

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
February 15, 2016**

MEMBERS PRESENT: Elizabeth Howard
 Dave Mail
 Paul Sellman
 Benjamin Tipton

MEMBERS ABSENT: Jona Burton

STAFF PRESENT: Heather Phile, Development Planner
 Bridget Susel, Community Development Director
 Gene Roberts, Service Director
 Eric Fink, Assistant Law Director

I. CALL TO ORDER

Ms. Howard called the meeting to order at 7:03 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Dave Mail, Paul Sellman, Benjamin Tipton, and Elizabeth Howard were present.

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 names and addresses 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

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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.”

Ms. Howard 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 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”.

VI. OLD BUSINESS

A. BZ15-013	Hallmark Campus Communities 1700 Holly Drive
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Section:	1145.04(b)
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Request: The applicant is requesting a 31-foot variance from the 41-foot required rear yard setback to allow a new building to be constructed 10 feet from the rear Property line (Section 1145.04(b)).

Ms. Howard stated that the applicant has asked to postpone this case until further notice. She asked for a motion to table it.

Motion: Mr. Mail moved in Case BZ15-013, Hallmark Campus Communities, located at 1700 Holly Drive, that the Board of Zoning Appeals tables the case until the next meeting of the Board of Zoning Appeals at which there is other business the Board has to consider.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

VII. NEW BUSINESS

A. BZ16-002 DS Architects/Newman Center
1424 Horning Road

Section: 1147.04(c)

Request: The applicant is requesting a 22.83-foot variance from the 25-foot minimum side yard setback requirement to allow an addition to be 2.17 feet from the side property line (Section 1147.04(c)).

Ms. Howard asked the applicant to present the variance request.

Doug Fuller, 136 North Water Street, Kent, Ohio, stated he was an architect with DS Architects in Kent. He said DS Architects were at the meeting tonight representing the Newman Center. He referred to the drawing, which is the site survey, the Board members had received in their packet and showed where the Newman Center is located on Horning Road. He said the university property line on the west side is much closer to the Newman Center than most people would consider. It is actually 16 feet, 9 inches from the university property line. He said this is pertinent to the reason they were at the meeting asking for the variance, because most people would probably think the Newman Center property is close to the curb line that includes part of the university property the

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driveway, drop off, handicapped parking, and landscaping. He said they want to build a couple of additions to the existing building. The additions would include extending the foyer to create a new entrance. He said the new entrance will extend from the existing looped driveway and sidewalk to the existing foyer. He said Father Stephen Agostino would speak about why the additions are being considered.

Father Stephen Agostino, 1424 Horning Road, Kent, Ohio, stated he was the pastor of the university parish at Newman Center. He said his office was in the basement of the center. He said there is no front door to the chapel, so people have questioned how to get in. He said they felt it would be good to have a front door so that people on campus could see in and those who preside at mass could see out. He said evangelizing brings people into the church and sending people out after liturgy. He said they are growing in terms of their student population. He said they are unique in that they also serve non-students, so they are a parish church. He said they have a lot young families bringing in their children, so they need more classroom space for catechism. He said their proposal is to extend the narthex foyer entrance with a door that would face Jackson Drive. Then they want to add a confessional that would be handicapped accessible, as well as another bathroom, and a classroom addition that will serve a multitude of purposes. All this has been approved by the bishop who has been very supportive of the project. He said they need to expand because their community has expanded.

Mr. Fuller stated they were at the meeting tonight because of the addition. He said the new addition will extend 10 feet from the existing building towards the west property line; towards the university parking lot in front of the Music and Speech building. He said there are also two small wings that extend a little further from the masonry; wings that drop down and flow away from the building to create a welcoming into the entrance. He said there would be a lot of glass in the front at the entrance so people can see much more directly into the sanctuary. He said the other additions do not require variances because they meet the setback requirements. He said one of the unusual things about this site and has already been mentioned is that the west property line, the university property line, is less than 20 feet from the Newman Center. He said the Newman Center was originally built in 1964 and was designed to sit 20 feet off the property line. When the site was surveyed, it showed that the building actually sits 16 feet, 9 inches away from the property line, therefore they had to condense things a little more. He said they have talked to the Kent State VP of Facility Planning, Mr. Tom Euclide, about the variance and they did get a letter of support from the university that says that they do not object in any fashion to what is going on. There has been a relationship between the Newman Center and the university center for over fifty years because of the use of the parking lot, which existed even before the Newman Center was built. In 2001, the Newman Center was allowed to add the drop-off /pick up area with landscaping and handicapped parking. He

said they were not surprised that the university supports their project. He said this was important because the university owns property on three sides of the Newman Center. He said they are asking for variances in order to extend the entrance to within 2 feet, 2 inches from the property line. He asked if there were any questions.

Mr. Mail asked about the wings.

Mr. Fuller replied that they are architectural to open up the front a little bit and they are aesthetically pleasing. He said the glass from the existing wall will be saved to be reused in the church.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Howard stated that the building would be up against the property lines but there were no objections from Kent State University.

Mr. Sellman stated that is was a minimal addition.

Mr. Mail felt that the variance request met all three criteria that the Board had to consider when approving a variance request.

There were no other comments, so Ms. Howard asked for a variance.

Motion: Mr. Sellman moved in Case BZ16-002, DS Architects/Newman Center, property located at 1424 Horning Road, that the Board of Zoning Appeals grants the request for a 22.83-foot variance from the 25-foot minimum side yard setback requirement to allow an addition to be 2.17 feet from the side property line, as defined in Section 1147.04(c) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

Vote: The motion passed 4 – 0.

B. BZ16-003

**DS Architects/City of Kent
200 East College Avenue**

Sections: 1146.04(a), 1135.04(a), 1146.03(c), 1135.03(f), 1167.05(b)(1), and 1171.01(8)

Requests: The applicant is requesting the following:

- 1) A 5-foot variance from the 0-foot front yard setback requirement to allow the new building to be constructed 5 feet from the front property line off of South Depeyster Street (Section 1146.04(a)),
- 2) A 44-foot variance from the 44-foot front yard setback requirement to allow the new building to be constructed 0 feet from the front property line off of Haymaker Parkway (Section 1135.04(a)),
- 3) A variance from Section 1146.03(c) to allow the construction of a new building to have 0 percent frontage along South Depeyster Street, where the building should occupy a minimum of 70 percent of the street frontage,
- 4) A 16.5 percent variance from the 25 percent maximum lot coverage requirement to allow 41.5 percent lot coverage (Section 1135.03(f)),
- 5) A variance of 2 spaces from the 55 minimum parking space requirement to allow a total of 53 parking spaces (Section 1167.05(b)(1)), and
- 6) A variance from section 1171.08 to allow the new police station building to be adjacent to residential uses (Section 1171.01(8)).

Ms. Howard asked the applicant to present the variance requests. She told the applicant that since there were only four Board members present at the meeting, he could ask to table the case to another meeting of the Board. She said each variance would be discussed and voted on individually.

Jeff Meyers, 136 North Water Street, Kent, Ohio, stated he was an architect with DS Architects. He referred to the letter the Board members had received and said there were six variance requests and that there were four major hardships that contribute to each of the six required variances. The parcel of land is split between a C-D District and an R-4 District. He located each of the districts on the drawings. He said the two zoning districts have different requirements such as the C-D District requires a 0-foot front yard setback, while the R-4 requires a 44-foot front yard setback. He said this site has a

topography change of over 20 feet from the corner of Haymaker and Depeyster to the opposite southeast corner and this makes it very difficult to develop the site from a functional stand point. Pedestrian ADA Accessibility is required from both downtown Kent and from the Vehicular Parking lot on the southeast portion of the site, so in order to accomplish that, the building had to be pushed up towards the northwest corner. There is an opening that allows people from downtown to pass through the building. He said this building is required to attempt to achieve Leadership in Energy and Environmental Design (LEED) Silver Rating. He then went on to discuss the variance requests:

- 1) A 5-foot variance from the 0-foot front yard setback along South Depeyster. The reasons for asking for this variance:
The site has split zoning.
 - a) There is a new bicycle route connecting the university to the downtown route along the river and passes on the north side.
 - b) The building setback aligns with the setbacks of both the neighboring Church and the Kent State University Hotel and Conference Center. This setback consistency is a desire of the City's Overlay District Guidelines.
 - c) The 12-Day Jail has been pulled off of the public walkway so people cannot see inside the jail.
 - d) The sally port is where the police cars enter the building, and egresses the building toward the west and a driveway turns to the south to connect to the site's vehicular access drive. If the building was located on the property line, the sally port could not function safely or properly.
- 2) A 44-foot variance from the 44-foot front yard setback requirement to allow the new building to be constructed 0 feet from the front property line off of Haymaker. The reasons for asking for this variance:
 - a) The building setback along Haymaker was determined from trying to balance several different hardships:
 - i. The site has split zoning and it is impossible to meet both the R-4 and C-D requirements.
 - ii. The original residential houses faced College Street as their frontage, but the College Street within the proposed site is being abandoned.
 - iii. The site has a topography change of over 20 feet from the corner Haymaker and Depeyster to the opposite southeast corner. If the building is setback at 44 feet, it would not be possible to have pedestrian ADA Accessibility from both downtown Kent and the Vehicular Parking lot on the southeast portion of the site.

- 3) A variance to allow the construction of a new building with 0 percent frontage along South Depeyster where the building should occupy a minimum of 70 percent of street frontage. The reasons for asking for this variance:
 - a) The site has split zoning and is impossible to meet both the R-4 and C-D requirements.
 - b) The new bicycle route connecting the university to the downtown route along the river passes the building on the north side.
 - i. Pushing the building back off of the South Depeyster Street provides a proper and safe view by cyclists of traffic heading north to South Depeyster.
 - c) The building setback aligns with the setbacks of both the church and the Kent State University Conference Center. The proposed setback achieves the City's Overlay District Guidelines.
 - d) The 12-Day Jail side of the building is located on South Depeyster, towards the south side of the property. It was decided that it was important to pull this function off of the public walkway so people could not see into it.
 - e) If the building was located on the property line, the sally port could not function safely or properly.
- 4) A variance of (2) two parking spaces to allow 53 parking spaces. The reasons for asking for this variance:
 - a) The LEED requirement is for the project to not exceed local zoning requirements and gives preference for sites with less than required parking spaces.
 - b) The department and Chief Lee requested 41 parking spaces. The proposed site provides 12 additional spaces than what is functionally required.
- 5) A variance to allow the new police station building to be adjacent to residential uses. The reasons for asking for this variance:
 - a) The site has split zoning. The layout has been designed to allow for green space, which will include a number of trees and landscaping next to the R-4 District. The trees will diminish the height from the Residential District. The site is a transition from the C-D District to Kent State University. The parcel is adjacent to R-4, as well as one of the largest buildings in the City of Kent.
- 6) A variance of 16.5 percent from the 25 percent maximum lot coverage requirement to allow 41.5 percent lot coverage. The reasons for asking for this variance:

- a) The 25 percent requirement is applicable only to the Residential R-4 District. The Kent Police Building is a conditionally permitted use and aligns more with the C-D District use.
- b) Prior to the demolition of the houses, the existing site showed 55 percent coverage.
- c) The proposed solution allows for safe vehicular and pedestrian functionality and achieves less lot coverage than previously existed.

Mr. Meyers stated that these were the practical difficulties and hardships. He asked if there were any questions.

Mr. Tipton asked about the pass through where people could walk from Haymaker to the parking lot. He also asked about the bike path.

Mr. Meyers replied there is a pass through. He said the bicycle route is only on the north side of the building because there was no way to get all the way around the building.

Mr. Mail asked why the number of parking spaces was reduced.

Mr. Meyers replied the City of Kent approved an ordinance for any city building getting a LEED silver rating.

Mr. Fink stated that in the ordinance, buildings had to be built to LEED Certification. They did not have to be LEED qualified.

Ms. Howard stated that whatever the number was, it would have to be some number fewer than that.

Mr. Meyers replied that was correct. He said if that was not done, there was a jeopardy of losing points. There is 100 points and each rating gets you different points.

Ms. Howard asked how the Chief came up with the number she wanted.

Mr. Meyers replied she had to make sure there were enough spaces for the employees as well as the turnover, which is at 3:00 p.m., and spaces for guests.

Ms. Susel stated the Chief of Police went over the number of employees and the number needed during the transition time which is when there is the highest number of cars.

Gene Roberts, Service Director for the City of Kent, answered additional questions on parking. The lot being built will be for city business. Every lot they have are limited by the same specifications.

Mr. Mail asked if there was going to be a provision for fueling vehicles at this location.

Mr. Roberts replied no.

There were no other comments or questions.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

The members of the Board of Zoning Appeals reviewed each variance request. There was a lengthy discussion about changing the 5-foot variance request to a 45-foot setback off South Depeyster.

Mr. Meyers agreed.

The first variance is for a 45-foot variance from the 0-foot front yard setback requirement off South Depeyster.

Mr. Tipton stated the building steps back well from the street. He had no issues with the request.

Mr. Sellman stated that it lines up with the hotel. The setback is better for traffic.

Ms. Howard reviewed the criteria that the Board of Zoning Appeals had to consider when approving a variance: practical difficulties or unnecessary hardship, exceptional or extraordinary circumstances and whether approval would be a substantial detriment to the neighborhood or surrounding area. She said it appeared that the criteria that the Board had to consider had been met. She said one structure is in two different zoning districts that contradict each other, so the specific requirements make it difficult. It would not be a detriment to the surrounding neighborhood.

There were no other comments, so Ms. Howard asked for a motion.

Motion: Mr. Mail moved in Case BZ16-003, DS Architects/City of Kent, property located at 200 East College Avenue, that the Board of Zoning Appeals grants the request for a 45-foot variance from the 0-foot front yard setback to allow the new building to be constructed 0 feet from the front property line off Haymaker Avenue, as defined in Section 1146.04(a) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

The second variance request was discussed.

Ms. Howard stated that this variance is completely in the residential area.

Mr. Fink stated that the Board might want to add a condition to the approval of this variance that the building is to be constructed as presented on the site plan stamped January 27, 2016.

Ms. Howard stated that this variance has the same hardship as in the first variance request.

There were no other comments, so Ms. Howard asked for a motion.

Motion: Mr. Mail moved in Case BZ16-003, DS Architects/City of Kent, property located at 200 East College Avenue, that the Board of Zoning Appeals grants the request for a 44-foot variance from the 44-foot front yard setback requirement to allow the new building to be constructed 0 feet from the front property line off of Haymaker Parkway with the condition that the building is be constructed as presented on the site plan stamped January 27, 2016, as defined in Section 1135.04(a) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

The third variance request was discussed.

Ms. Howard stated that this was also a variance needed in the residential area. She said it was a technical point because there is no actual frontage on the property line. She said the same hardships and exceptional circumstances exist as in the other requests.

There were no other comments or questions, so Ms. Howard asked for a motion.

Motion: Mr. Sellman moved in Case BZ16-003, DS Architects/City of Kent, property located at 200 East College Avenue, that the Board of Zoning Appeals grants the request for a variance to allow the construction of a new building with 0 percent frontage along South Depeyster Street, where the building should occupy a minimum of 70 percent of the street frontage, as defined in Section 1146.03(c) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

Vote: The motion passed 4 – 0.

The fourth variance request was discussed.

Ms. Howard stated that everything is included in this variance but the green space.

Mr. Meyers commented that they had a struggle with open space and parking. It was difficult because there are two different requirements because of the two zoning districts.

Ms. Howard stated she was concerned about a buffer between the houses immediately adjacent to the property. She said there are a lot of trees, as well as green space, but was still concerned.

Mr. Tipton stated that no neighbors came to the meeting to protest.

Ms. Susel said this projects funding is specific to capital cost only and part of this cost included acquisition. To meet the security requirements, the cost variables in the project estimate had to cap the acquisition, so owners in the area had prices that were around the 10 percent appraisal value and could not be met on the criteria. Once the acquisitions were done now, they only had \$109,000 budget. One of the houses they were looking at had a \$600,000 valuation. In order to acquire that property, they could not include it in the confines of that budget that was approved for the project. Rental properties do tend to have valuations above and beyond.

Mr. Sellman stated this is not likely to be a heavy traffic area.

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Mr. Meyers stated they took the residential neighborhood into account.

There were no other comments or questions, so Ms. Howard asked for a motion.

Motion: Mr. Tipton moved in Case BZ16-003, DS Architects/City of Kent, property located at 200 East College Avenue, that the Board of Zoning Appeals grants the request for a 16.5 percent variance from the 25 percent maximum lot coverage requirement to allow 41.5 percent lot coverage as defined in Section 1135.03(f) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

The fifth variance request was discussed.

Ms. Howard stated that parking is determined by function, not by zoning district.

Mr. Sellman said they were only asking for a variance of two spaces.

Mr. Mail stated that the number of parking spaces might go up if the use of the police department building increases or if there is an increase in staffing. He said there is land so that more parking spaces could be built in the future.

Ms. Howard thought that part of the answer was if it was not big enough, overflow would go into the parking garage.

There were no other comments or questions, so Ms. Howard asked for a motion.

Motion: Mr. Tipton moved in Case BZ16-003, DS Architects/City of Kent, property located at 200 East College Avenue, that the Board of Zoning Appeals grants the request for a variance of two spaces from the 55 minimum parking space requirement to allow a total of 53 parking spaces, as defined in Section 1167.05(b)(1)) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

The fifth variance request was discussed.

Mr. Sellman stated that the criteria already discussed also applies to this variance request. The property is located in two different zoning areas and the applicant worked hard to buffer between the residential properties and the structure.

There were no other questions or comments, so Ms. Howard asked for a motion.

Motion: Mr. Sellman moved in Case BZ16-003, DS Architects/City of Kent, property located at 200 East College Avenue, that the Board of Zoning Appeals grants the request for a variance to allow the new police station building to be adjacent to residential uses, as defined in Section 1171.01(8) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

Vote: The motion passed 3 – 1.

VIII. OTHER BUSINESS

Motion: Mr. Mail moved to excuse the absence of Jona Burton at this meeting of the Board of Zoning Appeals.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

IX. ADJOURNMENT

Motion: Mr. Mail moved to adjourn.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

Meeting adjourned at 8:37 p.m.