

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

MEMBERS PRESENT: **Dave Mail
Jona Burton
Paul Sellman
Elizabeth Howard
Benjamin Tipton, Arrived Late**

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

I. CALL TO ORDER

Ms. Howard called the meeting to order at 7:06 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Dave Mail, Paul Sellman, Jona Burton, and Elizabeth Howard were present. Benjamin Tipton arrived after Roll Call was taken.

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 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.

Board of Zoning Appeals

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. NEW BUSINESS

A.	BZ16-018a	Alden Kent Project, LLC 1456 East Summit Street
	Section:	1109.09(a)
	Request:	The applicant is requesting an appeal of the City’s determination of required parking spaces for the proposed multi-family residential project (Section 1109.09(a)).

Ms. Howard stated that because this was an appeal, a different procedure is followed than when a variance is being requested. She said any applicant may appeal any zoning decision made by a City official regarding interpretation of the City of Kent Zoning Code or the enforcement of a zoning decision to the Board of Zoning Appeals. In addition to Sections 1109.10 through 1109.12, the following procedures shall apply: 1) The Chair shall call the case and read the following statement: "This case is an appeal of a decision made by a City official pursuant to 1109.09(a) therefore legal standards are different than the preamble read at the beginning of this meeting applies. Members of the Board of Zoning Appeals act as judges in determining whether the City Official's decision should be affirmed or reversed. The decision of the Board of Zoning Appeals will be based upon the evidence and sworn testimony presented by the City, the applicant, and the public. The Board of Zoning Appeals members may also rely upon their own personal knowledge, experience and common sense. The burden of proof is on the applicant to show that by a preponderance of evidence, the decision reached by the City official is incorrect. The applicant must present to the Board of Zoning Appeals evidence that the decision failed to properly interpret any ordinance or that the applicant's property is in compliance with this ordinance. After the presentation of evidence, public comment and a discussion among the Board members, the Board of Zoning Appeals shall undertake motions and take a vote. Any party or individual considering an appeal of the decision of the Board of Zoning Appeals is advised to seek private legal counsel. She asked Mr. Fink if the appeal began with the disputed ordinance.

Mr. Fink replied the ordinance that is in dispute is the parking ordinance for the University District that Chapter 1147 would be a good place to start.

Ms. Howard stated that Section 1147.07, Parking and Loading Requirements, in the University District states as regulated in Section 1167.05(a)(2) Residential Multifamily - One space per bedroom. Section 1167.05(d)(2) Churches and Schools states one (1) space for each five seats in principal auditorium, based on maximum seating capacity. She said because the evidence used by the Board to make its judgement is different, she wanted to review for the Board and the applicant relevant and irrelevant testimony. Relevant testimony includes the City's proposed interpretation of the ordinance or ordinances in dispute, the applicant's proposed interpretation of the ordinance in dispute and how the applicant's property is or is not in compliance with the ordinance in dispute. Irrelevant testimony includes the impact the Board's decision will have on the applicant's property value, the price the applicant paid to purchase the property, the financial rate of return, the impact of the Board's decision will have on the profitability of the property, the applicant's ability to insure or finance the property, the potential financial gain or loss the City may have incurred as a result of the Board's decision, the applicant's character and depending upon the ordinance in dispute, how the neighbors would like to see the property developed. She asked Mr. Fink if he had any comments.

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Mr. Fink stated that the City of Kent has been asked to calculate the parking requirement for this application. He said the City came to its decision first by determining what kind of structure this was and the evidence had shown that the structure was a multi-family dwelling containing many individual dwelling units. Based on the zoning code, Chapter 1147, which discusses the University District that refers to Section 1167, it says that there should be one parking space per bedroom and also one parking space per each five seats in an auditorium. He said the City reviewed the number of bedrooms and calculated that 437 parking spaces are required for the project.

Ms. Howard asked the applicant to discuss the request.

Todd Hunt, 1301 East 9th Street, Suite 3500, Cleveland, Ohio, from Walter Haverfield Attorneys at Law, stated he was the attorney for Alden Kent Project, LLC and the Presbyterian Church of Kent. He distributed exhibits to the Board and to Mr. Fink. He said he attends this type of meeting as law director in other communities every month, so he is familiar in how to read an ordinance. He said The City determined that 437 parking spaces are needed, but they are providing 374 parking spaces, which is actually more than what is required. They are appealing the City's interpretation of the code. He said they are seeking a variance of the 63 spaces. He said they meet and actually exceeds the parking standard in the code. He said they are providing 0.83 parking spaces per bed as shown on the site plan, while 0.8 spaces per bed would be enough. He introduced Mr. Olbrys to respond to his questions and give further information.

Greg Olbrys, 1166 Avenue of Americas, New York City, New York, stated he was a student housing investor. He said he is manager of that entity, as well as the principal of Alden Kent Project, LLC. He has been investing in student housing for about 5 ½ years. He said he has been involved in commercial real estate and is a general real estate investor. He said they have been involved in the project for a while.

Ms. Howard told Mr. Hunt that his witness has been verified, but the history of the project is not part of the evidence. She said they are disputing the ordinance and asked the applicant to present the appeal.

Mr. Hunt stated Exhibit 1 is a copy of the site plan that was submitted with the City of Kent. He said they designed a site plan very similar to the site plan designed by the church in 2010. He said they positioned the building on the western side of the property so it would not interfere the viewing of the church from the street. He said there were some restraints and there were some requirements that the church wanted them to fulfill. He said they designed a very similar site plan.

Ms. Howard interjected to tell the applicants they should move on to the issue of the ordinance that they disagree on. The history of the project is not something that they as a Board can use as a part of its deliberations.

Mr. Hunt stated that in the fall of 2015, they had discussions with the City of Kent on how they should look at the issue of parking on the site. They were told that any units that had three or more occupants could carry a 0.8 designation, while any units that had two or fewer would carry a 1 space per bedroom designation. He said there are 1, 2, 3 and 4 bedroom units for a total of 384 beds. He said all the units have a common area space that includes a kitchen area and the bedrooms are positioned off the common area space. Each bedroom is leased individually and carries its own lease. Each bedroom door is locked by its occupant. The occupants do not necessarily know each other.

Mr. Hunt asked Mr. Olbrys how he arrived at the number of parking spaces.

Mr. Olbrys replied they applied a one to one parking ratio for the 56 one and two bedroom units and 0.8 parking ratio for the three and four bedroom units.

Mr. Hunt asked Mr. Olbrys if he calculated the parking spaces based on the information he received from the Community Development Department.

Mr. Olbrys replied yes.

Mr. Hunt asked what is the overall parking ratio for the project.

Mr. Olbrys replied it is a 0.83 parking ratio.

Mr. Hunt asked if that was per bed.

Mr. Olbrys replied yes.

Mr. Hunt asked how many beds were approved in the first approval.

Mr. Olbrys replied there were 375 beds approved under the original approval.

Mr. Hunt asked how many parking spaces were required at that time.

Mr. Olbrys replied he believed that it was 250 parking spaces.

Ms. Howard said that Mr. Olbrys “believed” and asked how anyone knew that information.

Mr. Hunt replied it was from a staff report in 2010. He asked Mr. Olbrys if they had looked at parking ratios for student housing across the country.

Mr. Olbrys replied no. He said they know other parking ratios because they have been in other markets and know specifically how markets with student housing designations treat parking ratios. He referred to an exhibit put together by one of their partners that shows various parking ratios at various projects.

Mr. Mail stated that this information was not germane to the request. He wanted the applicant to address what he was supposed to.

Ms. Howard stated that parking ratio at another university in another city is irrelevant to the City of Kent. She asked the applicants to continue.

Mr. Hunt stated that the spread sheet showed that projects close to campus require less than a one to one parking ratio for parking spaces. He said in their experience, they find the reason people want to invest in student housing close to campus is so that students can walk. He said the current project to the edge of campus is less than a tenth of a mile. Everything on the list he was referring to is a tenth or greater.

Mr. Sellman stated even though students walk to the university, they could still have cars that they left somewhere else which could be at the off campus site.

Mr. Olbrys stated that students do have cars and they have found that not all parking spaces will be filled up in certain markets. He said the average parking ratio is 0.46 in student housing developments on the exhibit he was referring to, while the ratio for this project is 0.83, which exceeds the requirement.

Mr. Hunt presented Exhibit 2 which discussed the chapters of the zoning code. Chapter 1147 which refers to the University District and the district where the project is located. He said that residential uses are permitted. Section 1147.07 refers to Section 1167.05 that discusses parking. He said that the project is not a multi-family project, but is a student housing project. He said it does not meet the multi-family definition. Multi-family is defined as individuals who are related by marriage, legally recognized union, adoption, or within 3 degrees of blood relation. He said this definition in Chapter 1167 cannot be applied to them. He then referred to Exhibit 3, which was 1167.05(e), that he felt applied to this project and states: Where the off-street parking requirement for a use is not specifically defined in this Chapter, the parking facilities for such use shall be developed so as to be sufficient to meet all the parking needs of the proposed use. He said the project is a student housing project. Exhibit 5 covered definitions and he said there are definitions for rooming houses and boarding houses and said they can house from 3 to 15

unrelated people. He referred to an email, (Exhibit 7), from Jennifer Barone, Development Engineer in the Community Development Department for the City of Kent. Ms. Barone discussed what was permitted in the University District in respect to residential units but no particular type was specified. He also referred to an email (Exhibit 7), from Heather Phile, Development Planner for the City of Kent in which she told him that if there were more than two or more unrelated persons, then the rooming/boarding house 0.8 parking spaces per bed can be used. He said that they used the 0.8 ratio to the three and four bedroom units and they applied the one to one ratio for the one- and two-bedroom units to come up with the number of parking spaces for the entire plan. He said they will be going before the Planning Commission for site plan approval. Exhibit 8 showed other projects and their parking requirements in the City of Kent that were approved by the Planning Commission. He discussed projects that have been approved and what their parking requirements are. Exhibit 10 discussed downtown projects and their parking requirements, specifically the 345 Flats project. Exhibit 11 is the actual Staff Report for the 2010 Presbyterian Church project, with 375 beds. He presented and discussed the 0.67 parking ratio, as shown in Exhibit 17.

Mr. Hunt discussed Exhibit 14. He said they had done their own market study for housing. He discussed the meetings he attended with the City's staff on November 23, 2015 and then again in the spring of 2016. At the later meeting, the issue was raised that Kent City Council has looked at changing the code and updating the rooming house code language. He said they would like to get the project started and felt that they were providing more than adequate parking for the parking.

Ms. Howard stated that when she thought of the term "student housing", she thought of on campus student housing. She said property owners cannot discriminate against non-students or students from living in a unit. She said personally she was confused with the term "student" housing and it was not in the code.

Mr. Hunt stated they would be happy with a rooming house designation.

Ms. Howard clarified that the heart of their argument is that this structure is not a multi-family dwelling and therefore the multi-family dwelling parking requirement is inappropriate. She said what the applicant is proposing is a rooming house designation and that is the parking requirement that should be applied. She said the applicant is applying the multi-family parking requirement for the one- and two-bedroom units and applying the rooming house parking requirement for the three- and four-bedroom units.

Mr. Tipton asked what the Triad organization was.

Mr. Olbrys replied it is a brokerage firm.

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Mr. Tipton stated that their study did not match the Kent housing study. He asked the applicant if they had reviewed the Kent housing study.

Mr. Olbrys replied they did their own study.

Mr. Fink stated that the City determined that this structure was a multi-family dwelling containing many individual dwelling units. Based on the zoning code, Chapter 1147, which discusses the University District that refers to Section 1167, which says that there should be one parking space per bedroom and also one parking space per each five seats in an auditorium. He said the City reviewed the number of bedrooms and calculated that 437 parking spaces are required for the project. He reviewed the definitions of a multi-family unit. He then reviewed other projects that were brought up by Mr. Hunt. He said City of Kent conducted a housing study while the applicants did their own study.

Ms. Susel said the U District in the city's code, allows a project of that size and can be treated as a permitted use. It would be considered a conditionally permitted use in all other zoning districts. Large projects have different variables and this project should be considered a conditionally permitted use. She referred to the housing study done and it was found that over 2100 beds were added in in a three year period.

Mr. Fink then reviewed other projects that were not brought up by Mr. Hunt. He referred to Ms. Barone's and Ms. Phile's email.

Mr. Hunt objected to the reference of the meeting with Ms. Barone because she was not at the meeting to defend herself.

Mr. Fink summarized and concluded that the applicant should be held to the 1 to 1 ratio for multi-family dwellings.

Mr. Tipton said Mr. Fink had referenced 345 Flats, which is in the C-D District and asked if there were other spaces designated for that development in the parking deck.

Ms. Susel replied they had contracted for thirty spaces in the parking deck.

Mr. Hunt felt the other projects discussed and their parking requirements were relevant to the applicant's appeal. He said using "beds" is a better standard to use rather "bedrooms".

Ms. Howard stated that the distance from campus is less relevant because the implication is that students would then be driving to campus the further away they live. She asked

where are going to park on campus. The distance from campus is not walkable. She felt that the reason students had cars was to drive for other reasons than for getting to campus.

Mr. Olbrys stated the students are accessing amenities.

Mr. Sellman stated the students are still going to have a car even if they walk everywhere.

Ms. Howard asked where the shared parking spaces for the Presbyterian Church were located.

Jonathon Burkhardt, 28 North Cherry Street, Germantown, Ohio, stated he was from Burkhardt Engineering. He referred to the site plan and showed the locations of the reserved parking spaces.

Mr. Mail asked if the church would grow and increase in membership.

Reverend Meadows, 1456 East Summit Street, Kent, Ohio stated he was the pastor for the church and has been for the past 12 years. He said there are 131 members. He said there will be colored spaces on the lot that will be for the church's use.

Mr. Hunt stated residents will have tags for their parking space. He said they will police the parking lot.

Reverend Meadows stated he has reviewed the housing study and said the vacancy rate of the apartment complexes is not right.

Mr. Hunt said this complex should not be designated as a multi-family dwelling because it is a student housing project. He said the applicant was providing adequate parking spaces. He was removing Exhibit 16 from the packet submitted because it was intended more for variances.

PUBLIC COMMENTS

Ms. Howard asked for public comments.

Mr. Hunt objected to public comment, because he felt it was inappropriate and unnecessary.

Mr. Fink stated that the City's code does not specify whether or not public comments is required for this type of case however he did know that public comment is required on

hearings before the Board of Zoning Appeals. Based on that, he allowed public comment.

No public comment.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton reviewed the housing study from the City of Kent. He said one of the things that the study seemed to indicate that over time is that the increase in enrollment at the universities will taper off and likely reverse so when the current saturation of the market is taken into consideration, it is a point in time, not a prediction. The study does indicate reduced enrollment. In regards to the walkability of the site, there is no grocery store near the project, so a bus would have to be taken to get to one. He said marking spots does not always work and people who do not live there might use them.

Mr. Mail agreed with Mr. Burton's comments. He referred to the email, Exhibit 7, from Ms. Barone and Ms. Phile and stated that both seemed to be subjective.

Ms. Howard referred to the email from December 15, 2015 and stated that if the project asked for rooming/boarding house status, the parking is 0.8 spaces. If the units had more than two unrelated persons, the 0.8 spaces per bed could be used. If the units were for two persons or less, then it would not be considered rooming/board units and would be subject to the one space per bed requirement.

Mr. Mail discussed guest parking and said if the 0.8 ratio was used, there would be no room for guest parking.

Mr. Fink stated that the code speaks for itself no matter what is said by someone.

Mr. Sellman stated that the question was whether the project is a rooming house or a multi-family dwelling. He said everyone in that building is going to have a car. He felt the one to one ratio would be better. He said schools are losing students.

Mr. Tipton asked what the procedure was.

Ms. Howard replied that the Board's discussion would continue until a board member makes a motion either affirming the City's interpretation or reversing the City's interpretation.

Mr. Tipton appreciated the comments from the applicant, as well as the City staff. He asked if the letter from the City to the applicant enclosed in the packet is read into the minutes.

Mr. Fink replied it was not read into the minutes, but it is an exhibit and is part of public records.

Mr. Tipton asked why this project could not be smaller so the one space per bedroom could be used. He asked if the university had been approached regarding overflow parking.

Mr. Fink stated that both of these issues were not relevant to the appeal, but more so if variances were being requested.

Ms. Howard stated that the basic question is the interpretation of a couple of ordinances. The first part is whether this project falls under Section 1167.05(b)(2), multi-family, or whether it falls under Section 1167.05(d)(1), an unspecified use. The Board has to determine if the one to one ratio or 0.8 is appropriate for the required parking spaces.

Mr. Fink stated that the City's stance is that 1167.05(a)(2), Multi-family, definition is the one that should apply. He said if the Board finds this incorrect, Section 1167.05(d)(1) would get the same results.

Mr. Hunt stated that they felt this project was a rooming house and not a multi-family dwelling.

Ms. Howard stated that one and two bedroom units do not meet the rooming house criteria while three and four bedroom units do meet the rooming house criteria.

Mr. Burton felt the multi-family designation would apply.

A discussion was held among the Board members on the definitions of multi-family unit, rooming house unit, and boarding house unit. A multi-family is defined as: "a building consisting of three or more dwelling units, including condominiums, with varying arrangements of entrances and parting walls. Individual kitchen, dining, and restroom/bathing facilities shall be provided in each separate dwelling unit. Multi-family housing may include public housing and industrialized units. Each dwelling unit may only house one family." The multi-family structure has a one to one ratio while everything else does not.

Ms. Howard said a dwelling unit housing 3 to 15 unrelated persons, including the owners of the dwelling unit, who utilizes this dwelling unit as their primary residence is a boarding house/rooming house. She said the three and four bedroom units can be designated as a rooming/boarding house. She said the code does not say anything about whether a structure is allowed to have more than one designation. She said the Board had to determine what interpretation they should consider as to what the designation of the structure should be.

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

Mr. Fink stated that each case stands on its own and precedence would not be set by the Board's decision on this case, however, other projects can be considered when the Board forms its opinion.

Motion: **Mr. Sellman moved in Case BZ16-018a, Alden Kent Project, LLC, project located at 1456 East Summit Street, that the Board of Zoning Appeals reverses the City's determination of required parking spaces for the proposed residential, as defined in Section 1109.09(a) in the City of Kent Zoning Code.**

Mr. Mail seconded the motion.

Vote: **The motion passed 4 – 1.**

**B. BZ16-018b Alden Kent Project, LLC
 1456 East Summit Street**

Section: 1109.09(a)

Request: The applicant is requesting a 63 parking space variance from the 437 total number of on-site parking spaces that are required to allow a total of 374 parking spaces for the proposed multi-family residential project and existing church at 1456 Summit Street (Section 1167.05)).

The applicant withdrew this application.

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Motion: **Mr. Mail moved to take a short recess.**

Mr. Sellman seconded the motion.

Vote: The motion passed 5 – 0.

The meeting reconvened.

**C. BZ16-019 Scott Flynn/Sheryl Carpenter
217 Orchard & 209 – 211 Standing Rock Avenue**

**Sections: 1133.03(a)(3), 1133.04(c), 1133.03(b)(3),
1133.03(a)(2) and 1133.03(c)**

Requests: The applicant is requesting the following:

- 1) A 15,376.3 square foot variance from the 28,00 square foot minimum lot size to allow a new lot (217 Orchard) to be created for a multi-family structure to have a lot size of 12,623.7 square feet (Section 1133.03(a)(3)),**
- 2) An 8-foot variance from the 10-foot minimum side yard setback to allow the building at 217 Orchard to be 2 feet from the new side property line (Section 1133.04(c)),**
- 3) An 11.65-foot variance from the 100-foot minimum lot width at the building line to allow a new lot (217 Orchard) to be 88.35 feet wide at the building line (Section 1133.03(b)(3)).**
- 4) A 3,270.6 square foot variance from the 12,000 square foot minimum lot size to allow a new lot (209-211 Standing Rock) to be created for a two-family structure to have a lot size of 8729.4 square feet (Section 1133.03(a)(2)), and**
- 5) A 27.42-foot variance from the 50-foot minimum lot frontage to allow a new lot (209 – 211 Standing Rock) to have 22.58 feet of**

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

Scott Flynn, 250 South Water Street, Kent, Ohio, stated he was the attorney for the applicant. He said there are currently two dwellings on one lot. He said there is a 5 unit dwelling at 217 Orchard Street and a two family dwelling at 209-211 Standing Rock Avenue. He said they were asking for five variances at this meeting so that the parcel can be split into two lots, with one building on each lot. He said the two dwellings have been operating for a number of years. He said the buildings and other factors of the lots will stay the same. He said the practical difficulty is that the houses cannot be sold separately. He said the exceptional or extraordinary circumstances are that the corner lot property is irregularly shaped and less than ½ acre and is impossible to split the lot without any variances. He said it would not be a detriment to the public interest or adjacent properties.

Mr. Tipton stated the Board of Zoning Appeals always likes to reduce the number and size of variances and asked if the split could be done another way.

Mr. Flynn replied there is no other way to split the lot and they will need variances to do so.

PUBLIC COMMENTS

Laura Jarvis, 205 Standing Rock Avenue, Kent, Ohio, objected to building on the lots.

Mr. Mail stated that the structures already exist. Nothing will be built. The applicant wants to split the lot into two properties. Nothing will be altered.

Ms. Howard showed Ms. Jarvis the site plan to show how the lots would be separated. In the future the owner could sell one and not the other or get financing for one and not the other. The point is that there are two completely different buildings that are on the same lot and the owner wants a separate lot for each building. Ms. Howard explained the requested variances to Ms. Jarvis.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that it is an odd-shaped lot and that each lot would be very small. It does make sense to turn it into two properties.

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Mr. Burton stated that it makes sense to split the lot into two different ones.

Mr. Mail saw the logic in splitting the lot into two different properties.

Mr. Tipton stated that practical difficulties and exceptional or extraordinary circumstances are well spelled out. He felt the criteria that the Board of Zoning Appeals has to consider have been met.

Ms. Howard stated none of the neighbors have objected to the variance requests.

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

Motion: Mr. Mail moved in Case BZ16-019, Scott Flynn/Sheryl Carpenter, property located at 217 Orchard and 209 - 211 Standing Rock Avenue, that the Board of Zoning Appeals approves the 15,376.3 square foot variance from the 28,000 square foot minimum lot size to allow a new lot for 217 Orchard to be created for a multi-family structure to have a lot size of 12,623.7 square feet, as defined in Section 1133.03(a)(3) in the City of Kent Zoning Code.

Mr. Tipton seconded the motion.

Vote: The motion passed 5 – 0.

Motion: Mr. Mail moved in Case BZ16-019, Scott Flynn/Sheryl Carpenter, property located at 217 Orchard and 209 – 211 Standing Rock Avenue, that the Board of Zoning Appeals approves an 8-foot variance from the 10-foot minimum side yard setback to allow the building at 217 Orchard to be 2 feet from the new side property line, as defined in Section 1133.04(c) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion passed 5 – 0.

Motion: Mr. Mail moved in Case BZ16-019, Scott Flynn/Sheryl Carpenter, property located at 217 Orchard and 209 – 211 Standing Rock Avenue, that the Board of Zoning Appeals

approves an 11.65-foot variance from the 100-foot minimum lot width at the building line to allow a new lot at 217 Orchard to be 88.35 feet wide at the building line, as defined in Section 1133.03(b)(3) in the City of Kent Zoning Code.

Mr. Burton seconded the motion.

Vote: The motion passed 5 – 0.

Motion: Mr. Burton moved in Case BZ16-019, Scott Flynn/Sheryl Carpenter, property located at 217 Orchard and 209 – 211 Standing Rock Avenue, that the Board of Zoning Appeals approves a 3270.6 square foot variance from the 12,000 square minimum lot size to allow a new lot at 209 – 211 Standing Rock Avenue to be created for a two-family structure to have a lot size of 8729.4 square feet, as defined in Section 1133.03(a)(2) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

Vote: The motion passed 5 – 0.

Motion: Mr. Burton moved in Case BZ16-019, Scott Flynn/Sheryl Carpenter, property located at 217 Orchard and 209 – 211 Standing Rock Avenue, that the Board of Zoning Appeals approves a 27.42-foot variance from the 50-foot minimum frontage to allow a new lot for 209 – 211 Standing Rock to have 22.58 feet of frontage on Orchard Street, as defined in Section 1133.03(c) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

Vote: The motion passed 5 – 0.

**D. BZ16-020 Andrew Lanier
 141 Crain Avenue**

Section: 1161.27(a)

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**Request: The applicant is requesting a variance from
 Section 1161.27(a) to construct a turnaround off
 of the driveway.**

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

Andrew Lanier, 141 East Crain Street, Kent, Ohio, stated he wanted to construct a turnaround off of the driveway to make it easier exiting onto Crain Avenue. It will match the existing driveway.

Mr. Burton asked the applicant to show him where the turnaround would be.

Ms. Howard stated that the code requires that a driveway must be the same width from the street to the end of the driveway.

Mr. Burton asked where the garage was located.

Mr. Lanier replied there was no garage.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated it was a safety issue.

Ms. Howard stated the drive was close to two major intersections. She said Crain is still a well-travelled road. It would not be a detriment to adjacent properties.

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

Motion: **Mr. Mail moved in Case BZ16-020, Andrew Lanier, property located at 141 Crain Avenue, that the Board of Zoning Appeals approves the applicant's request for a variance to construct a turnaround off of the driveway as defined in Section 1161.27(a) in the City of Kent Zoning Code.**

Mr. Sellman seconded the motion.

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Vote: **The motion passed 4 – 1.**

**E. BZ16-021 Joel & Shannon Caracciolo
 324 North Mantua Street**

Section: 1122.05(a)

Request: The applicant is requesting a 3248.2 square foot variance from the 10,000 square foot minimum lot size to allow a single family home to be converted to a rooming house with a lot size of 6751.8 square feet (Section 1122.05(a)).

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

Shannon Caracciolo, 324 North Mantua, Kent, Ohio, stated that their intention is to use the property as a boarding house for up to three individuals. She said they are seeking a variance on the lot size.

Ms. Howard asked the applicant to address the criteria that the Board of Zoning Appeals has to consider when granting a variance. She asked the applicant to address the practical difficulties or unnecessary hardship.

Ms. Caracciolo stated practical difficulty was requiring 10,000 square feet and the lot was not that size.

Ms. Howard stated that is not a practical difficulty. That just means the lot is not big enough.

Ms. Caracciolo replied they didn't have anywhere else to go and because of that she did not need the extra parking.

Ms. Howard asked if there were exceptional circumstances that apply to this property.

Ms. Caracciolo replied no.

Ms. Howard asked if granting the variance would be of substantial detriment to the public interest or adjacent properties and will not materially impair of the zoning ordinance.

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Ms. Caracciolo replied the number of tenants is three. She said they were already smaller than a traditional family. The house is technically four bedrooms. The extra bedroom is not going to be used as because it was too small.

There were no other comments or questions.

PUBLIC COMMENTS

Paulette Kordinak, 513 Rockwell, Kent, Ohio, stated she was a real estate agent. She was against approval of the variance. She said the house is located in an historic district.

Joyce Harris, 441 Earl Avenue, Kent, Ohio, stated she moved from High Street to get away from students. She would like to keep the historic feel in the neighborhood and would like to see the house remain as a single unit.

Beth Goldthwaite, 530 Park Avenue, Kent, Ohio, stated she does not like that there are rentals. She likes the idea that single family homes are coming back. She was concerned about property values.

George Keifer, 429 Earl Avenue, Kent, Ohio, stated this is a unique house in an historic district. He would like the property to stay as a single family structure. He was worried about property values.

Lori Coyle, 428 Earl Avenue, Kent, Ohio, stated she was worried about her quality of life. She did not like the idea of more student rentals in the neighborhood.

James Geisey, 422 Earl Avenue, Kent, Ohio, stated he was not in favor of the variance.

Garret Ferrara, 535 Pioneer Avenue, Kent, Ohio, stated he was a City of Kent councilman. He said he appreciated that the owners were fixing up the house. He said he has been getting calls and emails against the variance request. He did not think the criteria had been met that is needed to approve the variance. He wanted the neighborhood to be preserved.

Ms. Howard read two letters into the record the Board had received regarding this application; one from Charles J. Chilton and the other from Stacy Sheehan. Both had been at the meeting, but could not stay.

She read first the letter from Charles Chilton and then the one from Stacey Sheehan.

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To City Officials,

I have lived on Earl Avenue for nearly 27 years. One of the realities is how close the house and driveway at 324 North Mantua Street is to the properties around them thus my concern about approving a variance to allow the property to become a rooming house.

The narrow gravel driveway at 324 North Mantua sits less than 3 feet from the property line and when cars pull in and out, the dust kicks up can visibly be seen coming through our screens when the windows are open. With multiple cars, this situation will very likely worsen.

Another question is how many cars can be parked in this narrow driveway at one time and how inconvenient is it going to be trying to move cars when one of the other tenants needs to get out. The parking on the streets in our neighborhood takes up most if not all of the available spaces and will worsen if some of the rooming house tenants choose to also park on Earl Avenue.

I feel that more research should be done with regard to allowing this variance and appreciate your consideration of this matter.

Thank you,
Charles J. Chilton
407 Earl Avenue
Kent, Ohio

Letter from Stacey Sheehan:

The family that owns the house is a wonderful family. If I could see into the future to know that it would their family there forever, I would be more comfortable with the house being zoned as a rooming house.

My other concern is the installation of the additional parking behind the garage which unfortunately would be 7 feet from my bedroom window with vehicles driving toward my window to get in. The owners stated they would mitigate any issues this would cause, but I don't believe that will be reasonable.

Although I am the type of person that would sacrifice my own sanity and reduced home value, I am not the only resident that would be affected and I believe for the greater good of my neighborhood, I would be a fool not to advocate family dwelling over rentals.

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413 Earl Avenue
Kent, Ohio

Ms. Caracciolo stated that they were currently zoned as high occupancy.

Ms. Howard asked the applicant if they believed that at the time of purchase that the home itself was zoned to be a rooming house.

Ms. Caracciolo stated that the house is in the right zoning district to ask for a rooming house designation.

Ms. Howard stated they could ask for that designation, but the house is currently a single family structure. She said the applicants are permitted to ask for this variance.

Ms. Caracciolo replied that the attitude about having tenants stems from the previous owners and that the house was vacant for the past year.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Fink stated that the Board of Zoning Appeals has to consider particular criteria when ruling on a variance request. The criteria include practical difficulties, hardship, extraordinary circumstances and whether approval would be harmful to the public. He referred to the case of Duncan v. Middlefield, of the Ohio Supreme Court which reflects on this project and in that case the court had to determine whether the variance was substantial, whether the central character of the neighborhood would be substantially altered, whether adjacent properties would suffer detriment as a result of the variance, whether government services would be affected, whether the owner purchased the property with the knowledge of the zoning restriction, and whether the property owner's predicament can be solved with some method other than with a variance.

Mr. Mail stated it was an area of single family home is an historic area. He understood the objections.

Mr. Sellman stated he stood behind the code. He said this was a small lot. The house was purchased knowing it was single family. It is in the R-4 zone, which does conditionally permit rooming houses but parameters had to be met. He did not see any hardship. He also thought it might be a detriment to the neighborhood.

Mr. Burton asked what the criteria for unrelated people.

Ms. Phile replied there cannot be more than two unrelated people.

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Mr. Burton stated he did not see that the criteria had been met.

Mr. Tipton appreciated that the applicants had cleaned up the property. He did not see the hardships and it did not meet the three criteria. He also appreciated hearing the comments from the neighbors.

Ms. Howard stated that the code states that only two unrelated people can live in a house, but she felt that three would be more reasonable. She said the number of people determines whether a unit is a rooming/boarding house. She personally felt the strict application of the zoning code and practical difficulty is ridiculous. Personally, she felt

there were assumptions that the renters would be 18 year old party animals and she felt those were dangerous assumptions, because that is not who always rents properties. She said the other members of the Board did not find any clear state of practical difficulties or unnecessary hardships. The applicant purchased the property knowing that it was not a rooming house and that a variance could be asked for in this zoning district because it is conditionally allowed. She said the applicant is asking for a variance for the size of the lot. She personally did not feel that it was an unreasonable request. The other members do not see any exceptional extraordinary circumstances that do not apply to other properties in the area. Nine neighbors have made their objections known tonight, either verbally or by letter, and others have called Mr. Ferrara to voice their objection.

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

The application died for lack of a motion. This means that the variance request is denied.

VII. OTHER BUSINESS

Ms. Susel stated that at a future meeting, we will be discussing policies and procedures.

IX. ADJOURNMENT

Motion: Mr. Sellman moved to adjourn.

Mr. Mail seconded the motion.

Vote: The motion passed 5 – 0.

Meeting adjourned at 10:57 p.m.