

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
March 16, 2020**

MEMBERS PRESENT: Tim Sahr
Dave Mail
Jona Burton
Benjamin Tipton

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 7:00 p.m.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

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

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 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. BZ20-012 DOMINION ENERGY OHIO
SE CORNER OF S LINCOLN STREET & RELLIM DRIVE**

Sections: 1132.02(b)(10) and 1171.01(a)(1)

Request: The applicant is requesting a 100-foot setback variance from the 100-foot setback requirement to install a new natural gas regulating station 0 feet from the property line.

MOTION: Mr. Mail moved to delay this case to the end of the meeting when a Dominion representative may be present. Mr. Sahr seconded the motion.

Mr. Burton asked if there was anyone in the audience present who was planning on speaking either for or against this case. **Hearing none, the motion carried 4-0**

**B. BZ20-011 HASAWI'S
211 FRANKLIN AVENUE**

Section: 1146.05(b)

Request: The applicant is requesting a 3-foot, 4-inch variance from the 60-foot maximum height requirement to allow a new building to be constructed up to 63 feet, 4 inches tall.

Paul Romanic, Metis Design, 175 E. Erie, Suite 303, stated that he is the applicant's representative. Mr. Romanic stated that this project was previously approved by Architectural Review Board and Planning Commission in 2018 and now after delays they are looking to finalize the documents. Mr. Romanic explained that the first floor is designed to be a bakery/bar/coffee house, the second floor a restaurant, and the remaining four floors residential apartments. He added that the appearance of the building is exactly the same as what was originally submitted and approved with the only variation is increasing the floor to floor heights for the first and second floors if

there variance is approved. Mr. Romanic stated that the slope of the site made it difficult to develop both the exterior and interior of the building. Mr. Romanic explained that the height variance would provide space for the food service equipment and dumpster niche for both the first and second floors. Mr. Romanic stated that the variance would not impact the neighboring properties. He stated that the highest point of their building with the variance would only be 9 inches higher than the closest building on that side. He added that the variance would also allow them to have entrances on both Franklin and Erie, and help them maintain the intent of the work/entertain facility.

Mr. Sahr asked for clarification on the cover letter's statement of "significant engineering measures" if the building were to go over 5 stories.

Mr. Romanic stated that they have already done the significant engineering measures by going to a concrete flooring structure, which minimizes the thickness of the floor plate as well as the overall depth of the structure per floor to allow the building to be 6 floors. He further explained that the real issue is with the topography of Alley 10 and the necessary dumpster location given the requirement to building up to the street edge.

Mr. Mail stated that their drawings show the top of the parapet at 67 feet 3 inches. Mr. Mail questioned what the larger box on the roof is and how far above the roof it will protrude.

Mr. Romanic stated that that is the elevator overrun and it will be approximately 5-6 feet.

Ms. Susel stated that that element does not count into the height requirement per the zoning code.

Mr. Burton stated that the Board looks to grant the smallest variance possible and asked the applicant if there is a way to gain that 3 feet 6 inches from the other floors.

Mr. Romanic stated that they are already at ceiling heights of 8 foot 8 inches in the main living areas and 8 foot in the bathrooms, which is actually lower than other apartments in the area. He explained that if they go lower, the plumbing traps become an issue for the apartments below.

Mr. Sahr asked staff if there is a possibility of this project and the proposed project to the south combining their dumpster space.

Mr. Susel stated that due to the configuration of the buildings, the requirement to build to the property line, and fire wall requirements, this would not be a viable option. She added that the area between the structures is designed to be a pocket park.

Mr. Tipton reviewed the height figures with the applicant.

Mr. Romanic stated that Kent does allow an average grade line to be considered and that is what the variance is based on.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that he understands the engineering side of their request but because the building doesn't currently exist, he doesn't understand the hardship and feels that they can construct their building to code.

Mr. Sahr agrees. He stated that he feels that the issues that they have presented are monetary based and that there are other options.

Mr. Burton asked the applicant to restate their case with regards to the criteria needed to approve a variance. Mr. Burton read the first criteria.

Mr. Romanic stated that because of the sloping nature of the site and the requirement to develop to the property line, they couldn't move the building back and solve the dumpster issue; instead they would be asking for a setback variance. He stated that they also attempted to lease neighboring property to accommodate the generator and dumpster but their offer was not accepted.

Mr. Burton questioned why they couldn't building a 5 story building instead.

Mr. Romanic stated the project becomes unviable economically when the 6th floor is removed.

Mr. Sahr suggested that if they reduce the building to 5 stories, then they wouldn't need to use the more expensive construction methods such as the concrete floors.

Mr. Romanic stated that they have not done the cost projections recently. He stated that they have tried many ways to make the project work without requesting a variance but they don't have any other options available to them that they can see.

Ms. Susel stated that there have also been challenges with a transformer and a generator on this tight site. Ms. Susel also stated that there is also bedrock. She explained that there have been many reasons for delays in the project but there have been extensive design costs due to the challenges and going back for more design will likely kill the project.

Mr. Romanic stated that any building over 4 stories is required to have a generator for emergency power for the elevators.

Ms. Susel stated that if both projects go forward, they will be locating the transformer in the city right of way.

Mr. Tipton questioned which property lines they are required to build up to.

Ms. Susel stated that they are required to construct up to all for property lines in the Downtown District.

Mr. Burton questioned the applicant on the second criteria: exceptional or extraordinary circumstances applying to the property. He stated that he believes the applicant has stated that this is due to the grade of the property and the engineering challenges that result.

Mr. Mail stated that he understand the grade issue but feels that they have chosen to make it a problem by pushing the limits and maximizing their income per square foot.

Mr. Sahr stated that they don't know their financial structure but that isn't the issue of the board. Mr. Sahr stated that their consideration should be if they have exhausted all of their options. He stated that while he agrees that they have made a choice to go beyond the code, he also understands that a lot of time and effort has gone into this project to make it work.

Mr. Tipton asked if there are other 6 story buildings in the downtown.

Ms. Susel stated that both the Avant 220 the Landmark are 6 stories. She added that the Avant 220 did receive a height variance due to slope.

Mr. Tipton stated that while he agrees that 60 feet is the requirement, he is also considering the issues that have been presented.

Mr. Burton added that the generator is a requirement for 4 or more stories and they would still need to find a way to house that with a 5 story construction. He stated that he feels that this is a hardship. Mr. Burton stated that as far as construction and given that it is on bedrock, lowering the building seems unlikely.

Mr. Sahr questioned the location of the generator.

Mr. Romanic stated that although it is more expensive to do so, it will be located in the basement as that is their only option.

Mr. Sahr questions the viability of the site.

Ms. Susel stated that she reviews the proformas for potential projects. She stated that without the variance, getting the site redeveloped for anything viable with regards to what has already been expended on this site is unlikely. Ms. Susel stated that it would be redeveloped but the property would probably sit in its current situation for a while. She stated that it could also depend on whether the owner is willing to sell it for what someone would be able to purchase and afford build something smaller.

Mr. Sahr questioned if the proforma shows that the 6th story is necessary for this project to be profitable in a suitable amount of time for investors to continue.

Ms. Susel stated that there are 16 residential units, which is the lowest amount they have seen for downtown. She stated that staff was refreshed to see such a low residential density high rise building. Ms. Susel stated that the variance requested is a 5% variance.

Mr. Mail questioned parking.

Ms. Susel stated that a parking plan is all that is required in the Downton District but the developer will be providing parking in the deck as part of the rent.

Mr. Burton stated that the 5% number is helpful for putting the request into perspective and feels that it is a small amount in comparison to other issues they consider.

Mr. Burton stated that this is a smaller size variance that would have a more potential impact in a positive way.

Mr. Mail stated that he is still wrestling with the idea that it is a blank slate.

Mr. Tipton stated that he was thinking in a similar way until he saw that the building would have fit to code until the dumpster issue.

Mr. Sahr stated that due to finding bedrock during construction and the need to adjust plans accordingly, he feels that a 5% variance does make a lot of sense. He stated that they also have a duty to the community to help things happen for the good of the community. Mr. Sahr stated that while he still agrees with Mr. Mail, he is concerned about how long they will need to wait for another viable project.

Mr. Burton agreed with Mr. Sahr that this is a good solution given the issues that arose during construction.

Mr. Tipton stated that while he doesn't want to see a 66 foot building on Franklin Avenue, he is in favor of 2 commercial floors and larger residential units. He feels that it is quality project and feels that the 5% variance is needed.

Mr. Sahr stated that the third criteria of whether or not there will be a negative impact to the surrounding community is a definite no; he feels that the variance will bring something positive in that growth and expansion is good for the community.

MOTION: In Case BZ20-011, Hasawi's, 211 Franklin Avenue, Mr. Tipton moved that the Board of Zoning Appeals grant a 3 foot, 4 inch variance request from Section 1146.05(b) to allow a new building to be constructed up to 63 feet, 4 inches tall where a maximum of 60 feet is allowed.

Mr. Sahr seconded the motion.

VOTE: The motion carried 4-0.

**C. BZ20-010 LARRY NEIMAN
324 SOUTH WILLOW STREET**

Section: 1109.10(b)

Request: The applicant is appealing the Community Development Department's decision regarding the number of unrelated residents permitted in the licensed rooming house.

Mr. Burton reads the evaluation of a non-conforming status as presented in the staff report.

Mr. Fink reviewed the City's stance of the case stating that while there is no dispute that the property has been used as a rooming house since 1971, a determination of how many residents allowed is needed.

Larry Neiman, 3200 Calderwood Dr., Akron, owner, questioned the operating procedures pertaining to continuing a case due to the lack of a full board.

All discussed the process and assured Mr. Neiman that he has the right at any time to request his case be continued.

Mr. Neiman stated that before he purchased this property in 1989, he spoke with Gary Locke, former Community Development employee, who said that the property was licensed for 11 people. He stated that he also confirmed the occupancy number with the Health Department and then purchased the property. He stated that unfortunately all of the people that he spoke with are deceased and unable to speak on his behalf. Mr. Neiman stated that he has had this property inspected, approved, and licensed by the Health Department every year for 31 years for 11 people; he has had no issues with any of the city departments or the neighbors. He stated that his occupancy has fluctuated over the years but has almost always had 8 people, sometimes more. He explained that he has the flexibility to add more if the tenants want to bring in more people to share the costs. Mr. Neiman stated that he received the City's letter stating that they would compromise and allow a maximum of 8 people but he feels that because he was told before he purchased the house that the occupancy is 11 that that is what it should be. He explained that even though he sometimes had less than 11 people, he always renewed his license for 11 people per the Health Commissioner's advice. He explained that the license fee was based on a per person charge, which would have saved him some money, but Mr. Ferlito cautioned him that once he renewed for less he would not be allowed to go back to 11. Mr. Neiman stated that he feels that he is being punished for doing things right for all these years.

Mr. Tipton asked how many kitchens, bathrooms, and bedrooms are in the structure.

Mr. Neiman stated that there are 2 kitchens, 6 big bedrooms, and 4 bathrooms, 1 of which is his private bathroom for when he is there working.

Mr. Mail stated that he understands Mr. Fink's statements and stated that it is very difficult to determine the historical occupancy for many properties. Mr. Mail stated that Mr. Neiman didn't contact the city to ask how many people is was allowed to have.

Mr. Neiman stated that he had to go through the Planning Commission and the Board of Zoning Appeals to have another property licensed before receiving approval from the health department based on what the zoning department approved. He stated that it doesn't make sense that the health department would issue him a license for 11 at this house if it wasn't allowed by zoning.

Mr. Fink clarified that the city's offer of 8 people will be superseded by the Board's determination of the appropriate occupancy number. Mr. Fink stated that under a directive from Council, the zoning department is to make sure that all properties are abiding by the requirement of no more than 2 unrelated unless they specifically have a rooming house that has been licensed through the community development or health departments. Mr. Fink added that Mr. Neiman has been very polite and cooperative throughout the process.

Mr. Mail stated that Mr. Neiman does have licenses from the health department allowing 11 people and feels that the city needs to confirm across departments.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sahr asked for a timeline of events that occurred.

Mr. Fink stated that he is unsure how, but it was brought to the attention of the zoning enforcement officer, who in turn sent it to Ms. Heckman, who then sent it for legal clarification. Mr. Fink stated that he found a letter in the address documentation from the 1980's with the current owner at that time, who said that he was capping the occupancy at a maximum of 6. Mr. Fink explained that this letter would then override any pre-existing non-conforming use that would have been in affect allowing 11 people. He further explained that the city's code only allows for a less than 2 year break in a non-conforming use before reverting back to the use allowed in that district.

Mr. Tipton stated that the Board needs to make their decision based on the evidence presented by the applicant, which is sometimes difficult to do.

Mr. Burton stated that regardless of the records that Mr. Neiman has kept, the letter from the previous owner is not helpful to his case.

Mr. Sahr stated that Mr. Neiman has done a good job of assembling a preponderance of evidence and the city has one letter. Mr. Sahr stated that he would like to see that letter.

Ms. Susel stated that the letter is a notarized statement from the previous owner to the city.

Mr. Mail stated that permission was granted for 11 people from the health department.

Mr. Sahr stated that Mr. Neiman has presented 30 years of documentation showing that he has been allowed to have an occupancy of 11. He stated that while he understands that the health department is not the zoning department, he sees that from a public person's standpoint, an approval from a city department is approval from the city and there are no issues. He feels that whether or not he rents to the full capacity of the occupancy, it doesn't change the capacity of the house.

Mr. Fink clarified that there isn't a Certificate of Non-Conforming Use for this property. He stated that if there had been one, this may be a different story. Mr. Fink stated that something is not grand-fathered in until you obtain a Certificate of Non-Conforming Use.

Ms. Susel explained that previously, the health department and community development departments did not compare documents; the two departments now work together to assure consistency.

Mr. Sahr questioned the intent of the document from the previous owner.

Mr. Mail stated that he feels that because he has City of Kent Housing Operation Licenses for many years and at least some of them indicate 11 persons that he should be able to continue.

Mr. Sahr agreed and stated that Mr. Neiman's documentation is superior and shows that he has been acting in the very best interest.

Ms. Susel explained that the reason that some of the licenses have an occupancy and more recent ones to not, is because of a change in the way the health department bills for the licenses and not because the occupancy has changed.

Mr. Mail stated that he is inclined to grant the appeal and suggested further discussing the occupancy number although he believes the occupancy should be 11.

Mr. Burton stated that he is also in favor of recommending a number.

Mr. Neiman stated that he has 2 or the 6 bedrooms that he always rents as doubles. Mr. Neiman stated that reducing the occupancy could also affect his resale of the property given he purchased it knowing that it was for 11 people. Mr. Neiman read the bedroom sizes.

Mr. Sahr stated that he would like to approve 11.

Mr. Tipton stated that the occupancy will stay with the building forever and feels that it should be less than 11. Mr. Tipton cited that it is consistently used for 8 people and occasionally being used for 11. He feels that three of the bedrooms could be used for doubles and feels that 8 would be a good number. Mr. Tipton stated that in a past case, they did not consider the health department license as evidence.

Mr. Mail stated that he doesn't feel that this case is the same. He noted that there haven't been any complaints against the case.

Mr. Sahr noted that one of the documents shows the occupancies for the surrounding rooming houses; 10, 7, 6, 12, 12, 6, 3, 6, and a duplex. He stated that while 11 may seem high, there are others close by that are similar.

Mr. Tipton stated that there are also some that are lower.

Mr. Burton stated that he is considering 9; 1.5 per bedroom.

Mr. Sahr and Mr. Tipton stated that this seems reasonable.

Mr. Neiman stated that it has been 5 years since he had 11 people, 2 years ago he had 10, and 8 this year. He stated that the reason he has less people is because the house takes less abuse. He stated that in 2010 there was a fire and he invested \$183,000 to remodel and improve it. He stated that he does not run a party house. He stated that about every 3-4 years, he ends up with 10 renters. He feels that he is being penalized.

The Board continued to discuss the potential occupancy number.

Mr. Burton asked the applicant if he would like to go forward with the case or have it continued.

Mr. Neiman stated that he would like to go forward.

MOTION: In Case BZ20-010, Larry Neiman, 324 South Willow Street, Mr. Mail moved that the Board of Zoning Appeals grant the appeal regarding the number of unrelated residents permitted in the licenses rooming house and recommend a maximum occupancy of no more than 10 unrelated people.

Mr. Sahr seconded the motion.

VOTE: The motion carried 4-0.

D.-H. BZ20-005-9 A & H INVESTMENT JOINT VENTURE
318 EAST SUMMIT STREET
506 EAST SUMMIT STREET
545-547 SOUTH LINCOLN STREET
535-537 SOUTH LINCOLN STREET

HAUCH HOUSING
532 SOUTH LINCOLN STREET

Sections: 1109.10(b)

Request: The applicant is appealing the Community Development Department's decision to deny a certificate of non-conforming use.

Mr. Burton stated that this applicant has requested to have a one month continuance to April 20, 2020. Mr. Burton read the email into the record.

A. BZ20-012 DOMINION ENERGY OHIO
SE CORNER OF S LINCOLN STREET & RELLIM DRIVE

Sections: 1132.02(b)(10) and 1171.01(a)(1)

Request: The applicant is requesting a 100-foot setback variance from the 100-foot setback requirement to install a new natural gas regulating station 0 feet from the property line.

Mr. Burton asked if there was a representative present.

MOTION: In Case BZ20-012, Dominion Energy Ohio, SE Corner of S Lincoln Street & Rellim Drive, Mr. Mail moved to go forward with the case despite the lack of a representative.

Mr. Tipton seconded the motion.

VOTE: The motion carried 4-0.

Ms. Susel explained that the Development Engineer verified that an easement is in plans and that this is a replacement for an existing vault. Ms. Susel stated that the condition that makes this variance necessary will be looked at in the future zoning code updates as a variance is needed every time this condition arises. She stated that this is the same scenario as the pump station they reviewed on Middlebury Rd.

Mr. Burton stated that he visited the site and feels that the proposed project isn't very different from what it currently there. He added that they will dress it up with landscaping.

The Board agreed that because this is a gas utility, there are not any other options.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail restated Mr. Burton's comments.

Mr. Sahr noted that there are not any neighbors present to speak in opposition.

MOTION: In Case BZ20-012, Dominion Energy, SE Corner of South Lincoln and Rellim Drive, Mr. Burton moved that the Board of Zoning Appeals grant a 100 foot variance request from Section 1132.02(b)(10) and 1171.01(a)(1) to allow a new natural gas regulating station to be 0 feet from the property line where a minimum setback of 100 feet is allowed.

Mr. Main seconded the motion.

VOTE: The motion carried 4-0.

VII. MEETING MINUTES

A. February 17, 2020 meeting minutes

MOTION: Mr. Tipton moved to approve the minutes of February 17, 2020, as submitted.

The motion was seconded by Mr. Sahr.

VOTE: The motion carried 4-0.

VIII. OTHER BUSINESS

Staff discussed the possibility of a special meeting on April 27, 2020 due to the high volume of cases.

The Board was agreeable and they will be notified once the meeting is scheduled.

IX. ADJOURNMENT

MOTION: Mr. Burton moved to adjourn.

The motion was seconded by Mr. Sahr.

VOTE: The motion carried 4-0.

The meeting adjourned at 9:28 pm.