

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
May 15, 2017**

MEMBERS PRESENT: Elizabeth Howard
Paul Sellman
Jona Burton
Benjamin Tipton

MEMBER ABSENT: Dave Mail

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

I. CALL TO ORDER

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

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Paul Sellman, Jona Burton, Benjamin Tipton, and Elizabeth Howard 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. 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

Board of Zoning Appeals

meeting that it hears the testimony. Some decisions may be continued for further review. Mr. Fink read the General standards from Section 1109.09 that the Board of Zoning Appeals follows in the granting of any variance. "In every instance where the Board grants or recommends a variance, there must be a finding by the Board that: (1) The strict application of the provisions of the Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Ordinance. (2) There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses within the same zoning district. (3) The granting of such variances will not be of substantial detriment to the public interest or to adjacent property owners or improvements in such districts in which the variance is sought and will not materially impair the purpose of the Zoning Ordinance."

Ms. Howard read the following statement that summarizes the Board's authority: "The Board of Zoning Appeals operates according to the provisions of the Kent City Zoning Code which provides for the establishment of the Board. Members of the Board, Kent citizens serving without pay, visit sites and hear evidence both pro and con at public meetings before carefully and conscientiously rendering a decision. After a decision has been made, the case is closed for the Board, as there is no provision in the code for the Board to reopen a case. If the petitioner disagrees with the findings of the Board, there are only two proper procedures. One is to resubmit a revision of the request that is more compatible with the code and the second is to institute legal procedures in the Common Pleas Court."

V. ADMINISTRATION OF OATH

Mr. Fink instructed members of the audience wishing to be heard on any of the cases presented at this meeting to rise and raise their right hand. Mr. Fink administered the oath, "Do you swear or affirm that the testimony that you are about to give this evening is the truth, the whole truth, and nothing but the truth, so help you God? Please say "I do". The participants responded, "I do".

VI. OLD BUSINESS

A.	BZ17-003a	Ron Goodspeed 133 North Lincoln Street
	Section:	1169.12
	Request:	The applicant is requesting a substitution of a nonconforming use from 3 unrelated residents to 4 unrelated residents (Section 1169.12).

Ms. Howard asked the applicant to present the request.

Ron Goodspeed, 7689 Hudson Road, Kent, Ohio, stated they would like a substitution from the three unrelated nonconforming use to a four bedroom nonconforming use. He has a statement from 1976 from a realtor that states that there were three unrelated people living in the house. Up to this point with each sale of the house, the use stayed the same and since they owned from 2004, it has also been the same. There are leases from 2004 showing three unrelated people.

Ms. Howard stated in the matter of a substitution of a legal nonconforming use, the Board may allow a nonconforming use to be replaced by another legal 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. She asked the applicant to address these two points.

Mr. Goodspeed stated that it is already a rental property for three unrelated people, so he believes that it is appropriate for four unrelated in the same setting. He is using space that is already existing and not adding an addition. The surrounding houses are predominantly all rental property. He said adding a fourth unrelated person in the house would not be intrusive in this neighborhood, because the majority of the properties in this area are used for two or three unrelated persons. He referred to the Health Department list that shows ten or eleven multi-use housing units just on North Lincoln. He felt that four unrelated people living in the house was appropriate because it was comparable and compatible and not more intrusive to the neighborhood. The house is large enough for four unrelated people. He said the room that he would be using is 10 foot by 10 foot, 100 square feet, which is larger than the 70 square feet required by the Health Department. The house meets all requirements with fire alarms in each bedroom, foyer, basement, and attic. There are extinguishers on the first and second floors. Carbon monoxide alarms are throughout the house. There are ingress/egress access so the house is easy to get in and out.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton stated the house should have as many occupants as it was designed for. He felt it would be more of a detriment. He had traffic concerns.

Mr. Sellman agreed with Mr. Burton's comments. He asked where the internal doors would be.

Mr. Goodspeed showed where the internal doors are located.

Ms. Howard stated there is a window onto the front porch and then a window into the driveway.

Mr. Goodspeed confirmed this.

Mr. Sellman asked about the restroom facilities.

Mr. Goodspeed replied there is a full bathroom upstairs and then a half bathroom in the basement. There is not one directly near the added bedroom.

Mr. Sellman stated there are a lot of cars, as well as pedestrian traffic.

Mr. Tipton stated he had looked at surrounding uses and felt this project would be equally appropriate or more appropriate but felt it was more intrusive. He said parking was also an issue especially for the second variance request.

Mr. Sellman stated one more car will have to be squeezed into what is already a very small parking lot and that would be intrusive.

Ms. Howard stated the parking variance is a separate item. She said in the matter of a substitution of a legal nonconforming use, the Board may allow a nonconforming use to be replaced by another legal 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.

She said the second variance should be discussed when considering the intrusiveness to the neighborhood. She said there will be more parking requirements as part of whether the project being more intrusive or not. She said there are businesses and a light at the end of the block where the road goes into Main Street which is a very busy intersection. On the east side there are four houses designated as rooming house; three two units and one four units. On the west side, there are two rooming houses and the building and a parking lot owned by Kent State. There is already a lot of traffic in the area. She asked on the one hand how much of a difference could adding one more person and one more car make to this situation. On the other hand, it is a three bedroom house so construction has to be done to accommodate the fourth person. She thought the existing space was some sort of office or a living room. An accommodation of 1.5 parking spaces will have to be provided for the residents. She said there is no green space in the backyard because it is all for parking and this house shares the driveway space with its neighbor, so it could be intrusive for the residents at 203.

Mr. Goodspeed interjected to say he has a letter from the neighbor that gives permission to share the driveway.

Mr. Fink stated if the owner does sell the property, this agreement would not necessarily stay in place.

Mr. Sellman stated that four unrelated people in the house would not be out of character for the neighborhood.

Mr. Burton stated that in a broader perspective traditionally the neighborhoods decline and get more run down with the increase of people.

Mr. Goodspeed stated the attic space is open but he did not want to use it for a bedroom. He said technically this property is set up for up to six bedrooms if he included the living room space. He said there is egress in the attic and the basement and that is not found anywhere else on Lincoln Street. He said the parking issue is not new to his tenants. He would like to change the room and would like to do it the right way and legally.

Mr. Sellman said there have been cases where people buy property and want to expand. The City of Kent is trying to reign that in. He said the house can easily handle three tenants so the original nonconforming use is granted. A convincing argument needs to be presented.

Mr. Goodspeed replied that a convincing argument is that the rest of the neighborhood can do it. The other part is that he is standing in front of the Board tonight and trying to do it legally, while others are doing it illegally. He wants the Health Department and the

Fire Department to inspect it and have it done safely. It does not change how the neighborhood is going to go.

Ms. Howard referred to the letter from 1993 that states the house is a grandfathered nonconforming use rooming/board housing that will be limited to three people at any given time. She did not dispute that at some time there might have been four people living there.

Mr. Goodspeed said the house already has three people, so it is between a single family and multi-family unit. It cannot be a single family house and cannot be a duplex, so it is a multi-family house with only three people permitted.

Ms. Susel stated that the City of Kent has a rental licensing program. She said every single rental will be inspected, so that any unit that has two or more unrelated people will eventually be identified and addressed.

Mr. Tipton referred to the parking schematic that shows a couple different configurations for the parking for four cars and then another for five cars.

Mr. Goodspeed replied that he initially was told he had to have four spaces and then he was told later that he had to have five so he added that layout later. The pictures shown on the last page were from the Portage County Auditor, so the measurements in the back are point to point measurements from the County. The other picture is a power point schematic that shows the exact measurement for four spaces then for five.

Mr. Tipton referred to the five car schematic and asked Ms. Phile if a variance was need for the rear property line.

Ms. Phile replied yes.

Mr. Tipton questioned as to whether five cars could fit in the parking lot. He understood the fifth space would be for visitors. It seemed very difficult.

Ms. Howard asked if there was a structure in the back.

Mr. Goodspeed replied it is the neighbor's garage.

Ms. Howard was not sure there is enough room to get into parking space four or five. She said the Board was still talking about the impact on the neighborhood even though they were discussing the parking.

Mr. Goodspeed stated that it is a shared driveway and there is no way to get out of some of the parking spaces without backing out into the neighbor's driveway.

Ms. Howard stated that the existing garage has an impact on the parking.

Mr. Burton stated the safety concerns were addressed with egress locations. He felt there would be additional congestion.

Mr. Sellman stated that the Board of Zoning Appeals has received a directive to be stricter with the zoning code. He said the house was purchased with three unrelated people living there. He was uncomfortable with the expansion.

Mr. Tipton agreed with Mr. Sellman's comments. He referred to the circumstances that the Board has to consider when it allows a nonconforming use to be replaced by another legal nonconforming use. Based on the second requirement, he felt this expansion would be more intrusive to the neighborhood.

Mr. Burton stated that the house was approved for three unrelated people back in 1993 and felt this was a correct determination and felt it should remain the same.

Mr. Fink stated that it was determined that it was a nonconforming use and three unrelated people legally lived in the house and the status has been maintained for a number of years with no interrupted use for more than two years. It is irrelevant if it is large enough for more.

Ms. Howard stated that three unrelated people have been living in the house legally and it seemed that three is reasonable. She said she might feel differently if there was not a shared driveway and the proximity of the garage that has an impact on the parking situation. Seven people are currently trying to use that driveway, as well as visitors, so the number of cars in the lot has impact.

Mr. Goodspeed stated he could move the parking closer to the property line so the tenants could park easier. A variance could be approved to accommodate the ingress and egress turns. The parking could be changed to accommodate more cars.

Mr. Tipton stated the shared driveway is still a concern.

Mr. Goodspeed asked how the shared driveway could be changed.

Ms. Susel stated that a new owner could not agree to allow the tenants not to backup into the driveway. It would be considered an encroachment if there was not an agreement for

sharing the driveway. The directive from Kent City Council is strict adherence to the zoning code.

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

Motion: Mr. Burton moved in Case BZ17-003a, Ron Goodspeed, property located at 133 North Lincoln Street, that the Board of Zoning Appeals to deny the applicants request for a substitution of a nonconforming use from 3 unrelated resident to 4 unrelated residents, as defined in Section 1169.12 in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

Vote: The motion carried 4 – 0.

<i>Mr. Burton</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. BZ17-003b Ron Goodspeed
133 North Lincoln Street

Section: 1167.09(c)

Request: The applicant is requesting a 2-foot variance from the 24-foot minimum aisle width to allow an aisle width of 22 feet (Section 1167.09(c)).

Ms. Howard asked the applicant if he wanted to continue for his 2-foot variance request from the 24-foot minimum aisle width to allow an aisle width of 22 feet.

Mr. Goodspeed said it made no sense to continue with the second variance request.

Mr. Fink stated he was not suggesting one way the other what the applicant should do, but he said the applicant might want to consider tabling the second request in case he wants to appeal or to determine what other options he might have.

Mr. Goodspeed said he would like to table the second request.

Board of Zoning Appeals

May 15, 2017

Page 9

Ms. Howard stated she would be willing to consider BZ17-003b as a new case. The applicant is requesting a continuance so there is no time restriction. She told the

applicant that he could return to the Board of Zoning Appeals to move forward and adding a variance in terms of parking.

Mr. Fink stated this gives the applicant time to consider the options.

Ms. Howard stated that a continuance gives the applicant an opportunity to reappear before the BZA with new evidence.

VII. NEW BUSINESS

**A. BZ17-005 Kathy Fisher
 1142 Hampton Road**

Section: 1131.04(c)

Request: The applicant is requesting a 27-foot variance from the 45-foot minimum front yard setback to allow a porch addition to be 18 feet from the front property line (Section 1131.04(c)).

Ms. Howard asked the applicant to present the request.

Kathy Fisher, 1142 Hampton Road, Kent, Ohio, stated she built a front porch because her 90 year old father lives with her and the steps that go up to the door have no landing. She has had to call 911 twice and it was difficult to get in and out of the doorway so she built the porch and she was told she had to have a variance to get the roof on top of the porch. She wants the porch to have a roof so it will not be covered with snow and there will be no trouble getting and out.

Ms. Howard stated that the Board of Zoning Appeals has to approach this variance request from a different perspective. There are three circumstances that the Board has to consider:

- 1) The strict application will result in practical difficulties or unnecessary hardships.
- 2) There are exceptional or extraordinary circumstances that apply to the property.
- 3) That the granting of the variance will not be of substantial detriment to the public interest or adjacent properties.

Ms. Howard asked the applicant to address these issues.

Mr. Sellman asked if a variance was needed to build the deck on the front of the house.

**Board of Zoning Appeals
May 15, 2017
Page 10**

Ms. Fisher replied no. She said they had to get a building permit and it was inspected by the Building Inspector when it was done.

Mr. Sellman stated that the project involved putting a roof over the existing front part of the deck which will make it closer to the street.

Ms. Fisher replied yes.

Mr. Sellman stated it was about 12 feet.

Ms. Fisher stated she needed enough room to open up the door.

Mr. Tipton asked what the practical difficulty was.

Ms. Fisher replied she bought the house in 2010 and fixed it up. She did some renovations. The steps up to the door did not have a landing and she needed a better approach to the front door. She said she wanted easy access for the safety and emergency forces. She said she was going to put a roof over the top of the whole porch so no snow or ice will get on the porch. She does not have the snow and ice on the back, but the paramedics do not use the back entrance. It is a safer approach to the house and wants to cover it for safety. It will be 18 feet from the front property line.

Ms. Phile replied to a question from Mr. Burton and stated that the porch did not require a variance.

There were no other questions or comments.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that the unusual circumstance is that the original house is already closer to the property line than what is required without the deck.

Mr. Tipton stated that the setbacks on the street for the other houses are inconsistent.

Ms. Fisher discusses her neighbor, the nearby businesses and the congestion at the end of the street. She bought the house she has now because there was more “elbow” room. She

did not measure the porch on her neighbor’s house but it seemed to be as close to the property line as her house.

Mr. Sellman stated it is very close at 21 feet from the line. He said there was no guideline for setbacks when the houses in the neighborhood were built.

Ms. Howard asked if practical difficulties or unnecessary hardship applied to this property.

Mr. Sellman replied the hardship because there is no safe ingress/egress for the applicant's father.

Mr. Burton stated there are safety factors for the property.

Mr. Tipton stated that the setback is already nonconforming. He asked about the traffic pattern in the area and if there was a stop there.

Ms. Fisher replied that there is a four way stop.

Mr. Tipton asked if the variance could be minimized for safety issues.

Ms. Howard replied there would be no problem for ingress/egress.

The Board members discussed where the house sits now.

Ms. Howard stated that the exceptional and extraordinary circumstances have been met because it is impossible for this house to have a 45-foot setback. She said it would not be a detriment to the adjacent property owners. She said there is no consistency in the neighborhood in terms of the setbacks.

Mr. Tipton stated there were no neighbors at the meeting and no objection to the applicant's variance request.

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

Motion: **Mr. Sellman moved in Case BZ17-005, Kathy Fisher, property located 1142 Hampton Road, that the Board of Zoning Appeals approves a 27-foot variance from the 45-foot minimum front yard setback to allow a porch addition to be 18 feet from the front property lines, as defined in Section 1131.04(c) in the City of Kent Zoning Code.**

Board of Zoning Appeals

May 15, 2017

Page 12

Mr. Burton seconded the motion.

Vote: **The motion carried 4 – 0.**

Mr. Burton

Aye

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

VIII. MEETING MINUTES

A. Meeting Minutes from the April 17, 2017 meeting

Motion: Mr. Tipton moved to approve the April 17, 2017 meeting minutes, as amended.

Mr. Burton seconded the motion.

Vote: The motion carried 4 – 0.

<i>Mr. Burton</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>

IX. OTHER BUSINESS

A. Application Discussion/Review

Ms. Susel stated changes have been made to the application. On page 2, the Applicant Statement has been broken down to A, B, C, and D so it is no longer in paragraph form. It was also added that eight copies of the complete written “Applicant Statement” as specified above is needed. It has also been delineated what the applicant has to do and what they need to address.

Mr. Fink referred to a memo he sent out regarding Sections 1109.09(b)(1) and 1109.09(b)(3)(a) and said they are more or less mirrors of each other. He said these two sections are not precisely identical but they are essentially identical. Sections 1109.09(b)(3)(b) and Section 1109.09(b)(3)(c) are additional factors the Board of Zoning Appeals must find when granting a variance. He said three criteria must be addressed when the Board of Zoning Appeals is considering a variance. The language that the Board had before is correct. If there is a discrepancy that has to be dealt with, the City of

Board of Zoning Appeals

May 15, 2017

Page 13

Kent has its own requirements for granting a variance. The Ohio Supreme Court has its set of factors in terms of *Duncan v. Middlefield*. He said so far, the Kent City Council has not addressed that issue. He said if they went to court, he did not know if the court would follow the *Duncan v. Middlefield* factors or follow the City of Kent’s factors.

Ms. Howard asked if they are trying to explain why the language in Section 1109.09(b)(1) should be changed.

Mr. Fink replied yes. He said to 1109.09(b)(1) is almost identical in 1109(b)(3)(a). In both there is the word “or”.

Ms. Howard asked where in (b)(1) is the language mirrored.

Mr. Fink replied in the very first sentence of (b)(1): “When practical difficulties, unnecessary hardship or results inconsistent with the general purpose of the Zoning Ordinance...” He said that mirrors (b)(3)(a).

Ms. Howard stated that (b)(1) is a paraphrase of all three of the conditions.

Mr. Fink replied no because (b)(1) does not include extraordinary or exceptional circumstances.

Ms. Howard stated that there are three conditions that have to be met: Condition No. 1 is the strict application of the provisions resulting in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning ordinance. She said she personally was interpreting “or” between Condition No. 1 and Condition No. 2 or Condition No. 3 but “and” should be used rather than “or”.

Ms. Susel stated that is usually the environment the Board operates when considering a variance, but it is not true at all times. She said the Board of Zoning Appeals considers the three criteria based on what the applicant has provided. She said the section that has to be considered when applying for a variance is shown on the application.

Ms. Howard stated that sometimes the application is straightforward, but at other times it is not. She suggested that something should be attached to the application telling the applicant exactly the section that has to be considered. She suggested that the applicant be told that if the variance is not approved, they have the right to file an appeal with the courts or they can return to the Board of Zoning Appeals with different or more evidence. She asked Mr. Fink to script something out to inform the applicants.

Mr. Fink agreed to do this.

Board of Zoning Appeals

May 15, 2017

Page 14

Ms. Susel stated that there is a rental properties data base with about 1300 properties and that is not comprehensive. The Health Department issues zoning use certificates if the requirements are in compliance with the zoning code. It will take a while to get things in line.

Motion: Mr. Sellman moved to excuse the absence of Mr. Mail at the May 15, 2017 meeting of the Board of Zoning Appeals.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

<i>Mr. Burton</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>

Mr. Burton stated he could not be at the upcoming council meeting.

IX. ADJOURNMENT

Motion: Mr. Burton moved to adjourn.

Mr. Tipton seconded the motion.

Vote: The motion passed 4 – 0.

<i>Mr. Burton</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 8:30 p.m.