

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
February 18, 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. Tipton called the meeting to order at 7:04 p.m.

II. PLEDGE

The pledge was recited.

III. OATH FOR REAPPOINTED MEMBERS

Mr. Fink administered the Oath of Office to the reappointed members, Mr. Mail and Mr. Burton. Both responded affirmatively.

IV. ROLL CALL

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

V. ELECTION OF OFFICERS

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 4-0.

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. BZ19-004 315 RFK LLC
 315 GOUGLER AVENUE**

Section: 1161.21(a)

Request: The applicant is requesting a variance to allow a 6-foot tall fence within the front yard area, where a maximum height of 4 feet is permitted.

Ryan Cene, 315 Gougler, Kent, OH, presented the request. Mr. Cene stated that they have had vandalism and theft issues and hope that a 6 foot fence will resolve the issue.

Mr. Sahr asked if the fence they will install is the open cell chain link.

Mr. Cene stated that the option currently being considered is chain link fence that is coated with Black PVC.

Mr. Mail asked if the gates will be open during normal business hours.

Mr. Cene stated that due to the food component of their building, they are required to log the thru traffic; they will have some type of access control although they are not sure of specifics.

Mr. Sahr stated that due to FDA licensing they are required to have a certain level of security of access to the lot and asked if they decided because of this that they would like it to be a 6 foot fence.

Mr. Cene stated that it is a combination of the FDA requirement and to deter the issues that they are currently having.

Mr. Mail stated that it is a shame that it is necessary.

Mr. Burton asked about the forward placement of the fence as it relates to the front of the building.

Bob Cene, Jr., 315 Gougler, Kent, OH, stated that the fence needs to go around the sidewalk and ramp.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that he feels that a 6 foot fence will better protect the building than a 4 foot fence.

Mr. Sahr stated that he thinks that the black clad chain link fence is about as attractive an option as you can have.

Mr. Mail agreed that that fencing is unobtrusive.

Mr. Burton stated that the FDA requirements are an important factor in the decision making; silly to have a gate with no fencing.

Mr. Mail stated that he doesn't feel that the fence will detract from the tone of the neighborhood. He added that the unusual circumstances are they need to stop vandalism and because of the regulations for a food production facility.

Mr. Sahr stated that the strict application of this code requiring a 4 foot fence would deny them the security that they need.

Mr. Tipton stated that he agrees with the other Board Members, however, he is still thinking through the substantial detriment to the public interest. He explained that during construction there was a 6 foot opaque fence in the front yard that was very unsightly. He recalled feeling hampered in between the fence and the street traffic. He added that sight-wise, the proposed type of fence will be much better than the construction fence.

MOTION: In Case BZ19-004, 315 RFK LLC, 315 Gougler Ave., Mr. Mail moved that the Board of Zoning Appeals grant the variance as presented to allow a 6-foot tall fence within the front yard area, where a maximum height of 4 feet is permitted, as defined in Section 1161.21(a) in the City of Kent Zoning.

Mr. Sahr seconded the motion.

VOTE: The motion carried 4-0.

**B. BZ19-005 RYAN SAKS
456 BURNS COURT**

Section: 1133.03(a)(2)

Request: The applicant is requesting a 700 square foot variance from the 12,000 square foot minimum lot size to allow the property to be a duplex with a lot size of 11,300 square feet (Section 1133.03(a)(2)).

Jim Horovitz, 2687 Work Rd, Ravenna, presented the case. Mr. Horovitz explained that T.J. Surgeon is the former owner of this property, which was sold to John McCarty, who is now the fee holder of the property, and then Ryan Saks purchased the property from John McCarty via land contract. He stated that Mr. Surgeon ran the property as a two family house and when Mr. McCarty purchased the property his sister-in-law lived in the upper unit and he never applied to keep the conditional use permit valid. Mr. Saks, the current owner would like to have the house as a legal two family, however, the property is a little too small to meet code.

Mr. Tipton asked Mr. Horovitz how the strict application of the provisions of the zoning code would result in practical difficulties or unnecessary hardships inconsistent with general purpose and intent of the zoning ordinance.

Mr. Horovitz stated that most of the housing in this neighborhood is multi-family units and not consistent with the character of people who live in single family housing.

Mr. Tipton asked about the exceptional or extraordinary circumstance or conditions that apply to the property 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.

Mr. Horovitz stated that the structure currently has 2 kitchens and is set up for 2 residential units.

Mr. Tipton stated that Mr. Horovitz already addressed the third criteria in his previous statement.

Mr. Burton asked how many people are currently living in the structure.

Mr. Saks, 456 Burns Ct., owner, stated that there are currently 2 people living in each unit.

Mr. Mail asked where the entrances are located.

Mr. Saks stated that there are three entrances.

Mr. Sahr asked for clarification on the parcels.

Ms. Heckman stated that there are currently 2 parcels; one with the house and the other with the garage. In order for this variance to go through they will need to be consolidated.

Mr. Saks stated that although they are 700 square feet short of meeting the code requirement, there is still ample parking available.

Mr. Burton asked if the garage is used by the tenants.

Mr. Saks stated that they currently do not. Mr. Saks added that once the properties are consolidated the tenants will be able to use that 3 car garage as part of their property.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Tipton stated that they have a document in their packets that shows the surrounding uses of the neighborhood as well as a letter that was sent in 2016 requesting adherence to the zoning provisions.

Mr. Sahr asked for clarification as to the chain of events; it had been used as a grandfathered duplex and then because for a period of time it was used as a single family structure, it lost its classification as a duplex.

Ms. Heckman agreed.

Mr. Fink stated that it was a permitted use on a non-conforming lot.

Ms. Susel added that the structure existed before that zoning code requirement was established.

Mr. Burton stated that from his experience, he believes the structure was originally built as a single family house although now it is clearly a duplex.

Mr. Mail stated that this will not be a substantial detriment to the public interest as the other neighboring properties are duplexes as well. He doesn't see any exceptional or extraordinary circumstances applying to the property. He added

that this is one of the better kept properties in that area. Mr. Mail stated that the strict application of the code resulting in practical difficulty is a judgement call. It is rentable as a single family home, however, the character of the neighborhood does seem to be for multi-family.

Mr. Sahr stated that for the most part he agrees with Mr. Mail; it is not a detriment but doesn't see the hardship other than the number of people they can rent to. He added that the hardship could also be the expense to convert the structure back to a single family.

Mr. Mail stated that it would be harder to rent as a large single family home.

Mr. Burton reminded the Board that they cannot consider financial impact in either direction. He added that although the lot size is 700 square feet short of meeting code, it is still larger than many of the multi-family lots in the surrounding area. He stated that in keeping with the neighborhood it seems reasonable.

Mr. Tipton agreed with Mr. Burton's assessment of land sizes. He stated that he is concerned that it is currently being rented as a duplex without the proper designation; however, it is a minimal variance and they are considering the impact on the neighborhood. He does not feel that it is a detriment to the area and noted that no one came to speak about this variance.

MOTION: In Case BZ19-005, Ryan Saks, 456 Burns Court., Mr. Mail moved that the Board of Zoning Appeals approve a 700 square foot variance from the 12,000 square foot minimum lot size to allow the property to be a duplex with a lot size of 11,300 square feet as defined in Section 1133.03(a)(2) in the City of Kent Zoning Code.

Mr. Burton seconded the motion.

VOTE: Motion carried 4-0.

V. **ELECTION OF OFFICERS**

Mr. Fink summarized the positions and their responsibilities. After the Board's Discussion, the appointment of officers is as follows:

MOTION: *Mr. Tipton moved to elect Jona Burton as Board of Zoning Appeals Chairperson. Mr. Mail seconded the motion.
The motion carried 4-0.*

MOTION: *Mr. Burton moved to elect Benjamin Tipton as Board of Zoning Appeals Vice Chairperson. Mr. Sahr seconded the motion.
The motion carried 3-0-1. Mr. Tipton abstained.*

MOTION: *Mr. Burton moved to elect Tim Sahr as Board of Zoning Appeals Secretary. Mr. Mail seconded the motion.*

The motion carried 4-0.

VII. MEETING MINUTES

A. January 28, 2019 meeting minutes

MOTION: Mr. Tipton moved to approve the minutes of January 28, 2019, as submitted.

The motion was seconded by Mr. Mail.

VOTE: 4-0.

VIII. OTHER BUSINESS

Mr. Fink stated that the property owner for the proposed Dunkin Donuts has filed their appeal to the Court of Commons Pleas and has been assigned to Judge Pittman. There may be a Findings of Fact/Conclusions of Law statement presented at the next meeting for the Board's consideration.

IX. ADJOURNMENT

Mr. Mail made a motion to adjourn the meeting. Mr. Tipton seconded the motion. The motion carried 4-0. The meeting adjourned at 8:04 p.m.