

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
March 15, 2021**

MEMBERS PRESENT: Jona Burton Paul Sellman
Dave Mail Deborah Douglas

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

I. CALL TO ORDER

Mr. Sellman called the meeting to order at 7:29 p.m.

II. ROLL CALL

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

III. 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. Sellman 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."

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. BZ21-003 KYLE VEON
1230 Middlebury Rd.**

Requests: The applicant is requesting the following:

- 1) A variance from Section 1161.27(a) to allow a driveway to be 31 feet in width, where 24 feet is the maximum width allowed, and
- 2) A variance from Section 1161.27(a) to allow the driveway to have varying widths instead of the same width from the right-of-way to the terminus of the improved area.

Kyle Veon, 1230 Middlebury Rd., stated that the driveway is already completed. He stated that he started a business as a result of COVID and needed a place to park his larger truck and equipment trailer. He stated that he sent a site plan with the proposed driveway to Jennifer Barone and after two weeks of not hearing back from the city, he proceeded with his project. He stated that the turn-around and paved walkway were existing. He stated that he expanded the walkway by 9 feet and replaced the turn-around to make it all one area and now the driveway extends 20 feet beside the house along the garage side to allow room for the trailer.

Mr. Sellman questioned the measurements on the drawing.

Mr. Veon confirmed that the length of the side trailer parking area extends 60 feet to the front edge of the existing turn-around.

Ms. Susel stated that an email was sent to the applicant by Ms. Barone on September 30, 2020 regarding the proposed drive changes.

Mr. Veon stated that he is sure that the email was sent, he is merely stating that he didn't receive it at his email address. He stated that he wouldn't have gone forward knowing that there was an issue.

Mr. Sellman questioned why the applicant didn't follow up with a phone call.

Mr. Veon stated that he attempted make contact via phone as well but was unable to make contact.

Mr. Mail questioned who the complaints that were referenced in Mr. Veon's email were from.

Mr. Veon stated that there was a letter from the City stating that they had received a complaint but he doesn't specifically know from whom. He stated that the driveway was poured in late August 2020.

Ms. Susel stated that it may have been witnessed and acted upon by Ms. Barone herself or it could have been an anonymous tip.

Ms. Douglas questioned the distance from the trailer parking area to the side property line.

Mr. Veon stated that there is roughly 17 feet from the edge of the pavement to the property line. He stated that the neighbor's house is approximately 15 feet from the property line. He added that the driveway change did not change the grade.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that the drive is well done and is within his fence line. He stated that it appears that he tried to comply with the City and feels that it would be quite an imposition to remove the concrete.

Mr. Sellman stated that he doesn't like considering variances where the work has already been completed. He also feels that removing the concrete would be unduly harsh. He stated that other than the whiteness of the concrete, which will fade in time, it isn't horribly intrusive and does support the owner's need. Mr. Sellman stated that the applicant's hardship is that he needs parking for his gainful employment.

Mr. Mail stated that the conversation would be different than it is now if they were discussing it before the concrete had been poured.

Mr. Fink noted that they are to consider if they would have allowed it in the first place.

Mr. Sellman agreed. He stated that the exceptional or extraordinary circumstance is that this street is full of interesting driveways and this one is one of the nicest. He stated that he also doesn't feel that this is a detriment to the public interest or adjacent property owners. Mr. Sellman feels that the complaint was probably driven by the City. He feels that the applicant has met the criteria.

Mr. Burton stated that he disagrees. He stated that he doesn't feel that there is much of a practical difficulty or unnecessary hardship inconsistent with the general purpose of the zoning ordinance. He stated that it is unique that he needs to park larger and more industrial type equipment on a residential driveway. He also doesn't feel that there are extraordinary or exceptional circumstances applying to the property in that it is a house with an existing driveway that is 35-40 feet from the road.

Mr. Sellman interjected that if the house had a two car garage, the driveway would have been 25-30 foot driveway.

Mr. Burton stated that the maximum width for a driveway is 24 feet. He stated that he is happier to approve the second variance to allow the varying the widths. He stated that he wanted to point out that they should not just excuse the first two criteria quite as leniently. He also stated that saying that there aren't any neighboring complaints is moot as he is on a corner and the house next door is vacant; they don't know how a neighbor would have felt about the driveway coming closer to their house.

Mr. Mail stated that other houses in the neighborhood are not too close to one another and his corner lot is very open. He stated that it isn't shocking to look at.

Mr. Burton stated that the applicant only has a one car garage and on-street parking is not allowed on Middlebury.

Mr. Sellman stated that the existing garage would not have provided enough room for the truck, trailer and access to the garage.

MOTION: In Case BZ21-003, Kyle Veon, 1230 Middlebury Rd., Mr. Mail moved that the Board of Zoning Appeals grant a 7 foot variance from Section 1161.27(a) to allow a driveway to be 31 feet in width, where 24 feet is the maximum width.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-003, Kyle Veon, 1230 Middlebury Rd., Mr. Mail moved that the Board of Zoning Appeals grant a variance from Section 1161.27(a) to allow the driveway to have varying widths instead of the same width from the right-of-way to the terminus of the improved area.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

**B. BZ21-004 KEVIN RODGERS
1089 Leonard Blvd.**

Request: The applicant is requesting a variance from Section 1161.21(a) to allow a 6-foot tall fence in the front yard along Judith Street.

Kevin Rodgers, 1089 Leonard Blvd., stated that they would like to fence in their backyard and described the footprint of the fence; the property is a corner lot. He stated that the fence would be 24 feet from Judith Street and over 100 feet from the intersection of Judith Street and Leonard Boulevard; it will not create a line of sight issue. He stated that if they installed a 4 foot tall fence, in addition to losing privacy, they would lose approximately 2,200 square feet of fenced in area.

Mr. Sellman questioned if all three sides of the fence are proposed to be 6 feet tall.

Mr. Rodgers stated that they are.

Mr. Sellman questioned the fence material.

Mr. Rodgers stated that it will be a 6 foot tall khaki vinyl fence.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that this fence is still away from Judith Street and the intersection. He feels that the tan color will make it less obtrusive and will substantially improve the quiet

enjoyment of his property. He stated that it is a reasonable request given that it is a corner lot. He added that there aren't any houses across Judith Street from this property.

Mr. Burton stated that he has similar observations given the placement of the fence.

Mr. Sellman agreed that by the proposed fence being set off of Judith Street there is still adequate room for road safety.

Ms. Douglas stated that she agrees and stated that the vinyl will look much nicer than chain-link.

MOTION: In Case BZ21-004, Kevin Rodgers, 1089 Leonard Blvd., Mr. Burton moved that the Board of Zoning Appeals grant a 2 foot variance from Section 1161.21(a) to allow a 6 foot tall fence in the front yard along Judith St. where a maximum of 4 feet is allowed.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

VI. MEETING MINUTES

January 25, 2021 meeting minutes

MOTION: Mr. Mail moved to approve the January 25, 2021 meeting minutes as presented. Mr. Burton seconded. The motion carried 4-0.

VII. OTHER BUSINESS

None

VIII. ADJOURNMENT

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

The meeting adjourned at 8:08 pm.