

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
August 20, 2018**

MEMBERS PRESENT: Benjamin Tipton
Dave Mail
Tim Sahr
Jona Burton

BOARD ABSENT: Paul Sellman

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

I. CALL TO ORDER

Mr. Tipton called the meeting to order at 6:58 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Dave Mail, Tim Sahr, Jona Burton, and Benjamin Tipton 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 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. Tipton 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. BZ18-008 KATHRYN GRIGG & TIMOTHY MILLER 4183 NEWCOMER ROAD

SECTION: 1161.14(a)

REQUEST: The applicant is requesting an 8-foot variance from the 10-foot minimum side yard setback to allow a new detached accessory building to be 2 feet from the side (south) property line (Section 1161.14(a)).

Kathryn Grigg, 4183 Newcomer Rd, Kent, Ohio presented the project. She explained the selected site has a natural clearing. They do not want to remove any more trees than necessary. The driveway from this location would permit adequate backup space from the new garage, and would require less concrete than other locations. There also appears to have been a previous structure in the proposed location as gravel can be seen through the grass and there is also electrical at the site. The building would house large equipment necessary for maintaining their 7 acres. They may be able to construct more than 2-feet from the property line based on the grade but they are asking for the maximum now. Other areas are too soft for construction and the removal of trees would be required.

Mr. Tipton asked about placing the structure more towards the driveway.

Ms. Grigg stated that the slope would be too great for the apron into the garage from the existing concrete. Ms. Grigg reiterated that if they are able to increase the setback they will.

Mr. Sahr asked about the slope direction.

Ms. Grigg stated that it slopes down to the west.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton expressed concern about the closeness of the garage to the property line. There isn't anyone from the church present to oppose the location. Based on the unique parcel, existing driveway and slope of the grade, he feels that the placement makes sense.

Mr. Mail stated that based on the applicant's conversation with Riverwood Chapel and their lack of concern for the proposed location, he feels that the structure will be unnoticeable. He also feels that the grade in another location would be more difficult.

Mr. Sahr agreed with the other members and feels that it will not have a negative impact on the adjoining properties. The location makes sense.

Mr. Mail stated that the unusual circumstances of the property would be the destruction of more trees, when there is already a clear area for the building. He feels that the lot line will probably never be built on by the Church thus leaving plenty of room for emergency vehicles to have access. He also stated that this will not affect anyone's property values, as it cannot be seen from the street.

Mr. Tipton agrees with the other comments and feels the placement is agreeable. In addition, he recognizes the lack of opposition from the neighboring properties.

MOTION: Mr. Burton moved in Case BZ18-008, Kathryn Grigg & Timothy Miller, property located at 4183 Newcomer Rd., that the Board of Zoning Appeals approve the variance to allow a new detached accessory building to be located 2 feet from the south property line, as defined in Section 1161.14(a) in the City of Kent Zoning Code.

Mr. Sahr seconded the motion.

VOTE: The motion passed 4 – 0.

**B. BZ18-009 MICHAEL PURDIE
 426 HARRIS ST.**

SECTION: 1161.14(a))

REQUEST: The applicant is requesting a 5-foot variance from the 10-foot minimum side yard setback to allow a new detached accessory structure to be 5 feet from the side (east) property line (Section 1161.14(a)).

Michael Purdie, 426 Harris St., presented his request to the Board. He stated that the structure will allow him and his family to spend more time outside while protecting him from the sun. He previously has had sun poisoning and needs protection from the sun. The patio is within his enclosed fence and moving it 5 more feet will not allow him to use his tractor to cut his grass.

Mr. Tipton asked about the structure, such as the size and roof make-up.

Mr. Purdie stated that the 8' x 12' structure will not have sides and the roof will be constructed of plywood with 3 dimensional asphalt shingles.

Mr. Mail asked if the structure was already built.

Mr. Purdie stated that it is partially constructed but he stopped construction when asked to do so by the City.

Mr. Burton asked if the fence is also 5 feet from the property line. He asked staff if the overhang counted in the variance request.

Mr. Purdie stated that the fence is 5 feet from the property line.

Ms. Phile stated that the variance does not include the overhang, but rather the measurement is from the foundation to the property line.

Mr. Sahr asked about the size of the tractor.

Mr. Purdie stated that it has a 54 inch mowing deck and he would have a difficult time maneuvering it, if he moved it over due to the angle of the porch.

Mr. Mail asked when the project will be completed.

Mr. Purdie stated that he only has the uprights and part of the roof constructed. He still needs to complete the floor framing.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that one advantage is knowing what it will look like since the structure is partially built and the structure is within his fence line.

Mr. Tipton asked to hear more about the hardships and practical difficulty regarding this variance request.

Mr. Purdie restated his previous statement that he wouldn't be able to spend anytime outside with his family as a result of sun poisoning and not being able to get out of the sun, and moving the structure an additional 5 feet to meet code would inhibit his ability to mow. There is also a raised concrete pad close to the porch and it would be more difficult to put the posts through the concrete if he relocated the structure to conform. He also wouldn't be able to get his tractor into the back yard to mow either. A reduction in size of the structure would make it too small to be comfortable.

Mr. Burton stated that it seems that the concrete pad would appear to be a good location if the concrete wasn't already existing.

Mr. Purdie stated that it would need to be a lean-to type and he would be concerned about leaks where the roofs would join.

Mr. Burton restated Mr. Purdie's explanation of the property: 5 foot variance for a partially constructed structure, a raised concrete pad to the west of the proposed site would eliminate access for the tractor, constructing a structure off of the existing garage would cause concern with issues such as the rooflines.

Mr. Mail stated that the difficulties and hardships are somewhat self-inflicted but listed them as: other locations would not allow the tractor access to the rear yard, a structure off the existing structure would be a lean-to type and the owner is concerned about water run-off from his original garage. He feels that the owner's exceptional circumstances are that he has a very narrow lot. He says that because the owner of the property at 418 Harris has not made contact either for or against the project, he assumes that it isn't an issue for them. The project isn't visible from other neighboring properties.

Mr. Sahr doesn't see the items as practical difficulties or unnecessary hardships and feels there are ways around this. He agreed that it is a narrow lot, but feels that there are other options.

Mr. Burton stated that he feels that there are likely solutions given the depth of the lot but also recognizes that the close proximity of the main house makes sense given the purpose is to spend time with the family.

Mr. Fink stated that based on *Duncan v. Middlefield*, the courts only require practical difficulty and not necessarily an unnecessary hardship to grant a variance. The Supreme Court of Ohio gives factors to consider such as: 1. whether the property in question will yield a reasonable return without the variance, 2. whether the variance is

substantial, 3. whether the essential character of the neighborhood will be altered or the adjoining properties would suffer as a result of the variance, 4. whether the variance would affect the government's ability to deliver services, 5. whether the property owner purchased the property with the knowledge of the zoning restrictions, 6. whether the property in the predicament feasibly can be obviated through some other method other than a variance, and 7. whether the spirit and intent of the zoning ordinance would be observed and substantially justice done by granting a variance or any other circumstance that the Board deems necessary.

Mr. Tipton feels that it is a reasonable request and that they have granted variances that are closer and much larger.

Mr. Mail added that it is contained within his fence and the structure doesn't have permanent foundations that can be removed if desired.

Mr. Tipton and Mr. Mail discussed that the applicant has the option to table his request until all 5 members are present if he feels that he needs an additional vote.

Mr. Burton stated that given the lower standard that has been set by the Courts he is more in favor of granting the variance. He added that the project is also with the fenced area and the porch does present some difficulty.

Mr. Sahr agreed with Mr. Burton and he tends to move more toward the applicant's position. He added that there is a lack of concern from the neighbors and it doesn't appear that it will be a detriment to the rest of the neighborhood.

MOTION: Mr. Burton moved in Case BZ18-009, Michael Purdie, property located at 426 Harris St., that the Board of Zoning Appeals approve the variance to allow a new detached accessory structure to be located 5 feet from the east property line as defined in Section 1161.14(a) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

VOTE: The motion passed 4 – 0.

**C. BZ18-011 FAIRMOUNT PROPERTIES
227 FRANKLIN AVE**

SECTION: 1146.05(b)

REQUEST: The applicant is requesting a variance from Section 1146.05(b) to allow the average building height to be 65 feet, where 60-foot maximum is permitted.

Brice Hamill, Fairmount Properties, 1138 W. 9th St. Cleveland, Ohio, presented the project. The building is off-set on the property to allow for windows on all 4 sides of the building. There is a 5 foot topographic change from Franklin to Alley 10, which is

the reason for the variance request. The proposed building is bordered on 3 sides by city property. Fairmount is leasing the parking lot to the south, but is unable to construct any buildings on this parcel.

Mr. Mail asked if the parking lot provided parking for the entire building.

Ms. Susel explained that in the C-D District, they do not need to provide parking for the entire project. They do need to provide a parking plan explaining where parking is available for this project. The parking is an issue that will be examined and decided on by the Planning Commission.

Mr. Sahr asked if the number of stories in the building would change if a variance is not granted.

Ted Singer, Dimit Architects, 11441 Detroit Ave, Lakewood, Ohio, stated that the variance is a part of what allows this project to become a reality. If a variance is not granted they would need to go back and reassess their proposed investment in the City of Kent. He added that the hardships and difficulties are due to being constricted on all sides as well as the topography itself.

Mr. Tipton asked about the topography from Franklin Avenue to Alley 10 for the property to the north.

Mr. Singer stated that due to the orientation of the proposed building to the north being along Erie rather than Franklin, their blended average meets code. Essentially both properties have the same elevation line along Franklin Ave. The north building has less of a site constraint than theirs.

Mr. Tipton asked what the height of the north building is.

Ms. Susel explained that the height is an overall average height from grade. While the highest point is 62.5 feet the average is 60 feet, which is why they didn't come before the Board asking for a variance.

PUBLIC COMMENTS

Paula Treckel, 1244 Woodhill Dr., feels that the hardships are not hardships and the architects should have designed the project with the slope in mind. She suggested a 5 story structure. She stated that a 6 story building would be a substantial detriment.

Kevin Koogle, 519 Park Ave., agrees with Ms. Treckel's comments and suggested that they remove the windows on the north side and move the building north to help the average height.

Gayle Simon, 903 Morris Rd, also agrees with Ms. Treckel's comments. She is concerned that this may set a precedent for other larger buildings.

Heidi Weisel, 418 Longmere, also agrees with Ms. Treckel's comments. She believes their hardships are money related. She is also concerned about the congestion, wear and tear on the brick streets, and that it may lead to other large buildings.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Fink restated that based on *Duncan v. Middlefield*, the courts only require practical difficulty and not necessarily an unnecessary hardship to grant a variance. The Supreme Court of Ohio gives factors to consider such as: 1. whether the property in question will yield a reasonable return without the variance, 2. whether the variance is substantial, 3. whether the essential character of the neighborhood will be altered or the adjoining properties would suffer as a result of the variance, 4. whether the variance would affect the government's ability to deliver services, 5. whether the property owner purchased the property with the knowledge of the zoning restrictions, 6. whether the property in the predicament feasibly can be obviated through some other method other than a variance, and 7. whether the spirit and intent of the zoning ordinance would be observed and substantially justice done by granting a variance.

Mr. Sahr asked about the actions of the Architectural Review Board.

Mr. Fink stated at this time the Architectural Review Board has not made a recommendation to the Board of Zoning Appeals or the Planning Commission.

Ms. Susel further explained that the applicants met with the ARB only to gather preliminary comments on their conceptual plan. No official action has been taken.

Mr. Hamill stated that the building will be 65 feet at Franklin and 60 feet at the rear of the building.

Mr. Tipton asked why each floor allows for 11-feet per story. Can this be reduced?

Mr. Singer stated that after clarifying the method of determining the height according to Kent's zoning code, they have reduced each floor to be 10-feet, 6-inches.

Mr. Tipton asked if they could reduce it more.

Mr. Singer stated that it would reduce the ceiling height and make it less desirable for the tenants.

Mr. Sahr asked what the interior ceiling height will be.

Mr. Singer responded that the minimum would be 8-feet, 6-inches at the lowest due to utilities.

Mr. Mail stated that the drawing shows the parapet wall elevations of 67-feet to 62-feet.

Mr. Singer explained those measurements were noted before they understood that the zoning code allowed them to not include the parapet wall height. The building height without the parapet wall is 60 – 65 feet.

Mr. Mail stated that this building will tower over other buildings in the City.

Mr. Sahr stated that he feels that they can reduce the floor height to achieve an acceptable height and doesn't feel this is a hardship.

Mr. Burton agreed that because this will be an empty site before construction, there isn't a pre-existing condition that causes a hardship. The property was purchased knowing what it is.

Mr. Mail added that they have owned the property for 8 years.

Mr. Tipton stated that he is torn. He feels that 5 feet is a significant request. Mr. Tipton reflected on the Duncan v. Middlefield Case and City of Kent criteria.

Mr. Mail stated that he does not feel they meet any of the 3 criteria of the Kent Zoning Code.

Mr. Hamill acknowledged that they have been considering many options for this site for many years. Now there is a building to the north that sits on the property line which has shifted their design. This was not what they expected to happen.

Mr. Tipton stated that he understands what Mr. Hamill is describing however, there are still many options that would meet the 60 foot requirement.

Mr. Koogler stated that the other building shouldn't matter. This is not a hardship.

Mr. Sahr stated that the architects and engineers are there to design around difficulties. He stated that he has not heard any practical difficulty or exceptional circumstance. He is concerned that a precedence could be set.

Mr. Tipton reminded the Members that the Board does not set precedence.

Mr. Burton stated that he feels that if the building to the north was able to be designed within the 60-foot height restriction, this building can too.

MOTION: Mr. Burton moved in Case BZ18-011, Fairmount Properties, property located at 227 Franklin Ave., that the Board of Zoning Appeals deny the variance to allow the average building height to be 65 feet, as defined in Section 1146.05(b) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

VOTE: The motion passed 4 – 0.

VII. MEETING MINUTES

A. June 18, 2018 meeting minutes

MOTION: Mr. Mail moved to approve the minutes of June 18, 2018, as submitted.

The motion was seconded by Mr. Tipton

VOTE: The motion carried 3-0. Mr. Burton abstained.

VIII. OTHER BUSINESS

None

IX. ADJOURNMENT

MOTION: Mr. Tipton moved to adjourn.

Mr. Mail seconded the motion.

VOTE: The motion passed 4 – 0.

Meeting adjourned at 8:24 p.m.