

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
August 17, 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. Fink 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. BZ20-019 KRISTINA KING
206 WILSON AVENUE**

Sections: 1161.27(a), (c), and (e)

Request: The applicant is requesting in accordance with Sections 1161.27(c) and 1161.27(e), a variance from Section 1161.27(a), to install a bump-out in the driveway.

Kristina King, 206 Wilson Ave., explained her request as presented for her corner lot. She stated that the driveway is located on Crain Ave with a one car garage. Ms. King explained that the bump-out would allow them access to both cars without having to move one car to let the other out. Ms. King stated that they matched the brick pavers in the driveway for the bump-out. She stated that the work has already been completed as she didn't know she needed a variance until she received the citation letter. Ms. King stated that the bump-out is next to the neighbor's garage so it doesn't infringe upon the usable green space.

Mr. Sahr questioned how long the bump-out has been there.

Ms. King stated that they installed it in October 2019.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that he looked at the driveway and feels that the hardship is the very narrow garage, parking isn't allowed on Crain Ave., and Crain Ave. is hard to back out onto; for safety reasons it makes good sense. He stated that they have done the minimal amount of modification that they needed to accomplish their purpose.

Mr. Sellman stated that he also has seen the bump-out and feels that it is aesthetically appealing and looks as though it has been there forever. He agreed that there are hardships and safety concerns.

Mr. Sahr agreed with the previous comments and feels that it was well done and fits in with the nature of the existing drive and neighborhood. He stated that he sees the hardship is the short driveway and being very close to the stop sign. Mr. Sahr stated that his position is that it was done very nicely, and there is definitely a need for the bump-out to create a safe space for them to maneuver their vehicles without having to be in the busy street near the intersection.

Mr. Tipton stated that he generally agrees with the previous statements and feels that it is necessary to maneuver their vehicles.

Mr. Burton stated that he also agrees with previous comments; aesthetically it is well done, they used minimal amount of encroachment in order to make it safer for all, given the proximity to the stop sign.

MOTION: In Case BZ20-019, Kristina King, 206 Wilson Avenue, Mr. Sellman moved that the Board of Zoning Appeals grant a request from Section 1161.27(a), (c), and (e) to allow the installation of a bump-out in the driveway.

Mr. Mail seconded the motion.

VOTE: The motion carried 5-0.

**B. BZ20-020 BRIAN KAUFFMAN / BETSY BEYER
434 STOW STREET**

Section: 1127.04(a)

Request: The applicant is requesting an 89-foot variance from the 100-foot minimum front yard setback requirement to allow a new single family dwelling to be constructed 11 feet from the front property line (Section 1127.04(a)).

Betsy Beyer, potential property owner, stated that she, her daughter, and son-in law are excited about the possibility of building a new home at 434 Stow Street. She stated that they would like to construct a multi-generational, sustainable, single family home. Ms. Beyer stated that the current structure was built in 1870 and their hope is to demolish and construct new.

Brian Kauffman, architect, stated that because the lot is substandard size, it is impossible to obtain the 100' setback required by the O-R: Open Space Recreational zoning district. He stated that they would like to use the setbacks of the existing houses on the street to establish this front yard setback. Mr. Kauffman reviewed the site plan of the proposed new structure with a three car garage and an 11 foot front yard setback.

Mr. Mail stated that they want to be able to build with an 11 foot front yard setback and that the garage may or may not be as proposed.

Mr. Kauffman confirmed that that is the case and that they are still very early in their design.

Mr. Tipton questioned the multi-generational housing type.

Ms. Heckman confirmed that it is a single family house and not a multi-family structure.

PUBLIC COMMENTS

Ron Musselman, stated that he owns the house at 416 Stow Street, which is currently a rental and questioned the O-R zoning district for this area and the requirements.

Mr. Fink explained that 434 Stow Street doesn't meet the minimum lot size requirements for the O-R district and thereby follows the setback requirements for substandard lots.

Ms. Heckman read a letter from Mr. Brown, 424 Stow Street, who is in support of the variance.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Tipton stated that the slope of the rear yard is a consideration for the front yard setback. He stated that he is a little hesitant on the 11 foot request and would rather see the setback even with the other homes on the street.

Mr. Sahr stated that he is concerned that 11 feet isn't enough room to get in and out of a driveway should they decide to modify the plans and build the home up to the setback line. He stated that the submitted design takes care of his concerns regarding a parking area, turning area, safely getting in and out of the driveway but granting an 11 foot variance does not guarantee it will be constructed this way.

Mr. Sellman stated that he agrees with Mr. Sahr regarding safety with regards to the driveway. He stated that he likes the site plan as presented as it has a nice driveway area and sets the face of the house back. Mr. Sellman stated that an 11-12 foot setback is reasonable for the neighborhood and would not be intrusive to the other neighbors or the intent of the code.

Mr. Mail stated that the existing house is 11 feet but feels that if they move the new house back another 2-3 feet to line up with the house next door it would look better and not crowd the driveway. He feels that the new house will be an improvement.

Mr. Burton stated that the safety of the driveway is a concern and agrees that moving the setback back 2 feet from where the existing house is located would be more ideal. He questioned if increasing the setback to 13 feet would be detrimental to the planning process for their design.

Mr. Kauffman stated that they have discussed having at least 20 feet outside the garage for pulling in and doesn't feel that an additional 2 feet will be detrimental to the design or the layout of the house. He added that if they construct the house with the garage perpendicular to the street, then 11 feet makes sense, but if it doesn't

then the 13 feet would be okay. He stated that the 11 feet did line up with the house 3 doors down and the two houses in between are pushed back a bit. Mr. Kauffman suggested a compromise of 12 feet.

Mr. Mail stated that moving the house back 2 feet would also allow the back of the houses line up as well.

Mr. Kauffman stated that it will depend on whether or not they construct the house as presented as they still would like to have a nice balcony and walk-out and that might make the backyard too tight but he feels that 12-13 feet is certainly reasonable.

Mr. Tipton stated that because the guardrail makes everything feel tight, he feels that adding additional space would be best for that area. He stated that there is a significant drop-off in the back and moving the structure too far back could cause issues. Mr. Tipton suggested that if the applicant needed more space they could always come back to the Board to request a variance to the west side yard setback.

Mr. Kauffman stated that they are planning on using the existing curb cut for the driveway location.

Mr. Burton questioned the Board Members on a consensus of what the setback should be.

The Board discussed and it was decided that a 13 foot setback would better align the new structure with the existing structures.

Mr. Mail questioned the applicant if they can work with a 13 foot setback.

Mr. Kauffman confirmed that they are good with a 13 foot setback.

MOTION: In Case BZ20-020, Brian Kauffman/Betsy Beyer, 434 Stow Street Mr. Mail moved that the Board of Zoning Appeals grant an 87 foot variance request from Section 1127.04(a) to allow a new single family dwelling to be constructed 13 feet from the front property line where a minimum of 100 feet is required.

Mr. Sahr seconded the motion.

VOTE: The motion carried 5-0.

**C. BZ20-021 CITY OF KENT
ZONING CODE WORK SESSION**

The proposed Zoning Code Text Amendments are being forwarded to the Board for review and comment.

- Proposed Chapter 1112 –Administrative Organization
- Proposed Chapter 1113 – Administrative Procedures

Ms. Susel reviewed the zoning code change process and asked for the Board's comments on the presented chapters.

Mr. Fink reviewed the changes to Chapter 1112.03 (new numbering).

Mr. Sellman stated that it is good that the language has been cleaned up and more readable.

Mr. Burton agreed.

Mr. Tipton noted that the Conflict of Interest was not noted in the BZA section of the Chapter.

Mr. Fink explained that Chapter 1111 applies to all three boards: Board of Zoning Appeals, Planning Commission, and Architectural Review Boards. He stated that it is then broken down into each individual board in the next chapters.

Mr. Fink explained that on some level they are trying to give more authority to the Community Development Department to be making day to day zoning decisions and give the property owners (and possibly others) the right to appeal to the BZA should they disagree with the staff's decision; it gives staff the ability to be a little flexible and still allows the BZA to say if they disagree.

Mr. Burton stated that it seems this will really streamline the Community Development and Law Departments to avoid mismatching information. He stated that he likes it.

Mr. Sellman agreed and appreciated that it was written in plain English.

Ms. Susel stated that they have also added definitions that will clarify some issues.

Mr. Fink stated that they are looking at adopting the Duncan Standards for size and area requests as it would make considering variances much easier.

Ms. Susel stated that the Board will see a final copy before it goes to Council. She stated that if the Board has any thoughts or comments to let them know.

Mr. Mail questioned page 32 subsection (i): "reasonable return" noting that this indicates a monetary distinction and financial considerations are not allowed. He suggested replacing the text with something else.

Mr. Fink stated that this is under the size and area variance, which does allow some consideration of financial and whether there is a reasonable rate of return; financial considerations are not allowed under the location or ordinance variances. He stated that this language is from the Ohio Supreme Court.

Ms. Susel suggested adding an example to the text for clarification.

VIII. MEETING MINUTES

A. July 20, 2020 meeting minutes

MOTION: Mr. Sellman moved to approve the Board of Zoning Appeals minutes of July 20, 2020 as submitted.

The motion was seconded by Mr. Mail.

VOTE: The motion carried 4-0-1. Mr. Sahr abstained.

IX. OTHER BUSINESS

None

X. ADJOURNMENT

MOTION: Mr. Sahr moved to adjourn.

The motion was seconded by Mr. Mail.

VOTE: The motion carried 5-0.

The meeting adjourned at 8:23 pm.