

**CITY OF KENT  
BOARD OF ZONING APPEALS  
PUBLIC HEARING & BUSINESS MEETING  
December 21, 2020**

**MEMBERS PRESENT:** Jona Burton  
Dave Mail  
Paul Sellman  
Benjamin Tipton  
Tim Sahr

**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 suspended for tonight's remote meeting.

**III. ROLL CALL**

Jona Burton, Dave Mail, Paul Sellman, Tim Sahr, 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. 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 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 affirmatively.

**VI. NEW BUSINESS**

**A.      BZ20-025      JKC Land Company  
                                         705 Lake Street (Corner of Lake Street and Harvey Street)**

Sections:      1133.01 and 1133.04(b)

Request:      The applicant is requesting the following:

- 1) A variance to allow 10 dwelling units per acre, where a maximum of approximately 8 dwelling units per acre is permitted (Section 1133.01), and
- 2) A 20-foot variance from the 30-foot minimum rear yard setback to allow a new building to be constructed 10 feet from the rear property line (Section 1133.04(b)).

Jerry Cohen, owner of JKC Land Company presented the case for the variances. He stated that if the strict application of the code is followed, they would be allowed to construct 9.76 units on the 1.22 acre parcel. They are requesting a variance to construct 10 units. He stated that the parcel is a corner parcel, which requires the structures to be constructed 30 feet from the southern property line. He explained that they are requesting a variance to allow a 10 foot setback to allow more space between the structures and to make the structures more uniform with the existing structures on Harvey. He added that no trees will be removed.

Mr. Burton asked if he had drawings showing the 30 foot setback to share with the Board.

Mr. Cohen stated that he has not shared them with the city. He stated that he decided to request a setback variance due to the spacing of the structures and fire safety issues, as well as the spacing along Harvey Street.

**PUBLIC COMMENTS**

Mr. Burton stated that they received two letters of opposition from the neighbors. He stated that their concerns were additional units, noise, additional traffic, and potential light spillover.

Mr. Sellman noted that one of the letters also expressed concern for the apartment complex that would be across from the proposed project.

Mr. Cohen stated that he is targeting tenants that are 55 and older for this project.

Mr. Sellman asked if he can legally restrict tenants by age.

Ms. Susel stated that the applicant would need to obtain a designation through the federal government in order to be able to restrict by age. She stated that the developer has indicated that he is going to seek this designation however, without that designation, it is open to anyone of any age under fair housing law.

#### **BOARD OF ZONING OF APPEALS DISCUSSION**

Mr. Tipton questioned the adjacent zoning districts.

Ms. Heckman stated that the properties on Harvey are zoned R-2 and require a 10 foot side yard setback. She stated that the applicant's property is zoned R-3.

Ms. Susel stated that the property directly to the east on Lake Street is a preserve, which was donated by the Dix family and is not to be developed.

Mr. Sellman stated that based on the current code, the applicant would be allowed to have 9.75 units. Mr. Sellman stated that the street view looks nice.

Mr. Sahr stated that if the applicant constructed 9 units, there would be no action required from this Board.

Mr. Sellman agreed.

Mr. Mail also agreed with Mr. Sahr in that variances are not needed if 9 units are built. He stated that because this is a virgin parcel, there isn't a need for variances.

Mr. Sellman stated that there are concerns from the neighbors.

Mr. Mail stated that if the project doesn't require any variances, it is within code. He stated that if it is only 55 and older, there won't be as much in and out traffic.

Mr. Fink stated that the courts would look at the seven Duncan vs. Middlefield factors: 1) would the property have a reasonable rate of return if the variance is not granted; is there any beneficial use for the property without the variance, 2) is the variance substantial, 3) would the essential character of the neighborhood be substantially altered or would adjoining properties would suffer substantial detriment as a result of granting a variance, 4) would the granting the variance adversely affect the delivery government services such as water, sewer, etc. in the neighborhood, 5) would the property owner purchase the property with the knowledge of the zoning restrictions in place, 6) can the property owner's predicament be solved through some other method other than a variance, 7) the spirit and intent behind the zoning requirement

would be observed and substantial injustice be done by granting the variance. He reminded the Board that no one factor has any more weight than another and the Board does not need to find all factors; the Board is to use this information to weight and determine on their own. He added that City of Kent has not formally adopted these standards.

Mr. Burton stated that the factors that Mr. Fink presented doesn't change his opinion on the case very much. He agrees with the other statements that it is possible to build the project without any variances.

Mr. Tipton stated that he is less concerned with the setback on Harvey Street knowing that the rest of Harvey has a 10 foot side yard setback minimum. He stated he still has concerns about the density request for the property, but also feels that it is a relatively small request.

Mr. Mail stated that he doesn't see any outstanding reasons to grant the variances, as there isn't any hardship. He stated that there are many multi-family homes on Lake Street already plus one across Harvey Street from this property.

Mr. Sellman stated that he feels that they should stick to the code.

Mr. Cohen stated that the project has changed to only 8 units. He stated that the new layout has 10 foot setbacks on the side and rear yard with 20 feet between the buildings, which is more in line with other structures on Harvey Street.

Ms. Susel questioned whether the applicant should resubmit a drawing depicting the new configuration so the Board has a clearer picture of what they are voting on.

Mr. Sahr stated that with only 8 units there is no need for any variances.

[There was an interruption in the Zoom meeting. All participants logged back into the meeting.]

Mr. Burton stated that because the project has shifted to 8 units, he feels that they should be able to accommodate the existing setbacks.

Mr. Cohen stated that he withdraws the first variance request for 10 units, but still wants to go forward with the setback request.

Mr. Tipton stated that because he doesn't have an accurate site plan in front of him, he cannot fully evaluate the necessity for the 10' back yard setback.

Mr. Cohen shared his screen with the Board, which is an updated site plan showing 27 feet between the building and the 10 foot setback. He stated that he can change the layout to accommodate the 30 foot setback, but he will lose 34 feet.

Mr. Mail asked if the areas between the buildings would be grass.

Mr. Cohen stated that it will be grassed and landscaped.

Mr. Sahr noted that the units were larger.

Mr. Cohen confirmed that the units are now 66 feet instead of 56 feet. He stated that these are one bedroom apartments/condos with a study that can be converted to a bedroom if needed.

Mr. Burton stated that if the buildings were 20 feet apart rather than 27, then only a 5 foot variance would be needed.

Mr. Mail agreed and stated that the 27 foot separation is nice but they need to grant a substantial variance to achieve this. He stated that because these are potentially going to be for 55 and older, the need for a large area for the kids to play isn't needed.

Mr. Sellman suggested a 15 foot variance.

Mr. Cohen demonstrated what the suggested configuration might do to the building layout.

Mr. Tipton suggested reducing the spacing between the 2 buildings on Harvey Street but not the same for the Lake Street buildings. He feels that there is some wiggle room.

Mr. Burton stated that 20 feet between structures is common in the city.

Mr. Mail agreed that the distance between the buildings on Lake Street and Harvey Street do not have to be the same due to the configuration. He suggested making a 20 foot separation between the buildings on Harvey Street.

Mr. Sahr questioned the distance between the buildings on the new site plan.

Mr. Cohen stated that there are 18 feet, 6 ½ inches.

Mr. Sahr stated that he feels that a 5 foot variance works well within the parameters that the applicant has presented and will provide consistency.

Mr. Tipton stated that he is in favor of a 5 foot variance.

**The first variance request from Section 1133.01 regarding the number of residential units was withdrawn.**

**MOTION:** In Case BZ20-025, JKC Land Company LLC, 705 Lake Street (Corner of Lake Street and Harvey Street), Mr. Burton moved that the Board of Zoning Appeals grant a 5 foot variance from Section 1133.04(b) to allow a new building to be constructed 25 feet from the rear property line where a 30 foot minimum rear yard setback is required.

**Mr. Mail seconded the motion.**

**VOTE:** The motion carried 5-0.

**VIII. MEETING MINUTES**

**A. September 21, 2020 meeting minutes**

**MOTION:** Mr. Sellman moved to approve the Board of Zoning Appeals minutes of September 21, 2020, as presented.

The motion was seconded by Mr. Sahr.

**VOTE:** The motion carried 5-0.

**IX. OTHER BUSINESS**

None

**X. ADJOURNMENT**

**MOTION:** Mr. Tipton moved to adjourn. The motion was seconded by Mr. Burton.  
The motion carried 5-0.

The meeting adjourned at 7:55 pm.