

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
September 20, 2021**

MEMBERS PRESENT: Paul Sellman
Jona Burton
Debbie Douglas
Dave Mail

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

I. CALL TO ORDER

Mr. Sellman called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

III. ROLL CALL

Jona Burton, Dave Mail, Debbie Douglas, and Paul Sellman were present.

III. PREAMBLE

The Board of Zoning Appeals, Kent citizens serving without pay, hear evidence at public meetings both in support of and in opposition to an applicant's request before rendering a decision. Generally, the Board will decide to approve or deny each requested application at the meeting that it hears the testimony. Some decisions may be continued for further review. Once 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 file an appeal in the Common Pleas Court. Anyone interested in appealing a decision of the Board is advised to seek private legal counsel.

IV. 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.

V. NEW BUSINESS

**A. BZ21-022 KENT AUTOMATION
449 DODGE STREET**

Request: The applicant is requesting the following:

- 1) A 70-foot variance from the 100-foot minimum side yard setback requirement to allow a building addition to be 30 feet from the side property line (Section 1103.22(F)(1));
- 2) An 81-foot variance from the 100-foot minimum rear yard setback requirement to allow a building addition to be 19 feet from the rear property line (Section 1103.22(F)(1));
- 3) A 15-foot variance from the 20-foot minimum landscaping strip to allow a 5-foot landscaping strip between the parking area and public right-of-way (Section 1107.12(B)(1));
- 4) A 20-foot variance from the 50-foot minimum landscaping buffer to allow a 30-foot side yard landscaping buffer (Section 1108.05(D)(c)); and
- 5) A 31-foot variance from the 50-foot minimum landscaping buffer to allow a 19-foot rear yard landscaping buffer (Section 1108.05(D)(c)).

Dave Smith, 1390 Partridge Lane, Akron, Ohio stated that he is here on behalf of Kent Automation to request five variances. Mr. Smith stated that this industrial property has residential districts abutting it on three sides and requires 100' setback for both the rear and side property lines as a result. He stated that the property owners are not able to add on to their building without the variances. He stated that variances to the landscape buffers for the side and rear yards are also needed. He explained that there is also a 20' landscape buffer required between the off-street parking area and the public right of way but because the current building is close to the street and the company is adding on-site parking spaces that will help alleviate parking on the street, they are asking for allowance for a 5' landscape that will be landscaped and screened from the street.

Mr. Burton questioned the planting of the 5' street buffer.

Mr. Smith stated that they would like to preserve the existing trees as much as possible and will work with the City to achieve equitable screening.

Ms. Susel stated that the landscaping composition and placement is dictated by the landscape code.

Mike Pollard, owner of Kent Automation, explained the nature of the business and stated that they are leading the market in the USA and Canada and need more room to expand the market into Europe. He stated that they want to keep operations in Kent.

PUBLIC COMMENTS

Rick Wagner, 438 W. Elm St., stated that he lives next door and is in favor of the addition to keep the business growing and in the USA.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that the back portion of the existing building is very close to the residential area and feels that the addition is not going to be any more intrusive than the existing

building especially with the proposed removal of the recessed loading dock. He stated that with the absence of public objection, he doesn't have an issue with the project. Mr. Burton stated that he mirrors Mr. Mail comments.

Ms. Douglas questioned the need for more side yard landscape buffer.

Mr. Sellman stated that he agrees and feels that Ms. Douglas's comments can be addressed with the trees in the front when they work with the City.

Mr. Smith stated that the tradeoff for the smaller landscaping buffer would be getting parked cars off the street.

Mr. Sellman stated that he feels that their request is reasonable and well thought out; they are limited with their lot size. He stated that their decision to stay in Kent is very valid as Kent needs to have small businesses and they need to do what they can to support them. He stated that the only neighbor that would be affected by the project is here to speak in favor of it.

Mr. Mail stated that the Board always tries to minimize the variances, but because this is an industrial use surrounded by residential uses, he feels that they are making less use of the land than they did with the original building. He stated that the building is well cared for and getting rid of the loading dock will be an advantage to the neighborhood. He stated that it is all a good thing.

Mr. Burton stated that it is worth noting that a number of the variances would be significantly smaller if the property line was straight.

MOTION: In Case BZ21-022, Kent Automation, 449 Dodge St., Mr. Mail moved that the Board of Zoning Appeals grant a 70-foot variance from the 100-foot minimum side yard setback requirement from Section 1103.22(F)(1) to allow a building addition to be 30 feet from the side property line.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-022, Kent Automation, 449 Dodge St., Mr. Mail moved that the Board of Zoning Appeals grant a 81-foot variance from the 100-foot minimum rear yard setback requirement from Section 1103.22(F)(1) to allow a building addition to be 19 feet from the rear property line.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-022, Kent Automation, 449 Dodge St., Mr. Mail moved that the Board of Zoning Appeals grant a 15-foot variance from the 20-foot minimum landscaping strip from Section 1107.12(B)(1) to allow a 5-foot landscaping strip between the parking area and public right-of-way.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-022, Kent Automation, 449 Dodge St., Mr. Mail moved that the Board of Zoning Appeals grant a 20-foot variance from the 50-foot minimum landscaping buffer from Section 1108.05(D)(c) to allow a 30-foot side yard landscaping buffer.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-022, Kent Automation, 449 Dodge St., Mr. Mail moved that the Board of Zoning Appeals grant a 31-foot variance from the 50-foot minimum landscaping buffer from Section 1108.05(D)(c) to allow a 19-foot rear yard landscaping buffer.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

**B. BZ21-023 LAURA & MATTHEW COPLEY
1493 MOGADORE ROAD**

Request: The applicants are requesting a variance from Section 1106.12(E) to allow a fence with only one finished side to have the finished side of the fence oriented towards the interior of the lot.

Laura Copley, 1493 Mogadore Rd., reviewed their project as presented. She stated that her husband, Matthew Copley, received information on fencing from the Community Development Department in May stating that there were no restrictions regarding fence orientation and no property line setback. She stated that they did not immediately install the fence as they wanted to have a legal survey completed and it took some time to have it done. She stated that they purchased the fencing on June 15th and they were also able to have the survey completed on July 9th. She stated that on July 8th they obtained a fence permit and was reassured that he could install the fence as originally planned; no orientation or setback. She stated that on August 5th approximately 40 holes were professionally dug 6" away from the property line. She stated that she received an email from the CD Dept. after they had the posts and side rails installed regarding the updated requirements on fence orientation and stopped work. She stated that it would cost them an additional \$1,000 - \$2,000 to fix the issue.

Mr. Sellman stated that the new code went into effect on June 16th.

Matthew Copley, 1493 Mogadore Rd., stated that he spoke with Ms. Heckman regarding the regulations and purchased the fencing prior to the code change on June 16th. He stated that when he pulled the permit on July 8th, he confirmed that the previous regulations were still in effect. He stated that if he would have known that the regulations were different, he would have configured the fence differently.

Ms. Copley stated that their intent was not to break any rules; they wanted to follow the letter of the law.

Mr. Copley stated that the rules changed midway in their process.

PUBLIC COMMENTS

Deena Kruger, 1523 Mogadore Rd., stated that she has witnessed the project progress and is aware of the situation. She stated that there has been a lot of issues with the neighbors on the other side of the fence; a lot of animosity that has been building all summer long. She stated that she feels that the issue isn't just the fence being installed but with a neighbor being angry with the other neighbors.

Wendy DiAlesandro, 1477 Mogadore Rd., stated that she feels that what Mr. Copley has said is true as they were told the same when they called to ask about the orientation of the fence. She stated that she was also told by Ms. Susel that regardless of what Mr. Copley was told, he is responsible for knowing the code, which makes for a difficult situation. Ms. DiAlesandro stated that they would prefer that the City code be followed. She stated that she extends permission for the Copley's to come onto their property to install the fence the way it should be or they could go with a shadow box fence, which may be less expensive than having to move the stringers.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail questioned the applicant's statement regarding her initial conversation with the neighbor about the installation of the fence.

Mr. Copley stated that there has been an ongoing dispute regarding the property line with the DiAlesandro's. He stated that when they started to construct the fence, Mrs. And Mr. DiAlesandro were outside and he offered them the option of what color they would like their side of the fence painted; Mr. DiAlesandro stated that he just wanted it to be natural. He stated that a shadow box fence will cost them at least an additional \$1,000 due to the configuration of the pickets. He stated that this is not about a neighbor dispute but rather a discrepancy with what they were told by the City; the neighbor is not a factor. He stated that if this happened one month earlier, there would be no issue.

Ms. Susel clarified the extensive code changes and the timeline in getting the final approval. She explained that staff does not have to ability to grant variances due to erroneous information that was given.

Mr. Copley stated that he understands and that they are not pointing fingers. He stated that they were trying to install the fence the proper way and went by what the City told them to do. He added that if he knew the rules were different, he never would have approached the project the same way. He stated that he is asking for the Board's approval to continue to do what he was told he was allowed to do to begin with.

Ms. Susel clarified that the variance request is regarding the orientation of the finished side and not a setback. She stated that the fence is allowed to be up to the parcel line.

Mr. Copley stated that he feels that the finished side is subjective. He stated that the change in the code states that the 'decorative side or the finished side' is installed towards the neighbor. He stated that currently neither side is finished or decorative. He stated that he planned on painting both sides of the fence and giving the neighbors the option of what color they wanted on their side of the fence making both sides finished.

Mr. Copley confirmed and stated that the reason he is doing it this way is so that he is on his property when he is installing it. He stated that he doesn't want to be on their property. He stated that they are doing this to be nice, as well as for privacy.

Mr. Sellman provided the applicant a copy of the neighbor's letter that she submitted to the BZA.

Mr. Fink stated that there is some concern expressed by the applicant that he relied upon the statements from a City employee. Mr. Fink clarified that the City is under no obligation to provide any legal advice or answers; the City has given their best evidence but what really counts is what is in the City Code.

Mr. Copley stated that he understands.

Ms. Douglas questioned if the fence material is wood.

Mr. Copley confirmed that it is and reiterated that he has given the neighbors the color option for their side. He stated that given Mr. DiAlesandro asked for natural, he will stain their side clear at his expense. He stated that he will also maintain it as well.

Ms. Douglas asked if the applicant was provided a copy of the code in May.

Ms. Susel stated that the code had not been adopted at that time so they were unable to provide him a copy of it at that time. She added that the applicant also was not informed that the fence code could be changing.

Mr. Copley explained that he didn't obtain a permit in May when he first discussed the fence with Ms. Heckman because of the timeframe and cost of hiring a surveyor; he didn't want the permit to expire. He stated that he purchased his materials the day before the code changed.

Ms. Susel stated that the code reads "where a fence or wall has a single finished or decorative side, it must be oriented to face outward toward adjacent parcels or right-of-way". She questioned the applicant if either side is currently finished or if that is something that they would be applying after installation.

Mr. Copley stated that both sides are unfinished at this time and a finish would be applied after the fence is complete.

Ms. Susel discussed with Mr. Fink the finished sides.

Mr. Fink stated that if both sides end up being finished, then no variance is required.

Mr. Copley stated that both sides will be finished.

Mr. Fink stated that the code refers to a single finished or decorative side and the applicant is referring to something different.

Ms. Susel stated that the code does not reference that the stringers are on one side or the other.

[There was more discussion about the finished side, orientation, or location of the stringers]

MOTION: Mr. Burton moved for a 5 minute recess to discuss the finished side.
Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

The meeting recessed at 7:53 pm and reconvened at 7:58 pm.

Mr. Fink stated that it is the City and the applicant's joint request to continue any further discussion of case BZ21-023 until the May 1, 2022 meeting. He stated that they have had further discussion as to whether or not a variance is required and the City believes the best way to determine it is to see the final product and if the final product meets all of the statements that the applicant have made then no variance request would be necessary.

MOTION: In Case BZ21-023, Laura & Matthew Copley, 1493 Mogadore Rd., Mr. Burton moved that the Board of Zoning Appeals continue the case until May 1, 2022.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

**C. BZ21-024 GALENAS LLC
166 CURRIE HALL PARKWAY**

Request: The applicant is requesting a 5-foot variance from the 100-foot minimum setback from any residential district to allow a medical marijuana dispensary to be 95 feet from a residential district (Section 1105.34(B)(1)).

A survey was presented and the request was immediately changed to a 10-foot variance request to allow the facility to be located 90 feet from a residential district

Geoff Korff, CEO of Galenas, LLC stated that they are a licensed medical marijuana cultivator located in Akron and they are applying for a dispensary license in Kent as well as other Ohio locations. He stated that the property they are proposing to use in Kent is known as The Dome at 166 Currie Hall Parkway. He stated that the amended variances required are 10', not 5' based on the new survey. He stated that they have a record of spotless compliance with the Ohio Department of Commerce and they are a good operator and a good neighbor and this is a real business. He stated that if they are approved for this location, they plan on substantially upgrading the façade and the aesthetics of the building. He stated that granting this variance doesn't guarantee anything; they need to have local approval in place so that they can apply with the State of Ohio for an operating license.

Ms. Susel clarified that this variance is needed in order for the applicant to go for site plan review and approval by the Planning Commission. This is just to clear them for the zoning so that they can apply to the State.

Mr. Burton questioned where Kent ranked in reference to the other Ohio locations that they are considering.

Mr. Korff stated that it is very close to the top. He stated that from a logistical standpoint, Kent is one of the top three locations; they will be submitting 10 locations to the State.

Mr. Mail stated that they have not received any comments regarding the project.

Mr. Sellman stated that there are no negative comments at all.

Ms. Douglas questioned if there were any emails regarding the project.

Mr. Sellman stated that there were none.

The Board members stated that they do not have any questions at this time.

PUBLIC COMMENTS

Wendy DiAlesandro, 1477 Mogadore questioned the tentative plans for the residential units on the vacant parcel to the east of the applicant's parcel and how that would impact this plan.

Ms. Susel stated that this is based on existing residential and not potential or proposed residential uses.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that he was interested to see if there was any public comment on the project. He stated that improvements for this building are good. He stated that even if they approve the variance, the applicant still has to wait for State licensing. He doesn't feel that a 10' variance is an issue.

Ms. Douglas agreed with Mr. Mail's comments. She stated that her biggest concern would have been if the neighbors had concerns.

MOTION: In Case BZ21-024, Galenas LLC, 166 Currie Hall Pkwy., Mr. Mail moved that the Board of Zoning Appeals grant a 10-foot variance from the 100-foot minimum setback from any residential district requirement from Section 1105.34(B)(1) to allow a medical marijuana dispensary to be 90 feet from a residential district

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

VI. MEETING MINUTES

MOTION: Mr. Mail moved that the Board of Zoning Appeals approve the July 19, 2021 Minutes as submitted. Ms. Douglas seconded the motion. The motion carried 4-0.

MOTION: Mr. Burton moved that the Board of Zoning Appeals approve the August 16, 2021 Minutes as submitted. Mr. Mail seconded the motion. The motion carried 3-0; Ms. Douglas abstained.

VII. OTHER BUSINESS

None.

VIII. ADJOURNMENT

MOTION: Mr. Mail moved to adjourn the meeting. The motion was seconded by Ms. Douglas. The motion carried 4-0.

The meeting adjourned at 8:12 pm.