

**KENT PLANNING COMMISSION
BUSINESS MEETING
MARCH 15, 2016**

MEMBERS PRESENT:

**John Gargan
Peter Paino
Amanda Edwards
Anthony Catalano**

ABSENT:

Doria Daniels

STAFF PRESENT:

**Jennifer Barone, Development Engineer
Eric Fink, Assistant Law Director
Sheila Uzl, Transcriptionist**

I. Call To Order

The meeting was called to order at 7:00 p.m.

MOTION: *Mr. Gargan moved to excuse Doria Daniel's absence from the meeting.
Motion was seconded by Mr. Paino. The motion carried 4 – 0.*

II. Roll Call:

Mr. Gargan, Ms. Edwards, Mr. Paino and Mr. Catalano were present.

III. Reading of the Preamble

The Planning Commission operates in accordance with the provisions of the Kent City Charter, the Kent Zoning Code and Subdivision Regulations, all of which establish the powers and duties of the Commission. Members of the Planning Commission are appointed by Kent City Council and serve without compensation. Certain cases such as Conditional Zoning Certificates, Special Zoning Permits, Overlay District Projects and Zoning Amendment require Public Hearings before the Planning Commission. During the Public Hearing, any person wishing to address their concerns to the Commission will be provided the opportunity. Once the Public Hearing is closed, it shall be the discretion of the Chair whether to allow any additional public comment. Cases such as Site Plan Reviews and Subdivision Projects do not require a Public Hearing. However, the Chair will allow public comment on each case as it is taken on the agenda. In each instance where the Commission receives public comments or conducts a Public Hearing, those persons wishing to address their concerns to the Commission will be required to do so under oath or positive affirmation. The oath or affirmation shall be administered to all who wish to speak at the beginning of the Planning Commission Meeting. Once a decision has been made by the Planning Commission on a case, the Case is closed for the commission, as there is no provision to reopen a case. With the exception of cases falling under the Subdivision Code, any decision of the Planning Commission may be appealed to the City's Board of Zoning Appeals in accordance with the Chapter 1109 of the

Zoning Code. Anyone interested in appealing a decision of the Planning Commission is advised to seek private legal counsel.

IV. Administration of Oath

Mr. Fink instructed those 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 solemnly 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."

V. Correspondence

A letter from Dennis and Sarah Watson who expressed concerns about the Safeway project. A memo from Peter Paino regarding the 345 Driveway Sight Distance analysis of March 1, 2016 were received.

VI. Old Business

None

VII. New Business

**A. PC16-005 SAFEWAY FOOD DRIVE-THRU
 1340 Fairchild Avenue
 Conditional Zoning Certificate & Site Plan Review**

The applicant is requesting Site Plan Review and Approval in order to install a paved driveway around the store. The driveway will be used to access a drive-through window. The subject property is zoned R-2: Medium Density Residential District.

Mr. Gargan asked the applicant to present the project.

Bill Perfect (116 Spell Road, Kent, OH) stated they would like to install a paved driveway around the Safeway Store located at 1340 Fairchild Avenue in Kent. He referred to the site plan and said the driveway will be used to access a drive-through window.

PUBLIC COMMENTS

Brok Plymale stated he is the owner of the property. He said he was fine with the site plans.

PLANNING COMMISSION DISCUSSION

Ms. Barone stated that the applicant is requesting to construct a drive through window at the Safeway in the southeast corner of the site. Convenient stores are not a permitted or conditionally permitted use in the R-2: Medium Density Residential District. Therefore, this is a change to a non-conforming use. The site can be accessed from Fairchild Avenue or Silver Meadows Boulevard.

A new driveway will be installed around the rear of the building to form a cue line for the drive through window. There are adequate parking spaces. Five (5) spaces are required, the site plan shows seven (7). One space must be designated for handicap parking. Staff is recommending that this be made a condition of a motion.

Utilities are not applicable for this project.

The applicant is proposing to direct stormwater to a depressed area in the rear. No changes are proposed to the signage. Six (6) wall mounted lights will be added for the drive through window. No additional landscaping is being proposed. The dumpster is being relocated and will need to be screened. The Architectural Review Board did not review this project. No variances were required. The site plan shows two driveways on Fairchild. If they eliminate one of the driveways, they should restore the tree line and the curb. This should also be made as a condition for approval in the motion.

Mr. Gargan asked what the circles meant.

Ms. Barone replied that they are some kind of utility or utility poles. There are several others like light pole in the parking.

Mr. Paino asked why the dumpster was moved.

Mr. Perfect replied that the dumpster is currently in front where the driveway is proposed so they are moving it into the grassy area about 20 feet to the left.

Mr. Paino stated he would rather see the dumpster somewhere else rather than so close to Fairchild Avenue.

Mr. Perfect stated that they have a choice of a fence or some type of bushes on three sides leaving the front open.

Mr. Paino stated that as far as Shady Lakes Drive, there are pine trees across the street. He is not sure how that will affective more screening would be.

Mr. Gargan asked about the cost of the project.

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Mr. Perfect replied it will be around the \$20,000.

Mr. Gargan stated there will be an increase in traffic around the intersection and this used to be farm area. He understood that they want to increase business. It will be open 24/7 with no light at the intersection.

Mr. Perfect stated it is not open all night. The operating hours are 6:00 a.m. to 1:00 a.m.

Ms. Edwards expressed a concern about the dumpster. She asked if there were plans to have one entrance.

Mr. Perfect replied no. That was an error on the site plan. There will be two entrances on Fairchild. The truck has to drive up to the dumpster to empty it. The dumpster location is just a convenience.

Mr. Catalano stated he had considered the letter from Mr. & Mrs. Watson concerning the lights shining onto their property but did not think anything could be done.

Mr. Paino asked if the Planning Commission was voting on a site plan that showed only one entrance.

Mr. Perfect replied there is no reason to close the one access. It was just an oversight.

Ms. Edward asked how many feet from the corner of the main street and the side street.

Ms. Barone replied it is approximately 75 feet from the intersection and that Section 1171.01 of the zoning code does not apply to this project because this is not conditional zoning.

Mr. Paino stated the dumpster should be moved to next to the donation box.

Ms. Edwards agreed with this.

Mr. Paino asked if the Planning Commission could stipulate that no changes will be made on Fairchild Avenue.

Ms. Barone replied yes. She stated that Section 1167.04(c) requirement is that the intersection has to be 50 feet from the driveway.

There were no other comments or questions. Mr. Catalano asked for a motion.

MOTION: *Mr. Paino moved that in Case PC-16-005, Safeway Foods Drive Thru, property located at 1340 Fairchild Avenue, that the Planning Commission approves the Site Plan Review in order to install a paved driveway around the store which will be used to access a drive through window, subject to the following conditions:*

- 1) Review and approval of the technical plans.*
- 2) Adhere to the ADA requirements regarding handicap parking spaces.*
- 3) Install screening around the dumpster.*
- 4) Move the dumpster to the east towards the rear of the property to be next to the donation box.*
- 5) The Site Plan can be changed to reflect the two ingress/egress point on Fairchild Avenue.*

The motion was seconded by Mr. Gargan. The motion carried 4 –0.

VIII. Other Business

Mr. Fink asked that he discuss the oil wells next rather than after the discussion on 345 Flats.

MOTION: *Mr. Catalano moved to take the agenda out of order in order to discuss the Oil Wells next on the agenda. The motion was seconded by Mr. Gargan. The motion carried 4 – 0.*

B. Oil Wells Ordinance

Mr. Fink stated that oil wells are currently allowed in the O-R: Open Space Residential District. Kent City Council has passed a motion that says no oil wells are permitted on City property who owns most of the O-R district. City Council could revisit the issue for future change; probably not likely, but at least considered. It would be more reasonable if they do change the zoning code. It would make it easier for growing companies to find properties. He took a look at the properties large enough for oil and gas wells. There are a lot more parcels zoned as industrial that are outside the city's control. By keeping it as O-R district, the City maintains control.

One of the things the court noted was the zoning code had been in affect years before energy companies thought about growing in Munroe Falls. This is considered long standing and not holding anything against drilling industry. The companies couldn't say they were being picked on. If the City changed the codes, the companies could say it was reactionary and not part of the zoning scheme. The energy decision was not a majority decision but a plurality decision. Justice O'Donnell decision was very important regarding this issue. The Beck Energy Company was seeking a declaration. Mr. Fink

thinks it would not be advantageous for City of Kent to change the zoning code in regards to drilling rights.

The City is not going to authorize drilling on City owned land. The greatest concern would be the next governor who might decide on what would happen to the university property and Franklin township both, which are outside control of the City, but close enough to the water.

Ms. Barone said she believed O-R was allowed drilling wells and added to R-1. She proposed that structures should be so far from the wells. She said the City can control where structures are located to wells but not the distance gas wells are to be from structures.

Mr. Fink said if they control the gas well location, it would be picking on the industry.

Ms. Barone stated that structures must be so far from the gas well.

Mr. Paino said if the zoning commission was asked why they allow drilling in the O-R, they would have the answer.

Mr. Fink said the other answer would be from years ago before it became a hot button issue.

A question was asked if it was conditionally permitted in the O-R District.

Ms. Barone said she thought it was in the O-R District.

Mr. Fink confirmed this.

Ms. Barone said wells were to be added in the R-1: Low Density Residential District per previous discussions of zoning code changes.

Mr. Fink said based upon the cases going on in the courts, he believed they should keep it the way it is to say they have long standing policies.

A. Discussion for 345 Flats – Driveway Sight Distance Analysis

Mr. Paino had asked for time on the Planning Commission's agenda to discuss the site distance analysis performed by the City of Kent's Traffic Engineer, Jon Giaquinto, for the cars exiting the parking facility associated with the 345 Flats project in regards to pedestrians. He said the report supports his position that there is insufficient sight distance to see pedestrians using the sidewalk on South Depeyster, especially to the

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north. He said the project does not meet the Planning Commission's directive and is in violation of what was approved by the Planning Commission.

Mr. Paino and Ms. Edwards felt further that the limited sight distance view for this project was supported by the inclusion of other locations where sight distance is limited.

Ms. Edwards said these same examples are the same ones she mentioned at the April 21, 2015 meeting.

Mr. Paino felt that staff failed in doing their job in making sure that the desires of the Planning Commission were fulfilled. He said the Planning Commission needs to do a better job of reviewing the minutes. He said in regards to this particular project pertinent points were not included and disregarded thus compounding a problem with another. The April 21, 2015 Planning Commission minutes did not include Mr. Totino's threats and resulting pressure on the Planning Commission to not postpone the project. He said that his statement that the driveway design was a very poor design and the architects did not even consider pedestrian safety that would result in a redesigned. He said the drawing should have been brought back to the Planning Commission for approval. This project does not meet issues that he brought forth when the Planning Commission approved the project. He feels the City did not do its job.

A question was raised as to whether the Planning Commission can continue a project for any case. The response was that any case may be continued since the Planning Commission has 60 days to make a decision.

The Planning Commission asked for verbatim minutes of the April 21, 2015 meeting and wanted to know what recourse the Planning Commission could take, if any.

Ms. Barone stated that verbatim minutes were done only for cases going to court. The monthly meeting minutes are summarized.

Mr. Paino stated this is a "lesson to be learned" because the building is already up. He said there are other areas of the City of Kent that have some problems. He said the problem was created as a result of pressure from City officials.

Mr. Gargan asked what could be done if the conditions are not followed.

Ms. Barone said if the developer/builder does not follow the approved plans, the incorrect construction must be redone or a revised plan approved. For 345 Flats, they are following the approved plans.

Ms. Edwards asked if there was a time limit to come back.

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Ms. Barone said Planning Commission has the option continue a case with a time limit of 60 days. A decision has been made in 60 days.

Mr. Paino and Mr. Gargan both stated that some of their comments have not been included in the Planning Commission meeting minutes.

Ms. Barone stated she would add this item as other business on the next regularly scheduled meeting agenda to discuss what recourse options are available.

IX. Adjournment

**Motion: *Mr. Gargan moved to adjourn. Mr. Paino seconded the motion.*
 *The motion carried 4 – 0.***

The meeting adjourned at 8:00 p.m.