

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
January 28, 2019**

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. Tipton called the meeting to order at 7:01 p.m.

II. PLEDGE

The pledge was recited.

III. OATH FOR REAPPOINTED MEMBERS

Mr. Tipton made a motion to move the Oath for Reappointed Members to the end of the meeting. Mr. Burton seconded the motion. Motion carried 5-0.

IV. ROLL CALL

Tim Sahr, Jona Burton, Paul Sellman, Dave Mail, and Benjamin Tipton were present.

V. ELECTION OF OFFICERS

Mr. Tipton made a motion to move the Election of Officers to the end of the meeting. Mr. Burton seconded the motion. Motion carried 5-0.

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. 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."

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. BZ19-001 HEATHER ULLINGER
 523 ROCKWELL STREET**

SECTION: 1161.14(a)

REQUESTS: The applicant is requesting the following:

- 1) A 5-foot variance from the 10-foot minimum side yard setback requirement to allow a proposed detached accessory building to be 5 feet from the side property line (Section 1161.14(a)), and**
- 2) A 5-foot variance from the 10-foot minimum rear yard setback requirement to allow a proposed detached accessory building to be 5 feet from the rear property line (Section 1161.14(a)).**

William Ullinger, 523 Rockwell Street, described their case. He stated that the biggest reason that they are seeking the variance is for their child's safety while she is in the backyard. Moving the garage forward would create a major blind spot as well as hindering the usability of the backyard. He added that they would also need

to remove the large blooming magnolia tree that is in the center of the backyard in order to create a usable driveway area.

Mr. Tipton asked about the driveway configuration.

Mr. Ullinger stated that they would construct a larger apron in front of the 2 ½ car garage to allow for a turn around so that they can pull out of the driveway rather than backing out.

PUBLIC COMMENTS

Mike Deleone, 530 Fairchild, stated that he doesn't have an issue with the garage, but is concerned with the water/flooding issue for other properties caused by their driveway. He would like to know how the water will be addressed.

Mr. Tipton stated that he does not have any knowledge of the elevations of this area.

Mr. Deleone stated that he grew up at 537 Rockwell and stated that there was a swale that ran between the properties but now the driveway doesn't allow the water to flow. He submitted photos to the Board showing backyards from his mother's house at 537 Rockwell.

Mr. Tipton asked which direction the water flowed.

Mr. Deleone stated that it flows from west to east. He explained that his only concern is how the water situation will be handled.

BOARD OF ZONING OF APPEALS DISCUSSION

Heather Ullinger, 523 Rockwell St., stated that they are aware that they have a water issue. She added that their yard has been wet since they moved in. She explained that when they installed the driveway they removed a concrete wall that was prohibiting the water from getting into the next yard. She is an engineer and is planning on intercepting the water where it comes from the western neighbor into a gravel infiltration bed. If the infiltration bed is inadequate, they will take other measures such as installing a pump to get the water to the storm sewer. They receive water from the neighbors behind them and to the west. Currently they have a temporary culvert installed under the driveway to keep the water flowing. She stated that if they didn't build the garage in the back, it would be built in the drainage swale and further prohibit their ability to deal with the storm water. She indicated on the map to the Board the proposed location of the infiltration bed. She added that they have already cleared many other trees from their property and the neighbors have commented on how much that has helped to allow the sunlight to dry the ground.

Mr. Sellman asked if they removed a garage from the property already.

Ms. Ullinger responded yes, a single car garage was removed as a condition of the purchase.

Mr. Sellman stated that the narrowness of the lot creates a special circumstance for the side setback and the requested rear setback positions the garage for a dryer part of the property and makes it more usable.

Mr. Mail stated that having the garage near the rear property line does not adversely affect the abutting properties on Fairchild. He added that the recent snow and rain are adding to the water issues. Mr. Mail stated that he feels that having the garage in the proposed location would not be a detriment to the neighborhood, as many other properties use the rear of their property for garages and other structures. He added that with a 2 ½ car garage on a 60 foot lot, it is reasonable to violate one of the other side property lines. He believes the project is in character with the neighborhood. The unusual/outstanding circumstances and conditions are that it is a deep and narrow lot, which limits your location options.

Mr. Sellman asked if the apron will be gravel or cement.

Ms. Ullinger stated that they wanted to leave everything as gravel for now in case something needs to be changed while they are working out the water issue.

Mr. Sahr what type of survey was done.

Ms. Ullinger stated it was only a border survey; not a topographic survey.

Mr. Burton stated that he agrees that the side yard variance is fairly common given the narrowness of the lot. He asked for the reason for the large rear yard setback request.

Ms. Ullinger stated that without the rear variance, the garage would be located where the magnolia tree is and also creates a blind spot in the back of the property. They are trying to maximize the usable yard space.

Mr. Burton asked if lessening the request by a couple feet would be an issue.

Ms. Ullinger explained that it would affect the driveway in terms of the turn around and the tree.

Mr. Tipton stated that he is in general agreement with Mr. Mail.

Mr. Sahr stated that he is also in agreement with the other Board members. He would be inclined to grant the side yard setback due to the narrowness of the lot and the rear yard setback as it is consistent with the rest of the neighborhood and not a detriment. He feels that it is better to keep the garage at the rear of the property to avoid the wet areas.

Mr. Fink reminded the Board that if they choose, they can add a condition requiring the applicant to resolve the water issue by implementing storm water management practices.

Ms. Heckman stated that when they bring the construction plans in for approval, Jennifer Barone, Development Engineer for the City of Kent can look at the storm water.

Mr. Tipton asked the applicant if they are agreeable to such a condition, or if they would like the Board to not consider this case tonight.

Ms. Ullinger stated that they are planning to trap and convey the water on their property and are willing to discuss with Ms. Barone.

MOTION: In Case BZ19-001, Heather Ullinger, 523 Rockwell St., Mr. Mail moved that the Board of Zoning Appeals grant the variance to allow a 5-foot variance from the 10-foot minimum side yard setback requirement to allow a proposed detached accessory building to be 5 feet from the side property line, as defined in Section 1161.14(a) in the City of Kent Zoning Code and would further direct that the applicant make appropriate remarks to address the storm water management.

Mr. Sahr seconded the motion.

VOTE: The motion passed 5-0.

MOTION: In Case BZ19-001, Heather Ullinger, 523 Rockwell St., Mr. Mail moved that the Board of Zoning Appeals grant the variance to allow a 5-foot variance from the 10-foot minimum rear yard setback requirement to allow a proposed detached accessory building to be 5 feet from the rear property line as defined in Section 1161.14(a) in the City of Kent Zoning Code.

Mr. Sellman seconded the motion.

VOTE: The motion passed 5-0.

**B. BZ19-002 DS ARCHITECTURE / MASJID OF KENT
325 CRAIN AVENUE**

Section: 1167.11(a)

Request: The applicants are requesting a variance from Section 1167.11(a) to allow the proposed parking expansion to be within the required front and side yards.

Sean Barbina, 315 Gougler Ave, stated that the reason they are asking for these four variances is to create a safe passage into the mosque. They have purchased the neighboring property with the intent of expanding the parking area and the approach to the building. Initially the goal was to have 50 spaces, but due to the configuration of the lot, it isn't possible. The configuration presented tonight is the safest and simplest, which also maximizes the total number of spaces. The east side yard setback request of 7 feet matches the 7 foot west side yard setback of the existing parking area. It also provides a safe 24 foot lane for backing out, as well as 2 parking spaces next to the sidewalk, which protects the sidewalk traffic from the moving vehicle traffic. The new parking lot will minimize the overflow parking that is currently on the street. They are also asking for a variance to allow parking in the front yard to maximize the front spaces.

Mr. Sahr asked about the landscape screening.

Mr. Barbina stated that they will be installing both landscaping screening and fencing due to the close neighbor. They want to sure that the side yards are not a nuisance to any neighbors.

Mr. Burton asked if the removal of one of the parking spaces labeled #4 in the front would then make the parking 24 feet to the sidewalk.

Mr. Barbina responded yes.

Mr. Sahr asked how many parking spaces they currently have.

Mr. Barbina stated that there are currently 30 spaces.

Mr. Tipton stated that he is most concerned about the parking in the front yard due to the adjacent residential neighbors and feels that it will bring a more commercial feel into a residential area. He asked what the need is for these spaces.

Mr. Barbina stated that they need the spaces to keep the more cars off of the street in the neighborhood. He explained that they are not crowding the street any differently than the neighboring properties. They will also be planting some larger trees with lower branches to screen the spaces.

Farid Fouad, 1008 Wrens Hollow, stated that they have 150 – 200 people that come in for weekly prayer on Friday. They struggle with parking at this time and also during Ramadan and special events.

Mr. Tipton asked if there is on-street parking on Highland.

Mr. Fouad stated that there is and they do utilize it.

PUBLIC COMMENTS

Azamul Haque, 212 Bolder Blvd, Peninsula, Board Member of the Islamic Society of Akron Kent, stated that the center relocated to Cuyahoga Falls a while ago, but they have been trying to maintain the mosque in Kent to support the students at Kent State.

Thomas Page, 339 E. Crain stated that although he is not really in opposition to the project, he is concerned about the noise, lights, evening traffic, and storm water that the larger parking lot would bring. He stated that there is a lot of traffic not only on Friday, but also every evening.

Mr. Mail stated that if there are dense plantings, that would certainly help the light glow as well as the sound.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Tipton asked if this would be going to Planning Commission.

Ms. Susel stated that this project would go if it receives the variances. If variances are not granted, then they would need to submit a plan to Planning Commission that did not require these variances. Ms. Susel clarified that the mosque is a conforming use in a non-conforming building; this use is allowed in this zoning district.

Ms. Heckman added that it is a conditionally permitted use.

Mr. Burton asked if the Planning Commission would look at the lighting.

Ms. Susel stated that by code, staff is required to look at the photometric plan. The light is required to stay on the site and even after installations according to plan, they will be required to make adjustments if needed.

Mr. Tipton stated that he has the most concern about the variance request for the 3 parking spaces in the front yard due to the residential neighborhood. Although this is a conditionally permitted use, he is still concerned about the detriment to the adjacent property. Mr. Tipton stated that he would like to see if the applicant is willing to do without the variance to allow the front yard parking.

Mr. Sahr stated he is also having a little trouble following the rationalization for the front yard parking spaces. He explained that per their letter, they say they need 40 spaces and this plan gives them 46. If they lose these 3 spaces they will still have 3 spaces more than what the letter says they need. He feels those spaces may cause a detriment to the neighborhood.

Mr. Tipton stated that he visited the site and understands that the neighboring houses are closer to the street than code allows and yet there is still an established sight line. He is mainly concerned about the spaces that are beyond the site line.

Mr. Sellman stated that they need to respect the concerns of the residents. Removing the 3 spaces might be a reasonable compromise to minimize required variances.

Mr. Tipton clarified that they are discussing the 2 spaces to the west and the 1 to the east closest to the street.

Mr. Burton stated that he sees both sides of the variance request given he lives a few houses from this parcel. Crain is a high traffic through street so the more people you can keep from crossing the street, the safer it is. He added that although no one likes to see parking that close to the sidewalk, any resident can park within 1 inch of that sidewalk, which would be closer than any of these parking spaces. He stated that the space that he was most concerned about is the space closest to the accessible parking space mainly because it is not really accessible parking; without this space, they would be able to reduce the variance by 7 - 8 feet without changing the east side of the parking where they are proposing nice landscaping, fencing, and lighting that will remain on the parcel. He stated that even if they eliminate the front yard parking, the neighbor at 339 is still going to have cars adjacent to his house. He is inclined to approve the applicant's request because a few extra parking spaces is never a detriment to safety in this scenario.

Mr. Mail agreed with Mr. Burton. He stated that it looks like the planting and fence will take care of the neighbor's concerns that were voiced today. He added that he is concerned about how they will keep the light from traveling onto the neighbor's property. He noted that it currently has a parking lot. I thinks they would lose a few spaces if it were moved back a bit, but not enough that it would change the character of what they are trying to do.

Mr. Sahr stated that he has been swayed by the safety issue. He would like to discuss the other variances before voting on the front yard parking.

Mr. Burton stated that the side yard setback relates to the three criteria: the lot is an unusual shape, which is their first extraordinary/unusual circumstance that doesn't pertain to other properties, secondly the use of the property is different from neighboring properties in the same district and, thirdly the required 24 foot lane that is required to safely maneuver the parking lot. He feels that this request is a minimal encroachment especially with the landscaping and fencing.

Mr. Sahr stated that he is concerned for the neighbor that has come to the meeting to express his concerns.

Mr. Burton stated that the neighbor's concerns were about sound and light and less about proximity. He explained that the light issues will be addressed by Planning Commission and staff.

Mr. Sahr stated that for the most part he agrees with Mr. Burton's analysis and agrees that 3 feet isn't going to make a big difference but feels that they need to discuss the project comprehensively. If the 3 foot variance is not approved, it may mean the architect may need to go back and reconfigure the entire project.

Mr. Mail stated that he feels that the architect has done a good job designing the project given the shape of the lot and all that goes with it. He added that this isn't a commercial use that will be used 7am to 9pm every day.

Mr. Sellman stated that he feels that the fence and landscaping will mitigate the car lights.

Mr. Tipton stated that he still feels that the front yard parking will be a detriment.

Mr. Sahr stated that the front yard parking also lessens the line of sight distance from the drive out.

Mr. Tipton stated that he is more in favor of a strict application, which eliminates one front yard parking space that is directly adjacent to the neighbor's house but he feels the other variance requests are reasonable.

Mr. Sahr agreed with Mr. Tipton.

Mr. Mail stated that physically looking at the site, the front parking spaces are not necessarily visually intrusive especially if it is well planted; if one space was removed from each side, then the spaces would almost line up with the building. Mr. Mail added that if the cars are not in the parking lot they will be on the street or somewhere else.

Mr. Tipton asked Mr. Mail his opinion on the front parking spaces and the adjacency to the neighboring house.

Mr. Mail stated that they could reduce parking in some areas but that would be up to Planning Commission. He stated that some of the neighbor's concerns would be addressed with the plantings and light configuration. He added that he felt that the foliage would mitigate the sound well.

Mr. Burton stated that aesthetically he has no concerns.

Mr. Mail stated that he doesn't have an issue approving the variances as written. It would be a better ingress/egress than what is there now.

Mr. Sellman stated that it will look nicer than what is there now.

Mr. Tipton stated that he is in favor of the side yards and expansion of parking lots.

Mr. Burton stated that as it applies to the front yard parking, due to the large congregation as large as theirs, their need for all possible parking spaces is an extraordinary/unusual circumstance. He doesn't feel that it is a detriment but rather an improvement to the neighborhood. Mr. Burton stated that with this in mind, he does not see that it would be a detriment to grant the variances.

Mr. Mail suggested that if the Board is really concerned about the setback, they should ask the applicant to table and resubmit the drawing. Mr. Mail stated that he doesn't have an issue with approving it as presented as he doesn't feel it will make that much difference.

Mr. Sahr stated that he is of the opinion that they go ahead and approve the requests as presented. If too many changes are made by the Planning Commission, then the BZA approvals fail at that point. He asked Mr. Fink if this is reasonable.

Mr. Fink agreed that they can grant the variances subject to the Planning Commission approving the site plan as presented.

The Board discussed the items that Planning Commission will review.

MOTION: In Case BZ19-002, DS Architecture/Masjed of Kent, 325 Crain Ave., Mr. Burton moved that the Board of Zoning Appeals grant the variance to allow a 3-foot variance from the 10-foot minimum side yard setback requirement to allow parking to be 7 feet from the side property lines as defined in Section 1167.11(a) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

VOTE: The motion passed 5-0.

MOTION: In Case BZ19-002, DS Architecture/Masjed of Kent, 325 Crain Ave., Mr. Burton moved that the Board of Zoning Appeals grant the variance to allow parking within the side yard setback as defined in Section 1167.11(a) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

VOTE: The motion passed 5-0.

MOTION: In Case BZ19-002, DS Architecture/Masjed of Kent, 325 Crain Ave., Mr. Burton moved that the Board of Zoning Appeals grant the variance to allow a 15-foot variance from the 35-foot minimum front yard setback requirement to allow parking to be 20 feet from the front property lines as defined in Section 1167.11(a) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

VOTE: The motion passed 5-0.

MOTION: In Case BZ19-002, DS Architecture/Masjed of Kent, 325 Crain Ave., Mr. Burton moved that the Board of Zoning Appeals grant the variance to allow 3 parking spaces to be within the front yard setback as defined in Section 1167.11(a) in the City of Kent Zoning Code.

Mr. Mail seconded the motion.

VOTE: The motion passed 5-0.

**C. BZ19-003 COMMUNITY BUILDING STRATEGIES
425 CHERRY STREET**

Section: 1169.12

Request: The applicant is requesting a substitution of a non-conforming use from a bar/restaurant on the first floor and residential apartment on the second floor to a restaurant on the first floor and office space and a residential apartment on the second floor (Section 1169.12).

Chad Murdock, 228 W Main St., Ravenna, is the attorney for the applicant, Mr. Noden. Mr. Murdock stated that they are seeking approval to allow one of the bedrooms in the upstairs apartment to be used as an office.

Kirk Noden stated that his background is in community organizing and professional fundraising. He explained that they have several items in process that they would like to use the subject property for, such as: a home for their social justice craft beer project, an established restaurant on the first floor, and an office. The plan is to redevelop the building, which entails a complete upgrade/renovation of the first floor, converting one of the three bedrooms in the second floor apartment into an office, and exterior upgrades to landscaping and tuck-pointing the brick. He believes the total investment over the next couple of years will be close to \$400,000, which includes the purchase price of the building. He stated that the beer would not be brewed on site. He explained that they would be partnering with local craft breweries, where each beer would have a theme and support a non-profit or social justice cause. Mr. Noden stated that they went door to door and talked with many neighbors about the project, which is not very different from what has been there for years. He stated that they submitted an affidavit from Ms. Ciccone stating that there has been an office on the second floor at one time for the bookkeeper.

Mr. Burton asked if he would keep the apartment as a rental.

Mr. Noden responded yes.

Mr. Burton asked if he would have a separate entrance for the new office.

Mr. Noden responded no, they would share the entrance to get up to the second floor and then have separate locking doors for individual access.

Mr. Burton and Mr. Sellman stated that they are happy to see interest in reinvestment in that neighborhood.

Mr. Sellman asked if there were any changes to the footprint of the building.

Mr. Noden responded no.

Ms. Susel stated that the Board's role with this case is to determine whether or not the substitution of use is less intrusive or not.

PUBLIC COMMENTS

Robin Turner, Councilman, 327 Dodge, complimented Mr. Noden for his efforts in approaching both the City and neighbors to keep them informed of his intentions. He feels that it is a positive project that would be a benefit to this end of town and he is completely in favor of it.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that because the new use is located inside the building it will not be any more intrusive to the neighborhood.

Mr. Sahr confirmed that the restaurant and second floor apartment already comply and asked about the prior office use on the second floor.

Ms. Susel stated that he is correct regarding the restaurant and apartment, however, the prior office use could not be confirmed by the City and that is why it is before them today.

Mr. Sellman asked about renting the apartment.

Mr. Noden stated that his short term plan is to rent his brother for the next couple years and then he may rent to no more than two unrelated.

Ms. Susel stated that the Board's decision is to be based on the two criteria in the staff report based on the documents presented to them. She reminded them that they can also put limitations on the office use to limit it to professional office use only for up to however many people they feel appropriate to assure it doesn't become more intrusive but rather equally appropriate.

Mr. Sahr stated that he is in favor of the project but suggested that they specify that it is for one room for office space with a maximum occupancy of two people and the remainder of the second floor is for residential.

Mr. Burton asked about occupancy numbers that will be issued by other departments.

Ms. Susel stated that the Board can still set a maximum number of occupants not to be exceeded.

Mr. Burton also suggested that they could restrict the hours of operation for the office if that was a concern.

Mr. Tipton stated that he feels that the proposal is equally appropriate or more appropriate to the zoning district. He added that they have an affidavit stating that it was being used as an office around 2011. He stated that he is in favor of limiting it to a 'professional office' and limiting the number of occupants.

Mr. Noden stated that he is also in favor of the clarification of professional office space and 2-3 person occupancy.

MOTION: In Case BZ19-003, Community Building Strategies, 425 Cherry Street, Mr. Sellman moved that the Board of Zoning Appeals grant a substitution of non-conforming use of a professional office for 3 or less persons and a residential unit on the second floor as defined in Section 1169.12 in the City of Kent Zoning Code.

Mr. Tipton seconded the motion.

VOTE: The motion carries 5-0.

VII. MEETING MINUTES

A. December 17, 2018 meeting minutes

MOTION: Mr. Burton moved to approve the minutes of December 17, 2018, as submitted.

The motion was seconded by Mr. Mail.

VOTE: The motion carried 5 – 0.

VIII. OTHER BUSINESS

None

III & VI OATH FOR REAPPOINTED MEMBERS & ELECTION OF OFFICERS

MOTION: Mr. Tipton moved to table the Oath for Reappointed Members and the Election of Officers until the February BZA Meeting.

The motion was seconded by Mr. Sahr.

VOTE: The motion carried 5-0.

IX. ADJOURNMENT

Mr. Sellman made a motion to adjourn the meeting. Mr. Sahr seconded the motion. The motion carried 5-0. The meeting adjourned at 9:00 p.m.