

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
September 17, 2018**

MEMBERS PRESENT: Benjamin Tipton
Dave Mail
Tim Sahr
Jona Burton
Paul Sellman

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

I. CALL TO ORDER

Mr. Sellman called the meeting to order at 7:03 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Tim Sahr, Jona Burton, Paul Sellman, and Benjamin Tipton were present. Dave Mail arrived after roll call.

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. BZ18-012 STEAK-EEZ 120 S. WATER ST.

SECTIONS: 1165.05(d)(1)(A) and 1165.05(d)(1)(B)(i)

REQUESTS: The applicant is requesting the following:

- 1) An 87.75 square foot variance from the 50 square foot maximum for all signage to allow two building signs and a projecting sign totaling 137.75 square feet (Section 1165.05(d)(1)(A)), and**
- 2) A variance from Section 1165.05(d)(1)(B)(i) to allow a total of two building signs.**

Sonja Istocka, 120 S. Water St., Kent, OH, stated that they would like to hand paint a 16’ x 8’ sign on the side of the building that they own for their business, Steak-Eez.

Mr. Tipton asked why they want a sign this size.

Ms. Istocka stated that they feel it fits with the size of the building and it would be visible. She added that they are open to other sizes.

Mr. Sellman asked if there was a previous sign in this location.

Ms. Istocka stated that The Zephyr painted an area white to use as a movie screen.

Mr. Mail asked why they feel that they need this sign.

Ms. Istocka stated that they are trying to draw more attention to their business to help with sales.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that if this sign were 40 square feet it would be within size limits of the zoning code. They would still need a variance for a second sign.

The Board discussed and clarified that the business currently has one blade sign and one building sign, which total 9.75 square feet. There are 2 variances on the floor for review.

Mr. Sellman asked if it would cause them any hardships if they were not granted a variance for the additional 50 feet.

Ms. Istocka replied no but doesn't feel that it would be large enough to attract customers. The proposed size was recommended by her father.

Mr. Sellman asked how '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' applies with this request.

Ms. Istocka replied that it would be the need for better advertising.

Mr. Sellman asked Ms. Istocka about the third condition, '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. Istocka replied that she didn't feel that it would be a detriment to the public.

Ms. Susel added that there are not any other advertising signs on the side of buildings in the downtown area, with the exception of the Acorn Corner sign.

Mr. Fink clarified that this was approved as part of a Comprehensive Sign Plan and was needed to satisfy requirements for their historical credits.

Mr. Tipton stated that he isn't sure that this is a hardship, as they have other signs.

Mr. Burton added that they could also still have a window sign and increase the existing signs sizes.

Mr. Sellman stated that the proposed sign would only service southbound traffic and not well, due to the closeness of the buildings.

Mr. Sahr stated that he doesn't feel that any of the three criteria have been met; wouldn't be a hardship, isn't extraordinary as every business would like more advertising, and it could be viewed as a public detriment.

Mr. Sellman stated that he doesn't feel the sign meets the 3 criteria either. He thinks that they can expand what is already there from within the confines of the code.

Ms. Istocka asked if they would be allowed to paint a cheesesteak picture with the words "Cheesesteak" at the bottom without the business name. Would this still be considered a building sign?

Ms. Susel explained that it would need to go before the Architectural Review Board and they would determine if it is artistic or not. If the variance is approved tonight, it will also go to the Architectural Review Board for review.

Mr. Mail stated that he doesn't feel that this is a hardship; there was no compelling and unusual reason.

Mr. Burton is in relative agreement with all the other Board statements.

Mr. Tipton is also in relative agreement.

MOTION: Mr. Burton moved in Case BZ18-012, Steak-Eez, property located at 120 South Water Street, that the Board of Zoning Appeals deny the variance to allow an 87.75 square foot variance from the 50 square foot maximum for all signage to allow two building signs and a projecting sign totaling 137.75 square feet as defined in Section 1165.05(d)(1)(A) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

VOTE: The motion passed 5 – 0.

MOTION: Mr. Burton moved in Case BZ18-012, Steak-Eez, property located at 120 South Water Street, that the Board of Zoning Appeals deny the variance to allow a total of two building signs as defined in Section 1165.05(d)(1)(B)(i) in the City of Kent Zoning Code.

Mr. Sahr seconded the motion.

VOTE: **The motion passed 5 – 0.**

**B. BZ18-013 LISA PROCTOR
 1692 ATHENA DRIVE**

SECTIONS: 1161.27(a), 1161.27(c), and 1161.27(e)

REQUEST: In accordance with Sections 1161.27(c) and 1161.27(e), the applicant is requesting a variance from Section 1161.27(a), to install a bump-out in the driveway.

Lisa Proctor, 1692 Athena Dr., Kent, OH, stated that the driveway already had the bump-out when she moved in, in May of 2018. Her personal situation and lack of family to assist with the removal of the gravel is her hardship. She added that according to google maps, it has been there at least 8 years. The entire driveway and sidewalk are gravel and are partially lined with railroad ties. She stated that they own two vehicles. There is an old tree that would be in the way if she extended the bump-out to the street and enlarged the apron.

Mr. Burton clarified the options: 1. Continue the gravel to the street and expand the drive apron, 2. Remove the bump-out and, 3. Grant the variance. He asked Ms. Proctor if she would be willing to remove the gravel just in the bump-out area.

Ms. Proctor stated that it is more than she can handle both physically and financially.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sahr stated that this is not a detriment to the neighborhood, as there are many driveways in this area that have the same. He feels that they have practical difficulty in enforcing this ordinance in this circumstance.

Mr. Sellman asked if this could be considered non-conforming based on the acceptance of this ordinance and the year the bump-out was installed.

Mr. Fink stated that it is not. Before this became a part of the zoning code, it was a criminal offense.

Ms. Phile stated that the ordinance was passed in 2013.

Mr. Fink stated that they need to provide a preponderance of evidence that the bump-out was legal and not in violation of either the zoning or police ordinance.

Mr. Sellman stated that the City seems to want more green space, which is part of why bump-outs are not permitted.

Mr. Mail added that gravel is permeable. Mr. Mail stated that the extraordinary circumstance is that the bump-out was there when she purchased the house and it would be a Herculean job to remove the gravel given its size.

The Board discussed the neighborhood and its varying driveway configurations.

MOTION: Mr. Mail moved in Case BZ18-013, Lisa Proctor, property located at 1692 Athena Dr., that the Board of Zoning Appeals approve the variance to allow a bump-out in the driveway, as defined in Section 1161.27(a) in the City of Kent Zoning Code.

Mr. Burton seconded the motion.

VOTE: The motion passed 5 – 0.

VII. MEETING MINUTES

A. August 20, 2018 meeting minutes

MOTION: Mr. Tipton moved to approve the minutes of August 20, 2018, as submitted.

The motion was seconded by Mr. Sahr.

VOTE: The motion carried 4 – 0.

VIII. OTHER BUSINESS

MOTION: Mr. Tipton moved excuse Mr. Sellman from the August 20, 2018 meeting.

The motion was seconded by Mr. Mail.

VOTE: The motion carried 4 – 0.

IX. ADJOURNMENT

Hearing no objections, Mr. Tipton adjourned the meeting at 7:55 p.m.