

**CITY OF KENT  
BOARD OF ZONING APPEALS  
PUBLIC HEARING & BUSINESS MEETING  
August 21, 2017**

**MEMBERS PRESENT:** Elizabeth Howard  
Jona Burton  
Paul Sellman  
Dave Mail

**MEMBER ABSENT:** Benjamin Tipton

**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**

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

Ms. Howard told the applicants that there are only four Board members at the meeting. Three Board members have to cast a positive vote in order for a variance to be approved. She told the applicants they do have the option to wait until there are five to present their requests. She said they can decide what to do at any time before a vote is 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

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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. 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. BZ17-012**

**University Edge  
5694 Rhodes Road**

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**Section:** 1161.14(a)

**Request:** The applicant is requesting a 3-foot variance from the 10-foot minimum side yard setback to allow an accessory building to be 7 feet from the side property line (Section 1161.14(a)).

Ms. Howard asked the applicant to present the request.

Weslee Smith, 5694 Rhodes Road, Kent, Ohio, stated she was the manager of University Edge. She said they are requesting this variance to install a storage container for maintenance equipment. She said they opened in 2012, so they are at their five year mark, and are at the point that they need extra room to store things. She said that there are items used for climate control, paint for the property used throughout the year, as well as other maintenance equipment. They will install a 50-foot by 13-foot concrete pad for the container. They will purchase a 40-foot long storage container and place it on the concrete pad with privacy fencing around it. They will try to hide the container as much as possible.

Mr. Sellman asked what color the container will be.

Ms. Smith replied it will be tan with a white fence.

Mr. Burton asked if the Board members had an application.

Ms. Phile replied yes and showed the application to Mr. Burton.

Mr. Mail stated there are two, 10-foot pods leading into their maintenance building that are 14 feet apart. He said the storage unit could actually be located there.

Ms. Smith replied they had thought about doing that but with the 40-foot container and adding fencing around it, it would interfere with residents pulling up next to the trash compactor and it would interfere with the parking drive area.

Mr. Mail asked why the fencing is needed, because it would be in the middle of their property.

Ms. Smith replied the fencing would help store equipment, tenants' bikes, and items left from residents. She said the fencing also provides curb appeal.

Mr. Mail stated there would be enough room in a different a location.

### **PUBLIC COMMENTS**

Ms. Howard read a memo from Jennifer Barone, Development Engineer, regarding this variance request:

BZA members,

I would like to share my concerns about the placement of the proposed storage unit.

The proposed location is on the western side of the storm water detention basin at the top of the embankment. The embankment is approximately 8' wide, the same width as the proposed unit. The intent of the embankment is for storage of stormwater runoff and should not be used for other purposes. My concern is that the embankment may be compromised for the following reasons:

1. The unit will prohibit access around the basin. The basin is inspected by the City annually. If there are issues to correct, the unit may be in the way of maintenance equipment.
2. The embankment was not constructed for this type of use and may not be structurally sound for the weight of the storage unit.
3. Should a section of the embankment erode during a heavy rainfall event(s), the unit may be negatively impacted.
4. Vegetation of the embankment is a stabilization method. Vegetation will not survive under the unit.
5. The placement of this storage unit is in direct conflict with the intent of the stormwater management basin design.

Perhaps a different location would be better suited.

### **BOARD OF ZONING OF APPEALS DISCUSSION**

Mr. Fink stated that this was Ms. Barone field of expertise and he had nothing to add.

Ms. Susel stated that the City of Kent has to report to Ohio Environmental Protection Agency such measures.

Ms. Howard asked Ms. Smith to address Ms. Barone's concerns.

Ms. Smith replied that the unit will not be in the actual vegetation area but will be on a concrete pad with fencing round it. The City can go around another way to access the basin in case of maintenance issues.

Ms. Howard stated there are no problems now, but a concrete pad will change how the basin functions in two ways. Water will run off the concrete and will not be able to soak into the ground. There is also a problem of the actual weight of the concrete, because the land might not be able to support the weight of the pod and equipment stored inside.

Ms. Smith stated they can look at other areas and locations without interrupting the drive area.

Mr. Mail suggested putting it on the east side. He said if they put it where they want to, a road have to be added to drive up to it.

Ms. Smith stated if they put it there near the recycling center, additional parking spaces would be taken up, which would be an issue, because they have just enough parking spaces for their tenants.

Ms. Howard suggested that the applicant consult with Jennifer Barone and decide where the best place would be for this container.

Mr. Sellman asked if the applicant would have to reapply if the case was continued.

Mr. Fink replied no.

Ms. Smith stated she would like to continue her request until further notice.

No vote was necessary.

**B.      BZ17-013      Jake Ferlito  
                                         609 Pioneer Avenue**

**Sections:      1131.04(c) and 1131.04(b)**

**Requests:      The applicant is requesting the following:**

- 1) A 5.92-foot variance from the 10-foot minimum side yard setback requirement to allow a garage addition to be 4.08 feet from the side property line (Section 1131.04(c)), and**

**2) A 3.08-foot variance from the 45-foot minimum rear yard setback requirement to allow a garage addition to be 41.92 feet from the rear property line (Section 1131.04(b)).**

Ms. Howard asked the applicant to present the request.

Jake Ferlito, 609 Pioneer Avenue, Kent, Ohio, stated he had a drawing from the architect that the Board members could look at since the one they had were smaller. He said he wanted to add an attached garage. He said there is an existing attached garage that was built in the 1950's and fit the cars for that time period. It does not fit the modern size truck. He said the F-150 is 77.3 inches tall and it makes it difficult to swing it around to the angle and is not large enough for other things to be stored like a lawn mower and other equipment. He said if he could attach the new garage to the right, he could use the existing driveway. He said it would fit there and he could enter the house. He had also considered attaching the new garage to the back of the house but the architect told him it was not feasible. He said the existing trees and plants could be damaged if he garage was put in the back. He said it was determined the side was the best location. He planned to keep the existing garage.

**PUBLIC COMMENTS**

Jerry Fiala, 614 Pioneer Avenue, Kent, Ohio, stated he was in favor of granting the variance request. He did not think the zoning code covers substandard smaller older lots. He said years ago he too had to get variances to build his garage and it has been an asset to the value of his house and to the neighborhood. There are many house lots up and down Pioneer Avenue that are 60' to 70' wide. He felt there should be some give and take in order for people to put money into their houses.

Daniel Worley, 615 Pioneer Avenue, Kent, Ohio, stated his house is on the west side of the property. He put up a privacy fence before Mr. Ferlito bought the house and it has added to the backyard. He felt that the side yard variance is too close. He has a sunroom off the back of his home and wants to eventually put in a deck. The approval of the variance would put the garage only 4 feet from his property line. He said a lot of the garages in the neighborhood are pushed to the back of the property. He said his house is a fairly old property and believed his garage was initially a carriage house. He said his garage is tight and can fit his car in it. He would prefer that it was moved to the back. He said the new garage would be at the main entrance, which is the back side of his house, so would be a bit too close. He was concerned about fire hazards because the houses are old and a lot of wood used. He said Mr. Ferlito has turned the house around and it looks great. He asked if the garage was going to be two stories. He said it would fit better in the neighborhood if the garage was in the back.

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Mr. Ferlito replied it would be one story.

Mr. Worley said he has stopped by the Community Development Department but everyone was out to lunch.

Ms. Howard encouraged Mr. Worley to look at the drawing. She said if the garage was put in the back, the tree in the back would probably have to be removed. She said the side yard would become a driveway if the garage was put in the back.

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Mr. Mail stated that the first tree would be run into if you go straight up the driveway.

Mr. Ferlito agreed. He showed pictures that showed both trees indicating which tree would be taken out. The structure will only be one story, so the fence will only be 6 feet tall and will not block anything.

Ms. Howard referred to Picture 2 and asked if that was his backyard neighbor.

Mr. Ferlito replied yes.

Ms. Howard asked where the second tree would be located on the map.

Mr. Ferlito showed her the location of the tree.

Mr. Burton asked why the applicant would keep the current garage, since it was in disrepair and needs reinforcement and not functional as a garage. He said if he put the proposed garage straight over it would not be pushing back toward the tree in the back nor would it be located on the side yard. He asked if this had been investigated at all.

Mr. Ferlito replied the current garage could be straightened and shored up and lay a foundation so it could be kept and used for storage. He said if the garage goes back any further, it runs into the trees.

Mr. Mail stated that the turn is really hard to do, especially with a modern vehicle.

Mr. Worley stated that the garage is addressing a certain vehicle but the garage should fit the property, not fit the vehicle. He would rather see the garage fit the property. He said he did have to make adjustments to his garage, which was the original carriage so a modern vehicle would fit. He asked if there was a way to contain the garage in the back area.

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Ms. Howard stated the Board members have to address what fits the applicant's vehicles, as well as vehicles in the future for new owners.

Mr. Sellman asked if the door would be a double door or a single, 18-foot door.

Mr. Ferlito replied it will be a single, 18-foot door.

Mr. Burton stated he would like to approve the smallest variance possible.

Mr. Mail stated that 20 feet is the minimal size of a garage, so the applicant might want to rethink the size before the Board votes on the variance.

Mr. Ferlito replied his goal was to get the smallest variance possible.

Mr. Sellman stated that the variance is largest at the front corner.

Ms. Howard stated that this is a substandard lot that is seen again again in some of the older neighborhoods. She said it is difficult for owners of this type lot to add a garage without taking over the entire property. She said in these older neighborhoods there are also older large trees. The layout of the property whether it is the presence of trees, shrubs, vegetation, slope of the land, and the neighbor's property all have to be considered.

Mr. Burton stated he understood the neighbor's concerns. He said the lots are small and the construction would replace the entire view. He said he would like to approve the smallest variance possible that would still be reasonable.

Mr. Mail stated that the lot shape is a hardship. The large trees also present a concern.

Mr. Fink stated that a substandard lot definition is a lot that does not meet the minimum lot area of the zoning district but is still at least five thousand (5,000) square feet. In the R-2 District, which is the district this house is located, has a minimum lot size of 11,000 square feet for the lot size, so this is a substandard lot.

Staff agreed that this is a substandard lot and Section 1161.09(b)(1) would apply rather than the Section 1131.04. The side yard setback and the rear yard setback change for a substandard lot. This means the variance for the side yard setback would be 1-foot from the 5-foot minimum side yard setback requirement. The second variance for the rear yard setback is no longer required.

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Mr. Fink asked the applicant if he would like a motion made using Section 1161.094(b)(1), which would be to his benefit.

Mr. Ferlito replied yes.

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

**Motion:** Mr. Mail moved in Case No. BZ17-013, Jake Ferlito, owner of the property located at 609 Pioneer Avenue, that the Board of Zoning Appeals approves a 1-foot variance from the 5-foot minimum side yard setback requirement on a substandard lot to allow a garage addition to be 4.08 feet from the side property line, as defined in Section 1161.09(b)(1) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

**Vote:** The motion carried 4 – 0.

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

Ms. Susel apologized to Mr. Worley that he was told no one was in when he stopped in the office to review the application and the plan. She said the applications are on file and available to review 8:00 a.m. to 5:00 p.m., Monday through Friday. She said someone is always in the office, even during lunch. She asked Mr. Worley when he was there, so she could check things out.

## **VII. MEETING MINUTES**

### **A. July 17, 2017 Meeting Minutes**

**Motion:** Mr. Mail moved to approve the July 17, 2017 meeting minutes, as submitted.

Mr. Burton seconded the motion.

**Vote:** The motion carried 4 – 0.

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| <i>Mr. Burton</i>  | <i>Aye</i> |
| <i>Mr. Sellman</i> | <i>Aye</i> |

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|                   |            |
|-------------------|------------|
| <i>Mr. Mail</i>   | <i>Aye</i> |
| <i>Ms. Howard</i> | <i>Aye</i> |

**IX. OTHER BUSINESS**

**Motion:** Mr. Burton moved to excuse the absence of Benjamin Tipton from the August 21, 2017 meeting of the Board of Zoning Appeals.

Mr. Mail seconded the motion.

**Vote:** The motion carried 4 – 0.

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

Ms. Howard reminded everyone that she would no longer be a member of the Board of Zoning Appeals as of next month.

**IX. ADJOURNMENT**

**Motion:** Mr. Mail moved to adjourn.

Mr. Sellman seconded the motion.

**Vote:** The motion passed 4 – 0.

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

Meeting adjourned at 8:04 p.m.