

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
April 17, 2017**

MEMBERS PRESENT:

**Elizabeth Howard
Paul Sellman
Jona Burton
Benjamin Tipton
Dave Mail**

STAFF PRESENT:

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

I. CALL TO ORDER

Ms. Howard called the meeting to order at 7:02 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

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

Ms. Howard told that audience that that the applicant requesting a variance in Case BZ17-004, Neighborhood Development Services, Inc. has withdrawn the variance request for the property located at 228 East Summit.

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

Board of Zoning Appeals

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."

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. BZ17-002 DS Architects
 315 Gougler Avenue**

Section: 1169.12

**Board of Zoning Appeals
April 17, 2017**

Request: **The applicant is requesting a substitution of a non-conforming use from a manufacturing facility to a multi-use structure containing a non-conforming use (a water bottling facility) and permitted uses (professional office and a single family dwelling).**

Ms. Howard asked the applicant to present the request.

Eric Pros, 136 North Water Street, Kent, Ohio, stated their application has been submitted for a nonconforming use. He said they have done research and have found that the industrial use of the building dates back to its foundation but the zoning has changed since the building was erected. He said they are looking at continuing the industrial use.

Ms. Howard asked Mr. Fink what specific things the Board members should take into consideration for nonconforming uses.

Mr. Fink replied that the board members have to consider Section 1169.12, Substitution of Uses which states: The Board of Zoning Appeals may allow a nonconforming use to be legally replaced by another nonconforming use under the following circumstances:

(1) That the new use is similar in character to the previous nonconforming use by virtue of the fact that it is equally appropriate or more appropriate to the type of zoning district in which it is located.

(2) That the new use will not be any more intrusive to the neighborhood than the previous nonconforming use. He said that the Board must establish that and that the use is a less intrusive version of the use that previously existed.

Ms. Howard confirmed that the Board was just addressing the bottling plant.

Mr. Fink replied yes.

Mr. Pros stated that this location was a textile factory in 1928 and there has been a number of companies through the years including military materials during World War II, car restoration and the production of creepers and roller seats. It was recently purchased by Bob Cene to use the building for a mixed use, which will include aluminum water bottling operation, an architecture firm, and a single family apartment.

Mr. Tipton asked if the existing docks will continue to be used as loading docks.

Mr. Pros replied that only two will be used.

Mr. Sellman asked how much traffic and deliveries there would be per week.

Bob Cene, 3770 Starr Center Drive, Canfield, Ohio stated he was one of the owners of the building. He said there will not be heavy traffic in and out of there.

Mr. Burton asked if the type of machinery will create potential noise that will be heard by the adjacent property owners.

Mr. Cene described the process for the procedure and stated that there will be minimum noise and less than it was previously.

Mr. Mail stated there seemed to be a lot of parking spaces. He asked how many employees there will be.

Mr. Cene replied that there will be 15 – 20 employees for the bottling business and the architect's office.

Mr. Mail stated that there are about 50 parking spaces across the road.

Mr. Cene stated that the parking spaces across the road are for the architect's office.

Ms. Susel interjected to say that it also allows for public parking for access to the walking trail.

Mr. Cene stated there will be signage for the bottling business and the architect's business.

Ms. Howard stated that there does seem to be a concern that it has been two years since the automotive facility closed. She stated that property has been an industrial facility since 1928. It has to be proven that this new business will be of equal to or less intrusive than the previous one.

Mr. Cene stated that the oils and hydraulic fuel from previous use will be removed and they will be cleaning up hazardous wastes. This new business will be much less intrusive to the building and the neighborhood.

There were no other comments or questions, so Ms. Howard opened up Public Comments.

PUBLIC COMMENTS

Mary Junk, 341 North Mantua Street, Kent, Ohio, stated she was right across the street from the proposed business. She asked if the operation was going to be 24/7 because

right now during construction, they are not very good neighbors. She said they work on Saturdays and start at 5:00 a.m. There are trucks there all day long and constantly backing up. She asked if this would stop once the bottling plant is in. She said besides delivery trucks there will also be supply trucks. She said the lights from this property shine directly in the townhouses across the street from the site. She said she cannot see that they will be better neighbors once construction is completed.

Ms. Howard confirmed that Ms. Junk was specifically asking about the noise and the lights, if it will be operational 24/7 and what the hours of operation will be.

Mr. Fink stated that the light issue will be resolved at the site plan review.

Mr. Cene stated that it was absolutely their intent to be a good neighbor. He said unfortunately the noise during construction is a part of that project. He asked for the neighbors' patience. He said eventually the operation will be 24/7 but most of the deliveries will happen during the daylight hours. He said they will install landscaping.

Kirk MacLean, 307 North Mantua Street, Kent, Ohio, asked where the bottles will be stored. He was concerned about it being noisy from the bottles and the aluminum. He was curious what size the bottle was.

Mr. Cene replied the aluminum will be stored inside and there will be no noise. He said the bottle will be about the same size as individual water bottles. The aluminum will be stored on cardboard cases inside and do not clang together.

There were no other questions or comments.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that the building has been industrial for as long as he can remember. He felt the use would be far less intrusive than previous uses. He said the restoration of the building is awesome and the owner is restoring a very nice landmark.

Mr. Tipton stated the applicant has addressed the issue as to whether the intended use is less intrusive or equal to previous uses. He said the process will be self-contained and that there will be less noise from this business.

Mr. Burton agreed with the comments that have been made. He said the delivery truck times were reasonable. He felt the criteria had been met.

Mr. Tipton stated that the history of the past uses was very thorough.

Ms. Howard asked if most of the traffic would be coming in and out during the day and if so, were the trucks coming in and out at night delivery trucks.

Mr. Cene replied that most deliveries will primarily be made between 7:30 a.m. and 3:30 pm. He said no overnight deliveries are anticipated.

Ms. Howard confirmed that there would not usually be night time deliveries.

Mr. Mail asked about the sterilization process.

Mr. Cene replied that this system is self-contained. It is environmentally controlled and the bottles come clean but then there is a final cleaning process, which is done by an air process.

Ms. Howard stated her concerns were the level of external noise and the traffic.

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

Motion: **Mr. Sellman moved in Case BZ17-002, DS Architects, property located at 315 Gougler Avenue, that the Board of Zoning Appeals approves a substitution of a nonconforming use from a manufacturing facility to a multi-use structure containing a nonconforming use (a water bottling facility) and permitted uses (professional office and a single family dwelling), as defined in Section 1169.12 in the City of Kent Zoning Code.**

Mr. Mail seconded the motion.

Vote: **The motion carried 5 – 0.**

<i>Mr. Burton</i>	<i>Aye</i>
<i>Mr. Mail</i>	<i>Aye</i>
<i>Mr. Tipton</i>	<i>Aye</i>
<i>Mr. Sellman</i>	<i>Aye</i>
<i>Ms. Howard</i>	<i>Aye</i>

**B. BZ17-003 Ron Goodspeed
 133 North Lincoln Street**

Sections: 1169.12 and 1167.09(c)

Board of Zoning Appeals

April 17, 2017

Page 7

Requests: The applicant is requesting the following:

- 1) A substitution of a nonconforming use from 3 unrelated residents to 4 unrelated residents (Section 1169.12), and
- 2) A 2-foot variance from the 24-foot minimum aisle width to allow an aisle of 22 feet (Section 1167.09).

Ms. Howard stated that there were two different requests; one is for a nonconforming use which is like the previous request and the second for a 2-foot variance from the 24-foot minimum aisle width, which takes the Board back to the three criteria they have to consider. She asked applicant to present the request.

Ron Goodspeed, 7689 Hudson Road, Kent, Ohio, stated the nonconforming use is currently three unrelated people living at 133 North Lincoln Street. He said he would like to make it four unrelated people living there. He plans to convert a large room on the first floor into a fourth bedroom.

Ms. Howard stated that this nonconforming use has been continuous since 1971. She said the change must have an equal or lesser impact on the neighborhood.

Mr. Goodspeed stated that included in the packet that was submitted he shows the surrounding houses east to west and the north side. The south side is all commercial rentals that are in place. He also showed the single family houses in the area. He did not think that an extra person would be incompatible to the surrounding houses but would be compatible. On the north side of the property, there is a shared driveway and the owner has granted permission use it for access.

Ms. Howard stated that the other issue is that this property has been a nonconforming use since 1971.

Mr. Goodspeed stated that it has been a nonconforming use since they purchased the property in 2005.

Ms. Howard asked Mr. Fink for clarification in the nonconforming use.

Mr. Fink stated that the applicant was claiming that he wants to have a substitution of nonconforming use but it is a legal nonconforming use to begin with. Normally two unrelated people are permitted to live in the house but currently there are three unrelated people who are living there. He said legal documents are needed to show how the property was approved for three unrelated people and now the applicant wants to extend that use to four.

Board of Zoning Appeals

April 17, 2017

Page 8

Mr. Mail asked the applicant if it was a legal nonconforming use for three people or did he just have three people living there when he purchased the property. He asked if the

deed to the property states that it is a nonconforming use with three unrelated people permitted to live there.

Mr. Goodspeed replied it did not. He said he spoke to Ms. Phile by phone who verified that it was a legal nonconforming use for three people.

Ms. Phile stated that there is documentation showing that it has been a nonconforming use.

Ms. Susel stated that there is documentation from June 1993 stating that it is a nonconforming rooming house with no more than three unrelated people. She said there is a letter from 1975 from the owner, but it does not show the number occupying the house at that time.

Ms. Howard asked for additional clarification.

Mr. Fink stated that it has to be determined if the nonconforming use will be of equal or lesser intrusiveness. What the neighbors are doing does not establish the fact that it is a legal nonconforming use.

Ms. Howard confirmed that one issue that the Board has to consider is the history of the nonconforming use. She asked how the information on the history of the nonconforming given by Ms. Phile and Ms. Susel should be interpreted. She said the applicant is supposed to present this information and he is not. He can only go back to 2005.

Mr. Goodspeed stated he was unaware that he had to have records of this.

Ms. Susel stated that on the application for a nonconforming use, it shows what has to be submitted with the application.

Ms. Howard stated that the application the Board had was for a variance, not for a nonconforming use.

Ms. Susel stated that this was not the correct application for a nonconforming use. A nonconforming use application should have been sent showing what was required with submission.

Ms. Howard stated the application the Board had does not address the variance request.

Board of Zoning Appeals

April 17, 2017

Page 9

Mr. Fink asked the applicant if he wanted to continue his case to a future meeting because the Board did not have all the documents they needed.

Mr. Goodspeed replied yes.

Ms. Howard asked for a motion.

Motion: Mr. Mail moved to table Case BZ17-003, Ron Goodspeed, property located at 133 North Lincoln, until the May 15, 2017 meeting of the Board of Zoning Appeals.

Mr. Sellman seconded the motion.

Vote: The motion carried 5 – 0.

<i>Mr. Burton</i>	<i>Aye</i>
<i>Mr. Mail</i>	<i>Aye</i>
<i>Mr. Tipton</i>	<i>Aye</i>
<i>Mr. Sellman</i>	<i>Aye</i>
<i>Ms. Howard</i>	<i>Aye</i>

C. BZ17-004 Neighborhood Development Services, Inc.
226 East Summit Street

Section: 1161.14

Request: The applicant is request a 9-foot variance from the 15-foot minimum setback to allow a new garage to be constructed 6 feet from the main structure.

Ms. Howard reminded the Board that this application has been withdrawn.

VII. MEETING MINUTES

A. March 20, 2017 meeting minutes

Motion: Mr. Burton moved to approve the March 20, 2017 meeting minutes, as corrected.

Board of Zoning Appeals
April 17, 2017
Page 10

Mr. Mail seconded the motion.

Vote: The motion carried 4 – 0

<i>Mr. Burton</i>	<i>Aye</i>
<i>Mr. Mail</i>	<i>Aye</i>
<i>Mr. Tipton</i>	<i>Aye</i>
<i>Mr. Sellman</i>	<i>Aye</i>

One Abstention - Ms. Howard

VIII. OTHER BUSINESS

Mr. Tipton referred to the application and suggested changing “or” to “and” when addressing practical difficulties.

Ms. Howard said that statement should be exactly the way it is shown in the code.

Mr. Mail said he thought that each of the three criteria were going to be split into three paragraphs to address them separately.

Ms. Susel stated that down the road they will be shown as A, B, and C on the application.

Mr. Mail stated that the criteria should be addressed individually and separately.

Mr. Fink referred to Section 1109.09(b)(1) grants the applicant’s right to request a variance. In 1109.09(b)(3) refers to the standards that the Board of Zoning Appeals is supposed to apply in granting a variance. The standards include the “and”. The right to apply includes the word “or”.

Ms. Howard stated that the wording in the code is inconsistent and needs to be corrected. The wording should be changed to be consistent.

Mr. Burton suggested removing the lines on the application so the applicant will submit a separate sheet with the application.

Ms. Susel stated it could be stated on the application to attach a written statement addressing the information for each criteria the Board of Zoning Appeals has to consider when approving a variance.

**Board of Zoning Appeals
April 17, 2017
Page 11**

IX. ADJOURNMENT

Motion: Mr. Mail moved to adjourn.

Mr. Tipton seconded the motion.

Vote: **The motion passed 5 – 0.**

<i>Mr. Burton</i>	<i>Aye</i>
<i>Mr. Mail</i>	<i>Aye</i>
<i>Mr. Tipton</i>	<i>Aye</i>
<i>Mr. Sellman</i>	<i>Aye</i>
<i>Ms. Howard</i>	<i>Aye</i>

Meeting adjourned at 8:00 p.m.