

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
June 17, 2019**

MEMBERS PRESENT: Tim Sahr
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 7:01 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Jona Burton, Dave Mail, Tim Sahr, and Paul Sellman were present. Benjamin Tipton 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. 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. BZ19-014 FRANK HORNYAK
 134-136 BRADY & 326 NORTH DEPEYSTER STREETS**

Sections: 1161.27 and 1167.04(d)

Requests: The applicant is requesting the following:

- 1) A 6-foot variance from the 24-foot maximum driveway width to allow a new driveway to be 30 feet in width (Section 1161.27),
- 2) A variance from Section 1167.04(d) to allow three access ways on one street.

Frank Hornyak, 1928 Carlton Rd, Kent, stated that this property is a corner lot. He would like to relocate the dumpster from its current location to the lower driveway and relocate the three parking spaces from the proposed dumpster site to the other side of the lot.

Mr. Mail asked why he wants to make the change.

Mr. Hornyak stated that they are redoing the sidewalk and curb on Brady and it is so that the garbage truck can get in easier.

Mr. Mail asked if he thought about leaving the dumpster in its current location and putting a pad under it.

Mr. Hornyak stated that that would require him to extend the area with 8 inch cement where the proposed area is a smaller 6 inch thick pad.

Mr. Sellman asked about another potential dumpster location on the Depeyster Street side.

Mr. Hornyak explained that there are four parking spaces in that location and he needs to maintain 10 spaces.

Mr. Burton reviewed the criteria that the Board must meet in order to approve a variance.

Mr. Hornyak further explained that it's a problem having the dumpster in the current location and it has cracked the driveway. He stated that it isn't a hardship per se, but he is simply trying to improve the property while the street improvements are underway.

PUBLIC COMMENTS

Mary Jayne Stone, 133 Brady St, presented the Board with some photos. Ms. Stone stated that she opposes the variance because of the congestion at the intersection of Brady and North Depeyster, the safety of the area, storm water, and the removal of more green space. She added that she doesn't want to see the corner area become a parking lot. Ms. Stone stated that several times a week she sees trucks pull up and unload garbage into that dumpster, so she questions the necessity of the dumpster; most of the garbage is not coming from that property.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sahr asked if the existing pad on Brady was built before the zoning code was in effect or did it received a variance to be constructed where it is.

Ms. Susel responded that we do not have record of the pad.

Mr. Sahr stated that the pad in question does not meet 1167.04, as it is not greater than 50 feet from a cross street right of way, which he feels is part of the congestion issue. He feels that the property should be brought into compliance before granting a variance or having the movement of that parking area as a condition of the approval. He stated that the Zoning Board has more of a concern with the zoning code and its application, rather than where a dumpster does or doesn't go.

Mr. Sellman stated that there is already a lot of pavement in that area. He acknowledged the busy intersection and the proximity to the neighbor's driveway.

Mr. Mail stated that he doesn't feel that a hardship has been presented.

Ms. Susel stated that the dumpster is located in the right of way; it is on city property and not private property.

Mr. Fink stated that the City is not requesting the variance; a problem has been identified and the property owner needs to figure the resolution.

Mr. Burton stated that he agrees with Mr. Mail in that the three criteria have not been met. By the applicant's admission there isn't a hardship. Also the neighbor's driveway proximity creates some traffic safety issue, and granting the variance could be a substantial detriment to the public interest or adjacent properties. Although there may be some exceptional or extraordinary

circumstances with this being a corner lot, he feels that there are other ways to solve the problem without the variances.

Mr. Fink suggested asking about the allegation of trucks driving up and adding trash to the dumpster from off-site, which would be in violation of Kent Codified Ordinance.

Mr. Sahr stated that he feels that that is outside of the Board's authority.

Mr. Sellman questioned if a 2 yard dumpster is really necessary for 9 people; they could go back to trash cans.

Mr. Sahr added that Ray's Place uses many trash cans because a dumpster wouldn't work. He feels that there are other solutions for the issue.

MOTION: In Case BZ19-014, Frank Hornyak, 134-136 Brady & 326 North Depeyster Streets, Mr. Sahr moved that the Board of Zoning Appeals deny the request for a 6 foot variance to allow a new driveway to be 30 feet in width where a maximum of 24 feet is required, as defined in Section 1161.27 in the City of Kent Zoning.

Mr. Sellman seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-014, Frank Hornyak, 134-136 Brady & 326 North Depeyster Streets, Mr. Sahr moved that the Board of Zoning Appeals deny the request for a variance to allow three accessways on one street, as defined in Section 1161.04(d) in the City of Kent Zoning.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

**B. BZ19-015 NYPANO
199 WEST WILLIAMS STREET**

Section: 1146.03(c) and 1146.04(a)

Requests: The applicant is requesting the following:

- 1) A variance from Section 1146.03(c) to allow the construction of a new building with 0 percent frontage where the building should occupy a minimum of 70 percent of the street frontage on Summit Street,
- 2) A variance from Section 1146.03(c) to allow the construction of a new building with 0 percent frontage where the building should occupy a minimum of 70 percent of the street frontage on Franklin Avenue,

- 3) A variance from Section 1146.03(c) to allow the construction of a new building with 0 percent frontage where the building should occupy a minimum of 70 percent of the street frontage on West Williams Street,
- 4) A variance from Section 1146.04(a) to allow a new building to have a 32.91-foot setback from Franklin Avenue, where a zero foot setback is required,
- 5) A variance from Section 1146.04(a) to allow a new building to have a 78.07-foot setback from West Williams Street, where a zero foot setback is required, and
- 6) A variance from Section 1146.04(a) to allow a new building to have a 171-foot setback from Summit Street, where a zero foot setback is required.

Tom Myers, Nypano Co. LLC, 1750 Oak Hill Dr., Kent, introduced the project.

Michael Sichenzia, 5126 NE 20th Terrace, Lighthouse Point, Florida, stated that the letter before them states why they feel that their variance is in keeping with good policy. He stated that this is a unique request in that they are requesting to build something that is smaller than what the zoning code allows. The property is unique as well with regards to its shape and size in relation to other properties in the same district. He stated that the Planning Commission added restrictive covenants that they need to provide parking. They feel that they have put together a project that would meet the challenges of 110 parking spaces with the restrictive topography of the property, and creating a building that would be a good neighbor. They have incorporated a lot of green space into the project but need to have relief from the setback requirements to achieve this. Constructing the building with zero setbacks would maintain a clear line of sight for the intersection and provide an area for a pocket park or greenway. It also allows the sidewalk on Franklin to be constructed away from the street eliminating the need to remove the existing old growth trees and creating a more pedestrian friendly link from downtown to the post office and beyond. He stated that this link fulfills the Bicentennial Plan's objective for the Franklin area. Due to the cul-de-sac on West Williams, it would be difficult to build up to the lot lines and would eliminate most of the landscaping. The hotel design is unique to this location only. It is also environmentally sustainable: the landscaping is local plantings, the water run-off will be done in such a way that it can be potentially used as a gray water system in the future, the exterior walls will be energy efficient insulated concrete blocks, the rest of the structure will be constructed out of cross laminated timber, and the roof system will be more reflective in nature. Mr. Sichenzia stated that he feels that he has explained the practical difficulties of the size and shape of the parcel, which causes them an unnecessary hardship to build to the lot line. There are no other properties in this zoning district with these circumstances and conditions, so they feel that asking them to adhere to the code is an undue hardship. They do not feel that the granting of these variances will be a substantial detriment to the public interest or to adjacent properties or improvements and will not materially impair the purpose of the zoning ordinance.

Mr. Mail complimented the designers on the well done site plan and architecture. He asked about the address for the project.

Mr. Sichenzia stated that the fire department requested quick and easy access. There will be no public access to this property off of Summit Street; there is a gated area that can be used by the fire department only in case of an emergency. The public entrance is off of Williams Street.

Mr. Sellman likes that the entrance is at the rear of the building as it is less intrusive to the neighborhood. He also likes the greenspace areas.

Mr. Sahr stated that he feels that it is a well thought out project. His only concern was about entrance/exit on Summit, but that has been answered. Mr. Sahr asked about the potential gray water storage.

Mr. Sichenzia stated that they are currently looking at the engineering for that system.

Mr. Mail asked about the two houses that abut the property and buffers.

Mr. Sichenzia stated that they will leave as much of the existing greenery as possible, which will be an adequate buffer for those houses.

PUBLIC COMMENTS

James Mt. Castle, 1051 Briarcliff, Manager of University Inn, commented that the traffic in the area is busy at the intersection of Franklin and Summit; concerned that the hotel will create more congestion and suggested a traffic light.

Ms. Susel stated that a traffic study was submitted as part of the Planning Commission process and is being reviewed by the City's Traffic Engineer. If any improvements are identified, they will be the developer's responsibility.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that given the lay of the land, their proposal will be an asset to Kent. The site lines would definitely been an issue if the building was set at the property lines. He feels that it will be a benefit to the neighborhood and not a detriment.

Mr. Sahr and Mr. Sellman agreed with Mr. Mail.

Mr. Burton stated that having a four story building at the lot lines of the intersection would be terrifying and agrees with the other Board comments.

MOTION: In Case BZ19-015, Nypano, 199 West Williams St., Mr. Sellman moved that the Board of Zoning Appeals grant the variance request from Section 1146.03(c) to allow the construction of a new building with 0 percent frontage where the building should occupy a minimum of 70 percent of the street frontage on Summit Street.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-015, Nypano, 199 West Williams St., Mr. Sellman moved that the Board of Zoning Appeals grant the variance request from Section 1146.03(c) to allow the construction of a new building with 0 percent frontage where the building should occupy a minimum of 70 percent of the street frontage on Franklin Avenue.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-015, Nypano, 199 West Williams St., Mr. Sellman moved that the Board of Zoning Appeals grant the variance request from Section 1146.03(c) to allow the construction of a new building with 0 percent frontage where the building should occupy a minimum of 70 percent of the street frontage on West Williams Street.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-015, Nypano, 199 West Williams St., Mr. Sellman moved that the Board of Zoning Appeals grant the variance request from Section 1146.04(a) to allow a new building to have a 32.91-foot setback from Franklin Avenue, where a zero foot setback is required.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-015, Nypano, 199 West Williams St., Mr. Sellman moved that the Board of Zoning Appeals grant the variance request from from Section 1146.04(a) to allow a new building to have a 78.07-foot setback from West Williams Street, where a zero foot setback is required.

Mr. Sahr seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ19-015, Nypano, 199 West Williams St., Mr. Sellman moved that the Board of Zoning Appeals grant the variance request from Section 1146.04(a) to allow a new building to have a 171-foot setback from Summit Street, where a zero foot setback is required.

Mr. Sahr seconded the motion.

VOTE: The motion carried 4-0.

VII. MEETING MINUTES

A. May 20, 2019 meeting minutes

MOTION: Mr. Mail moved to approve the minutes of May 20, 2019, as submitted.

The motion was seconded by Mr. Sellman.

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

VIII. OTHER BUSINESS

MOTION: Mr. Sellman moved to excuse Benjamin Tipton from tonight's meeting.

The motion was seconded by Mr. Burton.

VOTE: The motion carried 4-0.

Mr. Fink provided an update to the Dunkin Donuts / Bishara appeal and will provide more information as it becomes available.

IX. ADJOURNMENT

Mr. Burton adjourned the meeting at 8:12 p.m.