

**CITY OF KENT  
BOARD OF ZONING APPEALS  
PUBLIC HEARING & BUSINESS MEETING  
April 15, 2019**

**MEMBERS PRESENT:** Benjamin Tipton  
Dave Mail  
Tim Sahr  
Jona Burton

**STAFF PRESENT:** Heather Heckman, Development Planner  
Bridget Susel, Community Development Director  
Eric Fink, Assistant Law Director

**I. CALL TO ORDER**

Mr. Mail called the meeting to order at 7:06 p.m.

**II. PLEDGE**

The pledge was recited.

**III. ROLL CALL**

Tim Sahr, Dave Mail, and Benjamin Tipton were present. Jona Burton arrived before the presentation of the first case.

**VI. 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 name and address 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 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."

Mr. Mail 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."

## **VII. 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".

## **VIII. NEW BUSINESS**

**A. BZ18-007 ROBERTA CICCONE / ROCHELLE KLEIN**  
1344 Pine Street / 403 Cherry Street

**Sections:** 1133.03(a)(1), 1133.04(b), 1133.04(c), and 1161.14(a)

**Requests:** The applicant is requesting the following variances for a lot split:  
1344 Pine Street (Parcel A)

- 1) A 1797.06 square foot variance from the 8000 square foot minimum lot size with a single family dwelling to allow the new lot to be 6202.94 square feet (Section 1133.03(a)(1)),
- 2) A 23-foot variance from the 30-foot minimum rear yard setback requirement to allow the existing house to be 7 feet from the rear (South) property line (Section 1133.04(b)), and
- 3) A 5-foot variance from the 10-foot minimum side yard setback requirement to allow the existing house to be 5 feet from the side (West) property line (Section 1133.04(c)).

403 Cherry Street (Parcel B)

- 1) A 2324.13 square foot variance from the 8000 square foot minimum lot size with a single family dwelling to allow the new lot to be 5675.87 square feet (Section 1133.03(a)(1),
- 2) A 21-foot variance from the 30-foot minimum rear yard setback requirement to allow the existing house to be 9 feet from the rear (West) property line (Section 1133.04(b)),
- 3) A 4-foot variance from the 10-foot minimum side yard setback requirement to allow the existing house to be 6 feet from the side (North) property line (Section 1133.04(c)),
- 4) A 7-foot variance from the 10-foot minimum side yard setback to allow a new detached accessory building to be constructed 3 feet from the west side property line (Section 1161.14(a)), and
- 5) A 7-foot variance from the 10-foot minimum side yard setback to allow a new detached accessory building to be constructed

3 feet from the new east side property line (Section 1161.14(a)).

Mr. Fink stated for the record that Ms. Klein has consulted Mr. Fink's office on matters entirely unrelated to this proposal.

Rochelle Klein, 2612 Hartville Rd, stated that she is requesting the variances for 403 Cherry Street. She explained that she and her sisters inherited this property and that both houses are currently on one lot. She stated that she will be moving into 403 Cherry Street next to her sister, who resides in the other house on the lot at 1344 Pine St. She added that because there isn't any place to park in this area she would like to add a pole building/garage in the back.

Mr. Tipton asked why she picked the location that she did for the garage.

Ms. Klein stated that it is the only available location on the lot that wouldn't be too far from the house.

Mr. Tipton asked why they decided to split the parcel.

Roberta Ciccone, 1344 Pine Street, stated that they need to split the parcels so that they can each be deeded in the individual names for legal purposes.

Mr. Tipton asked about the size of the proposed garage.

Ms. Klein stated that she has two vehicles, which will be parked end to end within the 40 foot long structure.

#### **PUBLIC COMMENTS**

None

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

Mr. Mail stated that he understands that legally, it makes sense to try to separate the two houses onto separate parcels even though it causes the need for many variances. He does have some concerns about the garage and its proximity to the other structures.

Ms. Heckman stated that the building code may require fire rated construction of the garage.

Mr. Mail asked about the current excavation at 403 Cherry Street.

Ms. Klein stated that they are repairing the basement walls.

Mr. Tipton also stated this concerns regarding the garage and its location and the density. He added that the requested variances are much larger than what he is normally comfortable with.

Ms. Susel stated that this parcel had multiple dwelling units on it with one being a rental and owner of record owned all of the structures. The parcels now need to be legally split because you can't have separate owners of one parcel the way it

is configured. The parcel split is necessitated by legal matters, but also for insurance purposes. She added that this is a very tight site.

Mr. Sahr stated that his concern is that they would be taking a small city lot and creating two even smaller lots. He understands the ownership issues, but is concerned it will create other issues.

Mr. Mail stated that because these houses are existing, he doesn't feel that this would be a detriment to the neighborhood to grant the variances. The unusual circumstance is legally splitting the property as a result of the inheritance. He added that they aren't creating a problem, they are just recognizing that there really isn't any other good solution.

Mr. Tipton stated that he is supportive of the parcel split due to the hardships and lack of detriment to the neighborhood.

Mr. Sahr agreed with Mr. Mail's comments and added that he feels that there are exceptional issues at hand with this case and not granting the lot split would create a hardship.

Mr. Tipton added that no one came out against the project.

Mr. Burton stated that he is generally in agreement with the others. He stated that the strict application of the provisions of the code would result in practical difficulties or unnecessary hardships. He also feels that there are exceptional or extraordinary circumstances or conditions and that there will not be a substantial detriment to the public interest or adjacent property. He is, however, concerned regarding the location of the garage and asked the applicant if she would be willing to move the proposed structure further back on the lot.

Mr. Mail stated that if the front of the garage were about 45 feet from the alley and then extended 40 feet, it would not close up the house on Pine Street; it would, however, be a longer walk to the house on Cherry.

Ms. Susel reminded the Board that the alley is considered a front yard and has a front yard setback of 60 feet.

Ms. Heckman explained that moving the structure would still require the side yard variances.

The Board and Ms. Klein discussed possible other locations for the structure. The general consensus is to start the building 60 feet from the alley property line and build the 40 foot structure towards the house, which will add a little more distance from the house.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 1344 Pine Street., Mr. Mail moved that the Board of Zoning Appeals grant the 1797.06 square foot variance from the 8000 square foot minimum lot size with a single family dwelling to allow the new lot to be 6202.94 square feet, as defined in Section 1133.03(a)(1) in the City of Kent Zoning.

Mr. Tipton seconded the motion.

**VOTE:** The motion carried 4-0.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 1344 Pine Street., Mr. Mail moved that the Board of Zoning Appeals grant the 23-foot variance from the 30-foot minimum rear yard setback requirement to allow the existing house to be 7 feet from the rear (South) property line, as defined in Section 1133.04(b) in the City of Kent Zoning.

Mr. Tipton seconded the motion.

**VOTE:** The motion carried 4-0.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 1344 Pine Street., Mr. Mail moved that the Board of Zoning Appeals grant the 5-foot variance from the 10-foot minimum side yard setback requirement to allow the existing house to be 5 feet from the side (West) property line, as defined in Section 1133.04(c) in the City of Kent Zoning.

Mr. Tipton seconded the motion.

**VOTE:** The motion carried 4-0.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 403 Cherry Street., Mr. Mail moved that the Board of Zoning Appeals grant the 2324.13 square foot variance from the 8000 square foot minimum lot size with a single family dwelling to allow the new lot to be 5675.87 square feet, as defined in Section 1133.03(a)(1) in the City of Kent Zoning.

Mr. Sahr seconded the motion.

**VOTE:** The motion carried 4-0.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 403 Cherry Street., Mr. Mail moved that the Board of Zoning Appeals grant the 21-foot variance from the 30-foot minimum rear yard setback requirement to allow the existing house to be 9 feet from the rear (West) property line, as defined in Section 1133.04(b) in the City of Kent Zoning.

Mr. Sahr seconded the motion.

**VOTE:** The motion carried 4-0.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 403 Cherry Street., Mr. Mail moved that the Board of Zoning Appeals grant the 4-foot variance from the 10-foot minimum side yard setback requirement to allow the existing house to be 6 feet from the side (North) property line, as defined in Section 1133.04(c) in the City of Kent Zoning.

Mr. Sahr seconded the motion.

**VOTE:** The motion carried 4-0.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 403 Cherry Street., Mr. Mail moved that the Board of Zoning Appeals grant the 7-foot variance from the 10-foot minimum side yard setback to allow a new detached accessory building to be constructed 3 feet from the west side property line, as defined in Section 1161.14(a) in the City of Kent Zoning.

Mr. Sahr seconded the motion.

**VOTE:** The motion carried 4-0.

**MOTION:** In Case BZ18-007, ROBERTA CICCONE / ROCHELLE KLEIN 403 Cherry Street., Mr. Mail moved that the Board of Zoning Appeals grant the 7-foot variance from the 10-foot minimum side yard setback to allow a new detached accessory building to be constructed 3 feet from the new east side property line, as defined in Section 1161.14(a) in the City of Kent Zoning with the condition that the building is constructed 60 feet from the north property and not to exceed a building length of 40 feet.

Mr. Tipton seconded the motion.

**VOTE:** The motion carried 4-0.

**B.      BZ19-009      CITY OF KENT SERVICE DEPARTMENT  
SOUTHWEST PUMP STATION  
1296 MIDDLEBURY ROAD**

**Section:**      1171.01(a)(1)

**Request:**      The applicant is requested a variance from Section 1171.01(a)(1) to allow a new pump station to be 2 feet from the front property line, where 100 feet minimum is required.

Melanie Baker, Service Director for the City of Kent, presented the application. She explained that there is an existing pump station currently at this location within an easement. The existing underground lines and elevations set the location and elevation of the new pump station. The location does not substantially violate the spirit or intent of the zoning code as it is existing. A new wet well with safety rails and hatches, as well as a building to house the new pumps, generator, and electrical panel will be constructed. There are 140 existing residential units that will benefit from this utility change. The 2' variance requested is for the building and the wet wells for the south, east and north property lines due to the shape and size of the parcel. There are no other location options that would alleviate the need for a variance. The structure will be constructed of split-face brick and metal standing seam roof. This should not alter or adversely affect the adjoining properties or deter from the existing character of the neighborhood and should not leave any special conditions or circumstances to the existing parcel. The granting of this variance will convey no special privileges or lands. The new structure will better facilitate the service of sanitary sewer to the adjoining parcels and help to prevent sewer back-ups.

**PUBLIC COMMENTS**

Pat Overfield, 1298 Middlebury, asked about the visibility coming out of her driveway.

Ms. Baker stated that the building will be located 28 feet from the street and the trees that are in front of the existing pump station will be removed. There will be a landscaping plan to help screen the structure from the neighbors.

Eugene Bowers, 1302 Middlebury, asked about the design.

Cori Finney, Senior Engineer for the City of Kent, stated that the proposed layout of the structure is to accommodate the trucks.

Ms. Baker added that the new layout is also due to the existing pump station needing to stay in service while the proposed pump station is constructed. Ms. Baker stated that there will be a public meeting for all the neighbors to discuss the project in the near future.

**BOARD OF ZONING OF APPEALS DISCUSSION**

Mr. Mail stated that edge of the right of way is a long way from the edge of Middlebury Road, which minimizes the impact of the variances. He feels that it will be an unobtrusive building that will not crowd the roadway.

Mr. Tipton agreed.

Mr. Sahr stated that he is okay with the variance, as he doesn't feel that it will be a detriment. He added that it is a nicely designed building that will serve the community. He stated that because of the shape of the lot and all of the other restrictions, they don't have any other options.

Mr. Burton thanked Ms. Baker for her presentation, which addressed all three conditions.

**MOTION:** In Case BZ19-009, City of Kent Service Department, Southwest Pump Station, 1296 Middlebury Rd, Mr. Sahr moved that the Board of Zoning Appeals grant the variance request from Section 1171.01(a)(1) to allow a new pump station to be 2 feet from the front property line, where 100 feet minimum is required.

Mr. Tipton seconded the motion.

**VOTE:** The motion carried 4-0.

**VII. MEETING MINUTES**

**A. March 18, 2019 meeting minutes**

**MOTION:** Mr. Mail moved to approve the minutes of March 18, 2019, as submitted.

The motion was seconded by Mr. Sahr.

**VOTE:** The motion carried 4-0.

**VIII. OTHER BUSINESS**

Mr. Fink updated the Board on the status of the appeal for Dunkin Donuts. There will be a new proposed business for the parcel on South Water Street where a Dunkin Donuts was previously proposed. Staff will review the proposal first and then if the applicant wishes, it could come before the Board of Zoning Appeals

**IX. ADJOURNMENT**

Mr. Tipton made a motion to adjourn the meeting. Mr. Mail seconded the motion. The motion carried 4-0. The meeting adjourned at 8:11 p.m.