

Summary of Record – Quorum for approval is not possible.

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
November 20, 2023**

MEMBERS PRESENT: Steven Protzman
Michelle Sahr
Laura Scarnecchia

STAFF PRESENT: Bridget Susel, Community Development Director
Kailyn Cyrus, Development Planner

I. CALL TO ORDER

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

II. ROLL CALL

Steven Protzman, Michelle Sahr, and Laura Scarnecchia were present.

III. PREAMBLE

The Board of Zoning Appeals, Kent citizens serving without pay, hear evidence at public meetings both in support of and in opposition to an applicant's request before rendering a decision. Generally, the Board will decide to approve or deny each requested application at the meeting that it hears the testimony. Some decisions may be continued for further review. Once 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 file an appeal in the Common Pleas Court. Anyone interested in appealing a decision of the Board is advised to seek private legal counsel.

IV. ADMINISTRATION OF OATH

Ms. Susel instructed members of the audience wishing to be heard on any of the cases presented at this meeting to raise their right hand. She administered the oath. The participants responded affirmatively.

NEW BUSINESS

**A. BZ23-014 RICK HAWKSLEY, RUTH & JOE CULLUM
434 STOW STREET**

The applicant is requesting a variance from Section 1103.08(E) to allow a 90-foot variance where 100 feet is the minimum requirement to allow a principal building to be constructed 10 feet from the front property line.

Ms. Cyrus presented the staff report. She stated that the proposed parcel is located in the O-R: Open Space Recreational Zoning District. She stated that the parcel is categorized as a substandard lot and will be subject to the substandard setbacks, which are 100 feet from the front property line and 20% of the depth of the property for the rear setback. She stated that the previous owner obtained a zoning variance that allowed that proposed single family house to be located 11 feet from the property line, but granted variances became void because the project was not under construction within two years. She added that on October 4, 2023, the Board of Building Appeals granted the applicants a variance from KCO 1201.03(f)(2) to allow 66 foot 4 inch variance, where 200 feet is the minimum requirement to allow for the construction of a single family structure to be located 133 feet 8 inches within the riparian setback.

Rick Hawksley, Architect, stated that they are requesting the same variance as what was granted in 2020. He stated that the requested setback is the same as the original house that was recently demolished; approximately a 90 foot variance for the front and rear setback.

Ms. Sahr questioned the 100 foot setback requirement.

Ms. Susel explained that the 100 foot setback is due to the riparian setback. She explained that the riparian setback is required so that in case the river was to overflow, the water would have adequate space. She noted that the property sits well above the river and although as shown on the map it is within the 100 feet to the river's edge, the water would never reach the construction site.

PUBLIC COMMENT

None

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Sahr stated that the other houses in that area do not have a 100 foot front yard setback and the house that was just demolished was located in the same space. She stated that she is in favor of the variance.

Ms. Scarnecchia stated that she is also in favor of the variance. She stated that it will be inline with the neighboring houses and will look nice. She noted that the steep topography would also make the 100 foot setback difficult.

Ms. Susel stated that it isn't logical to think that this will ever be an issue. She stated that it is better to not be 100 feet back from the property but rather be closer to the street and aligned with the other properties.

MOTION: Ms. Sahr moved that in case BZ23-014, applicants Rick Hawksley, Ruth & Joe Cullum, 434 Stow Street, Ms. Sahr the Board of Zoning Appeals grant the applicants' request for a variance from Section 1103.08(E) to allow a 90-foot variance where 100 feet is the minimum requirement to allow a principal building to be constructed 10 feet from the front property line.

Ms. Scarnecchia seconded the motion.

VOTE: The motion carried 3-0.

**B. BZ23-015 AKERS SIGN & THE UNITED METHODIST CHURCH OF KENT
1435 EAST MAIN STREET**

The applicant is requesting a substitution of nonconforming use for the alteration and parts replacement of an existing electronic messaging center sign.

Ms. Susel explained a Substitution of Nonconforming Use and how it applies to this case. She stated that technically a nonconforming use is an illegal use according to the current Zoning Code that was once a legal use based on a previous Zoning Code. She stated that a substitution of a nonconforming use allows another nonconforming use to be put in place of an existing nonconforming use when certain conditions are met. She stated that in this case, the monument sign has been in existence and now because the actual sections of the sign are being replaced, it needs a substitution of nonconforming use as electronic messaging center (EMC) signs are no longer allowed according to the Zoning Code. She recited the conditions from KCO 1110.06(e) that must be met in order to grant the substitution of nonconforming use. She stated that the applicants are requesting a substitution of nonconforming use for the alteration and parts replacement of an existing EMC sign. She stated that the property is located in the C-R: Commercial High Density Multi-Family Residential Sistrict and is surrounded by residential uses to the north, east and west and commercial uses to the south. She stated that the work has already been performed without permits. She stated that the previous monument sign size is documented by the permits that were obtained; 150 inches high and 120 inches wide. She noted that the new sign is 166.39 inches high and 120 inches wide, which is the same width but is taller than the original sign. She stated that the original sign was 125 square feet, and the current sign is 138.65 in total square footage. She stated that the previous EMC board was 26 inches high and 120 inches wide and the new EMC measures 37.8125 inches high and 113.38 inches in width; total EMC square footage: 21.6 sq. ft. and 29.77 sq. ft., respectively.

Michelle Miller, Aker Signs, 3328 Charlene Ave. SW, Canton, OH presented drawings of the previous sign and stated that they were doing a re-face but used different LED panels because parts for the existing LED are not available. She stated that the new LED sign vendor that they chose has a different size panel for each display, which is larger than the original. She stated that because the sign cabinet was not flush to the original LED sign panels, it allowed water to get in and caused outages. She stated that they used that space with the larger panels to close the gap and keep water out. She stated that the new LED panels are more programmable, have available replacement parts, and have a better warranty. She stated that the cabinet size is the same and that they never changed any of the cabinets except to re-vinyl and re-paint. She explained that the section with the pastor's name is changeable.

Ms. Susel explained that the City's definition of re-facing a sign is replacing the acrylic screen on the cabinet.

Ms. Miller stated that their employee misread the Code and that their company always pulls permits; it wasn't their intention to do work without the required permits.

Ms. Sahr noted that the new sign is larger than the old sign.

Ms. Miller stated that she doesn't understand where the difference is coming from because all of the cabinets are the same size and were just re-vinylled. She stated that they are here to work with the City to get this resolved.

Ms. Susel reminded the applicant that technical plan review will be required if the substitution of nonconforming use is approved.

Ms. Sahr asked if the applicant was saying that they didn't do anything to increase the height of the sign.

Ms. Miller stated that they did not, and they are trying to figure out why the height of the sign is different. She stated that the only thing they did was take the sign back to the shop for rehab and reinstall it.

Ms. Sahr questioned if they moved the cabinets when the sign was reinstalled.

Ms. Miller stated that the cabinets all stack on top of one another. She stated that the dimensions from the original drawings are the same with the exception of the LED panels, so they can't explain the difference.

PUBLIC COMMENT

None

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Scarnecchia stated that while permits should be obtained before work is started, as a citizen driving by, she didn't even notice that there was a new sign as it isn't such an outstanding change that causes aesthetic issues. She stated that she feels that it does blend in with the previous nonconforming use.

Mr. Protzman stated that he doubts that the congregation even noticed a difference.

Ms. Sahr stated that she noticed that it is different but didn't notice that it was significantly higher or bigger. She stated that the new use is similar in character and will not be anymore intrusive to the neighborhood than the previous use. She stated that under the approving standards, she feels that the new sign complies.

MOTION: ***Ms. Scarnecchia moved that in case BZ23-015, applicants Akers Sign & The United Methodist Church, 1435 East Main Street, in accordance with Section 1110.06(E), the Board of Zoning Appeals grant the applicants' request for a substitution of nonconforming use for the alteration and parts replacement of an existing electronic messaging center sign.***

Ms. Sahr seconded the motion.

VOTE: **The motion carried 3-0.**

**C. BZ23-016 SUSAN MORRISON & TRAVIS WHISMAN
 305-307 S. CHESTNUT**

The applicant is requesting a variance from Section 1106.08(F) to allow a deck to project 8 feet into the pre-existing nonconforming front yard setback of 14 feet.

Ms. Cyrus presented the staff report. She stated that the property is located in the R-3: High Density Residential District and is a corner lot, which has two front yards. She stated that the owners have constructed a deck that projects 8 feet towards S. Chestnut St. and 8

feet towards Haymaker Pkwy. She stated that the deck projects 8 feet into the required front yard towards Haymaker Pkwy and is 6 feet from the right of way. She stated that the Zoning Code requires that decks do not project more than 10 feet into the required front yard.

Ms. Susel stated that the house is a pre-existing nonconforming use because it doesn't meet the current front yard setbacks. She stated that the other practical difficulty is that the property has two front yards being a corner lot.

Ms. Sahr questioned if there was a different structure in the location previously and what the dimension difference is.

Travis Whisman, 307 S. Chestnut St., stated that there were concrete steps and a sidewalk previously in that location but were replaced because they were in poor condition. He stated that the old sidewalk was located 8 feet from the house and the new deck is also 8 feet from the house.

PUBLIC COMMENT

None

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Sahr stated that the property has two front yards and doesn't protrude any more than what was there before. She stated that even though it is officially a front yard, it seems more of a side yard and if that were the case they wouldn't have needed a variance.

Ms. Scarnecchia stated that she feels that the corner lot with two front yards is a valid hardship. She stated that the deck extension is relatively the same as it was before and far enough away from Haymaker Pkwy that visually it is okay. She stated that it will potentially be a nice addition to the house.

Mr. Protzman stated that he doesn't appreciate that the work happened before permits.

Ms. Susel stated that this happens frequently and is typically because the general public just doesn't know that they need to get permits. She stated that it isn't the City's position to stop development but just to ensure that permits are issued, the construction is safe and meets code, and doesn't create a hazard for the public.

MOTION: ***Ms. Sahr moved that in case BZ23-016, applicants Travis Whisman & Susan Morrison, 305-307 Chestnut Street, the Board of Zoning Appeals grant the applicants' request for a variance from Section 1106.08(F) to allow a deck to project 8 feet into the pre-existing nonconforming front yard setback of 14 feet.***

Mr. Protzman seconded the motion.

VOTE: **The motion carried 3-0.**

**D. BZ23-017 HUMP & HUSTLE LLC, NORTH WATER BREWING CO
101 E. CRAIN AVENUE**

The applicant is requesting

- 1. A variance from Section 1108.05(D)(b) to eliminate the required 20-foot landscape buffer in the rear where it abuts the I: Industrial District.**
- 2. A variance from Section 1108.05(D)(b) to eliminate the required 20-foot landscape buffer to the west side where it abuts the railroad.**

Ms. Cyrus presented the staff report. She stated that the property is located in the C-D: Commercial Downtown District. She stated that the property is changing its zoning land use from a microbrewery to a restaurant, which requires that the property comply with all regulations as specified in the current Zoning Code. She explained that the current Zoning Code requires properties in the C-D District that abut an Industrial District and/or a railroad property must have a 20 foot wide landscape buffer. She stated that the west property line is zero feet from the abutting railroad property so there isn't a side yard available for such an installation. She stated that the rear of the property abuts the Industrial District and is currently paved for parking.

Ryan Ailes, North Water Brewing partner, 3944 Willow Brook, Ravenna, stated that they have applied for a change in use to allow for a restaurant in the back of the building. He stated that they lease property at the rear of the building for parking from Mr. Bowen and because that area is paved, it would be very difficult to install a landscape buffer as would the other areas.

PUBLIC COMMENT

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Protzman stated that this is a decision between green space and parking.

Ms. Sahr stated that the parking is very tight and the on-street parking in that area isn't very good due to the intersection.

Ms. Scarnecchia stated that it seems that the green space is a logistical impossibility.

Ms. Sahr stated that it may be more important if it wasn't located right on the railroad tracks. She added that it doesn't deter from anything and that the hardship is the shape of the parcel and location of the building.

Mr. Protzman stated that people would not be sitting in their cars looking at a green buffer zone; the customers park and go inside the building. He stated that it is good that the business is expanding.

MOTION: Ms. Scarnecchia moved *that in case BZ23-017, applicants Hump & Hustle LLC, North Water Brewing Company, 101 Crain Avenue, the Board of Zoning Appeals grant the applicant's request for a variance from Section 1108.05(D)(b) to eliminate the required 20-foot landscape buffer in the rear where it abuts the I: Industrial District.*

Ms. Sahr seconded the motion.

VOTE: The motion carried 3-0.

MOTION: Mr. Protzman moved *that in case BZ23-017, applicants Hump & Hustle LLC, North Water Brewing Company, 101 Crain Avenue, the Board of Zoning Appeals grant the applicant's request for a variance from Section 1108.05(D)(b) to eliminate the required 20-foot landscape buffer on the west side where it abuts the railroad.*

Ms. Scarnecchia seconded the motion.

VOTE: The motion carried 3-0.

**E. BZ23-018 BRIDGET TIPTON & PAUL ORGAN
234 S. WATER STREET**

The applicant is requesting:

1. In accordance with Section 1110.06(E) the applicants are requesting a substitution of nonconforming use for a pole sign.
2. A variance from Section 1109.09(D)(6) to allow an 8-foot 3-inch variance where 10 feet is the minimum requirement to allow a pole sign to be located 1-foot 9-inches from the right of way.

Mr. Susel stated that this case is also a substitution of nonconforming use as pole signs were eliminated in the Zoning Code update in June 2021. She explained that a pole sign is a sign that is not a monument or building sign. She stated that there was a pre-existing pole sign in the front yard that had been removed. She added that they do not have the measurements of that sign. She stated that the proposed location of the new sign will be 1-foot nine inches from the right-of-way. She stated that there is a condition for the substitution of nonconforming use that all free-standing signs be located 10 feet from the right-of-way, which is for line-of-sight concerns. She stated that the current building is 9 feet 5 inches from the right-of-way. She stated that if the sign were installed, it would be 1 foot 9 inches from the right-of-way line.

Mr. Protzman questioned what a monument sign is.

Ms. Susel stated that a monument sign has a solid base with landscaping and the sign above the base.

Rick Hawksley, Architect, 120 Portage St., presented a photo of the previous sign and stated that the sign was very close to the right of way. He stated that in order to make the building ADA compliant, they had to remove the original sign and they didn't think about the sign being nonconforming. He stated that they are proposing a new sign that is very similar in feel and sign type. He stated that the location was selected for visibility of the sign.

Ms. Sahr questioned if the new sign was the same height as the old sign.

Mr. Hawksley stated that it seems to be shorter to him and maybe a little wider.

Paul Organ, 5876 Horning Rd., building owner, stated that the signs on either building that were taken down were very similar to this as well. He stated that this is the one building in downtown that still has a small yard in front of it, so he feels that it fits the neighborhood pretty well.

Mr. Protzman questioned if the sign could be moved back from the front line anymore.

Mr. Organ stated that if they moved the sign back, it would be on the porch.

PUBLIC COMMENT

None

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Scarnecchia stated that she is okay with the sign location. She stated that the point was made that it blends in with the area and is unobtrusive as long as it is safe.

Ms. Sahr stated that she feels that it is within the substitution conditions. She stated that the sign has been moved for the sake of accessibility.

Mr. Protzman stated that they can all agree that accessibility is a much needed thing.

MOTION: ***Ms. Scarnecchia moved that in case BZ23-018, applicants Bridget Tipton & Paul Organ, 234 S. Water Street, in accordance with Section 1110.06(E), the Board of Zoning Appeals grant the applicants' request for a substitution of nonconforming use for a pole sign.***

Mr. Protzman seconded the motion.

VOTE: The motion carried 3-0.

MOTION: ***Ms. Sahr moved that in case BZ23-018, applicants Bridget Tipton & Paul Organ, 234 S. Water Street, the Board of Zoning Appeals grant the applicants' request for an 8-foot 3-inch variance where 10 feet is the minimum requirement to allow a pole sign to be located 1-foot 9-inches from the right of way.***

Mr. Protzman seconded the motion.

VOTE: The motion carried 3-0.

V. OTHER BUSINESS

None.

VI. MEETING MINUTES

MOTION: Ms. Scarnecchia moved to approve the August 21, 2023 meeting minutes as presented. Ms. Sahr seconded the motion. The motion carried 3-0.

MOTION: Ms. Sahr moved to approve the October 16, 2023 meeting minutes as presented. Mr. Protzman seconded the motion. The motion carried 3-0.

VII. ADJOURNMENT

MOTION: Ms. Sahr moved to adjourn the meeting. Ms. Scarnecchia seconded the motion. The meeting adjourned at 8:02 pm.