

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
February 21, 2022**

MEMBERS PRESENT: Dave Mail
Jona Burton
Steven Protzman

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

I. CALL TO ORDER

Mr. Mail called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

III. ROLL CALL

Jona Burton, Dave Mail, and Steven Protzman were present.

MOTION: Mr. Protzman moved to excuse Paul Sellman from the February 21, 2022 meeting. Mr. Burton seconded the motion. The motion carried 3-0.

V. PREAMBLE

The Board of Zoning Appeals, Kent citizens serving without pay, hear evidence at public meetings both in support of and in opposition to an applicant's request before rendering a decision. Generally, the Board will decide to approve or deny each requested application at the meeting that it hears the testimony. Some decisions may be continued for further review. Once 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 file an appeal in the Common Pleas Court. Anyone interested in appealing a decision of the Board is advised to seek private legal counsel.

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 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.

VII. NEW BUSINESS

Mr. Mail informed the applicant that because there are only 3 members present, the applicant has the right to request their case be continued to a future meeting, where more members are present. He asked the applicant if he would like to proceed.

The applicant, James Shrewsberry, stated that he would like to continue.

**A. BZ22-002 MORGAN JONES
1295 Denise Drive**

Request: The applicant is requesting the following:

- 1) A variance from Section 1107.15 to allow the driveway to be 31 feet wide, where 24 feet is the maximum width,
- 2) A variance from Section 1107.15 to allow a driveway to be of unequal width from the street to the terminus, and
- 3) A variance from Section 1107.15(A) to allow up to 60 percent of the front yard to be driveway, where 40 percent is the maximum allowed.

James Shrewsberry, applicant, 1295 Denise Drive, reviewed the project as submitted. He explained that they wanted to install a basketball court for their son so he called someone that he knew to install it. He stated that the contractor said that he would take care of getting any permits that might be required. He stated that the contractor excavated the front yard and he paid him half of the agreed upon fee but then the contractor became unavailable to finish the job. Mr. Shrewsberry stated that he then hired a second contractor, who told him he didn't need any permits.

Mr. Burton questioned if the City reached out to him during this process.

Mr. Shrewsberry stated that the City left him a notice saying that he needed a site plan but he didn't know what that was.

Mr. Mail explained that his project is more than a just a site plan as there are zoning laws that he is violating and also specifications as to how it is constructed. Mr. Mail questioned if he received the notice from the City after the concrete had been set.

Mr. Shrewsberry replied "yes". He stated that he took pictures of how it was constructed.

[For the record, the City contacted the applicant after the first contractor excavated the yard and before the second contractor poured the concrete.]

Mr. Protzman explained that variances are granted to alleviate a difficulty or a hardship.

Mr. Shrewsberry stated that the hardship is that there are cars on the road all the time; it is convenient for getting cars out of the driveway in the morning. He stated that his neighbors have told him that they don't have an issue with it and that it looks good.

PUBLIC COMMENTS

None.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton stated that there are three variances under consideration. He stated that the first is to allow the drive to be wider than what the code allows, which is not without realistic existence in other parts of the city. He stated that the second is to allow a drive to essentially have a bump out, which has been granted in the past due to a hardship or difficulty that prevents the property owner equal access to use their property comparable to the neighbors. He stated that the third variance to allow up to 60% of the front yard to be driveway where 40% is the maximum, in his opinion is very impactful to the neighborhood and neighbors.

Mr. Mail stated that this is the first time that he recalls someone asking for a variance to the percentage of driveway in the front yard.

Mr. Burton stated that looking at the property in general, it seems that there is ample space in the backyard.

Mr. Shrewsberry stated that there is a swimming pool in the backyard. He stated that he has done everything he can to make the front area look better such as adding flower beds.

Mr. Mail stated that it does look better than he thought it would, given that it covers a large portion of the yard.

Mr. Protzman stated that his only concern is that there isn't any real hardship or exceptional circumstance. He stated that they are basically being asked to say no or that it's okay to break the law.

Mr. Mail stated that there are other wide drives in the neighborhood.

Mr. Shrewsberry noted that there are 5 people that live next door with 5 cars, which puts 3 on the road; sometimes there isn't even a parking space available on the road.

Mr. Mail stated that parking is only allowed on one side of the road and during his site visit, there were many cars traveling in and out.

Mr. Burton stated he is still struggling with the amount of concrete being more than half of the front yard. He stated that he is also concerned that once they grant a variance, it's granted forever.

Mr. Mail commented that it will be fairly expensive and require a huge effort to remove the concrete but it would also remove the zoning violations. He stated that a hedge along the front edge of the concrete would break up the look of the concrete front yard but that would also make it harder to retrieve the basketball from the neighbor's yard. He stated that he presumes that most of the back yards in that area are fenced so that would happen in the back yard as well.

Mr. Protzman stated that in the front yard the ball would also roll into the street or hit someone's car.

Mr. Mail stated that if this would have come to the Board prior to the concrete being poured, he would have been more agreeable to finding a compromise to make it work. Mr. Mail stated that their decision cannot be based on economy. He stated that the work was done without permits.

Mr. Protzman questioned the homeowner's responsibility for checking into required approvals and not relying on the contractor's word.

Mr. Burton stated that it is unfortunate that the contractors provided him with bad information regarding approvals. He questioned the timeline on the project and noted that the City made contact with the owner in-between the two contractors and before the project was completed. Mr. Burton explained the variances to the applicant.

Mr. Mail sympathized that the concrete will be difficult to remove but also noted that if the proper procedure had been followed, he would not have had to seek variances. He reminded the applicant that the vote needs to be unanimous for this case due to only three members being present. He reminded the applicant that he has the option to continue the case to a future meeting where all four members are present.

Mr. Shrewsberry said to proceed with the decision.

MOTION: In Case BZ22-002, Morgan Jones, 1295 Denise Dr., Mr. Burton moved that the Board of Zoning Appeals grant a variance from Section 1107.15 to allow the driveway to be 31 feet wide, where 24 feet is the maximum width.

Mr. Protzman seconded the motion.

VOTE: The motion was denied 0-3.

MOTION: In Case BZ22-002, Morgan Jones, 1295 Denise Dr., Mr. Burton moved that the Board of Zoning Appeals grant a variance from Section 1107.15 to allow a driveway to be of unequal width from the street to the terminus.

Mr. Protzman seconded the motion.

VOTE: The motion was denied 0-3.

MOTION: In Case BZ22-002, Morgan Jones, 1295 Denise Dr., Mr. Burton moved that the Board of Zoning Appeals grant a variance from Section 1107.15(A) to allow up to 60 percent of the front yard to be driveway, where 40 percent is the maximum allowed.

Mr. Protzman seconded the motion.

VOTE: The motion was denied 0-3.

VIII. **MEETING MINUTES**

MOTION: Mr. Protzman moved that the Board of Zoning Appeals approve the January 24, 2022 Minutes as presented. Mr. Burton seconded the motion. The motion carried 3-0.

IX. **OTHER BUSINESS**

None.

X. **ADJOURNMENT**

MOTION: Mr. Mail adjourned the meeting at 7:26 pm.