

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
July 18, 2016**

MEMBERS PRESENT: Dave Mail
 Jona Burton
 Benjamin Tipton
 Paul Sellman

MEMBERS ABSENT: Elizabeth Howard

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

I. CALL TO ORDER

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

II. PLEDGE

The pledge was recited.

Mr. Mail stated that since there were so many people in the audience, public comment would be limited to three minutes to each speaker.

III. ROLL CALL

Dave Mail, Benjamin Tipton, Paul Sellman, and Jona Burton were present.

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.

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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 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."

Mr. Mail 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. BZ16-012

Patrick Ryel & Kellie Rossini
502 Miller Avenue

Section: 1161.14(a)

Request: The applicant is requesting a 9.5-foot variance from the 15-foot minimum setback from a main structure requirement to allow an accessory building to be 5.5 feet from the house (Section 1161.14(a)).

This case has been withdrawn by the applicants because the shed has been moved and now meets the setbacks. No variances are required.

VII. NEW BUSINESS

A. BZ16-013 Lewis Land Professionals, Inc.
1500 St. Clair Avenue

Section: 1167.11(b)(1)

Request: The applicant is requesting an 18-foot variance from the 20-foot minimum landscaping strip between the parking area and right-of-way requirement to allow parking to be 2 feet from St. Clair Avenue (Section 1167.11(b)(1)).

Mr. Mail asked the applicant to present the variance request.

David Potts, from DS Architecture, stated he was representing Kent Elastomer located at 1500 St. Clair Avenue. He said they want to construct an addition to the existing building that will fill in a corner of the building. He said they will be keeping within the previously established setbacks and will not be encroaching on them. The intention of the addition is to consolidate office functions throughout the building and provide additional space for offices and administration. There will be a displacement of eight parking spaces with the addition. He said that additional parking spaces will be installed so there will be a short distance to the front entry and the workers will not have to go near the docks while they are being loaded or unloaded. The new parking will be two feet from the front property line.

Mr. Mail asked if the parking could be moved to the rear of the lot.

Mr. Potts replied no because of safety reasons, the office traffic needs to be in front of the building.

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PUBLIC COMMENTS

David Reith, 520 Harvey Street, Kent, Ohio, came to the mike to speak, but did not because his comments did not relate to this case.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton stated he would like the parking in the rear of the lot. He would like to see the trees saved and felt the parking was too close to the road.

Mr. Sellman agreed with the comments made by Mr. Burton.

Mr. Potts stated that they could put in new trees and shrubs.

Mr. Mail stated that they would not be encroaching on the neighbors.

Mr. Tipton asked the applicant to point out the trees on the map. He asked what the average use of the parking lot was right now.

Bob Oborn, owner of Kent Elastomers, 1500 St. Clair Avenue, Kent, Ohio, stated that the parking lot is currently 85 to 90 percent full. He said they expect to bring two or three more employees in. He said the company has grown since it started. He said one area will be for visitors and the other area will be for employees.

Mr. Mail asked if the parking lot will connect to the existing driveway.

Mr. Oborn replied yes and that there is another driveway at the end that was installed in 2006.

Mr. Tipton stated that no neighbors showed up at the meeting to comment on the project. He reviewed the variance request and stated that sixteen parking spots will be added. He was concerned about the trees being removed.

Mr. Oborn stated they will replace the trees that are removed. He said the current fence will be extended around the new parking spaces in the rear of the lot.

There were no other comments or questions, so Mr. Mail asked for a motion.

Motion: **Mr. Sellman moved in Case BZ16-013, Lewis Land Professionals, Inc., property located at 1500 St. Clair Avenue, that the Board of Zoning Appeals grants the request for an 18-foot variance from the 20-foot**

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minimum landscaping strip between the parking area and right-of-way requirement to allow parking to be 2 feet from St. Clair Avenue, as defined in Section 1167.11(b)(1) in the City of Kent Zoning Code.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

Mr. Mail told the audience that there was not a full Board present at the meeting so three positive votes were required to approve a variance request. An applicant has the option to withdraw his request and submit it when a full Board is in session.

**B. BZ16-014 City Of Kent / Charles Corcoran
418 North Mantua Street**

Sections: 1135.04(b) and 1135.04(c)(3)

Requests: The applicant is requesting the following:

- 1) An 8-foot variance from the 30-foot minimum rear yard setback requirement to allow a building addition to be constructed 22 feet from the rear property line (Section 1135.04(b)), and**
- 2) A 2-foot variance from the 10-foot minimum rear yard setback requirement to allow a building addition to be constructed 8 feet from the side property line (Section 1135.04(c)(3)).**

Mr. Mail asked the applicant to present the variance request.

Charles Corcoran, 34 Munroe Falls Avenue, Munroe Falls, Ohio, stated he was the architect for the project. He said they want to add a pitched roof and an addition to the rear of the building. He said they need an 8-foot variance from the 30-foot minimum rear yard setback requirement to allow the addition to be 21 feet from the rear property line. A 2-foot variance from the 10-foot minimum rear yard setback requirement is needed to allow the addition to be 8 feet from the side property line. He said the addition will have room for the storage of firefighter's gear, a storage area for outdoor equipment, an EMS supply room, as well as kitchen improvements. He said the

addition will allow gear to be stored more neatly and safe. It will add needed upgrades to the facility for those firefighters who work 24 hour shifts.

Mr. Mail asked if the gravel driveway will remain.

Mr. Corcoran replied yes. He showed the Board where the firemen who are on duty park.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman asked how many people were in the building per shift.

Mr. Corcoran replied there are three.

Mr. Sellman stated approval will have a minimal impact on the neighbors. He was comfortable with the variances. He felt they were modest variances.

Mr. Tipton stated that the variances were minimal. He said the City of Kent owns the neighboring parcels.

Mr. Burton agreed with the comments made. He said it was a necessary renovation.

Mr. Mail stated that the strict application of the zoning code would result in practical difficulty. The extraordinary circumstance is that the site is located on a corner adjacent to residential properties. There would be no detriment to the adjacent properties.

There were no other comments or questions, so Mr. Mail asked for a motion.

Motion: **Mr. Burton moved in Case BZ16-014, City of Kent/Charles Corcoran, property located at 418 North Mantua Street, that the Board of Zoning Appeals grants the 8-foot variance from the 30-foot minimum rear yard setback requirement to allow a building addition to be constructed 22 feet from the rear property line, as defined in Section 1135.04(b) in the City of Kent Zoning Code.**

Mr. Sellman seconded the motion.

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Vote: **The motion passed 4 – 0.**

A member of the audience said they could not hear him.

Mr. Konstand: My name is Bob Konstand. I'm an attorney out of Akron representing the property owner, the applicant, with the same entity. My address is 106 South Main Street, Suite 2500, Akron, Ohio 44308. And if I may, for the pleasure of the Board, we have two representatives from LRC, the developer. LRC is a developer out of Akron. They're going to be making the presentation to this Board to present to the Board the facts. As the Board knows, we are seeking an area variance where all we have to show is practical difficulty, not a hardship, because it is a use variance. We have tried to minimize the variance requests to do this project. And I will now have a representative from LRC present to you exactly what we're looking for.

Bob Abramovich: I am Bob Abramovich, 1585 Frederick Blvd, Akron, Ohio, LRC Realty. The property...uh...that we're here to talk about tonight is 1005 East Main Street. It's the...uh...former DuBois property. It was a two story roughly 10,000 square foot bookstore. Most recently I believe it was fairly blighted and therefore was...uh...demolished somewhat recently. The zoning is...uh...Commercial – High Density Multi-family Residential zoning. Our plan is to redevelop the property...uh...We'd like to invest several million dollars and create and retain roughly 40 jobs...uh...The proposed building is roughly 87...8700 square feet building footprint with 62 parking spaces...uh... Shown on the site plan there's roughly...uh...roughly 40 parking...side parking spaces and 22 spaces in the rear...uh...The mix of uses would be...uh...permitted commercial uses including an approximately 2300 square foot café with a drive-thru on the west on the Luther side. The remaining 6100 square feet will be commercial or other permitted uses within the zone. Access on the lot is two curb cuts...on Luther and one on Elmwood. Generally speaking, the curb cuts will remain approximately the same location as they are today with the exception that we will meet the 50-foot setback required in the zoning code...uh...Circulation on the lot provides for two way traffic and for all exit traffic with the exception of a single lane drive-thru. The configuration of the parking as shown provides the best circulation for the property. The uniqueness of this property fronting four public streets...uh...each side is considered a front yard and therefore applies the front yard building and landscaping setbacks...uh...similar lots with side setback zero landscape setback and the building setbacks are approximately 10 feet...uh...The building setbacks...we meet or exceed the requirements on three sides and on the fourth side along Luther there is approximately a 9-foot building setback. On the east side of the building along Elmwood, we're asking for a 12-foot parking setback to allow parking within the landscaping setback. The configuration of the parking on...uh...Elmwood allows for the ease of the egress and ingress and circulation

on the lot. Well one thing that you will note on the site plan is the existing right-of-ways on the side streets being Elmwood, Crain and Luther...uh...The right-of-ways are approximately 60 feet which leaves about 18 feet of green space right-of-way between

the...uh...edge of pavement and the property line. So, in fact, if you look at the color rendering behind on the board...uh... you're already starting off with an 18-foot buffer there...uh...I think we're asking for...uh...providing for 8 more feet on Elmwood to make it roughly 26 feet. On Crain, there's a 20-foot... an existing 18-foot we're showing additional just north of about 20 feet so you're going to be 38 feet roughly there so you've got plenty of room and...uh...uh...the other side street...uh...18 feet...I believe there's 18 feet there as well. I don't have any other remarks.

Mr. Mail: The address of your property is on East Main Street but you have no driveway coming in from East Main Street. Why?

Mr. Abramovich:...Uh...(Inaudible)...

Ms. Susel: Please come to the mike.

Mr. Abramovich: Okay. ..Uh... We had talked about circulation on the lot to get in and out. I think the...uh... side streets...uh...would be the best use.

Mr. Mail: Except two of those side streets are residential.

Ms. Susel: Excuse me. That is actually a site plan matter that would be discussed with the Planning Commission and not something that's related to...

Mr. Mail: No, I know...(inaudible overlapping conversation...)

Ms. Susel: Right. That is something that staff will look at when it comes to Planning Commission review. Right.

Mr. Mail: Okay. All right. Thank you. Is there anybody here who would like to speak for this variance request? Is there anybody here who would like to speak against this variance request?

PUBLIC COMMENTS

Mr. Mail: Alright, we'll start with you because you're experienced. And I would like to hold all comments...Be as brief as you can, not to exceed more than three minutes...

Mr. Fink: Before you get started...uh...so we ...(Inaudible)...using their time but because we swore people in at the beginning of this and I will freely admit that it's difficult to tell who else that said "I do" and who did not, so if you would please at the microphone reiterate that you were sworn in for the record so that we have no questions

about that. That will...that will make my job easier. I will ask you to do this. And I'll ask you to make sure you keep your comments to the variances and not to the site plan. That will be at the Planning Commission meeting where it will be discussed.

Mr. Mail: Right. And this is...We are addressing what he said...the variances and setbacks....uh...If they're going to put in a fracking injection well there or a Church's Chicken or something, we don't address that. That is not...The use of that space is not in question. That's for other boards to determine that. If that's what you want to speak about, that's not what we're addressing here. Yes, sir?

David Reith: David Reith, 520 Harvey Street, Kent...I was not sworn in, so I'll not ask a question, but I would like to refer to Mr. Fink about the issue that we talked about before because I think that the attorney for LRC had a conflicting statement in his opening statement about the ownership and the applicant who presented the variance. Mr. Fink?

Mr. Fink: You could probably ask the question to Mr. Konstand to please identify...On the application it states the owner is...uh...Mr. DuBois and the applicant is different. Would you please explain what their current relationship is at this time for the property?

Mr. Konstand: Yes. Since that time, the property has closed and my client, the applicant...owns...they own the property...LRC Realty...Main Street Investors... Kent Investors is the property owner on record, which is an affiliate of LRC. So the question is...is that is that applicant actually owns the property.

Mr. Mail: So, it's Kent Investors?

Ms. Susel: Kent Investors LLC is what's on the website with a closing date of June 22, 2016.

Mr. Mail: Thank you. All right. Is there anyone else who would like to speak...Yes Mr. Fink?

Mr. Fink: I would just like to address for the record that there's a question of whether or not it is legal for an applicant to be different from the owner of the property...uh... whether or not is relevant...we frequently have applicants who are not the same as the

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owner often in form of...uh...whether it's an attorney or whether it's an architect that in itself is not uncommon...uh...for example the fire station itself...uh... It's owned by the City of Kent, but we have hired an architect to give the actual presentation to the Board so that on itself... that does not create a conflict or violation for purposes of going forward to discussing a zoning variance. Thank you.

Mr. Mail: State your name.

John Ferlito: John Ferlito.

Mr. Mail: Were you sworn in?

Mr. Ferlito: Yes. And I am a representative of Faith Lutheran Church which borders on Luther. And our Board looked at this and we wanted to say we're against granting any variances. We can see no reason why they can't keep it within the variance...the property setbacks, because it would bring it up really really close to the side of our church. And it'll be other problems. That we will see in planning but...uh...our concern about it being right on the edge of road by our church. We have a Christian Center for Students and we don't want it that close you know right there ...to Luther. It would be nice to have a setback and meet those standards. Thank you.

Mr. Mail: Anybody else? Okay. We have more.

Randall Smith: I am ...uh...Randall Smith, 301 Oakwood Drive. I would like to...

Mr. Mail: Were you sworn in?

Mr. Smith: Yes. I'd like to speak specifically to...uh...uh... Item three, Extraordinary Circum...Conditions that apply to the property that don't...I'm sorry. Granting such variance will not be of substantial detriment to public interest to adjacent property owners. I would like to speak to public interest...uh...The tax payers of Kent just recently spent millions of dollars to reroute the Crain Avenue Bridge to a different location...part of that intent being to turn Crain Avenue into a residential street rather than a thoroughfare to bypass downtown Kent to reach the university. Well that has been successful...uh...statistics show that street receives about 10,000 vehicles a day before the bridge was moved and it is now down to less than 5,000 vehicles a day. My concern is approving these variances is going to increase substantially the vehicular traffic in that area and return Crain Avenue two lane. It will make it a thoroughfare once again. Thank you.

Mr. Mail: Thank you.

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Paula Treckel: My name is Paula Treckel. I am a resident at 1244 Woodhill Drive in Kent. I have been sworn in. Okay. First of all, it has come to our attention that our City Manager has communicated with the Board here before us to discourage us from weighing in on this process to affirm our concerns to the Planning Commission stage after the variances have been granted. As a citizen of Kent, I take issue with this. Our concerns...the concerns that are going to be expressed by the people standing behind

me are widely believed these variances should not be granted in the first place. Since 1937, this land was plotted as part of Glen Reeds University Heights allotment while 1005 East Main Street has been the gateway to our neighborhood. For the past 79 years this property and the businesses that were located upon it served as a subtle sympathetic transition to the neighborhood of single family and multi-family homes that surround it on three sides. While it's always been zoned as commercial property, its impact on the land has been light and respectful to neighbors. This is a consequence of the City's adherence to the zoning requirements. I think many of my neighbors in University Heights and Crain Avenue and its tributaries ...what I think is permitting the variances requested by the new owner developer of this property has the potential to bring significant disruption to our neighborhood and it's against the public's best interest. Ours is a diverse neighborhood of single and multi-family homes that have remained remarkably intact despite our proximity to a growing university and the creep of commercial development along East Main. To award the variances requested by the new owner developer will dramatically alter the appearance of this block. With the clearing a century of trees, the land will certainly result in a paved paradise to put in a parking lot with a drive-thru no less. The proposed...

Mr. Mail: Can we wrap this up?

Ms. Treckel: The proposed footprint with parking for vehicles and a variance request to accommodate a drive-thru will bring congestion to residential roads. All of us here recognize that this is commercial property. We understand that. We hope the Board of Zoning Appeals will recognize the variances requested will directly and negatively impact us. Thank you.

Applause.

Mr. Mail: Thank you.

Mr. Fink: Hold on. Just a second here, this won't come out of your three minutes, I promise. I'm sorry. I promise this won't come out of your three minutes...I...since a statement was made suggesting that the statement that was made in the last comment about an email from the City Manager...uh....The City Manager did send an email...uh...It is our position that the email does not encourage or discourage any vote.

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It does not...It does say that some issues are site issues for Planning Commission so does not encourage the Board to vote on them. It does not discourage the Board to vote any direction. And if you have a different email that was sent to me, I would encourage you to bring it to my attention.

Ronald Bergen: I'm Ronald Bergen. My residential address is 2866 Park Drive NE, Silver Lake. My business address is 931 East Main Street. I'm the interim minister for

Faith Lutheran Church in Kent and I along with John Ferlito have been allowed to represent the church in making a presentation. I'm speaking...

Mr. Mail: Have you been sworn in?

Mr. Bergen: Yes, I have.

Mr. Mail: Okay. Thank you.

Mr. Bergen: Yes...uh...And I know the area well. I'm speaking against the variance and most of it has to do...uh...with the traffic problem on Luther Avenue. They are...there are still two driveways but the other driveway when that was a funeral home that had two vehicles the flower car and the hearse. And that was all...so I don't think we can argue from those...those...uh...driveways the second part is Luther Avenue is quite different from University Drive where Burger King is and on Linden Drive where Taco Bell is...Those are streets where there is no heavy traffic, no university entrances, no traffic light...uh...this would cause a serious substantial detrimental to adjacent property owners, mainly Faith Lutheran Church. You have to understand the nature of the church there. It's not just Sunday morning. There's ...There's evening traffic into the church and granting the variances will create serious serious traffic problems. Last week, I usually arrive there about 8:45 and the traffic was backed up. There was nothing else going on, but the traffic was backed up on Luther Avenue. I dread to think of what happens with...if suddenly traffic flow increases. Since we've become a congregation, it would seriously be a detriment for the congregation...its driveway and its access to its own property. Thank you.

Mr. Mail: Thank you.

Terry Kuhn: I'm Terry Kuhn and I live in University Woods at 496 Overlook. I have been sworn in.

Mr. Mail: Thank you.

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Mr. Kuhn: ...uh...I would like to speak to the public interest aspect of this proposal...uh...Most of my concerns rightfully will be directed toward the Planning Commission because they deal with traffic and ways to redo Luther Avenue; making it three lanes instead of two. That kind of future would be terribly jeopardized if this variance is granted to widen Luther to a one incoming lane and two lanes going towards Main Street would make a lot of sense but the arbitrariness of addressing zoning issues apart from planning issues makes it difficult for many of us to speak what's really on our minds. So I would just say that we oppose the variance because of public interest

and those of us that can't get onto 59 unless we go to the light at Luther and would be greatly impacted if this variance was granted. Thank you.

Mr. Mail: Thank you.

George Ackerman: Hi. Good Evening. My name is George Ackerman. I live at 109 Elmwood Street, immediately across the street there. You can see the driveway in the picture...uh...I'd like to speak against the two variances being proposed...uh...The first reason would be the traffic and safety concerns. Obviously, Kent put in a no left hand turn sign at the end of Elmwood Drive because of the frequency of accidents there; not that it stops accidents for people turning left illegally...uh...I can tell you that probably 50 cars a day turn around in my driveway currently. Stop by any time, you'll see one...uh...because they get to the end of the street and go "oh I can't do that" so you'll be watching them do that even more....uh...The traffic will just keep going on down further in the neighborhood to where they can find streets with no left hand turn so I believe that's going to be a substantial detriment to the neighborhood overall...uh...The next practical difficulties... I believe someone pointed out that property's been there for 80...uh...almost 80 years now...there were not difficulties. The owners bought that property knowing how it was zoned and coming in and requesting that this is a hardship on them, which... When you already know it's there, how is it a hardship?...uh...And finally the extraordinary circumstances...well...The other businesses up and down Main Street, not that we are particularly fond of them either,...uh... have managed to fit within the code all these years. I'm not sure what makes this extraordinary other than its effecting neighbors on three sides...residences. Thank you.

Mr. Mail: Thank you.

Tracy Wallach: My name is Tracy Wallach. I live at 231 Starr Avenue and I have been sworn in. I just wanted to fill in some information that's missing a little bit. On the map, there are actually three sides that are residential, not two sides. On Luther, there is on the corner an unoccupied home and up in the middle of Luther there is a building by the church which is used for a residency for the person who works with the youth organization. So it's actually three sides of residences.

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Mr. Mail: Thank you.

Scott Flynn: Hi. My name is Scott Flynn and I just got here, so I've not been sworn in.

Mr. Fink: Scott, do you swear that the testimony that you give before the Board of Zoning Appeals is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Flynn: I do.

Mr. Fink: Thank you.

Mr. Flynn: I hope you...uh... received a copy of my four page lengthy letter that I submitted today...uh...so I won't go through all of that again but...uh....but what we have here is obviously a problem where we have a developer that wants to take a box here and expand it here and I think the neighbors around here know that. Even if this Board denies the variances, whatever is developed there could still be a travesty on the neighborhood. But for today's purposes to stay focused, we don't want that box to get any bigger because if that box gets bigger, that means more parking spaces, more cars, more traffic, more pollution, more trees cut down...uh...a drive-thru that has nothing to do with this neighborhood. The C-R District the purpose of the code, as I mentioned in my letter, talks about...uh...having close proximity to...uh...commercial...buildings for the neighborhood. Why would anybody... all these 100 people here tonight... want a drive-thru within a mile radius of the neighborhood? A drive-thru doesn't serve any purpose to this neighborhood. If they want to put in a restaurant there, fine, we'll walk there but we're not going to drive through it... a drive-thru just to pick up a sandwich or a...or a cup of coffee so the C-R's purpose is to benefit the neighborhood here. We're stuck with this commercial property whether we like it or not but why are we...why would we let this developer expand that which like I said it would harm the neighborhood so...The more important stuff that we've talked about is the Planning Commission makes sure that there's proper landscaping, proper lighting, proper everything, noise control, all those things that are going to affect us. But for today's purposes, where's....where's the practical difficulties? What have they shown that says that they need to do this. There...there is none. Saying your property is unique is...is...it's a joke, because everybody's got unique property here, so to say that they have a uniqueness is ridiculous. They bought this property less than a month ago knowing what the zoning code said. The zoning code hasn't changed in the last month. They're stuck in that box unless you guys want to give them more in that box, but I don't think that's proper tonight. Thank you.

Mr. Mail: Thank you very much.

Applause

Bob Twieg: My name is Bob Twieg. I live at 1223 Woodhill Drive in Kent and I've been sworn in...uh... My predecessor did a very good job speaking on my behalf, so I only have a couple comments left after he was finished. The only argument the developers have given you is that this parcel is somewhat unique. That's no excuse for putting together a plan that doesn't conform with zoning laws. Okay. They should submit a plan that doesn't require these kinds of revisions in the first place. But, I guess since the only thing they can lose is \$50.00, they went ahead and submitted a plan that makes an excessive use of this piece of property. Okay. This doesn't belong in this neighborhood. Okay...uh...We'd like to see a nice building there and this thing used for the public interest, but what you're looking at here is clearly excessive. It has been alluded to there's going to be numerous traffic problems that are going to be exacerbated that already exist. Again...uh... the unique feature that was overlooked earlier is that this pod is surrounded by residences. When you guys work in...uh... normal situations, you're talking about what's next door, what's behind. In this case, this parcel is surrounded by residential homes here and will have a major impact on the value of these people's property... uh...so what I'd like to see is a reasonable proposal for this lot with a reasonable number of parking places, with a

reasonable size for the building, so that these off sets are not required. This asphalt here is completely out of line and excessive. And by the way, there are a few beautiful trees. I know some people here are interested in trees and I hope down the road we get a revised plan so that this can be done correctly. This is not the right way to do it. Thank you.

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Mr. Mail: Thank you.

Applause

Lee Higgins: My name is Lee Higgins. I have been sworn in. I reside at 1232 Woodhill Drive in Kent...uh...I would like to say that what you are not hearing tonight is resistant to commercial development. We all know that this is commercial property. What you are hearing tonight is that we accept that something will be done, but the residents have a very strong feeling that whoever owns this property should work within the existing setback requirements for their building. The reason there are four front yards is by design not by whimsy. That's the way this property was designed and its part of University Heights. We've also heard a couple mentions tonight of being kicked up to the Planning Commission, which kind of indicates that we'd be asked to buy a pig in a poke. We have no idea what's going...these plans are not cast in concrete so we have no idea what's coming. We're asking that this Board recognizes our position and not participate with the developer in a venture designed to maximize his profit and minimize green space and the human scale of this property to the detriment to the neighborhood and the City of Kent. Thank you.

Mr. Mail: Thank you.

Applause

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Bethany Snyder: My name is Bethany Snyder. I live at 224 Overlook Drive. And I'd like to say as a mother of three young children and two big dogs who like their walk, I already live in a neighborhood by choice that does not have sidewalks, which has been fine. It is...uh...you know there's quite a lot of traffic that goes through but we deal with that. With this type of use, there's certainly going to be pushing a whole lot traffic into my neighborhood. I'm very concerned about the safety of my children. My six year old trying to ride her bike down the street without a sidewalk is already a tough thing for us to do so when you add this drive-thru and where the driveways are located you are certainly going to push traffic through my neighborhood and out to Overlook to get onto 59...uh...and that's certainly going to have a serious impact on my quality of life. So...Thank you very much.

Ms. Susel: You were sworn in right, ma'am?

Ms. Snyder: I'm sorry. Yes.

(Overlapping inaudible comments)

Lynn Ormiston: Hello. Thank you for allowing us to have this opportunity to talk to you. My name is Lynn Ormiston. I'm from 211 Elmwood Drive, Kent, Ohio 44240.

Mr. Mail: Have you been sworn in?

Ms. Ormiston: Yes, I was sworn in. I've been a resident and a tax payer three for 20 plus years. I want to just give my comments. A lot of these are also the same kinds of things that other people have been saying. I want to use the words that I find on your web page and make sure that it is understood, in my opinion, that this is what is happened...uh...Granting the requested variances will be a substantial detriment to the public interest and to the adjacent properties, one of which is mine. Such variances designed to accommodate a restaurant including a drive-thru on Luther and more parking nearer to and along Elmwood will create more traffic in an already too small area at an intersection that is already dangerous as well as constituting a danger to vehicles and bicycles. Creating additional traffic will endanger university students crossing the street. Additional traffic will impede current property owners to try to leave or enter their driveway. The additional traffic will find a quick exit from or entrance to the restaurant will send through traffic down the street into the residential neighborhood again, creating a pedestrian hazard. This increased traffic will undo the success of the Crain Avenue and Water Street intersection redesign. Why would you want to do that?

Applause

Paula Rosky: Hello. My name is Paula Rosky. My address is 941 North Mantua Street, Kent. And I have not been sworn in, Mr. Fink.

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Mr. Fink: Oh. If anyone else wasn't sworn in and plans on testifying, you can get sworn in right now if you'd like. Do you swear that the testimony that you give before the Board of Zoning Appeals is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. Rosky: I do.

Mr. Fink: Thank you.

Ms. Rosky: I actually have a couple of questions for the zoning committee or staff or the applicant, depending on who would like to answer the question...uh...My first question is for confirmation make sure...uh...I was on the zoning board many years ago before the code was revised and things have changed, so I'm not sure that I'm reading everything correctly. For Section 1167.05 of the zoning code....give me a minute to...uh...as far as parking...uh...My reading of that is for restaurants the minimum requirement would be one

parking space per four seats. We're not sure what exactly this space is going to entail as far as what the applicant has submitted...uh...so that would...estimate be...uh...for 62 parking spaces, which is what is proposed times four...uh...that would be...uh...a restaurant that would have a capacity of 248 seats which is very large...uh...The square footage is 8700 square feet...uh...and...uh...that space would need to include a kitchen, storage space, restrooms...all of those things that would encroach on that 8700 square feet. Uh...I understand ...uh...I did call Kent State University banquet sales to see what their space was for a restaurant...a banquet space. For them a 3007 square foot room can seat 120 people so I'm trying to see why they need 62 parking spaces for the space that's a planned building that's going to be a restaurant. So am I reading that correctly?

Ms. Susel: You are, and one of the things we need to speak to is we actually haven't identified any type of parking count because the configuration of the tenants is what defines that. You're absolutely correct.

Ms. Rosky: Okay.

Ms. Susel: The other spaces have to be defined for tenants either one or two. Retail for example has a different parking criteria than a restaurant so the actual parking that is required will be reviewed by staff and the Planning Commission submission once we actually know what the tenant base is for the building.

Ms. Rosky: Okay great. Thank you very much for that confirmation. So the second point that you mentioned...uh...Bridget...uh...if it's for retail...if it's going to be a store selling something, the requirement would be one parking space for 500 square feet and so if you do the math, which I'm an English major, not a math major, but I did it twice...uh...and I came up with...uh...they only need 18 parking spaces for an 8700 square foot building if that was all retail. And so we're looking at 62 spaces. My question is why do we need 62 spaces?...uh...Why...What are they putting in there that requires those 62

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spaces?...uh...And what will those 62 spaces be used for? Is it an attempt to get extra parking that one tenant then can rent out to students...uh...as some other businesses do on Main Street? My other question, again for clarification, on the map is about the setback from East Main Street at the corner of Luther for the egress and...uh... ingress...uh... The requirement for the zoning code is that it's 50 feet, but...I... I see the arrow on the...uh...on the site map comes in the middle of the ingress and egress rather at the apron. Is that standard?

Ms. Susel: I think the applicant actually spoke to that matter at the mic and said they were going to meet that. Did you not say that? That's a Planning Commission matter too, as well. Okay. It will be reviewed by our engineers.

Ms. Rosky: Okay. As someone who travels on that street every day...every morning and sit at that traffic light and looking at having an ingress and egress...uh... for the purposes

of this drive-thru...uh...It's a concern for me that it will increase the traffic backed up on the on that street. Thank you.

Mr. Mail: Thank you.

Applause

Mary Jacoby: I was sworn in. I'm Mary Jacoby and I live a 220 Elmwood Drive in Kent. I've lived there for 49 years and have had a beautiful neighborhood of residential homes with a funeral home that was there, which was pleasant to our development....uh...I'm concerned the traffic is going to become extremely heavy because of people exiting either to turn left to get out on Main Street or they will go...to go on Elmwood. There's also the safety of all of our young people and older people, like me, who are out walking. You need to give consideration and interest to all of our residential homes and the church and to the University Heights development, which was established in 1937. If the purpose of the zoning code is to discourage developments that interfere with the character of the community, then the applicant for the variances has not addressed this. This...uh...property is...uh...has had this low impact building in our residential area for many years with beautiful trees and lots of green space. The variance just on Elmwood Drive will eliminate five beautiful trees that have been there for years, along with the green space around them. If you approve these variances, they will have a negative impact on our property values that surround the development and we have been a residential community that's been well kept and an asset to the City of Kent. Please do not grant these variances.

Mr. Mail: Thank you.

Applause

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Albert Green: Hi. I'm Albert Green...uh...residence at 485 Overlook Drive in Kent. And I have been sworn in. So the point that I would raise is that Kent has a long history of neighborhood schools and one of those schools is Walls Elementary School just located about 1½ block from this site...uh...I know that because I have a sixth and a seventh grader that they went for five years...maybe six years...five years each at Walls Elementary and that neighborhood doesn't have bussing to...to Walls because it's so close. In fact that was one of the reasons we bought in that neighborhood to begin with so for...for years my kids walked to school or they rode their bikes to school. If you now increase...you've heard all the statements about traffic and increase in traffic, I really question the safety of a child who often times will be walking or biking home at the time when people are coming in the morning up to the our drive-thru. We don't know the details of the property but it will be a serious issue for parents that live in that neighborhood that have children who go to a neighborhood school like Walls.

Applause

James Mullen: My name is James Mullen, 212 Elmwood...uh...My wife is a nurse and she is not here. She works at Akron General. We're both working and there are times when it makes it almost impossible to get out of our driveway. As many folks have said...um...I'm new to this sort of meeting so I understand...um...I wanted to ask a question actually...um...first of all why weren't the details on the building itself given to us? They want a variance that we do not know specifically... things like hours of operations. Again people have spoken very eloquently about the impact on the neighborhood traffic so and so forth. What about the parameters of the business itself? Like I said, the hours of operation within a residential area are significant.

Mr. Mail: That is not the purview of the Zoning Board, so they didn't present...They have never, as far as I know, presented that. All we know about this property has to do with zoning.

Mr. Mullen: Okay.

Applause

Deborah Daly: Hi. My name is Deborah Daly. I live at 1223 Woodhill Drive in Kent. I've lived there for up-teen years now and my dog passed away but I used to walk all over the neighborhood...uh... If you were to live in it, you would see basically for University Heights and University Woods and for some of the side streets that come off of Crain Avenue, there is really only one way to get out of our neighborhood if you need to make a left turn to...If you want to turn onto Overlook, you're at a three way intersection on Main Street...four lanes of very busy traffic. There's a light about a half

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block away, but it's kind of scary and sometimes it takes a long time to take a left turn coming out of there. It often gets backed up from people waiting to turn left off of Luther. It's manageable. It's okay at work...it's...you know...a...a bearable amount of congestion. If you put two driveways not far apart, nobody is going to get in and out of there. There's no...uh... clear indication that there will be a right turn only or left turn only, but if they're not left turn only, those people aren't going to get out of the neighborhood either unless they go some other way and try to turn left. I was hoping someone...to explain this...I hope you visit our neighborhood, take a look at Luther, take a look at its relationship to Crain, watch the traffic say three in the afternoon...five in the afternoon...day and morning...eleven in the morning. You will see that this would create a miserable and intolerable situation not only for pedestrians, but for people who need to get in and out of our neighborhood. Thank you.

Applause

An Unidentified Speaker from the audience: Could I ask a quick question?

Ms. Susel: Sure. Of course.

Unidentified Speaker: ...uh... location of the driveways is certainly a concern here. Is that in our purview or is that a Planning...

Ms. Susel: It's a Planning Commission item. Staff will go through it and it will be discussed when we get the full set of plans for Planning Commission review.

Don Bosshart: I'm Don Bosshart 315 Elmwood Drive...uh...I want to address the 20-foot minimum setback requirement on Elmwood Drive. The 8 feet...uh...I don't understand how they can justify this. We think there should be at least a 20-foot...uh...setback as required by the code. I also think that a fence should be installed along Elmwood Drive so that...so that the neighbors in that area will not see car headlights flashing in their windows at nighttime and there needs to be space for that fencing...a fencing which will shield the lot from the residential properties and shield the homes from the headlights from cars...uh...Also they...the other point is fencing would contain the trash the patrons may discard in the parking area so that it doesn't blow in the University Heights neighborhood. The drive-thru window...there's just not enough space to have a single lane drive-thru and it's going to be a real nightmare because you can't pass one...two cars can't pass on a 12-foot line. Space...you can get space between...you have space between the street and the building. It's just too close. We've got to have more clearance for that way, I...I think it's just a crummy plan that's all there is to it. It's going to be disruptive to the neighborhood. It's going to impact everybody's home property value. I had an office in that building. It was a residence.

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There were six apartments on the second floor. It's still in use and there's no problem. I think these two driveways...the driveway...I don't...I don't understand why that's...So that's it.

Mr. Mail: Thank you.

Applause

Mr. Mail: Is there anyone else who wishes to speak?

David Schmader: I need to be sworn in.

Mr. Fink: Is there anyone else who needs to be sworn in? Do you swear that the testimony that you give before the Board of Zoning Appeals is the truth, the whole truth, and nothing but the truth, so help you God?

David Schmader: Yes, I do.

Mr. Fink: Thank you.

David Schmader: David Schmader, 456 Harvey Street, Kent, Ohio,...uh...This...this property here...uh...I've just been sitting there quietly listening...*(Inaudible)*... When I look at the map...it...it surrounds three neighborhood streets. Right where these houses right along all these areas... *(Inaudible)*...front yards all around it. That makes sense right. You look at my house with a nice front yard in front of me right? So it makes sense there should be a 20-foot variance and I think LRC Land Investors want to be good neighbors, they should revise this. That's it.

Applause

Bob Mayfield: I think I understand how to work...to use this thing now. I hope I can make some sense here. Bob Mayfield, 356 Oakwood Drive, Kent...And I have been sworn in. And as a business owner in Kent, I am glad to see an interest in this property...uh...It shows you know Kent's a viable town to do business in and I think that's a great thing. I am thrilled the new owners of this property...because I don't...the previous owners were not very respectful to the neighborhood or to the property near them and they were not good stewards at all...uh...I look at this property and I see frontage on four streets; three of them are residential streets with residential housing. And for some business, I think that would be a good thing to have frontage on four streets and...uh...I don't understand what the hardship is, you know. There's great visibility. You have a whole block to develop with over an acre of land. And I'm not too sure what the hardship is except the developer, which I understand, is a business trying to maximize their return on their investment and...uh...they want to maximize the square footage, maximize the amount of parking and

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rents they can charge for this. And I think that's...and I understand that...that's the American way...uh... The only hardship is that they, the investors in the property, maybe they paid too much money or maybe they should come up with a plan to maximize the value of the property and...uh... so they can maximize their return value. I don't see giving up residential views from the residential houses...uh...It's their front yards, you know. I don't...I don't see the hardship at all and...uh...it would be a detriment to the residents neighborhood.

Applause

Mr. Konstand: Could I recap quickly?

Mr. Mail: What do you want to ask?

Mr. Konstand: I just...I don't want to ask anything. All I want to do is address some of the comments that were comments.

Mr. Mail: All right.

Mr. Konstand: Thank you. The Planning Commission has always allowed the presenter the opportunity to...

Mr. Fink: The Planning Commission, and the BZA, and also the Architectural Review Board have always allowed the presenters an opportunity to make a rebuttal, so we're going to follow the same course we do in all the other cases. We're going to allow them a brief rebuttal.

Mr. Konstand: Thank you. I understand the neighbors' concerns. They have legitimate concerns but we've got to look at the facts here. The facts are that building is sized for commercial use... for a couple cafes to go in there, no matter what. 62 parking spots can go in there. So whether the variances are granted or not, this can happen. I'm not saying that it will but legally it can happen. What we're asking for are two insubstantial variances; one for a building side line and one for a landscape side line. We're not asking to make the building larger or anything substantial like that. We're going to conform with all the other zoning requirements of the City of Kent. That means that...a lot of people have mentioned today that we have to show hardship. That's not the law. This is an area variance. That's as far as it goes. In the Statement of Ohio Law, for an area variance is to just show practical difficulty. We stated that we have practical difficulty, because when we bought the property, we thought we would have two front streets. We didn't realize we were going to have four until we were advised by the City. That's our fault.

Outbursts from the audience

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Mr. Konstand: That's our fault but I want everyone here to understand that because that's the practical difficulty we have. If you listen...I listened to you, please listen to me. If we have two front yards, then the side yards would have zero setbacks under your zoning code just so you understand that. And with the 62 spaces, we could have moved the building farther back into the residential neighborhood. We thought that would be worse for the residents so what we're trying to do is center the building, keep it away... as much away as possible so that somebody doesn't have a commercial building in their front yard and to do that and make the building fit, we need to get...we need to have these two variances. They're insubstantial variances. They're not substantial. They will not change the neighborhood by granting these two variances. This building can go here no matter what with the drive-thru and with the parking spaces. We can make it fit. We're just trying to keep the building away from the houses and have enough parking so that the people who are going into those stores or restaurants or cafes don't park in your streets in the neighborhood.

Outbursts from the audience

Mr. Konstand: They'll park...They'll park illegally. We're trying to keep... we're trying to be a good neighbor... Keep all this self-contained and follow the zoning laws of the City of Kent. I thank the Board for their patience tonight and thank you for your effort.

Mr. Mail: Is there anyone else who wishes to speak against this variance? Public comment is closed. Before we go any further...Heather, we have a letter here from Kim and Fay Sebaly concerning this property and then Scott Flynn who also spoke to us and presented a summary of his four page letter. Basically, Scott...uh... emailed...It's just what he said and I would rather not take the time to read that in the record and...uh...also I would like to say the letter from the Sebaly's will also be in the record. Basically it reiterates what a lot of people here have said. I don't think there is time to read that in.

Mr. Fink: And just to note that their address is 132 Luther Avenue, so it's directly adjacent to this property.

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Mr. Mail: Alright. Are there any comments from you guys?

Mr. Tipton: I...I... I see ...Frequently I always listen to...uh... folks when they come out and speak especially directly adjacent neighbors...so we heard...we heard testimony from a lot of directly adjacent neighbors, so that...that weighs on my decision.

Mr. Burton: ...Uh...Typically when we make variances, we try to make the smallest variance possible...uh...when there's good reason...uh... and I think that speaks more specifically to the second variance request regarding Elmwood Drive, which is a 60

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percent variance from the zoning requirement...uh...Also traditionally, when...when we make variances, we have an idea of the existing or proposed use of the site...uh...and so it's...it's hard to know what requirements that might be needed...what the developer needed without knowing the proposed use.

Mr. Sellman: Okay. I think that...I am feeling the same thing they both said, we had a lot of input from your immediate neighbors. And the reason these setbacks have been created was to provide barriers and protection to adjacent properties and such. I...I feel having have...having had worked on the code this city uses. This committee has been involved in several code revisions over the years...uh...I'm a long time member of this committee. A lot of care and thought has gone into the creation of our zoning code in setting the setbacks. Now you do have the unique situation of having four yards. The purpose of the setback is often for the green space's protection. I'm fully aware that you have all...put the building in there based on the code. I think it's fair. It protects the community, the citizens, and we will also give the property owner rightful use of the property. You are certainly entitled to the rightful use of your property.

Mr. Mail: I feel in this case, we've been...we have granted a great many commercial areas...areas that...uh...that fall within reason and in this case we're looking at granting a bunch of variances so the property can be developed. We don't know what's going in. If somebody said I'm going to do, you know, I'm going to put in a fracking injection well and I need these variances, that would be fine and we could address them. In this case, I do think we're sort of being asked for variances....Tell us what's going in, what does it need for signage, what does it need for ingress/egress...uh...Talk to the Planning Commission...uh...The address is...uh...on Route 59, on Main Street. There is no ingress or egress onto Main Street. All the ingress/egress are off of residential points so that is a Planning Commission function, not ours. We're being asked for fairly large percentage of error for nothing, so my question... we can do one of two things. We can make a proposal and deny the proposal or we can let it die, that is up to you. Somebody like to propose that...We can kill this otherwise they can come back with another proposal.

Mr. Sellman: Before we go any further Eric, if we just let this die, it makes it easier for them... it makes it easier to comeback alternative proposal whereas, if we deny it...

Mr. Fink: All right. There're a couple different options in front of you. If the Board chooses to...uh... let request case die without a motion that means they cannot get the variances granted, but then they are not subject to the rule that requires one year before they're allowed to resubmit without a major change or a change of facts and circumstances. If there's a vote denying the application, then that one year rule does in fact apply.

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Mr. Mail: But in fact, saying I am going to build this sort of structure in this area... They may need these variances and would in fact be a change in the facts and circumstances of this request. This request asks for a hypothetical...a hypothetical nut in the middle of husk but I want my husk to be this big.

Mr. Fink: Cosmetically, that would be a material change of facts and circumstances if having a known...having a known use versus having an unknown use...uh...The other option always would be to...uh..., the Board of Zoning Appeals has a time line they have to vote on each issue but they...uh...they can always request additional information. The Board can choose to table the issue in order to see if they are given any additional information about the use. These are the options you have; any one of those. Your choice.

Mr. Sellman: Well, I...I think my feeling right now, is that I'm not in favor of granting these variances tonight based on lack of information. If we were to table this, then I would make a motion to that affect. Maybe a little more information...I'm quite sure I would like to see some architectural work on the structure...what the building is going

to look like besides just a bunch of parking spaces. It may be possible to reassess the number of parking places. I know that's come up quite a few issues here too.

Mr. Fink: May I interrupt you for just a second? I apologize, but I should clarify. If this dies without...If it dies for lack of a motion that would effectively act as a decision that would allow the applicant to go forward if he wishes to pursue that route. If it is tabled, and they do not have the right to do their appeal at this point in time, they'd have to wait until a subsequent vote in the required...uh... time frame for each application. If it is tabled, they don't have to resubmit a \$50.00 application fee or whatever the filing fees for this, it doesn't matter, but since you asked what the differences are, I needed to say that on the record.

Mr. Sellman: Okay. Well...that's a legal procedure...If we were to table it to give them the opportunity to revise the request, maybe soften a bit and make it less of a request and or give us more information on what we're dealing with.

Mr. Susel: You're asking for information so that you can identify the minimal amount of variances that can be granted based on the use that's going to be put there?

Mr. Sellman: Yeah.

Mr. Mail: Why do we need...the Board grant a variance at all if they work it the right way? What do you...deny or table?

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Mr. Abramovich: We always...we always consider this and in this situation we're not able to consider this. Are we talking about a drive-thru or are we talking about parking places...a set of trees?

Mr. Mail: We have the option to making a motion to deny a request. They would go back and come back with a request that says I want to put this building... this use here. I need these ingresses and this many parking spaces. That is a substantially different request then I just want to push the boundaries out to the edge. And that tabling it sort of does the same, except there is a grey area. This request still remains active, they can just say this is what I want...*Inaudible*...and we can go back to the same thing. And we don't want to grant that much of a variance. Then it can get tabled again...*Inaudible*...If you deny it, it makes it final. Your call. I mean I'm the chairman, I can't make a motion.

Mr. Fink: If I may, it might be helpful...uh...in making your decision to ask the applicant if they believe they would provide additional information. If they don't plan on providing any additional information in the near future, then there would be no benefit to table it at all and then you might as well proceed with the vote today. I don't

know if they wish to provide additional information or not, you might want to ask the applicant that.

Mr. Mail: Let me ask the Board first if I may.

Mr. Fink: You're the chair. You can do whatever you want.

Mr. Tipton: I'd be curious to hear what the developer had to say.

Mr. Sellman: I would like to, too.

Mr. Mail: Please come forward to address that.

Mr. Konstand: Thank you for the opportunity to respond. At this point, we can't tell you who is coming in there. What we don't want to see is a fast food with a lot of traffic, so we're trying to work with small cafes. If you ask us to come back in 30 or 60 days, we can't tell you what we're going to do because we don't have what we need from you. So I would respectfully ask that you vote on it tonight one way or the other so that we know which way to go and not prolong this.

Mr. Burton: I'm going to push back a little. You...you...you already made it a drive-thru, so you do have an idea about what...

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Mr. Konstand: There would be a café restaurant with a possible drive-thru. We don't want to see a McDonalds there. We don't want to see a Burger King there. We tried to plan for a lot of parking, but we don't have any concrete user at this point and until we know where we stand with the City of Kent as to the zoning, we can't tell any prospective user what we have to offer, so we need to vote.

Mr. Mail: Excuse me. If you don't know where you stand with Kent and the zoning code, get a copy of the zoning code and read it. That says what your setbacks are.

Mr. Konstand: I don't know where I stand with the BZA tonight, sir and I want to know where we stand with the BZA tonight.

Mr. Mail: We will decide that. Thank you. Does anyone have a better idea what we should do? May I have a motion?

Motion: **Mr. Burton moved in Case BZ16-015, LRC Development Company, property located at 1005 East Main Street, that the Board of Zoning Appeals denies the 9-foot variance from the 30-foot minimum front yard setback requirement to allow a new**

structure to be built 21 feet from the front property line along Luther Avenue, as defined in Section 1145.04(a) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

Motion: Mr. Burton moved in Case BZ16-015, LRC Development Company, property located at 1005 East Main Street, that the Board of Zoning Appeals denies the 12-foot variance from the 20-foot minimum landscaping strip between the parking area and right-of-way requirement to allow parking to be located 8 feet from Elmwood Drive, as defined in Section 1167.11(b)(1) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion passed 4 – 0.

Brief recess to allow the room to clear.

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End of verbatim transcript.

Meeting reconvened.

Ms. Phile stated that the applicant has asked that Case BZ16-017, property location at 516 South Lincoln Street, be heard before Case BZ16-016.

Mr. Mail asked for a motion to make the change in the agenda.

Motion: Mr. Tipton moved to change the order of the agenda so that Case BZ16-017, Steve & Susan Mileski, property located at 516 South Lincoln Street, can be heard before BZ16-016.

Motion second by Mr. Burton.

Vote: The motion passed 4 – 0.

Mr. Mail told the Board members that what they were deciding was to approve an appeal of the zoning inspector's decision to deny the property owners' request to

determine the use of the properties in each case, so they did not have to consider the criteria they usually consider when granting a variance. He asked the applicants to present their case.

D. BZ16-017

**Steve & Susan Mileski
516 South Lincoln Street**

Section: 1109.09(a)

Request: The applicant is requesting an appeal of the zoning inspector's decision to deny the property owners' request for the City to determine that the use of the property at 516 South Lincoln Street as a rooming house is a legal-pre-existing non-conforming use.

Susan Mileski, 1461 River Edge Drive, Kent, Ohio, stated that according to county records 516 South Lincoln has been owned by a number of people and businesses for the past 40 years. The owners listed as LLC or LTD were landlords. They did not own 516 as their personal residence. George Waliga purchased the property in 1982 and at the time of purchase, students were boarding at the house and Mr. Waliga continued to

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rent the property as a rooming house. She said they purchased the property in 2010 and they ran ads for a five bedroom, two bathroom house. Single families were uninterested in renting the house because there were student rentals all around it. Families do not want to live in student rental neighborhoods. After they could not find a single family to rent, they rented the property to five students. Each year they advertise the property in the same way and have never had a family interested in renting because of the property's location. She said they have rented to five students in the past and have only rented to two this year. She said in the past while renting to five students, they have never had any problem with the City of Kent. She said problems arose last year when they were renting to two students. She said there were extra cars in the parking lot and they questioned whether the renters were allowing people to park on the property and then go to class. She said there were questions of how many students were living there, but they were renting to only two. She said they questioned if the tenants were having overnight guests and how many nights were these guests staying. She said a 24 hours' notice has to be given before anyone can come in to inspect the property. She said they do not want people staying in the house if they do not have a lease or a contract signed by their parents. In addition to the fact that the house has been a rooming house for decades, they also ask that the Board takes into the consideration the use of the neighboring homes and the dramatic changes in the neighborhood since they have purchased the property. She said in the application they included a map showing the duplexes, rooming houses and apartments surrounding 516

South Lincoln. Only two other houses are single family homes, and in 2011 a new apartment development was approved right across the street. The lot for 516 South Lincoln is the same size and in many cases larger than those that are being used as duplexes and rooming houses. The property used as a rooming house would conform to the neighborhood uses. She said they have provided homes for students and families for over 20 years. They provide safe housing and are not discriminatory and respond to tenants' request for repairs within 24 hours. Changes as a result of an inspection are always taken care of. She said they have done a lot of updates on the property, as listed in their letter and are constantly improving the property. She said they work hard to create a good owner/tenant relationship.

Mr. Mail stated that the applicants provide parking for six cars. He asked if that included the gravel lot in back.

Ms. Mileski replied there are more than six spaces available with the gravel lot.

Mr. Tipton asked if it could be verified what the continuous use has been since 1971.

Mr. Fink replied that after the presentation is finished, it needs to be turned over to the City to review the continuous use.

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George Waliga, 203 East Summit, Kent, Ohio, stated that he was the previous owner. He owned the property in 1982 and it was used as a rooming house for three students.

PUBLIC COMMENTS

Tom Mahon, 54 Vine Street, Kent, Ohio, stated he was opposed to this variance for a number of reasons. He said he was the representative of the Historic Vine Street Group, who is against student rentals. He said they support the Bicentennial Plan and one of the points of this plan is the preservation of family neighborhoods. He said they have seen a large increase in student rentals in Kent neighborhoods since the houses on College Street are no longer there. He said they are not against rentals per se, but they would like to see more family rentals. They would like to see this property changed back to a single family residence.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Fink stated that in May 2007 this issue was brought before the City to determine whether or not this property should be grandfathered in as a pre-existing, non-conforming use. At that time, the application was denied. More recently, another owner chose not to appeal the decision by the Board of Zoning Appeals. The applicants tonight were not the owners then. It states in Gary Locke's letter from May 2007, there was no evidence to support the request for the issuance of a non-

conforming use certificate to the owner for this property. He said in the letter, Mr. Locke stated that if the property was being used for four unrelated people, it should have been licensed, which it was not.

Ms. Susel stated that staff checked with the Health Department and it has never been registered as a licensed rooming house. The letter from 2007 indicated that this request was for four unrelated persons. City records show this property as single family unit, with three bedrooms.

Mr. Mail asked the applicants if they knew the property was considered a single family residence.

Ms. Mileski replied they tried to rent to a single family, but no one was interested when they saw the property was surrounded by student rentals.

Mr. Tipton asked the applicants how many properties they owned when they purchased this one.

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Ms. Mileski replied they owned other properties and a lot of changes have occurred since they purchased the property. She said it is very close to the college.

Ms. Susel stated that no more than two unrelated people can rent under a single family classification.

Mr. Tipton asked if the Health Inspector had ever been called about this property on any issue or if it has five bedrooms.

Ms. Susel replied no, because it has never been inspected or registered with the Health Department. She said if a rooming house status was going to be considered, parameters, which would include parking and other variables, should be brought into the determination.

Mr. Fink stated it was important to determine what the continuous use has been since 1971 and whether there have been two consecutive years when it was not used that way. It has been in operation since 1971. The Board of Zoning Appeals has the discretion to determine if it has continually been a non-conforming use if the applicants have convinced them that this is the case. The City does not have that discretion. He said if there were more than two unrelated people occupying a house that property had to be licensed and it would be considered a non-conforming use.

Ms. Susel stated these applicants were asking for four unrelated people, while prior to that it was for three unrelated.

Mr. Mileski stated that there are five rooms that they have asked the Health Department to come through. They were told that as soon as they go through zoning the Health Department will come through and the Building Department will come to make sure the egress is right. He said they wanted to make sure everything is proper and if something needs to be done, they will take care of it.

Mr. Fink stated that whether or not there is property ingress/egress and that sort of thing is not before the Board. If the Board finds that there is a pre-existing, non-conforming use for say 20 people, they would still have the right to rent to those 20 people, but they have to find a way to do that in a way that it meets the current code.

Mr. Tipton said they would have to verify the non-conforming use from 1971. He said his recollection is that there were three unrelated people, so they only track three people going back to 1971 and felt that was a stretch because they have no verification. He asked the applicants if they would verify that there were three persons in this house every single year.

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Mr. Waliga stated that when he purchased the house, there were three people in the house and he continued to rent to three tenants, and this is going back to 1968, when he moved on the street. He discussed the other properties he owned and how many people lived in them.

Mr. Mail stated that if it can be verified that there were four people living in the house, then it could be said that it is a permanent non-conforming use.

Mr. Fink said the word permanent should not be used because they could change the use. He said it was the Board's responsibility to determine if a non-conforming use has been a factor based on evidence.

Mr. Sellman asked what the next step was for the owner if this variance request was not passed.

Mr. Fink replied if the variance does not pass, the owners could decide to use this home as a household unit which could be a single family, two unrelated people, a single family with an additional person or some sort of combination which would be a single household unit. If the Board was to grant the variance for a non-conforming use, it would still have to determine the appropriate number of bedrooms, the appropriate parking, and the code requirements.

Mr. Mileski stated he would like the Building Department to go through the house to determine if there is enough room for five. He said they would like to have five people in the house. He said they are asking the Board of Zoning Appeals to let this property comply with everything that is on the street.

Mr. Tipton and Mr. Burton felt that there was evidence for three people since 1971, but not for five people. The evidence does not support that there have been five people in the house.

Ms. Mileski stated that they cannot rent to a single family. She said they can fit five people in the house. She said there will still be issues if they only rent to three people. She added that she had provided a map showing the locations of rentals in the adjacent neighborhood. She said there are a lot of people calling them for rentals.

Mr. Mail stated that they could probably fit four people in the house. He asked the applicants how many students were there when they bought it.

Mr. Mileski replied there were students on every floor, so there were more than three.

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Mr. Burton stated that the evidence speaks against that because it could not be verified that there were four people. It shows that the house was rented to three people.

There was a continued discussion among the Board members on the evidence of three people, the number of bedrooms, that the property is surrounded by student rentals, and whether it is a single family home.

Ms. Mileski said that she did not understand why every house on the street can be something other than a single family house but theirs. She said families are not interested in living adjacent to student rentals. She said it has not been a single family home since Mr. Waliga owned it.

There were no other questions or comments, so Mr. Mail asked for a motion.

Motion: **Mr. Sellman moved in Case BZ16-017, Steve & Susan Mileski, property located at 516 South Lincoln Street, that the Board of Zoning Appeals approves the request to use the property as a non-conforming use for up to three unrelated people, as defined in Section 1109.09(a) in the City of Kent Zoning Code.**

Mr. Burton seconded the motion.

Vote: **The motion passed 3 – 1.**

Susan Mileski, 1461 River Edge Drive, Kent, Ohio, stated they purchased the property at the end of 2015. She said they have spent a lot of money on cosmetic renovations for this property. This house has been vacant. No records have been found prior to 1988. She requested a file from the Building Department to see when a building permit had been pulled for this change to create the two units. They were told there was no file but just before they purchased the property, the previous owner received a violation because there were two or more unrelated people living at the address. A letter was sent to them from the Building Department stating that a file did not exist for this property. All the paper work for this property is not at the Recorder's Office or at the Building Department. She said because the records were not available, they invited Robert Nitzsche, a City building inspector, to the property to show him that the materials used were from the 1960's. She said they wanted to provide evidence that the improvements had been made to the home and that they had not altered the structure of the home. She said the addition to the house was done some time in the 1960s. Mr. Nitzsche made suggestions to meet today's standards to use the house as a duplex. She said they would obtain a building permit to add an exit door to the living room on the first floor. They would also add an egress size window at the basement level. She said they would close the kitchen and the back half to create two completely separate units. She said all these modifications would just be taking a duplex from the 1960's up to today's standards. She said that this property is located in area of predominantly student rentals, so would they have a hard time finding a single family to live there. She said they are asking for two people to live in each unit and not asking to fill all the

bedrooms. She said they need to control the number in the people in the home and to keep each person accountable with a lease.

Mr. Burton asked how many utility meters were on the property.

Steve Mileski, 1461 River Edge Drive, Kent, Ohio replied that there is one water meter and one for the furnace. The rent includes utilities. The property does have two driveways, two doorbells, two mailboxes, and three separate entrances.

PUBLIC COMMENTS

Patrick Madonio, 228 Highland Avenue, Kent, Ohio, lives about five doors down from this property and has been for over 20 years. He said this property has been run as a boarding house for at least half of that time. He felt the new owners would take care of the property and would get the property cleaned up.

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George Smith was sworn in. He said he owned the property across at 227 / 229 Columbus Street, Kent, Ohio. He agreed with the comments that have been said. He said this would be a big improvement.

Joseph Seryak was sworn in. He said he lives at 239 Columbus, Kent, Ohio. He said there has been a noise issue in the past. He wants to see the property cleaned up.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Fink told the Board members that this was not a variance request, but rather approval of a non-conforming use.

Mr. Burton stated that the information they have does not have a clear record of ownership.

Mr. Sellman asked how far back they have to go to prove the number of occupants.

Mr. Fink replied that the same rules apply that were applied with proof of use back to 1971 for the other property.

Ms. Mileski stated that is why she went to the Recorder's Office to trace back. The information does not exist.

Mr. Sellman asked if the property was currently a duplex.

Ms. Mileski replied it was converted to a duplex in the 1960's but things have to be done to bring it up to current standards. He said it is easier to rent as a duplex. He said he wants to keep the property nice and wants to be proactive in that their rental properties will be inspected.

There were no other questions or comments, so Mr. Mail asked for a motion.

Motion: Mr. Sellman moved in Case BZ16-016, Steve & Susan Mileski, property located at 244 Columbus Street, that the Board of Zoning Appeals approves the appeal to use the property as a duplex as a legal pre-existing use, as defined in Section 1109.09(a) in the City of Kent Zoning Code.

Mr. Tipton seconded the motion.

Vote: The motion passed 3 – 1.

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VII. MEETING MINUTES

A. Minutes from the June 20, 2016 meeting

Motion: Mr. Burton moved to approve the minutes of June 20, 2016 as amended.

Mr. Tipton seconded the motion.

Vote: The motion passed 3 – 0. 1 abstention.

VIII. OTHER BUSINESS

Motion: Mr. Sellman moved to excuse the absence of Elizabeth Howard from the July 18, 2016 Board of Zoning Appeals meeting.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

IX. ADJOURNMENT

Motion: Mr. Sellman moved to adjourn.

Mr. Mail seconded the motion.

Vote: The motion passed 4 – 0.

Meeting adjourned at 10:52 p.m.