

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
May 20, 2019**

MEMBERS PRESENT: Benjamin Tipton
Dave Mail
Jona Burton
Paul Sellman

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

I. CALL TO ORDER

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

II. PLEDGE

The pledge was recited.

III. ROLL CALL

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

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. Burton 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. OATH FOR NEW BOARD MEMBER

Mr. Fink administered the Oath of Office to Mr. Sellman. He responded affirmatively.

VI. 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".

VII. NEW BUSINESS

**A. BZ19-010 GPD GROUP / AT&T
1133 WEST MAIN STREET**

Sections: 1171.01(a)(1)

Requests: The applicant is requesting a variance from section 1171.01(a)(1) to allow a monopole and the associated utility equipment to be up to 3 feet from the side property line, where 100 feet minimum is required.

Ed Block, GPD Group for AT&T, 520 S. Main St., Suite 2531, Akron, reviewed the project as it is presented to the Board. The location is in the unused back corner of the dealership lot. He explained that constructing the tower 100 feet from the residential area would put the tower in the area of the parking lot that is currently being used and also would interfere with future construction plans for the dealership. The current proposed location is the least impactful to the neighboring properties. The surrounding green areas are Fishcreek Stream and City owned property, which are unlikely to be developed due to wetlands, etc. He reviewed the fence and equipment locations. The tower itself is centrally located within the lease area and is 24-feet center from the side property line and about 40-feet from the north property line. The fence will be 1-foot off the property line.

Mr. Tipton asked about collocating with other towers and why this area was chosen.

Mr. Block stated that the reason behind this tower is that AT&T is trying to off-load some of the usage traffic off the existing towers to this new tower to improve

performance. Due to the density and population of the area, the current towers are getting overloaded.

Mr. Sellman asked how close the nearest tower is to this location.

Mr. Block presented a map to the Board that shows the other current local sites. He added that the capacity of the existing sites have already been maximized.

Mr. Sellman added that he feels that a monopole is probably the least intrusive type.

Mr. Block stated that this pole is under 200-feet and will not require lights.

PUBLIC COMMENTS

Joseph Stefanini, 1127 W. Main St., Vice President of the Mazda store stated that the proposed location is the only part of the property that they are willing to give up and the tower would not disrupt their future plans for the site.

Dave Burt, 358 N. Francis, asked about the tower's location. After seeing the drawings, he stated he is okay with the location.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that it appears that it is a large variance but because of its isolated location, it doesn't appear to be a detractor to the area. He feels that it makes sense.

Mr. Sellman stated there will always be open land next door and it isn't too obtrusive to the surrounding area. It will provide a good service.

Mr. Tipton stated that it is the extreme north end of the parcel where it will not be in close proximity to residents; mainly close to businesses. He does not feel that a strict application to the code is appropriate for this case. He added that there are exceptional and extraordinary circumstances with the need for this location with regards to the other towers.

Mr. Burton stated that he agrees with Mr. Tipton regarding the location of the site and the lack of intrusion into neighborhoods. He doesn't feel that it will be hugely visible from West Main. It will be good for service. He complimented the applicants on finding a site that would work for them and still be the least intrusive location.

MOTION: In Case BZ19-010, GPD Group/AT&T, 1127 W. Main Street., Mr. Sellman moved that the Board of Zoning Appeals grant the request to allow a monopole and the associated utility equipment to be up to 3 feet from the side property line, where 100 feet minimum is required, as defined in Section 1171.01(a)(1) in the City of Kent Zoning.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

**B. BZ19-011 RICK HAWKSLEY
101 CRAIN AVENUE**

Section: 1155.05(a)(7)(e), 1167.09(a), and 1167.11(b)(1)

Request: The applicant is requesting the following:

- 1) A variance from Section 1155.02(a)(7)(e) to allow a new bottling plant to be 85 feet from a residential district, where 100 feet is required,
- 2) A variance from Section 1167.09(a) to allow the parking lot to remain gravel where hard surface is required,
- 3) A variance from Section 1167.11(b)(1) to allow a landscaping strip of 5 feet in the front yard, where 20 feet is required.

Don Schjeldahl, 122 N. Mantua, presented the information for the project. They are proposing a community oriented craft brewery; a micro-brewery, which will produce beer for wholesale distribution and taproom sales. There will not be any food involved. Mr. Schjeldahl explained that while this is a change in use, the nature of this brewing operation is within the building and will not have any odors, dust, or light pollution. The taproom will have limited hours that will be geared more towards a mature clientele and will not have much impact on the community. They will have 14 parking spaces on site and also have a parking agreement with the adjacent property owner for 23 full-time parking spaces with an additional 8 spaces when the cycle shop is closed; a total of 45 spaces. The current parking areas are compacted gravel that have been in existence for many years and have good drainage; a paved parking area would increase storm water runoff. The variance for the landscape buffer is needed because the area has been reshaped but is harsh going from concrete to gravel. They feel that landscaping and creating a welcoming atmosphere is important and are working on creating just that.

PUBLIC COMMENTS

Pat Flanigan, 103 Lake St, owner of Hutch Pet Shop stated that he is concerned with the increased activity with traffic, trash, and noise; not necessarily negative comments as much as concerns from the residential aspect.

Mr. Schjeldahl stated that they are trying to target a more mature audience. They will try to respect their neighbors to keep the area clean and while they are planning on having live music, it will be low key and no later than 10-11:00 p.m. They will be very mindful of their neighbors and adjust their operations accordingly.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Fink reminded the Board that the business variance will be for all future uses that stay within the two year non-conforming use category.

Mr. Tipton stated that he feels that the gravel and landscaping variances seem minor and seem reasonable given the location and existing conditions.

Mr. Sellman agreed with Mr. Tipton and added that it will not impact the neighborhood. He also feels that the landscape buffer will help designate a specific entry point and improve safety.

Mr. Mail confirmed that the only change to the site will be the landscaping.

Mr. Fink reviewed the code definitions for bottling and the uses that would be allowed with the granting of the variance.

Ms. Susel further explained that someone could in the future propose a different use, which would require further review.

Mr. Tipton asked about the parking agreements.

Ms. Susel stated that they will need to keep parking agreements in place to accommodate the necessary parking requirements.

Mr. Sellman stated that he feels that the first variance request is reasonable given the nearest residential is across the street. While he appreciates the neighbor's concerns, the anticipated clientele will be less likely to be an issue. He stated that it would be a nice use of the property and probably less offensive than other uses.

Mr. Tipton stated that he generally agrees and added that the distance is nominal. He feels that the three criteria are adequately addressed.

Mr. Burton stated that the second two variances definitely speak directly to the three criteria. He added that historically within about the same proximity to the neighborhood, was a more traditional bar. Based on the proposed seating, he doesn't feel that this business would rise to the same scale and agrees with the other Board members regarding the first variance.

MOTION: In Case BZ19-011, Rick Hawksley, 101 Crain Avenue, Mr. Mail moved that the Board of Zoning Appeals grant the variance request from Section 1155.02(a)(7)(e) to allow a new bottling plant to be 85 feet from a residential district, where 100 feet is required.

Mr. Sellman seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-011, Rick Hawksley, 101 Crain Avenue, Mr. Mail moved that the Board of Zoning Appeals grant the variance request from Section 1167.09(a) to allow the parking lot to remain gravel where hard surface is required.

Mr. Sellman seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-011, Rick Hawksley, 101 Crain Avenue, Mr. Mail moved that the Board of Zoning Appeals grant the variance request from Section 1167.11(b)(1) to allow a landscaping strip of 5 feet in the front yard, where 20 feet is required.

Mr. Sellman seconded the motion.

VOTE: The motion carried 4-0.

**C. BZ19-012 AMIRA OMRAN, INC.
 706 SOUTH WATER STREET**

Section: 1137.04(a), 1137.04(b), and 1137.04(c)(3)

Request: The applicant is requesting the following:

- 1) An 11-foot, 5-inch variance from the 30-foot minimum front yard setback requirement to allow a new building to 18-feet, 7-inches from the front property line (west hall street) (Section 1137.04(a)),
- 2) A 27-foot, 10-inch variance from the 30-foot minimum rear yard setback requirement to allow a new building to be 2-feet, 2-inches from the rear (south) property line (Section 1137.04(b)), and
- 3) A 9-foot variance from the 10-foot minimum side yard setback requirement to allow a new building to be 1-foot from the side (west) property line (Section 1137.04(c)(3)).

Amy Omran, 110 Montgomery Dr., Canfield, OH, owner, explained that they need a much larger store than what they currently have. She feels that the store is an eye sore and needs to be completely redone, however, because the lot is small and oddly shaped, they require variances. Some of the changes would include moving all merchandise inside and reducing the hours of operation. She added that they have contacted the carwash next door and offered to purchase a strip of land to help with the parking area.

Ike Omran, 110 Montgomery Dr., Canfield, OH, owner, was also present.

Mr. Burton explained the three criteria that they base their decision on.

Ms. Omran stated that the main issue is the ability to make room for needed parking spaces and a larger building.

Mr. Burton stated that the plan shows 1 accessible parking space and 3 additional.

Mr. Omran stated that they will also have 2-3 spaces in front of the building.

Mr. Sellman and Mr. Burton discussed the lot having two front yards.

Mr. Tipton stated that the rear yard variance is a large variance request and asked why the building needed to go back so far.

Ms. Omran stated that the pumps and the canopy are not going to be moved, so in order to make space for parking and traffic flow, the building has to sit farther back on the property.

Mr. Tipton stated that while parking isn't an issue that this Board decides, it is helpful to understand when deciding on such a large variance request.

Mr. Omran stated that they would actually like an even bigger building, but because traffic flow on site is so important, they have reduced the building size to what you see on the plans.

Mr. Tipton stated that the size of the building that they would prefer is irrelevant; the Board's concern is the setback.

There was discussion regarding which variance went with which property line and which side of the building is considered the front.

Mr. Sellman stated that while the south property line variance is large, they are facing the hardship of an extremely small lot and because the abutting neighbor is a driveway for a carwash, he feels that there is a reasonable exception. The west side variance abuts the back side of the apartment building.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman stated that the hardship is the small lot. He feels that the new building will be visually a big improvement and would not be a detriment to the neighbors.

Mr. Tipton stated that if they grant the variance as stated, then there isn't the need for the owners to continue to seek property from the neighbor. He asked how the number of spaces is determined for this business.

Ms. Heckman stated that it is based on square footage of the building.

Ms. Susel stated that it will be calculated for Planning Commission.

Mr. Omran stated that if they purchase the additional property, they will not relocate the building; they will use it for parking and traffic flow.

Mr. Burton stated that he is struggling with the size of the variances and the proximity to the adjacent residential use.

Mr. Mail stated he would be happier if the building were smaller with larger setbacks but the owners feel that they can use a larger building. He is also concerned about the proximity to the residential use.

Mr. Omran suggested that they can move the building forward and only require a 5-foot variance for the west property setback.

Mr. Tipton stated that there is a huge variance request for the south setback but it is a commercial use and no letter of opposition has been received. The north setback request isn't as large and it is the street. The west setback request is to have a 1-foot setback and he would like to see a little more of a buffer.

The Board agreed that the west property setback of 5-feet is more palatable.

Mr. Sellman stated that he feels that there is enough of a hardship to fit the building on the small lot.

Mr. Burton stated that they could reduce the north size of the building and not need need the variance.

Mr. Tipton stated that he wasn't as concerned about the north side variance since it is going towards the road.

Mr. Burton explained that the building could then shift north by 25-feet and not need the south variance.

Mr. Tipton stated that he looks at it as other commercial areas, where they do not have any setbacks and this does have some setbacks.

Mr. Burton asked the applicant if a 5-foot variance for the west setback would be agreeable.

Mr. Omran stated that they would be okay with that.

MOTION: In Case BZ19-012, Amira Omran, Inc., 706 S. Water St., Mr. Tipton moved that the Board of Zoning Appeals grant the 11-foot, 5-inch variance request from Section 1137.04(a) to allow a new building to be 18-feet, 7-inches from the front property line (West Hall St.), where 30 feet minimum is required.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-012, Amira Omran, Inc., 706 S. Water St., Mr. Tipton moved that the Board of Zoning Appeals grant the 27-foot, 10-inch variance request from Section 1137.04(b) to allow a new building to be 2-feet, 2-inches from the rear property line (south) where 30 feet minimum is required.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-012, Amira Omran, Inc., 706 S. Water St., Mr. Tipton moved that the Board of Zoning Appeals grant a 5-foot variance from Section 1137.04(c)(3) to allow a new building to be 5-feet from the side property line (west) where 10 feet minimum is required.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

**D. BZ19-013 ROBERT BAUMANN
 909 FRANKLIN AVENUE**

Sections: 1122.05(a)

Requests: The applicant is requesting a 4,881.7 square foot variance from the 10,000 square foot minimum lot size requirement to allow the conversion of a single family house to a rooming house for up to 4 unrelated persons on a 5,118.3 square foot lot (Section 1122.05(a)).

Robert Baumann, owner of 909 Franklin, stated they are requesting this variance to create a rooming house. He explained that they are next to a church, who is in agreement with the request, and a rooming house that is approved for 3 unrelated. There are commercial properties in front across Franklin Avenue and to the rear is a single family house, which is separated by shrubbery. The current zoning district allows for rooming houses with Planning Commission approval. The variance is needed because they cannot purchase any of the surrounding property to alleviate the shortage.

Mr. Mail asked about parking.

Mr. Baumann stated that they plan to create more parking in the rear yard.

Mr. Burton asked about the driveway ownership.

Mr. Baumann stated that the drive belongs to the church, but they have an easement for access.

Mr. Tipton asked if they had a letter of support from the church.

Mr. Baumann stated that he does not, but the church called him and said they do not have an issue with their proposal.

Mr. Mail asked why they don't want to rent it as a single family house.

Mr. Baumann stated that they like to renovate houses and provide affordable housing for college students.

Mr. Sellman stated that the general consensus is that Kent is pretty well saturated with rental properties and this property isn't within walking distance to the university.

Mr. Baumann stated he also didn't want to rent to a single family as the neighbor is already a rooming house.

Mr. Sellman stated that their proposal doesn't leave any green space in the back yard because they will need it all for parking.

PUBLIC COMMENTS

Kurt Snyder, 921 Franklin Ave., stated that he would rather see the house fixed up and proper parking than have it the way it is.

Wendy Koontz, 812 S. Water St., stated that she feels that there are too many rooming houses. She added that the owner has had the property for a year and it is one of the worst on Franklin; no exterior work has been done. She stated that her concern is that this house is on the way to Holden Elementary School and the drive is a safety issue. This is a small house and thinks that 4 people are too many.

BOARD OF ZONING OF APPEALS DISCUSSION

Ms. Susel reminded the Board of the directive from City Council as stated in the staff report.

Mr. Mail stated that the variance is for half the minimum requirement. It isn't a very big house and does not have adequate parking. He feels that the house could be rented as a single family if it is fixed up. He feels that approving this as a rooming house could set a precedence for more.

Mr. Sellman agreed.

Mr. Burton stated that it is a large variance request for a small parcel and a small house.

Mr. Mail added that this variance does not satisfy any of their three criteria for approving.

Mr. Sellman stated that he agreed with Ms. Koontz in that it is very close to Holden Elementary and they are trying to preserve what is left of Kent's single family housing.

Mr. Burton stated that based on the housing study and Council's directive he also feels that it is important to preserve the single family homes.

MOTION: In Case BZ19-013, Robert Baumann, 909 Franklin Avenue, Mr. Mail moved that the Board of Zoning Appeals deny the 4,881.7 square foot variance to allow the conversion of a single family house to a rooming house for up to 4 unrelated persons on a 5,118.3 square foot lot, where 10,000 square foot minimum lot size is required, as defined in Section 1122.05(a) in the City of Kent Zoning.

Mr. Sellman seconded the motion.

VOTE: The motion carried 4-0.

VIII. MEETING MINUTES

A. April 15, 2019 meeting minutes

MOTION: Mr. Mail moved to approve the minutes of April 15, 2019, as submitted.

The motion was seconded by Mr. Burton.

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

IX. OTHER BUSINESS

MOTION: Mr. Sellman moved to excuse Tim Sahr from tonight's meeting.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

X. ADJOURNMENT

Mr. Burton adjourned the meeting at 9:09 p.m.