

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

MEMBERS PRESENT: Dave Mail
Jona Burton
Steven Protzman
Michelle Sahr

STAFF PRESENT: Bridget Susel, Community Development Director
Kailyn Cyrus, 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. Michelle Sahr was not present.

[Ms. Sahr arrived at 7:04 PM]

IV. 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.

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.

VI. OLD BUSINESS

**A. BZ22-013 MARIANNE KARLSON
670 RIVER BEND BLVD.**

The applicant is requesting a variance from Section 1106.10(A) to allow a 13-foot variance where 15 feet is the minimum to allow an accessory building to be constructed 2 feet from the principal building.

Marianne Karlson, 670 River Bend Blvd. apologized for her absence at the previous meeting. She stated that they would like to install a shed close to the side of the house. She explained that they have a gas company easement that runs through the middle of their backyard and to

install a shed, they would need to dig into the steep hill in the backyard.

Mr. Burton questioned the placement of the proposed shed.

Ms. Karlson stated that they are proposing to put it close to the house because of the 15' side yard setback.

Mr. Mail stated that he looked at the property and questioned adjusting the location by a foot. He explained that the reason for the distance between the shed and the house is for fire access and maintenance of the structures.

Mr. Jim Karlson, 670 River Bend Blvd. stated that due to the gas company easement and the hill in the backyard, it is nearly impossible to put a shed in the backyard.

Mr. Mail questioned if they could move the shed 3 feet from the primary structure.

Mr. Karlson stated that they can.

Mr. Protzman questioned the statement in the applicants' letter regarding blocking the neighbor's access to their backyard.

Ms. Karlson stated that the neighbor has a row of trees and needs to use the Karlson's yard in order to access their backyard; a shed farther into the side yard would block the neighbor's use of the Karlson's property to access their own rear yard.

Mr. Karlson stated that it isn't practical to have a shed on the other side of the house. He reviewed the drawing with Mr. Protzman and added that there is also a tree in that vicinity.

Ms. Sahr stated that she doesn't have any questions at this time.

Mr. Karlson stated that the neighbors and the Homeowner's Association do not have any issues with the placement of the shed.

Mr. Mail stated that the proposed placement isn't going to intrude on anyone or be visible from the front.

PUBLIC COMMENTS

None.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton stated that he feels that the location makes sense although they prefer to grant the smallest variance necessary. He stated that locating the shed as far as possible from the house without having to excavate to keep the shed level is preferred. He stated that 5' would feel better for him.

Mr. Mail questioned the applicant as to how far the shed can be located from the house.

Mr. Karlson stated that the farther it is from the house, the closer it is to the neighbor's property line.

Ms. Susel clarified that locating the shed more than 2' from the main structure, will not allow the shed to be the required 10' from the side yard property line.

Ms. Sahr stated that 3 feet from the main structure will be more adequate for safety access.

Mr. Mail agreed and stated that it would give more access for maintenance too.

MOTION: In Case BZ22-013, Marianne Karlson, 670 River Bend Blvd., Mr. Burton moved that the Board of Zoning Appeals grant the request from Section 1106.10(A) to allow a 12' variance, where 15' is the minimum requirement to allow an accessory building to be erected 3' from the principal building.

Ms. Sahr seconded the motion.

VOTE: The motion was carried 4-0

VII. NEW BUSINESS

**A. BZ22-014 REED HAVEL
248 COLUMBUS STREET**

The applicant is requesting an appeal of the Community Development Department's decision to deny a certificate of non-conforming use to allow four unrelated residents in a single-family dwelling unit.

Reed Havel, 2371 Monica St., Ravenna, stated that he is a local real estate agent here to argue his rights as a property owner under the Ohio Constitution that are being infringed upon. He stated that it is his hope that the Board will authorize his appeal. As to the two unrelated individual policy. In support of his claim, he referenced the Court Case No. 3:17 CV 2321: Yoder v. City of Bowling Green. Mr. Havel stated that in an article written and supported by Ohio Realtors, a federal court has found that a City of Bowling Green zoning ordinance that limits the number of unrelated persons who can legally reside in a single family home violates the Ohio Constitution. Mr. Havel stated that the plaintiffs alleged that the ordinance was unconstitutionally vague and arbitrary, unduly oppressive, and did not apply equally to all similarly situated homes. He stated that in a ruling in favor of the plaintiffs, federal Judge Knepp rejected the City of Bowling Green's argument that the ordinance was based on a legitimate public interest to control density. Mr. Havel stated that Judge Knepp stated the dwelling unit occupancy limits prohibit living arrangements that have no greater impact on population density than those of a family; a house with 4 unrelated roommates creates no more population density than one with 4 related roommates. Mr. Havel, quoting from the Ohio Realtors' article, stated that rather than regulating based on space, the dwelling limit operates based on the occupancy relationship. He stated that Judge Knepp found that the limit is arbitrary and unduly oppressive. He stated that it fails to substantially advance the avowed government interest of reducing population density or targeting specific issues with college aged inhabitants and treats similarly situated homeowners and tenants differently without any justifiable basis. He stated that consequently, the court finds the dwelling limit is unconstitutional as applied and therefore unenforceable. He stated that Judge Knepp relied on prior cases that established that the Ohio Constitution establishes private property rights as fundamental rights to be strongly protected, and which have also held that homeowners have a constitutionally protected property interest in running their residential leasing businesses free from unreasonable and arbitrary interference from the Government.

Mr. Mail questioned the date of the ruling.

Ms. Susel stated that it was 2019.

Mr. Havel stated that he is looking to use this property as a rooming house for the individuals that currently occupy it.

Mr. Fink stated that the Yoder v. Bowling Green case has come up numerous times from landlords in the City of Kent who state that all of our [City's] ordinances were declared unconstitutional, but three years after that ruling, that is not the case. Mr. Fink noted that similarly, there have been numerous cases since then, such as the decision from the federal court regarding the City of Bedford Heights, where rental registration requirements and limits on how many people can stay within one single family home, have been upheld on numerous occasions. He further explained that while the Bowling Green case is important and should be considered, the factors that lead to the decision in that case must also be considered. He stated that in Bowling Green, they didn't have a preexisting zoning code; enforcement standards were put together on a house-by-house basis. He stated that the judge in this decision acknowledged that there should be some sort of limits and so rather than go with number of family members, he decided to base it on the bathrooms, not worrying at all about whether the bedrooms met the Ohio Building Code. Mr. Fink stated that this is partially why the Bowling Green case has not been followed by other courts. Mr. Fink stated that there have been other legal challenges in Portage County that cite the Bowling Green case and in each instance our [City's] zoning ordinance survives without any changes and that our [City's] rental registration and our [City's] ability to limit the number of residents per household has remained intact. He stated he also disagrees with several of the conclusions drawn by the applicant as to what the federal judge relied upon or not. He stated that he recognizes that the article was written by the Ohio Realtors, who have a certain financial interest in conveying a certain impression of the judge's decision and have their own bias. He stated that they should look at the judge's own words. Mr. Fink stated that the Board's duty is to enforce the laws of the City of Kent and those laws make it clear that the landlord has to limit the number of residents to a single household unit. He stated that it is true that this household unit number can vary depending on the family dynamic and those concerns need to be raised in the Portage County Court of Commons Pleas not at a Board of Zoning Appeal hearing. He stated that if the decision today is in the City's favor, the landlord can appeal that decision to Portage County Court of Commons Pleas and raise his arguments there but there is a proper procedure that must be followed. Mr. Fink stated that at this point in time, we believe that the ordinance is constitutional and moreover, we believe that based on what he testified to, it is a clear acknowledgment that the landlord's property is in violation of the City of Kent Ordinance and that the Community Development Department staff's decision was proper under the ordinances and should be upheld by the BZA.

Ms. Susel stated that a substantive difference between the Bowling Green case and this one, as Eric highlighted, is that the City of Bowling Green arbitrarily and capriciously assigned occupancy limits of 3 and 4 to certain houses. The City of Kent actually has a definition in the Zoning Code, under the conditionally permitted uses, of a rooming house. She stated that a rooming house is defined as a former single-family house that allows from 3-15 unrelated persons. She explained that that use, however, is restricted to certain higher density zoning districts starting in R-4 and above; and in this current case, it's in an R-3 Zoning District. She stated that the difference with Bowling Green is that they did not have a designation for a rooming house, and it was being decided basically by the zoning inspector and not by land use that had been adopted by codified ordinances in the community. She stated that rooming houses are prohibited in certain zoning districts, but it is allowed in others; Bowling Green was trying to do it based on individual units and not an actual zoning district land use.

Mr. Protzman asked for clarification on how many people could live in a rooming house.

Ms. Susel stated that it is 3-15 unrelated persons and it is conditionally permitted, and those

conditions are reviewed by the Planning Commission in zoning districts of R-4 or greater. She explained that occupancy is determined by legal bedrooms, or in some cases, existing non-conforming uses where there is documentation in the file pre-dating 1971 that shows that they had that many occupants and have used it continuously since that time to the current date. She stated that unlike an existing non-conforming use, this rooming house designation is determined on a new use basis the zoning district and meeting the conditions as reviewed and approved by the Planning Commission.

Mr. Protzman stated that this is an R-3 Zoning District.

Ms. Susel confirmed that it is R-3 and that rooming houses are not permitted nor conditionally permitted in an R-3 Zoning District.

Mr. Fink explained that City Council set forth part of the policy for this because the City does not want all of the neighborhoods turned into nothing but rental properties; Council wants some neighborhoods that are retained for single family.

Ms. Susel stated that the City of Kent has a definition of family in the City's Zoning Code, which specifies that it must be within three degrees of the Table of Consanguinity, in terms of a blood relation, and also allows for legally recognized unions, foster/adoptive relations, and caregivers; which is a broader definition than what has been discussed.

Mr. Havel questioned staff as to how many properties on Columbus St. are designated rooming houses.

Ms. Susel stated that staff did not bring inventory information on this, but they can look it up.

Mr. Havel stated that that information is part of the literature that he provided tonight.

Ms. Susel stated that that information from Mr. Havel has not been confirmed according to what is in the City's records.

Mr. Havel questioned how 244 Columbus St. was approved as a multi-family residence.

Ms. Susel stated that she does not have that property file in front of her so she cannot speak to that case. She did explain that a multi-family status is not the same as a rooming house nor is it the same as a duplex.

Mr. Havel stated that he grew up on Columbus St. and he knows firsthand that that property [244 Columbus] prior to 1970 was not in compliance by having more than 2 unrelated residents.

Ms. Susel stated that tonight's case is regarding 248 Columbus St. She stated that the cases are reviewed by the individual property and not the proximity to another property because it could be a non-conforming use or unrelated matter.

Mr. Mail agreed and stated that other properties are completely incidental to this property.

Ms. Sahr agreed that they can only speak to this property and the other properties are moot.

Mr. Havel stated that his goal was to draw similarities to other properties that are student rentals on Columbus that do the same.

Mr. Mail stated that this is a nice house on Columbus St. that is zoned as a single family home and questioned the hardship.

Mr. Fink explained that this appeal case is different than a BZA variance request in that hardships are not a factor for appeals. He stated that this is a question of whether the Community Development's decision should be upheld or overturned.

Mr. Susel stated that based on clear and convincing evidence from the City's property records, the Community Development Department has determined that this property is a single family residence that is limited to no more than two unrelated residents.

Mr. Protzman stated that the City's decision was to deny a rooming house.

Mr. Fink stated that this was not a request for a rooming house as there was never an application.

Ms. Susel further explained that a rooming house would have never been allowed as it is neither permitted nor conditionally permitted in this district.

Mr. Fink stated that this is an appeal of the Community Development Department's decision to not grant a pre-existing non-conforming use. He stated that at this point in time, the applicant has not presented evidence suggesting this property has been used as a rooming house dating back to August 1971.

Mr. Mail referenced a letter that was provided in the Board packet, signed by the owner of the property, stating that the property is not a rooming house but rather a single family house.

Ms. Susel stated that the same person that signed that letter submitted another letter to her stating that the property was a rooming house.

Mr. Mail stated that there is a vulgarity in the way the owners of this property have approached it, but in fact there is a statement from one of the prior owners, that this is a single family home.

Ms. Susel noted that the prior owners, through their own legal counsel, also could not document the structure as a rooming house predating their acquisition of the property in 1978.

Mr. Mail stated that verbal statements between seller and purchaser as to the use of a property hasn't been viewed as enough evidence in many appeal cases. He noted that not all landlords are trustworthy when it comes to being honest about the use of a property. He stated that the preponderance of evidence in the presented documentation shows that it has not operated as a rooming house since 1970.

Ms. Susel stated that this matter was brought to the City's attention as the result of a resident complaint. She stated that after an investigation, it was determined that there were more than 2 unrelated persons residing in the single family home. She stated that this is prohibited because it is a single family dwelling with a Zoning Use Certificate for no more than 2 unrelated occupants. She stated that a notice was sent to the property owner explaining that based on the City's evidence, the dwelling has been zoned single family since pre-dating the adoption of a City Zoning Code in 1971, and under the City's clear and convincing evidence requirement, only a Zoning Use Certificate for no more than 2 unrelated in a Single-Family dwelling can be issued.

Mr. Protzman questioned if it was made clear to the property owner that if they had evidence prior to 1970, it could be changed.

Ms. Susel stated that it was explained, but the evidence showed that it was used as single family. She stated they would have had to provided evidence showing that it had been consistently used as a non-conforming use prior to the adoption of a Zoning Code and with no interrupted use.

PUBLIC COMMENT

Tatsyana Havel, 6242 Lakeview Dr., Brady Lake, stated that she owned 248 Columbus St. from 1994 and sold it to her son, Reed in August 2022. She stated that when they purchased the house it was a multi-family, which is shown on the tax records. She stated that it had 2 electric meters and an exterior entrance to the second floor and completely closed off. She stated that they converted into a single family home to accommodate their foster children with disabilities. She stated that she continued to pay taxes on a multi-family. She stated that the house next door was also a single family house and wasn't a rooming house for about 10 years.

Mr. Mail stated that the neighbor's situation has no bearing on this property.

Ms. Havel questioned if she could read a letter from her neighbor.

Mr. Fink explained that this would not be permissible as the neighbor has not been sworn in and the letter was not submitted directly to the Board of Zoning Appeals.

Richard Pryor, 233 Columbus St, who resides across the street and down 25-30 yards from the subject property. He stated that they are correct to the extent that there are other rental properties on the block, however, it is his opinion that they have not met the requirements. He stated that it is up to the Board whether to give them a break on the rules that they should have been aware of before the property transfer.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton stated that according to the case packet, there are noticeable gaps. He stated that there are important reasons and differences between boarding house vs. multi-family vs. duplex. He stated that even if they were paying taxes on the property as a multi-family, it wasn't the continuous use of the home, which is the criteria that the City's code puts forth. He stated in his opinion, that there isn't anything compelling, where the Board could say that there is a preponderance of evidence to the contrary.

Ms. Sahr stated that she agrees with Mr. Burton. She explained that it is clear that they applied to have a single family use because it was a favorable to the situation that they had at the time. She stated that now that it isn't favorable, they can't come back and change it. She stated that it is beyond their scope to rule on other houses and such. She stated that she would deny the request based on the preponderance of evidence presented.

Mr. Protzman stated that he agrees and that the evidence isn't there apart from the concerns that other people have raised about the property.

Mr. Mail stated that trying to be as fair as possible, the City has expressed its ruling and given what the City wants to do with its density of housing, there isn't anything that says they can't rent the home as a single family dwelling. He stated that it is a vast difference going from a single family dwelling to a rooming house. He stated that it could have been used that

way in the past but right now it isn't. He stated that the preponderance of the evidence does not support a change of its use or zoning.

MOTION: In Case BZ22-014, Reed Havel, 248 Columbus St., Ms. Sahr moved that the Board of Zoning Appeals deny the applicant's appeal of the Community Development's decision to deny a Certificate of Non-Conforming Use to allow 4 unrelated persons to reside in the dwelling.

Mr. Fink asked for clarification if her motion was to uphold the Community Development Department's decision and it would not allow him to continue to allow 4 unrelated persons to reside in the dwelling.

Ms. Sahr stated that that is correct.

Mr. Protzman seconded the motion.

VOTE: The motion was carried 4-0

**B. BZ22-015 MEAGEN AND EVAN HOWE
407 WILSON AVENUE**

The applicants are requesting a variance from Section 1107.15(B) to allow a driveway bump out to be installed where the driveway must be equal width from the traveled portion of the public or private road right-of-way to the driveway terminus.

Evan Howe, 407 Wilson Ave., stated that they are seeking permission to alter the existing footprint of their driveway to extend an extra 7 feet to the south. He stated that they are not able to comply with the existing code due to a utility pole that is next to the existing apron so it prohibits them from extending the bump out all the way to the road.

Mr. Mail stated that he has viewed the property and agrees that the utility pole is in the way.

Meagen Howe, 407 Wilson Ave. added that they have talked with their neighbors, and they are okay with their proposal.

Mr. Protzman questioned why they want to widen the driveway.

Ms. Howe stated that they have 2 teenaged boys so they have a third car that they would like to park there.

Mr. Burton stated that the current drive is wide enough for two cars to pass.

Mr. Howe stated that it is, but it is tight.

Mr. Protzman stated that 17' is less than the width of two standard parking spaces.

PUBLIC COMMENT

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that the garage is a very narrow garage and it's a narrow driveway. He stated that there are other bump outs in the neighborhood. He stated that he didn't see

anything that would intrude or be obnoxious to the visual pleasure of the neighborhood by allowing the bump out. He stated that he can understand the reason for the request.

Ms. Sahr questioned if there were any setback issues.

Staff responded no.

Mr. Protzman stated that the utility pole cannot be moved.

Mr. Mail stated that he feels that this makes good sense.

Mr. Burton stated that the driveway is too narrow for a two car width and the existence of the utility pole blocks the ability to widen the driveway and keep it the same width for the length of the driveway.

Ms. Susel asked for clarification that the Board is indicating that the hardship is the existence of the utility pole.

The Board stated that that is correct.

MOTION: In Case BZ22-015, Meagen and Evan Howe, 407 Wilson Ave., Mr. Protzman moved that the Board of Zoning Appeals grant the variance from Section 1107.15(B) to allow a driveway bump out to be installed where the driveway must be equal width from the traveled portion of the public or private road right-of-way to the driveway terminus not to exceed 24' total driveway width.

Mr. Burton seconded the motion.

VOTE: The motion was carried 4-0

**C. BZ22-016 JAMES SHREWSBERRY AND MORGAN JONES
1295 DENISE DRIVE**

The applicants are requesting a variance from Section 1107.15(B) to allow a driveway bump out to be installed where the driveway must be equal width from the traveled portion of the public or private road right-of-way to the driveway terminus.

James Shrewsberry, 1295 Denise Dr., stated that he constructed a wider driveway and a basketball court for his son last year. He stated that since that time, he has removed the basketball court and removed 5' of the concrete to now have a driveway that is 24' wide. He stated that it was a huge undertaking to remove the concrete and back fill with soil.

PUBLIC COMMENT

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Protzman questioned the applicant's letter and the reference of trespassing.

Morgan Jones, 1295 Denise Dr., stated that they were unable to put the basketball court in the rear yard due to the existing fire pit, swimming pool, shed and hot tub, but if they would have, the ball would be able to clear the neighbor's fence causing their son to trespass onto the neighbor's property to retrieve the ball.

Ms. Susel stated that this case was originally heard by the BZA last year after the wider driveway and basketball court had been installed without a permit. A variance was not granted at that time and the property owner was ordered to completely remove the pavement and return the front yard to its original state. She stated that this case is back because although the concrete has been lessened, it still does not comply with the Board's original decision.

Mr. Burton stated that he remembers the original case and the amount of concrete that was installed in the front yard. He stated that the owners have gone to some lengths to reduce that footprint and conform to at least the 24' maximum width.

Ms. Sahr questioned the percentage of the front yard that is now concrete.

Ms. Susel stated that it now does not exceed the 40% threshold for impervious surface in a front yard.

Mr. Mail stated that there were two trucks parked there today and the drive was not overly wide. He stated that it blends in with the neighborhood and is well done and landscaped. He stated that it is not obtrusive or an eye sore.

Mr. Burton stated that he agrees.

MOTION: In Case BZ22-016, James Shrewsberry and Morgan Jones, 1295 Denise Dr., Ms. Sahr moved that the Board of Zoning Appeals grant the request for a variance from Section 1107.15(B) to allow a driveway bump out to be installed where the driveway must be equal width from the traveled portion of the public or private road right-of-way to the driveway terminus.

Mr. Burton seconded the motion.

VOTE: The motion was carried 4-0

VIII. **MEETING MINUTES**

MOTION: Mr. Burton moved that the Board of Zoning Appeals approve the October 17, 2022, minutes as presented. Ms. Sahr seconded the motion. The motion carried 4-0.

IX. **OTHER BUSINESS**

None.

X. **ADJOURNMENT**

MOTION: Mr. Mail adjourned the meeting at 8:05 pm.