use certificate to the buyer.

Ms. Susel stated that this is also a part of the rental licensing process that the Community Development Department has been working on since 2016; the records were matched with the Health Department to address any inconsistencies and to ensure the zoning use certificates align with the Health Department.

Mr. Pierre stated that he was unable to find a non-conforming use certificate for this property. He added that their founder, who was a City Council member and an attorney, did obtain a non-conforming use certificate for the other property on College St. Mr. Pierre questioned the city's record keeping practices.

Mr. Fink stated that the address folder wasn't empty as it contained the certificate of non-conforming use from 1973, which showed it was a single family residence in a commercial district.

Mr. Mail stated that given the founder was an attorney, you would have thought that if a certificate was granted, he would have had a copy in their files.

Mr. Sellman stated that he feels that they need to stick with the code and that there are other provisions to allow the applicant to seek a non-conforming use certificate.

He stated that he doesn't feel that there is enough evidence for this Board to approve.

Mr. Mail agreed.

Mr. Tipton also agreed and asked the city if the fees could be waived for the Planning Commission.

Mr. Pierre stated that he has no issue paying the fees although it would be nice if they could.

Mr. Fink stated that the city could waive the application fees but not the certified mailing fees.

MOTION: In Case BZ20-018, Kent Co-Operative Housing, 609 Franklin Ave., Mr. Burton moved that the Board of Zoning Appeals deny the appeal request from Section 1109.10(b), which would have allowed a non-conforming use certificate for a rooming house with no more than 4 unrelated residents.

Mr. Sellman seconded the motion.

VOTE: The motion carried 4-0.

VIII. **MEETING MINUTES**

A. **May 18, 2020 meeting minutes**

MOTION: Mr. Sellman moved to approve the Board of Zoning Appeals minutes of May 18, 2020 as submitted.

The motion was seconded by Mr. Mail.

VOTE: The motion carried 3-0-1. Mr. Burton abstained.

B. **June 15, 2020 meeting minutes**

MOTION: Mr. Mail moved to approve the Board of Zoning Appeals minutes of June 15, 2020 as submitted.

The motion was seconded by Mr. Sellman.

VOTE: The motion carried 4-0.

IX. **OTHER BUSINESS**

None

X. **ADJOURNMENT**

MOTION: Mr. Sellman moved to adjourn.

The motion was seconded by Mr. Mail.

VOTE: The motion carried 4-0.

The meeting adjourned at 8:28 pm.