

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
December 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
Kim Brown, Administrative Assistant

I. CALL TO ORDER

Mr. Tipton called the meeting to order at 7:02 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Tim Sahr, Jona Burton, Paul Sellman, Dave Mail, 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. BZ18-015 ANDRA FRESCURA
 126 SOUTH PEARL STREET**

SECTIONS: 1133.03(a)(2), 1133.3(b)(2), AND 1133.04(a)

REQUESTS: The applicant is requesting the following:

- 1) A 2,400 square foot variance from the 12,000 square foot minimum lot size to allow a duplex to be located on a parcel that is 9,600 square feet (Section 1133.03(a)(2)),**
- 2) A 15-foot variance from the 75-foot minimum lot width at the building line requirement to allow a duplex to be located on a 60-foot wide parcel (Section 1133.03(b)(2)), and**
- 3) A 20-foot variance from the 35-foot minimum front yard setback to allow a building addition to be 15 feet from the front property line along the Alley (Section 1133.04(a)).**

Andra Frescura, owner of 126 S. Pearl St., stated that she would like to add a mother-in-law suite to her current home but she needs variances because her house would then be considered a duplex. The addition will sit inside her current fence.

Mr. Tipton asked Ms. Frescura asked what her practical difficulty is.

Ms. Frescura stated that her hardship is that she would like to stay in her house but at this point in her life it is more than what she can take care of. She would like to have her own part of the house to maintain her independence, while her son and daughter-in-law live in the main portion.

Mr. Tipton stated that he agreed that that is exceptional or extraordinary. He asked about whether or not the project would be a detriment to the adjacent property or interest.

Ms. Frescura stated that she feels that it would not be a detriment due to the location where it will not be visible from the neighboring properties. There is plenty of existing parking. She explained that there wouldn't be any additional load on the existing utilities.

Mr. Sahr asked about the layout of the house and whether or not the addition could be constructed in the center of the "c" shaped house.

Ms. Frescura stated that the interior walls are all lined with glass windows. Putting the addition in that area would ruin the courtyard.

Mr. Sellman asked if the addition would be attached to the main structure.

Ms. Frescura stated that it would be connected with a breezeway.

Mr. Burton asked why she wanted a kitchen in her in-law suite.

Ms. Frescura stated that she wanted to be independent from the main house.

PUBLIC COMMENTS

Randy Lyle, 127 S. Prospect, stated that he is the neighbor across the alley from the subject property. He stated that his two concerns were the size of the addition and parking. Given the explanation of the project, he has no concerns.

Ms. Frescura added that she has two neighbors to the right of her property who couldn't be at the meeting who are in support of the project and can submit a letter if needed.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Tipton stated that the request is a 20% variance from the minimum lot size requirement and the other two variance requests are very significant as well.

Mr. Sellman stated that the lot width is common in older neighborhoods. Mr. Sellman stated that even though it would have a duplex status, it isn't going to be used as a duplex since they are all family.

Ms. Susel clarified that a duplex can occupy 2 single families; it cannot be used as a rooming house.

Mr. Mail stated that the applicant has other options for a mother-in-law suite without asking for a duplex. The current plan is a totally separate building rather than a continuation of the current structure.

Mr. Tipton acknowledges that this property has two front yards but asks what the setback would be if the alley side was an actual backyard.

Ms. Heckman stated that it would be 30 feet instead of the current 35 foot requirement.

Mr. Sellman asked if the applicant wants to have a separate outside entrance.

Ms. Frescura clarified that there is also an entrance through the house to the proposed addition. She stated that she would like to have a sliding glass door as it complements the architecture of the main structure. The roof will be continuous from the main house to the addition.

Mr. Sahr asked for the definition of a duplex.

Ms. Susel stated that there isn't one specific item that makes it a duplex due to the many varying configurations. She added that in this instance, there is no congregate living space that is shared in any way; one party can live independently from the other. Many times the Building Official has to perform a walk-thru inspection to make the determination. She stated that because this is its own separate house, the Building Official determined it to be a duplex.

Mr. Tipton informed the applicant that if she chooses she can table her variance requests and work with the City to see if changes can be made to make the addition an in-law suite rather than a duplex. This would lessen the variances required.

Ms. Frescura stated that she would like to continue her case until she can get with her contractor and look at the options.

**B. BZ18-016 JOHN BURNELL
 1022 MASON AVENUE**

Section: 1161.14(a)

Request: The applicant is requesting a 4.42-foot variance from the 10-foot minimum rear yard setback to allow an accessory building to be 5.58 feet from the rear property line (Section 1161.14(a)).

John Burnell, 1022 Mason Avenue, stated that he would like to construct an enclosed building in the same location as an existing garage. The current foundation is failing

so he wants to rebuild from the ground up and the current location is less than 10 feet from the property line.

Mr. Tipton complimented the applicant on his thorough application and his detailed answers to the pertinent questions regarding practical difficulties, extraordinary circumstances and the detriment to the public. Mr. Tipton clarified that the building is to be used for storage and not a living space.

Mr. Burnell confirmed that it will be for storage and utility.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton asked if the existing foundation didn't need to be removed would he still need to have a variance.

Ms. Heckman stated that they would not.

Mr. Tipton stated that he can personally vouch for the need to replace the foundation. He feels that it is a reasonable request given the existing structure in that location.

Mr. Mail stated that there won't be a traffic issue since it isn't a garage.

Mr. Sellman stated that they are more than 50' from the next structure.

The Board and Staff all complimented Mr. Burnell on his application.

MOTION: Mr. Sellman moved in Case BZ18-016, John Burnell, 1022 Mason Avenue, that the Board of Zoning Appeals approve the variance to allow a 4.42-foot variance from the 10-foot minimum rear yard setback requirement to allow a new detached accessory structure to be constructed 5.58 feet from the rear 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 5-0.

C. BZ18-017 DS ARCHITECTS
1625 SOUTH WATER STREET

Section: 1171.14(a)(8)

Request: The applicant is requesting a variance from Section 1171.01(a)(8) to allow a proposed Dunkin' Donuts to be located next to residential uses.

Amanda Carter, DS Architects, 315 Gougler Ave., Kent, stated that they are seeking a variance to allow a conditional commercial use in the R-C District for the proposed Dunkin Donuts. She stated that this is a unique site in that there are two residential sites located behind the subject property, which also have a drive easement through property that they would maintain. Ms. Carter explained that it is a common condition for sites along South Water Street to have residential uses behind them so they feel that it is compatible. In terms of hardship, any commercial use would require a variance.

Mr. Sahr asked if they have conducted traffic studies yet.

Ms. Carter stated that they are in the process of getting proposals for traffic studies, which will be included with their Planning Commission submission.

Mr. Tipton asked for clarification on the curb cuts.

Ms. Carter pointed them out on the drawing and explained.

Mr. Sahr asked about the distance from the centerline of S.R. 261 to their first proposed curb cut.

Ms. Carter did not have that information.

PUBLIC COMMENTS

Ken Blum, 2595 Center Road, Hinkley, Ohio, owner, stated that they have 26 Dunkin Donuts locations in northeast Ohio including the other Kent location and it is not uncommon for neighboring residents to be concerned during the planning stage but when the business is open the anxieties are alleviated. They are good neighbors and take care to address lighting and fence issues/requests from the neighbors. They are owner/operators and take pride in maintaining their structures. He feels that the drive easement for the houses behind the proposed site will be safer with a paved drive and second curb cut.

Mr. Tipton asked how they will address ensuring that there is room to get around the cars waiting in the drive thru line for the residents with the drive easement.

Mr. Blum stated that the area is wide enough for cars to get around.

Mr. Mail asked if they made donuts on site.

Mr. Blum stated that they do not bake donuts at any of their locations. They are made at an off-site commissary and are delivered between midnight and 3 a.m.

Fred White, 421 Beryl, stated that he has four commercial properties adjacent to his property. His only concerns are about traffic and trash. He feels that traffic is going to be an issue regardless of the location. He would like to see a sidewalk installed on that side of the street as well.

Al Smalley, 414 Beryl, stated that he is concerned about the lighting and noise that will travel onto his adjacent property. He submitted a petition, which shows that 41 out of 46 households were against the variances. Traffic is also an issue in the area.

Brad Maxwell, 434 Beryl, also concerned with traffic and its impact on safety. He is concerned about property values. The current wooded lot blocks noise. He would like to see Dunkin build on the west side of Water Street.

Rebecca Harder, 431 Beryl, read her statement that has been provided and is a part of the record. She is concerned about increased traffic, light pollution, and trash. She is not in favor of new commercial development adjacent to residential properties.

Jean Sink, 5332 St. Rt. 43, lives directly behind the subject property. She is concerned about the driveway easement, lighting, noise and other issues that have already been discussed.

Loran Sink, 5332 St. Rt. 43, stated that he has the same concerns as the others before him.

Dave Kessler, 1638 S Lincoln St., agrees with other comments and traffic congestion concerns.

Cynthia Price, 709 Beryl, agrees with other comments and traffic concerns.

Maureen Smalley, 414 Beryl, agrees with other comments, and is also concerned about noise after they clear the trees and lighting concerns. Stated there are a lot of walkers in the area and she doesn't feel that this is a good fit.

Jody Maxwell, 434 Beryl, stated that there is a lot of cut-thru traffic through the Beryl Dr. neighborhood already and is concerned about an increase in traffic.

Charles Lim, owner of 1605 S. Water St., agreed with traffic concerns and also concerned about traffic going down the driveway to the houses behind the proposed site, one of which his son owns, as well as the lights and noise.

Fred White added that the only reason that he changed his mind and is in favor of the project is due to the traffic light improvements that are currently underway.

Brad Maxwell added that the storm sewers on Beryl are already overloaded; doesn't feel they could handle more water.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Burton stated that based on the strict application of the code he doesn't think that the variance should be granted although he is cognizant of similar uses just to the north that also abut residential properties. He thanked the residents for their input and efforts.

Mr. Burton stated that although there are other commercial uses in the area that have similar use cases, he feels that there are some distinct differences such as the driveway easement and the close proximity to busy intersections. His primary concern is that the people who need the driveway easement have continuous and appropriate access to their houses. Although they may have excellent planning, he doesn't trust people to follow it to maintain a modicum of safety for the residents.

Mr. Sellman stated that he agrees that there are two very active intersections with the proposed property between them. He feels that a better site would be farther north on Water Street away from Beryl Drive and State Route 261. He agreed with Mr. Burton in that modern drivers don't stop for red lights or stop signs nor do they follow the guided traffic. He feels that this will be a tough location to develop because of the adjacency to the major arteries. He added that he feels that the R-C code was set-up in this location to allow for a less traffic intensive use.

Mr. Sahr feels that there would be a detriment and that it would be inconsistent with purposes of the code. He doesn't feel that they have made an argument for an exceptional hardship. It doesn't meet any of the three criteria, therefore it fails.

Mr. Mail stated that the driveway easement is an issue. He feels that the residents behind this parcel have a right to safe passage out to Water Street. There are other options that would alleviate the drive issue.

Ms. Susel added that any commercial use would need to seek approval due to the residential area near it and it would need to meet the same conditions.

Mr. Tipton agreed with Mr. Sahr that the strict application, exceptional or extraordinary circumstance, and substantial detriment have not been met.

MOTION: Mr. Burton moved in Case BZ18-017, DS Architects, 1625 South Water Street, that the Board of Zoning Appeals deny the variance to allow a Dunkin' Donuts to be located next to residential uses as defined in Section 1171.01(a)(8) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

VOTE: The motion carries 5-0.

VII. MEETING MINUTES

A. October 15, 2018 meeting minutes

MOTION: Mr. Mail moved to approve the minutes of October 15, 2018, as submitted.

The motion was seconded by Mr. Tipton.

VOTE: The motion carried 5 – 0.

VIII. OTHER BUSINESS

None

IX. ADJOURNMENT

Mr. Sellman moved to adjourn the meeting. Mr. Tipton seconded the motion. The motion carried 5-0. The meeting adjourned at 8:33 p.m.