

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
September 18, 2017**

MEMBERS PRESENT:

**Elizabeth Howard
Jona Burton
Paul Sellman
Dave Mail
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, 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

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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.	BZ17-014	Family & Community Services 143 Gougler Avenue
	Sections:	1165.05(d)(1)(A) and 1165.05(d)(1)(B)(i)
	Requests:	The applicant is requesting the following:

- 1) **A variance from Section 1165.05(d)(1)(A) to allow a total of 66 square feet for two building signs, where 50 square feet is the maximum, and**
- 2) **A variance from Section 1165.05(d)(1)(B)(i) to allow a total of two building signs, where one building sign is permitted.**

Ms. Howard asked the applicant to present the request.

Roger DiPaolo, 143 Gougler Avenue, Kent, Ohio, stated he was representing Family and Community Services on Gougler Avenue. He said Family and Community Services have been the primary tenant in the building since 2002. He said during that period, there have been numerous improvements including the restoration following a major fire. The new building that has been recently erected is the first major non-residential construction in the West River neighborhood in over 50 years. It significantly enhances what is considered a blighted area. It is a three million investment that brings in comprehensive medical services to the underserved population in Kent. Axess Pointe Community Health Centers is relocating from Franklin Township and will be the primary tenant of the new addition. It has added approximately 50 jobs to the City of Kent's tax rolls. He said there are asking for variances so that they can have two building signs for each business. The one for Family and Community Services will replace a sign that has been there since 2002. The second sign is for Axess Pointe Community Health Centers. There is no plan to light the sign for Family & Community Services. The Axess Pointe Community sign will be externally illuminated. The sign for Family & Community Services will a metal channel lettered sign measured a total of 42 square feet that will replace a flush mounted sign installed in 2002. This sign will be affixed to the one-story location that is occupied by the agency. The Axess Pointe sign will be aluminum/acrylic faced sign that will be mounted above the primary entrance of the two-story addition to the Family Community Services facility. It will be an externally lit sign that will be 24 square feet. They are two separate businesses and need to be identified.

Mr. Tipton asked if the building and the addition was all connected.

Mr. DiPaolo replied that it is. He said that the Architectural Review Board approved their request for both signs.

Mr. Tipton confirmed that the sign will be externally lit.

Mr. DiPaolo replied the Axess Pointe will be externally lit. The sign for Family and Community Services will not be lit.

Ana Theisen, 143 Gougler Avenue, Kent, Ohio, stated she was from Axess Point Community Health Centers. She said the sign will actually be internally lit and will be on a timer and will be lit only at night. She said the sign was at their previous location. She said they are not open 24 hours.

Mr. Mail did not see why these variances are before the Board of Zoning Appeals because it is one address, one building and two different businesses.

Ms. Howard asked if there was ever any question about having two addresses.

Mr. DiPaolo replied that notion was brought up, but since there is the bridge connecting the two areas and one continuous building, they could not have a separate address.

PUBLIC COMMENTS

Eric Pros, 136 North Water Street, Kent, Ohio, stated he was in favor of granting the variance requests. The applicant has been a good neighbor.

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Howard asked what the practical difficulties or unnecessary hardships were.

Mr. Mail stated that two separate businesses are in the building. Each business needs to advertise.

Ms. Howard agreed with Mr. Mail. She said each business needs their own sign. Granting the variances will not be a detriment to the neighbor or adjacent properties.

Mr. Sellman stated these are minor variances for two businesses. Granting the variances will not be a detriment. He said the two signs fit the building and will not be intrusive.

Mr. Tipton stated he was not in favor of the lighting but understood why it was needed.

Ms. Howard did not think the sign will shine into anything.

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

Motion: **Mr. Mail moved in Case BZ17-014, Family & Community Services, property located at 143 Gougler, that the Board of Zoning Appeals approves a variance to allow a total of 66 square feet for two building**

signs where 50 square feet is the maximum, as defined in Section 1165.05(d)(1)(A) in the City of Kent Zoning Code.

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

Motion: Mr. Mail moved in Case BZ17-014, Family & Community Services, property located at 143 Gougler, that the Board of Zoning Appeals approves a variance to allow a total of two signs, where one building sign is permitted, as defined in Section 1165.05(d)(1)(B)(i) in the City of Kent Zoning Code.

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

**B. BZ17-015 City of Kent Fire Department/Ted Manfrass
418 North Mantua Street**

Sections: 1135.04(b) and 1135.04(c)

Requests: The applicant is requesting the following:

- 1) A 10.33-foot variance from the 30-foot minimum rear yard setback requirement to allow a building addition to be constructed 19.67 feet from the rear property line (Section 1135.04(b)), and**

- 2) A 3-foot variance from the 10-foot minimum side yard setback requirement to allow a building addition to be constructed 7 feet from the side property line (Section 1135.04(c)(3)).

Ms. Howard asked the applicant to present the request.

John Tosko, 985 Bruce Drive, Kent, Ohio, stated he is the Fire Chief for the Kent Fire Department. He was speaking in place of Mr. Manfrass, who is their architect and is out of town. He said they came before the Board of Zoning Appeals in 2016 and received variances for the same addition. He said the building has been redesigned, so they are requesting new variances. They will still be adding a pitched roof. The addition will have room for supplies and equipment, as well as a small addition to the kitchen to round the area off. He said their former architect was unable to finish things for them so they have been working with a new architect and developing a plan. He said they looked at the overall plans and decided to make some changes. He said the original plan was good, but the new architect had some new ideas that made sense to them.

Mr. Tipton asked how the numbers changed.

Mr. Tosko replied they are asking for a 10.33-foot variance instead 8 feet from the rear setback and an additional foot on the side yard setback.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated the City of Kent owns the neighboring lots. It is an odd shaped lot and the building is on the “crooked” part of the lot. These are minor variances being requested.

Ms. Howard agreed that it is an odd-shaped lot and the location of the building is a factor.

Mr. Tipton agreed with the comments made. He said granting the variances will have a minimal impact on the neighboring lots.

Mr. Burton agreed with the previous comments made.

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

Motion: Mr. Sellman moved in Case BZ17-015, City of Kent Fire Department/Ted Manfrass, property located at 418 North Mantua Street, that the Board of Zoning Appeals approves a 10.33 -foot variance from the 30-foot minimum rear yard setback to allow a building addition to be constructed 19.67 feet from the rear property line, as defined in Section 1135.04(b) in the City of Kent Zoning Code.

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

Motion: Mr. Sellman moved in Case BZ17-015, City of Kent Fire Department/Ted Manfrass, property located at 418 North Mantua Street, that the Board of Zoning Appeals approves a 3-foot variance from the 10-foot minimum side yard setback requirement to allow a building addition to be constructed 7 feet from the side property line, as defined in Section 1135. 04(c)(3) in the City of Kent Zoning Code.

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

C. BZ17-015 Sandra & Henry Halem
 433 – 435 Carthage Avenue

Section: 1109.09(a)

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Request: The applicant is appealing the Zoning Inspector's decision to deny the applicant's request to grant the property at 433-435

Carthage Avenue a certificate of pre-existing use as a 3-unit dwelling.

Ms. Howard asked Mr. Fink to review the criteria the Board of Zoning Appeals should use to make a decision.

Mr. Fink stated that the use is a conditionally permitted use. If the use does pre-exist the zoning code, there is no reason for the applicant to go through the conditional use permit process. In order to establish the pre-existing use, they have to show by a preponderance of evidence, or more likely than not, the use has been in use prior to the zoning code being adopted in 1971 and they also can show that the use has been continuous, with no more than a two-year gap throughout the process. The applicants can use evidence such as building permits, site or building plans, leases, rent payments, tax records, photographs, property insurance policies, and directories. If the City of Kent can show beyond a shadow of doubt that there is no possible way to think otherwise, the City does have the authority to approve those applications. It has to be proven with the preponderance of evidence that it has been in continuous permitted use.

Ms. Howard stated the Board of Zoning Appeals has to look at the evidence to make its decision. The applicants are appealing the Zoning Inspector's decision to deny the applicant's request to grant a certificate of pre-existing use as a 3-unit dwelling for the property located at 433 – 435 Carthage Avenue. She said the situation has existed prior to 1971, with no more than two-year gaps. There can be multiple gaps, as long as there is none that is longer than two consecutive years. She asked the applicants to present their preponderance of evidence.

Sandy Halem, 429 Carthage Avenue, Kent, Ohio, stated the Board members have copies of materials that they have submitted. They purchased the property in 1975 and they know that it was occupied in 1974 by one of their renters. She said it has continuously been rented since that period of time. She said there are directories from the Kent Historical Society that show the locations and it shows renters all the way back to 1950. She said it was definitely shown as a three-family unit since 1971.

Ms. Howard confirmed that they bought the property in 1974.

Mrs. Halem replied they purchased the property in 1975, but had a renter that had been there since 1974.

Ms. Howard stated that it has been consistently rented as a three-unit dwelling since 1975.

Ms. Halem replied yes.

Ms. Howard asked Ms. Halem what she could tell the Board about the time between 1971 and 1974.

Ms. Halem replied they could look in the directories that were submitted. It is shown that the previous owner had the property continuously rented. She said it is very difficult to get much information from that far back. They had a renter that had been there since 1974.

Ms. Howard stated between 1971 and now, there is nothing that shows a gap.

Ms. Halem referred to invoices that were submitted showing electrical work done on the three separate apartments.

Ms. Howard asked the Board members felt about the evidence. It was decided that the evidence from before 1971 was okay.

Mr. Burton was convinced there was not a two-year gap in the use of the property.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Fink stated that there was no reason for the City staff to make statements defending the Zoning Inspector's decision.

Ms. Susel stated concrete evidence has not been presented for the time 1971 – 1974. She said the City does not have a pre-existing zoning use permit in the file so lacking that documentation, so the case had to be brought before the Board of Zoning Appeals to consider the preponderance of evidence.

Mr. Tipton stated that the evidence has been presented, except for the time between 1971 and 1974.

Mr. Burton agreed that the evidence is there.

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Mr. Mail agreed with the comments made.

Mr. Sellman also agreed. The preponderance of evidence is there.

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

Motion: Mr. Tipton moved in Case BZ17-016, Sandra & Henry Halem, owners of the property located at 432 – 435 Carthage Avenue, that the Board of Zoning Appeals to grant the applicants’ request for a certificate for pre-existing use as a three unit dwelling, as defined in Section 1109.09(a)

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

VII. MEETING MINUTES

A. August 21, 2017 Meeting Minutes

Motion: Mr. Sellman moved to approve the August 21, 2017 meeting minutes, as submitted.

Mr. Mail seconded the motion.

Vote: The motion carried 4 – 0. 1 abstention.

<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>
<i>Mr. Tipton</i>	<i>Abstained</i>

IX. OTHER BUSINESS

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Mr. Mail stated he would not be at the October 2017 Board of Zoning Appeals meeting.

This is the last meeting for Ms. Howard, so she was thanked for her years of service on the Board of Zoning Appeals Board.

IX. ADJOURNMENT

Motion: Mr. Mail moved to adjourn.

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

Meeting adjourned at 8:00 p.m.