

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
September 19, 2016**

MEMBERS PRESENT: Elizabeth Howard
Jona Burton
Benjamin Tipton
Paul Sellman

MEMBERS ABSENT: Dave Mail

STAFF PRESENT: Bridget Susel, Community Development Director
Eric Fink, Assistant Law Director
Heather Phile, Development Planner
Sheila Uzl, Transcriptionist

I. CALL TO ORDER

Ms. Howard called the meeting to order at 7:00 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Paul Sellman, Jona Burton, and Elizabeth Howard were present. Benjamin Tipton arrived late.

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 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

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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.”

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
	Sections:	1135.03(b)(3), 1171.01(22)(a-f), 1171.01(37)(h)
	Requests:	The applicant is requesting the following:

- 1) A 55-foot variance from the 100-foot minimum lot width at the building line to allow a new multi-family project to have a lot width of 4 feet along Horning Road (Section 1135.03(b)(3),
- 2) A variance from Section 1171.01(22)(a-f) to allow the proposed project to not have a courtyard, and
- 3) A variance from Section 1171.01(3)(h) to allow 9'x 18' size parking spaces instead of 200 square feet parking spaces, at the rate of 1 parking space per bedroom and to allow the parking spaces to be closer than 20 feet from the proposed structures.

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

Scott Flynn, 220 Francis Drive, Kent, Ohio, stated he was the attorney for the applicants and was at the meeting on a limited basis. He said he was contacted a few weeks ago after the applicants' previous attorney retired. He said he has been contacted by other developers who wanted to put developments in the same neighborhood but he declined those. He has dealt with Hallmark for the last year and a half, as well as one of the property owners who sold their property to Hallmark. He said he believes Hallmark when they say they want to be good neighbors and they do not want to flip this property but they want to invest in it. He said this project has changed in the last year and a half. Originally, it was a joint proposal with Franklin Township, but that did not work out. He said the applicants have talked to a lot of the neighbors and listened to their concerns, such as storm water and that the project was too big. The joint proposal did not work out with Franklin Township. Hallmark cut their proposal in half as far as beds and the number of units. Hallmark went forward with the storm water proposals and they have met with the Fire Department to discuss what they believe is a sensible proposal for this project. When he got involved, he suggested that Hallmark speak to the neighbors again. Hallmark agreed to do that and met with 10 – 12 neighbors to discuss this newest proposal. Speeding and traffic on Horning were two of the issues raised by the neighbors. He said the applicants would support any endeavors to enforce the limits on that road. There were concerns about trees and screening. The neighbors want the applicants to keep as many trees as possible. He said those concerns were appreciated. The applicants have also talked to the City Staff as this project goes forward. The applicant thought about putting in a boarding house as a conditional use in this district, but the City discouraged this idea. This project is geared towards professionals and graduate students, not to undergraduates. It will be more for residents. He said there will probably be people

at the meeting who oppose any development at the site and he respects their opinion. He said something will be developed in this area and he feels that this plan is sensible, in the sense that the applicants are not trying to put in something that does not fit in there. It is something unique in the neighborhood. This is a unique parcel and they are requesting minor variances. He said Hallmark wants to continue to be a good neighbor and wants to continue to meet with the neighbors to see what the least impact would be, while at the same time do what is needed at this property. It is a four story structure, with two buildings on a 4.5 acre lot.

Rick Kirk, 150 East Broad Street, Columbus, Ohio, stated he was a principle. He introduced Ryan Pearson, who would give the details of the project.

Ryan Pearson, 330 Spring Street, Columbus, Ohio, stated the previous plan was for 362 beds and the current project is for 98 units within two structures. There will be a total of 184 beds. He said Franklin Township denied variances they were seeking. Now they are discussing the property that is located just within the City of Kent, which is owned by two families; the Miller and Pizzino families. There is a private drive that will provide secondary access to the whole parcel to the north. He said this is a difficult piece of property to develop. The first variance deals with the 100-foot lot width at the building line. He said they are asking for a 55-foot variance from the 100-foot minimum lot so that a multi-family project will be allowed to have a lot width of 45 feet along Holly Drive. The second variance request is to allow the project to not have a courtyard because they are not proposing a group dwelling but rather a multi-family development. The third request is to allow 9'x 18' parking spaces rather than 200 square feet parking space and to allow the parking spaces to be closer than 20 feet from the proposed structures. There will be one parking space per bedroom. He said the variances are minor. He said the hardship is the configuration of the lot and the narrow entry at the front property line.

Ms. Howard asked what the difference was between the building line and the setback line.

Mr. Fink replied the building line is where the buildings are being constructed with the idea that all buildings are about the same distance back from the road. The building line and the setback line are combined to be the same definitions...synonyms for each other in Kent City Ordinances. The definition for a setback line is the distance from the road where a developer is allowed to place the building or structure. The building line is where the City of Kent determines how close a structure can be to the road. If someone wanted to build more than 5 feet further back from the minimum, a variance would be needed.

Ms. Howard asked if they were measuring from Horning Road to the access road.

Mr. Fink replied yes.

Ms. Howard asked if the building line would be 100 feet back from the property line.

Mr. Fink replied the lot width.

Ms. Howard stated that a courtyard would be facing the street.

Mr. Sellman stated that the project did have open space.

Mr. Fink stated that a Group Dwelling requires that it is built around a courtyard. A multi-family would not require a courtyard. He suggested that the group dwelling issue be discussed by the board members.

Ms. Howard stated that one of the differences between a multi-family and a group dwelling is that the group dwelling requires a central courtyard and the buildings face it. A multi-family dwelling does not require that. Another difference between the two is the third variance, which has to do with the sizes of the actual parking spaces. A multi-family structure requires 9'x 18' parking spaces while a group dwelling requires 10'x 20' parking spaces. She said that difference also transfers into the area required for the parking; 200 square feet for a group dwelling and 162 square feet for a multi-family dwelling.

There were no other comments or questions.

PUBLIC COMMENTS

Ms. Howard stated the first people that would speak will be people who just had questions and would not be expressing their opinions. People who supported the project would follow next and then those that were against the project.

Rob Dinehart, 911 Crain Avenue, Kent, Ohio, asked if anyone has thought of having an entrance off S.R. 59 rather than Horning Road. He asked if there was any way to get to S.R. 59 to the site.

Ms. Susel stated that this was not part of the plan.

Gina Volchko, 5908 Horning Road, Kent, Ohio, asked why Franklin Township turned down the project.

Ms. Susel replied it was a zoning question that was being resolved and did not go in favor of the development.

Kathleen Rhodes, 5890 Horning Road, Kent, Ohio, asked if children would be living there. She understood that multi-family and group dwelling developments could have people of any age living there.

Mr. Fink replied that the City of Kent does not discriminate based on age.

Nancy Pizzino, 4640 Creekside Drive, Kent, Ohio, stated the property belonged to her family and they have been working with Hallmark for a number of years. She and her family members were comfortable with the project and were in favor of the project.

Mary Organ, 5876 Horning Road, Kent, Ohio, stated she understood that that it is a difficult piece of property to develop because of the size and shape of the lot. She agreed to a point that there would probably be a development on this piece of property. However, this project does not feel sensible to the residents of Horning Road. She said this proposal feels like a forced fit to many of the residents. There are too many residents trying to be put in a very small space on a two lane road where the speed limit is 25 mph. The applicants are asking for more than a 50 percent reduction in the frontage. It is a very small lot and odd shaped. She was concerned with the parking space size. She felt that the reduction in the size of the parking spaces does not allow them to provide enough parking for the proposed project. She was not sure if they would have enough parking if they had to have the 10' x 20' parking spaces. She understood that they cannot discriminate, so although this will not be targeted towards the undergraduates of the university, there is always a chance that there is going to be more of that. There is a lot of student housing in their neighborhood. She felt the project was too much in too small of a space.

Mishell Touve-Holland, 5896 Horning Road, Kent, Ohio, stated that this is a difficult parcel to develop because of the shape and the size and the grading. She said with all these factors, this project will not fit and the applicants are asking for variances so it will. It is a square peg they are trying to fit into a round hole. She said they have been told this property will be developed and the resident's should accept this proposal as potentially the lesser of the two evils. She did not believe that this property has to be developed at the expense of the resident's privacy and safety. She said the development will sit ten feet from their property and will be four stories high. She said her property is located in Franklin Township.

Ms. Howard stated that Eric Fink made the determination that the Board of Zoning Appeals could hear comments from residents of Franklin Township without any prejudice

but the Board has to give preference to the comments from the residents of the City of Kent when making its decision and they have to follow the City of Kent's code.

Mick Rogers, 5885 Horning Road, Kent, Ohio, stated he was opposed to the project. He was concerned about the safety of the residents. The project is too much in too small of space. He said there was a 19 percent reduction in the size of the parking spaces and 184 parking spaces is a lot of cars in too small of space. The parking to the front door is too short. He was also concerned about the impact on property values. He said the applicants are asking the residents to give up some of their quality of life.

Dennis Krupa, 5882 Horning Road, Kent, Ohio, stated he used to use the bike path a lot and has talked students and the residents. He asked the students in particular how they liked the bike paths. They replied they liked it and that they liked the rural atmosphere in getting to the university. It does serve a purpose in being rural in character rather than adding so many beds and cars to the area. The project will increase the traffic. He said the applicants are citing a hardship, but it seems the original hardship was created when Holly Park was built. He said Holly Park was not going to use a driveway as a connector to Horning Road. He was concerned there would be a noise problem. He said the variances might be slight, but they will have a negative impact to the area.

Madison Touve-Streby, 5896 Horning Road, Kent, Ohio, stated the development should not be there because of the trees. She said when trees are cut down, organisms that give you oxygen and animals are displaced. She and her sister have found trash and picked up as much as they could. She was concerned about the safety of the residents. She would like to see a park rather than a building.

Keith Benjamin, 6206 Sixth Avenue, Franklin Township, Ohio, stated he was a Franklin Township Trustee. He said at one of the Planning Commission's meetings, Mr. Paino asked for a map of all of the present and possible future buildings and their populations. He asked the Board if they had that information.

Ms. Susel replied no.

Mr. Benjamin stated there has been a lot of development in the area. He discussed developments from the 1980's. Duplexes and condominiums were built then. He said three and four story buildings would impact property value in the single family neighborhoods. He said the increased traffic would have a negative impact.

David Fredle, 5847 Hornig Road, stated he opposed the development. He said there would be an increase in traffic. There would be speeding, so he was concerned about safety in the neighborhood.

Scott Swan, 6171 Third Avenue, Franklin Township, Ohio, stated he was a Franklin Township Trustee. He said the project does not fit the parcel. He said it was too much for too little.

Alexandra Kluczarov, 124 West Elm Street, Kent, Ohio, stated she was concerned about the increased traffic. It is a large building. She was worried about the fire trucks getting in and out, as well as the parking.

Ms. Howard stated that some of her comments and questions should probably be addressed to the Planning Commission that meets on October 4, 2016.

Joe Volchko, 5908 Horning Road, Kent, Ohio, raised the Holly Drive access issue. He was concerned with fire department access. He said there is limited visibility to the street. He submitted pictures to the Board members of the area he was discussing. He was concerned about the increased traffic. He did not think the 9' x 18' parking spaces were not large enough. He was concerned about property damage. He said it would be a detriment to the neighborhood and that it would set a dangerous precedent.

Ms. Howard stated that any comments or questions relating to emergency vehicles' access should be should be discussed at the Planning Commission meeting.

Gina Volchko, 5908 Horning Road, Kent, Ohio, asked if there would be fencing on the site.

Ms. Howard stated that is an issue that should be discussed at the Planning Commission meeting.

Scott Miller, 1700 Holly Drive, Kent, Ohio, referred to the site plan and showed where he was raised. He said his grandfather planted the trees. He said the idea was one day to reap the rewards of the property. He said there needs to be a sustainable development on the property.

Robert Miller, 1700 Holly Drive, Kent, Ohio, stated it was his mother's wish to have a sustainable development on the property either residential or commercial. She deserves the benefit of the sale of the property. He said the property is zoned properly.

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Ms. Howard reminded the applicants that there were only four board members at the meeting tonight while there are usually five.

Mr. Sellman asked about the density on that parcel. He said parking seems to be a big concern.

Mr. Kirk reviews the changes to the project which resulted in a smaller development with less parking on site. He said it is zoned Commercial – High Density and is a conditional use, as stated in Section 1171.01 in the City of Kent Code. The variances they are requesting fall under Sections 1135.03(b)(3), 1171.01(22)(a-f), and 1171.01(37)(h),

Ms. Howard asked what the size of the property is.

Mr. Kirk replied the development will be on 4.5 acres.

Ms. Howard asked if they would all be two bedroom apartments.

Mr. Kirk replied there will be one and two bedroom units on the site.

Ms. Howard stated there would be 184 beds on 4.5 acres.

Mr. Kirk agreed.

Mr. Tipton pointed out that the entire development was not in the Commercial District. The access road is in the R-4 District. This was a problem for him because there is a C-R development dumping to an R-4 zone.

Ms. Howard summarized the first variance request; a 55-foot variance from the 100-foot minimum lot width at the building line to allow a new multi-family project to have a lot width of 45 feet along Horning Road.

Mr. Sellman stated there was a hardship because it was an odd shaped lot. He said it would have a minimal impact on the neighborhood.

Mr. Tipton stated he did not see the hardship. He said they are making a two lane narrow road to access the site. He said they are not addressing the buildings or their locations. He felt this was a self-imposed hardship.

Ms. Howard stated if the differences between a group dwelling and multi-family was not an issue, this project might not be in front of the Board of Zoning Appeals. A group dwelling requires a courtyard while a multi-family structure does not require a courtyard.

Mr. Fink stated that if the property was all in the R-4 district, you are allowed to have 36 units per acre. It is a 4.5 acre site that would allow for 162 units, if the site was all R-4. It is not. The lot width requirement is 100 foot within the R-4.

Ms. Howard stated that this is where the group dwelling and multi-family issue is coming from because of the R-4.

Mr. Fink stated that the dwelling definition only applies to the second and third variance. The 100-foot lot width is required at the building line in the R-4 district.

Ms. Howard asked for clarification of the building line.

Mr. Fink replied the City of Kent defines the building line as the being the synonym to the setback line.

Ms. Howard stated they were measuring 30 feet back from the road to the right of way and measuring the width, so 30 feet back from the right of way is 45 feet wide.

Mr. Fink agreed.

There was additional discussion on determining the building line.

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

Motion: Mr. Sellman moved in Case BZ15-013, Hallmark Campus Communities, property located at 1700 Holly Drive, that the Board of Zoning Appeals approves a 55-foot variance from the 100-foot minimum lot width at the building line to allow a new multi-family project to have a lot width of 45 feet along Horning Road, as defined in Section 1135.03(b)(3) in the City of Kent Zoning Code.

Mr. Burton seconded the motion.

Ms. Howard stated this is a very odd sized lot. She said this is a situation where two lots will be put together to create one lot and it is a land locked lot and the access is impacted.

Vote: The motion passed 3 – 1.

Ms. Howard stated that the second variance is to allow the developer to have no courtyard.

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Mr. Sellman stated the configuration of the lot has to be considered. He said there is ample green space and there are buffers. He said it would not be a detriment.

Mr. Burton understood that this variance was being requested because this is a multi-family development rather than a group dwelling.

Ms. Howard confirmed that this variance relates to a multi-family development. She added that there are no setback variances requested.

Mr. Tipton did not feel that a courtyard was necessary.

Ms. Howard stated that Building no. 2 has green space to the rear and some in the east and to the north. The south end of the building has some to the west. She said there is some green space surrounding Building no. 1. There is use of green space even though there is no courtyard. She said the configuration of the property makes it impossible to construct a courtyard. There would be no room for a courtyard. The exceptional circumstances are the shape of the property, as well as the lack of an access due to the property being land locked. It was the consensus of the Board members that the lack of a courtyard would not be a detriment to the adjacent properties or surrounding neighborhood.

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

Motion: Mr. Burton moved in Case BZ15-013, Hallmark Campus Communities, property located at 1700 Holly Drive, that the Board of Zoning Appeals approves a variance to allow the proposed project to not have a courtyard, as defined in Section 1171.01(22)(a-f) in the City of Kent Zoning Code.

Mr. Sellman stated the property configuration prevents a courtyard. There is green space and ample buffers. It would not be a detriment.

Mr. Burton stated this was an awkward situation because of the determination as to whether it was a group dwelling or a multi-family one.

Mr. Tipton did not feel it was necessary to have a courtyard.

Ms. Howard stated there was green space around. There was no room for a courtyard due to the lot configuration. She said the parcel is land-locked.

Mr. Sellman seconded the motion.

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Vote: The motion passed 4 – 0.

Ms. Howard summarized the third request, which was a variance to allow 9' x 18' sized parking spaces, which is the standard size in the code.

Mr. Fink asked Ms. Howard if the variance should be for 162 square feet, which is a 38-foot variance from the 200-foot size as required by code.

Ms. Howard replied correct. She said she needed help in understanding the request.

Mr. Pearson interjected and said they wanted to defer to Section 1167.

Ms. Howard stated that the Board of Zoning Appeals had to say either that the applicants wanted relief from the 200 square foot parking requirement or wanted relief from the 10' x 20' individual parking space requirement.

Mr. Fink stated that the 200 square foot parking requirement is from Section 1171.

Ms. Howard confirmed that this section is being applied to this request.

Mr. Fink stated the variance was either for the 9' x 8' parking spaces or 162 square feet.

Ms. Howard asked what the variance would be if the Board went with the 162 square foot requirement.

Mr. Fink replied that would be a variance of 38 feet from the 200 square foot requirement.

Ms. Howard stated that would be the way the Board would consider the request.

Mr. Fink stated that would give the applicants a means on how they wanted to create 162 square feet of parking area. He said if the Board considered the 9' x 18' parking space, the applicants might choose to do something else.

Ms. Howard stated that whatever they did with the 162 square feet of parking, they have to have one space per bedroom for a total of 184 parking spaces. This would be a 12 space reduction of 196 parking spaces. She said included in the third variance request to allow the parking spaces to be closer than 20 feet from the proposed structures. She said the applicants want the parking for the east building in the northwest corner to be 8 feet from the building, which would be a 12-foot variance. She said there is no issue with the smaller building because it will be 20 feet from the parking. The larger building will

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need a 12-foot variance. She asked the applicant to identify where the 8-foot variance was needed. Ms. Howard asked if there was a difference on how many parking spaces were required for a multi-family structure or group dwelling.

Mr. Fink replied a group dwelling requires two parking spaces per unit, regardless if it is one bedroom or two bedrooms. Multi-family units require one parking space per bedroom.

Mr. Fink stated this was a condition for a multi-family structure in the C-R District. If the development was in an R-4 district, this condition would not apply.

Ms. Howard stated that part one of the third variance is asking for a 38 square foot variance from the 200 square foot parking space requirement which would result in 162 square feet. The second part of the variance is that they are asking for a 12 space variance to have 184 parking spaces, which would be one space per bed rather than two per unit. The third part of the variance request is to allow the parking spaces to be closer than 20 feet from the proposed structure. There was no problem with the west structure, but a variance is needed for the east structure for the first 27 feet.

Mr. Tipton stated he was not in favor of the second part of the variance request. He said he was more in favor of the 196 spaces. He had no problem with the first and third part of the variance request. There will be no visitor parking.

Ms. Howard agreed there would be no visitor parking. She said the handicapped parking would be included in the 184 spaces.

Mr. Burton agreed with the comments made.

Further discussion was held on the number of parking spaces.

Ms. Howard asked if they could have a motion that would approve the first and third part of the variance request, but not the second part.

Mr. Fink replied yes. He said the Board also has the right to table the case.

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

Motion: Mr. Burton moved in Case BZ15-013, Hallmark Campus Communities, property located at 1700 Holly Drive, that the Board of Zoning Appeals allows 162 square feet parking spaces instead of 200 square feet parking spaces and to grant a variance of 12 feet to allow

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the parking spaces to be closer than 20 feet from the first 27 feet of the northwest corner of the east building, and an 8 foot variance from the standard 20 feet for the remaining length of the said building, as defined in Section 1171.01(37)(h) in the City of Kent Zoning Code.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

Motion: Mr. Burton moved in Case BZ15-013, Hallmark Campus Communities, property located at 1700 Holly Drive, that the Board of Zoning Appeals denies the request for a variance for a rate of parking of one space per bed, as defined in Section 1171.01(37)(h) in the City of Kent Zoning Code.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

Ms. Howard told the applicants that they could return to the Board of Zoning Appeals with changes to their variance request.

A motion was made and seconded to take a short recess.

VII. NEW BUSINESS

A. BZ16-022 Richard & Linda Zucca
1571 Elizabeth Court

Section: 1129.04(a)

Request: The applicant is requesting an 11-foot variance from the 45-foot minimum front yard setback requirement to allow a new home to be constructed 34 feet from the front of the property line (Section 1129.04(a)).

Ms. Howard asked the applicants to present their request.

Richard Zucca, 6744 Stow Road, Hudson, Ohio, stated he and his wife bought Lot 79 in the Riverbend Subdivision, Phase 3 for a single family home. They are asking for a front

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setback at the curve in the cul-de-sac. The front of the garage which will be on the east side will line up with house that is east of the property and meet the 45-foot setback requirement. He said they hired geotechnical engineers to take soil borings. He said the home needs to sit back further due to poor soil conditions in the rear of the property. The slope towards the Cuyahoga River also presents difficulties.

PUBLIC COMMENTS

Erica Finley, 55 Public Square, Cleveland, Ohio, stated she was the attorney for the Riverbend Home Owners' Association. She said the association strongly opposes the variances. She reminded the Board of the property at 1421 Rustic Bridge Drive that also had asked for a variance from the 45-foot setback requirement, but the request was denied due to a lack of a motion. She said the Homeowners' Association wants to be good neighbors. She said there are no exceptional or extraordinary circumstances.

Mr. Sellman stated that the Board of Zoning Appeals had to examine each application separately and make a decision on the information submitted.

Stephen Colechi, 1584 Elizabeth Court, Kent, stated he was on the Homeowners Board of Directors. He said he lived across the street from the property. He said the same situation happened down the street. He said the applicants did not come before the Homeowners' Association for an architectural review.

Jim Carlson, 670 Riverbend Boulevard, Kent, Ohio, stated he was a member of the Architectural Committee. He said the committee will work with the property owners and that they are readily available to talk with the owners.

John Emig, 823 Dominion Drive Kent, Ohio stated he was president of the Home Owners' Association. He said the owners should have come before their Board first.

Ms. Howard said that the Board of Zoning Appeals does not act as a go between the owners and the Homeowners' Association or builder.

Public Comments were closed with no additional comments.

Bob Mastriana, 4m Company LLC, 4251 Glenwood Avenue, Boardman, Ohio stated he was the architect for the project. He said a geotechnical group who found that the underlying top soil down to 15 feet was mostly silt and sand and soft, gray clay silt from 24 feet to 36 feet. The proposed home is located on a slope towards the Cuyahoga River that has weak underlying soils. He said they are asking for a variance of 11 feet from the 45-foot setback requirement. He said the owners have already redesigned the house.

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Ms. Howard said she consulted with one of deans of the School of Architectural at Kent State University who interpreted the information received from the geotechnical group so she could understand what their findings were. He also sits on the City of Kent Architectural Review Board. He told her the back part of the lot is "jello" and the front

part of the lot is oatmeal. It is better to build on oatmeal. He also looked at the plans and confirmed what Mr. Mastriana said.

Mr. Sellman stated the garage does not stick out.

Ms. Howard said the garage meets the setback and lines up with the adjacent neighbors.

Mr. Sellman asked if the Board grants the variance if the owners would go before the Homeowners' Association as far as deed restrictions. He was told yes.

Ms. Howard stated that was not the Board's concern.

Mr. Tipton asked if there was a reference where the oatmeal and where the "jello" starts. He asked if the north edge of the property is the furthest that the house can go to be stable. He said it actually is a pretty deep lot.

Mr. Burton stated he could see both sides. It was useful information to have the technical information.

Mr. Mastriana referred to the site and showed the Board where the different types of soil are located. He said it was a difficult construction project. The object is to move the house off the "jello" soil. He showed the final design of the house.

Ms. Howard stated the owners had the soil tested while their neighbors had not and there is no way of knowing what the results would have been if they had this done. She referred to drawings and asked Mr. Colecchi if this document describing the accommodations that would be required to be able to build the house in the location on the drawings referenced or are on the original plans that show the house further back from the road, as well as the original size of the house.

Mr. Colecchi replied yes.

Ms. Howard asked if the house at 1583 is 45 feet from the road or is it greater.

Mr. Carlson replied it was greater than 45 feet.

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Ms. Howard stated that the corner of the garage is at the setback and the rest of the house is further back for this project. She said this request was hard for the Board to make a determination.

Mr. Tipton felt the project is tastefully stepped off.

Mr. Sellman agreed.

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

Motion: Mr. Sellman moved in Case BZ16-022, Richard and Linda Zucca, property located at 1571 Elizabeth Court, that the Board of Zoning Appeals approves the 11-foot variance from the 45-foot minimum front yard setback requirement to allow a new home to be constructed 34 feet from the front property line, as defined in Section 1129.04(a) in the City of Kent Zoning Code.

Ms. Howard stated that the extraordinary circumstance is the flood plain location. The slope and the nature of the soil has to be taken into consideration. She said only the corner of the garage will match up with the adjacent houses. The owners had the soil tested and the others did not, so it cannot be compared to the other properties. She said the house has been reduced in size. She felt too it was tastefully done. She said the owners reached a reasonable compromise and approval would not be a detriment to the adjacent properties.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

B.	BZ16-023	Jo Leigh Lyons 907 Crain Avenue
	Section:	1161.21(a)
	Request:	The applicant is requesting a variance from Section 1161.2(a) to allow 16-feet of 6-foot high fencing in the front yard.

Jo Leigh Lyons, 907 Crain Avenue, Kent, Ohio, stated she and her spouse own the property. She said they were requesting a variance from the Board of Zoning Appeals to keep a two panel section of privacy fence, which is 16 feet in length and 6 feet high. This

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fence is on the southeastern portion of the property and provides them with privacy and to prevent potential fighting among their dog and the neighbors' dogs. She distributed pictures of their yard; one showing a large dog in it. At the time the panels were installed, they were not told by the contractor that it might be a violation of the code. She said their neighbor's house at 911 East Crain sits higher than theirs at 907 East Crain Avenue, so that creates a direct line of sight into their living room. The two panels sit approximately 30 feet from the sidewalk. They do not impact pedestrian or traffic in any way.

PUBLIC COMMENTS

Mengjiao Wu, 201 Wilson Avenue, Kent, Ohio, stated her house is right across the street. She has not even noticed the fence. It is well covered with trees and bushes. It will not have an effect on the neighborhood. She was in favor of the variance.

Rob Dinehart, 911 Crain Avenue, Kent, Ohio stated his house sits above the applicants' property. He felt the applicants should have talked to the City before installing the panels. They are non-conforming. He was not in favor of the 6-foot panels. Approval may set a precedent.

No other comments from the public.

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Mr. Burton stated he lived nearby and that it is not intrusive. He said it is not enclosing the front yard and seems more to be a privacy issue. He said there were no traffic issues and that there were no line of sight issues. He said there are a lot of plantings around the fence.

Mr. Tipton agreed with Mr. Burton's comments.

Mr. Sellman agreed with the comments made and said that they are not intrusive.

Ms. Howard stated there was a third panel that is not located in the front yard, so it can be 6 feet. It would look odd to drop down to 4feet. She said there is a trellis there which is probably for future planning. The nice side of the fence is facing the neighbor. She said the side with the plantings is virtually invisible. It was thoughtfully done and only as much as needed was installed. She said they do not go all the way up to the front. The dog issues have seized since the panels were installed. They are aesthetically pleasing and are not a detriment to the adjacent properties. She said this seems to be the minimum required and no longer than it needs to be. The practical difficulty is the difference in the

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slope and the houses are not in line facing the property line. The extraordinary circumstance includes the difference in elevation.

Motion: **Mr. Tipton moved in Case BZ16-023, Jo Leigh Lyons, property located at 907 Crain Avenue, that the Board of Zoning Appeals approves a variance to allow 16 feet of 6-foot high fencing in the front yard, as defined in Section 1161.21(a) in the City of Kent Zoning Code.**

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

C. BZ16-024

**City of Kent Parks Department
300 Stow Street**

Sections: 1171.01(1), 1127.04(a) and 1167.11(a)

Requests: The applicant is requesting the following:

- 1) A 91-foot variance from the 100-foot activity setback requirement to allow a parking area to be 9 feet from the front property line along Stow Street (Section 1171.01),**
- 2) A 91-foot variance from the 100-foot minimum front yard setback to allow the parking lot to be 9 feet from the front property line (Section 1127.04(a)) and**
- 3) A variance to allow parking within the front yard setback (Section 1167.11(a))**

John Idone, Director of Parks and Recreation for the City of Kent, Kent, Ohio, stated the City of Kent has received an AMATS/ODOT grant to connect the hike and bike trail. This expansion of the parking lot is at John Brown Tannery Park and is a part of the larger project. He said most of the expansion will be off the road. He said they received a grant to connect the Esplanade at Kent State University where it comes into S.R. 59. He said there will be a 10-foot trail that will meander around and cross S.R. 43 and down over the hill then terminate at Tannery. He said design of the parking lot was put in years ago and is very inefficient and was one that evolved over time. He said while a circular parking lot is easier to cruise in and out of, it is very inefficient to park, and it is pie

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shaped. He said Tannery Park has become very popular and a number of people use it for canoeing and picnicking so parking issues have developed. He said they need more parking spaces. Since the park was developed, the City of Kent approved a riparian setback that prohibits impervious surfaces 200 feet from the Cuyahoga River. The neighbors to the west of the property are in favor of the project. All the existing asphalt will be removed and replaced with the pervious pavers for the whole parking lot. Safety for park users will also improve. Currently, the trail ends at the end of the parking lot.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Howard stated there will be a about a 25 percent increase in parking.

Mr. Burton stated that the trail expansion is good for the City of Kent.

Mr. Tipton stated that this was a reasonable request. The parking lot is already at 9 feet and it is staying at 9 feet.

Ms. Howard stated the practical difficulty is that there is a need for more parking, because there is an increase in the use of the park and the Riparian setback makes it difficult to extend the parking. The exceptional circumstances are the same. It will not be detriment to the public interest.

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

Motion: Mr. Sellman moved in Case BZ16-024, City of Kent Parks Department, property located 300 Stow Street, that the Board of Zoning Appeals approves a 91-foot variance from the 100-foot activity setback requirement to allow a parking area to be 9 feet from the front property line along Stow Street, as defined in Section 1171.01(1) in the City of Kent Zoning Code.

Mr. Burton seconded the motion.

Vote: The motion passed 4 – 0.

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Motion: Mr. Sellman moved in Case BZ16-024, City of Kent Parks Department, property located 300 Stow Street, that the Board of Zoning Appeals approves a 91-foot variance from the 100-foot minimum front yard setback to allow a parking lot to be 9 feet from the front property line, as defined in Section 1127.04(a) in the City of Kent Zoning Code.

Mr. Burton seconded the motion.

Vote: The motion passed 4 – 0.

Motion: Mr. Sellman moved in Case BZ16-024, City of Kent Parks Department, property located 300 Stow Street, that the Board of Zoning Appeals approves a variance to allow parking within the front yard setback, as defined in Section 1167.11(a) in the City of Kent Zoning Code.

Mr. Burton seconded the motion.

Vote: The motion passed 4 – 0.

VIII. MEETING MINUTES

A. Minutes from July 18, 2016

Motion: Mr. Sellman moved to approve the minutes of July 18, 2016, as presented.

Mr. Burton seconded the motion.

Vote: The motion passed 3 – 0. **1 Abstention**

B. Minutes from August 15, 2016 meeting

Motion: Mr. Burton moved to approve the minutes of August 15, 2016, as presented.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

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IX. OTHER BUSINESS

A. Pursuant to the Planning Commission's request, discussion of BZA Members' rationale for vote in BZ16-018a.

Mr. Fink stated the Planning Commission has requested that the Board of Zoning Appeals explain its reasoning on the decision made in reference to BZ16-018a. A motion was made and seconded and carried four to one at the August 15, 2016 meeting of the Board of Zoning Appeals to reverse the City's determination of required parking spaces for the proposed residential project as required in Section 1109.09(a) in the City of Kent Zoning Code.

Todd Hunt, 1301 East Ninth Street, Cleveland, Ohio, stated he was the attorney for the project. He objected to the request. He did not see the point to the request and no formal motion was made by the Planning Commission.

Mr. Fink agreed this was unusual.

Ms. Howard asked if the Planning Commission asked for this discussion but no motion was made. She asked Mr. Fink how the Board of Zoning Appeals should proceed on this. She asked if each member was to give his/her response or if the response came from the Board as a whole.

Mr. Fink replied each person should respond to this request.

Mr. Sellman stated he would like to review the transcripts of the meeting to remember what was discussed, so he could refresh his memory.

Ms. Howard asked if there was a verbatim transcript of this meeting.

Mr. Fink replied yes and that it should be available by this week.

Ms. Howard agreed with Mr. Sellman that she would like to see the transcripts, so that she could answer with integrity. She suggested tabling this discussion until the next Board of Zoning Appeals meeting. She asked for a motion to table the discussion.

Motion: Mr. Burton moved to table the discussion of the Board of Zoning Appeals members' rationale for their vote in BZ16-018a.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

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Motion: Mr. Sellman moved to excuse the absence of Dave Mail at the September 9, 2016 Board of Zoning Appels meeting.

Mr. Burton seconded the motion.

Vote: The motion passed 4 – 0.

X. ADJOURNMENT

Motion: Mr. Burton moved to adjourn.

Mr. Sellman seconded the motion.

Vote: **The motion passed 4 – 0.**

Meeting adjourned at 11:13 p.m.