

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
June 21, 2021**

MEMBERS PRESENT: Paul Sellman
Jona Burton
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 7:00 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. BZ21-011 AUDREY & DAVID KESSLER
1638 SOUTH LINCOLN STREET**

Request: The applicants are requesting the following:
1) A 3-foot variance from the 45-foot minimum front yard setback requirement to allow an addition to be constructed 42 feet from the front property line (Section 1129.04(a)), and
2) A 7-foot variance from the 12-foot minimum side yard setback requirement to allow an addition to be constructed 5 feet from the side property line (Section 1129.04(c)).

Mr. Sellman stated that the Board has received an email from the applicants to withdraw their case.

MOTION: In Case BZ21-011, Audrey & David Kessler, 1638 S. Lincoln St., Mr. Mail moved that the Board of Zoning Appeals accept the applicant’s request to withdraw the case.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

**B. BZ21-012 JUSTIN & MARINA SAUNDERS
710 VINE STREET**

Request: The applicants are requesting the following:
1) A 9-foot variance from the 50-foot minimum lot width at the building line to rebuild a dwelling on a 41-foot wide lot (Section 1133.03(b)(1)),
2) A 9-foot variance from the 50-foot minimum lot frontage to rebuild a dwelling on a lot with 41 feet of frontage (Section 1133.03(c)),
3) A 13-foot variance from the 35-foot minimum front yard setback requirement to rebuild a dwelling 22 feet from the front property line (Section 1133.04(a)), and
4) A 5-foot variance from the 10-foot minimum side yard setback requirement to rebuild a dwelling 5 feet from the side property line (Section 1133.04(c)).

Marina Saunders, owner, stated that they recently purchased 710 and 704 Vine St. and plan to rebuild and resell 710 Vine St. She explained that there was a house fire and the previous owners decided not to rebuild; the foundation and a detached garage are all that remain. She stated that they would like to demolish the existing foundation and construct new with basically the same footprint using the existing location of the four corners and extending the front and back to complete a rectangular shape. She stated that they are requesting a variance to reconstruct a new structure in the old location.

Mr. Mail questioned the footprint of the new structure.

Ms. Saunders explained that the new footprint would extend the front and back sides of the house to square off the shape, but otherwise it is the same as the prior structure.

Mr. Mail questioned the height of the new structure.

Ms. Saunders stated that a two story structure is preferred.

Mr. Sellman questioned the height of the house that was there before the fire.

Ms. Saunders stated that she believes that it was a full two story; same as 712 Vine St.

Mr. Sellman questioned if the existing garage would remain.

Ms. Saunders stated that the existing garage will remain.

PUBLIC COMMENTS

Mr. Sellman read the email from Laura Scarnecchia, 714 Vine St., who stated that she was concerned about the house becoming a rental and with the closeness of the homes in that area.

Ms. Saunders stated that the previous owner could have rebuilt on the existing foundation but chose not to. She stated that she is not planning on renting it. She stated that their plan is to rebuild a single family home and sell. She stated that a new structure is probably not going to be of interest to an investor, but she can't say what the future owner would do.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that he feels that it is a reasonable request as the new structure will occupy the same footprint as the one that was destroyed by fire. He stated that the lot is very small and deep and there isn't much else that can be done.

Mr. Burton agreed and added that there are at least three lots in that area that are the same size, which indicates that that was the intention with the original platting and construction. He stated that putting the new house in the original place makes reasonable sense.

Ms. Douglas questioned the closeness to the other property.

Ms. Saunders stated that it will be 5 feet from the property line.

Mr. Mail commented that that is how it currently exists.

Ms. Saunders stated that she also owns 704 Vine St., which is next to the property line with the proposed 5 foot setback.

Mr. Sellman noted that currently there is quite a distance between 704 and 710 Vine Street. He stated that he feels that the hardship is the unusually narrow lot. He stated that the original house would still be there if it wasn't for the fire. He stated that he feels that all four variance requests are reasonable and revolve around the lot size. He stated that he believes that the front of the new house would line up with 712 Vine St.

MOTION: In Case BZ21-012, Justin & Marina Saunders, 710 Vine St., Mr. Mail moved that the Board of Zoning Appeals approve a 9-foot variance request from the 50-foot minimum lot width at the building line requirement from Section 1133.03(b)(1) to rebuild a dwelling on a 41-foot wide lot.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-012, Justin & Marina Saunders, 710 Vine St., Mr. Mail moved that the Board of Zoning Appeals approve a 9-foot variance request from the 50-foot minimum lot frontage requirement from Section 1133.03(c) to rebuild a dwelling with 41-feet of frontage.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-012, Justin & Marina Saunders, 710 Vine St., Mr. Mail moved that the Board of Zoning Appeals approve a 13-foot variance request from the 35-foot minimum front yard setback requirement from Section 1133.04(a) to rebuild a dwelling 22 feet from the front property line.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-012, Justin & Marina Saunders, 710 Vine St., Mr. Mail moved that the Board of Zoning Appeals approve a 5-foot variance request from the 10-foot minimum side yard setback requirement from Section 1133.04(c) to rebuild a dwelling 5 feet from the side yard property line.

Mr. Burton seconded the motion.

VOTE: The motion carried 4-0.

**C. BZ21-016 CITY OF KENT
319 SOUTH WATER STREET**

- Request:** The applicant is requesting the following:
- 1) A 40 percent variance from the 70 percent minimum lot frontage to allow a new building to occupy 30 percent of the frontage along day street (Section 1146.03(c)),
 - 2) A 14 percent variance from the 70 percent minimum lot frontage to allow a new building to occupy 56 percent of the frontage along haymaker parkway (Section 1146.03(c)),
 - 3) A 6-foot variance from the zero front yard setback requirement to allow a new building to be constructed 6 feet from the front property line (Day Street) (Section 1146.04(a)),
 - 4) A 19-foot variance from the zero front yard setback requirement to allow a new building to be constructed 19 feet from the front property line (Water Street) (Section 1146.04(a)), and
 - 5) A 44 square foot variance from the 50 square foot maximum total area for all signs to allow a total of 94 square feet for all building signage (Section 1165.05).

Melanie Baker, City of Kent, Service Director, presented the project. She stated that part of the need for variances is that the lot is unique in that it has three street frontages: S. Water St., Haymaker Pkwy, and Day St. She stated that they are also requesting variances due to the practical difficulty of the topography and elevation changes from Haymaker Pkwy and S. Water St. to the parking lot off of Day St. She stated that the proposed placement of the building is to allow for a gathering space in front of the building and to allow as much land to remain in place so as not to require additional cutting or filling of the property due to the elevation change. She stated that the elevation change of 15 feet requires a retaining wall to hold the existing land in place. She stated that the intersection and traffic counts also indicated that a greater setback for the building should be provided for the maneuvering of the traffic and safety of the building. She stated that the existing wider hike and bike trail along Haymaker Pkwy also moved the finished edge of the building back. She stated that there was a need to match the existing rear elevations in order to provide sufficient parking and the continuity and access for the fire department's rear bay doors. She stated that other structures in the area such as Walgreens, Panini's and the Barbell Club are all setback from the front property line and do not meet the 70% building coverage along their frontages. She stated that she feels that the variance requests can be granted and are not out of character or detrimental to the surrounding area. She stated that they are also proposing 2 building signs. She explained that the main sign facing the intersection of S. Water St. and Haymaker Pkwy, "Kent City Hall", is 80 sq. ft. with a font size that can be seen at that elevation and at the speed of the traffic. She stated that the height of the front of the building is due to the topographical elevations. She stated that this sign is similar to other signs in the area. She stated that the other proposed sign is on the rear of the building off of the parking lot, "Kent City Hall", and is 14 sq. ft. She stated that the sign is needed for recognition for the entrance from the rear of the building. She stated that the need for the variance for the maximum square footage of the signs is due to the hardship with the elevation changes and unique circumstances of the three frontage property. She stated that the proposed signage will be similar in character to signs in the area and will not be harmful or detrimental to the surrounding area.

Mr. Burton stated that the first four variance requests make sense from a safety perspective. He stated that he is unsure of the significance of the variance for the signage, which is almost double the permitted amount. He questioned other signage options the City may have considered.

Ms. Baker stated that they also had a ground monument sign but as a result of the Architectural Review Board's recommendations, they have removed it. She stated that the size of the sign is due to the height of the elevation.

Mr. Mail stated that he feels that because they are not a commercial enterprise and people aren't just randomly stopping by, the signs could be smaller. He stated that he feels that they do need signs in the front and back of the building but feels that they don't need to be as big as presented.

Ms. Baker stated that they can look at making the signs smaller but her concern is that it will be unreadable when coming east bound on Haymaker Pkwy.

Mr. Burton questioned if lowering the front sign would help in reducing the size. He stated that people driving or walking by the building will see the sign because it is 30 feet in the air.

Ms. Baker stated that they were just trying to mimic the area with the placement of the sign.

Mr. Sellman questioned how the proposed font size compares to the Davey Tree and Smither's sign sizes.

Ms. Baker did not know but stated that Davey Tree's sign was wider and thicker.

Ms. Susel stated that Davey Tree has a comprehensive sign plan, which is why the Board did not have to review those signs for variances. She stated that the size of their signs is a part of that plan.

Mr. Sellman also questioned if the front sign could be lowered on the building.

Ms. Baker stated that it would be difficult to lower it due to the glass.

Nancy Nozik, architect, stated that if they reduce the size of the letters a little bit, it will then move the letters closer together and also reduce the size of the overall sign.

Mr. Sellman stated that the Board tries to keep the variances as minimal as possible to achieve the needed outcome. He suggested 30 sq. ft. for the variance request.

Ms. Susel reminded Ms. Nozik that a decision on the variances needs to be made tonight so that the project can continue on to the Planning Commission tomorrow evening.

Ms. Nozik stated that if the directive is 30 sq. ft. for the variance granted, they will achieve it.

Mr. Mail stated that the sign on the back of the building is quite elevated and large and is only needed for people who are parking and need to find the entrance. He stated that he feels that this sign is also larger than it needs to be, which contributes to the overall square footage of the signage. He suggested attaching it to the canopy. He stated that it looks good but it does exceed the limits.

Ms. Heckman stated that the Davey Sign on the adjacent corner is about 40 sq. ft.

Ms. Baker stated that they can look at reducing the rear sign but she is unsure that they can set it on the canopy. She stated that the placement is a little high, but they were looking at it in the context of the whole building; a design element. She stated that the maximum square footage allowed for the secondary sign off of the parking lot is 32 sq. ft. and the proposed sign is only 14 sq. ft.

Mr. Sellman suggested moving the sign from the parapet to the brick wall to the left of the entrance.

Ms. Baker stated that they could look at other options but feels that it is an important design element.

Ms. Nozik stated that it make sense to have the sign in its proposed location because the material of the vertical band is different than the brick on either side. She stated that the letters of the front sign are proposed at 30 inches tall but if they reduced them to 24 inches it would reduce the entire sign by 20%, which would reduce the total signage to 76 square feet; a variance of 26 square feet.

Mr. Sellman stated that he feels that this is a reasonable compromise that will still achieve the goal.

PUBLIC COMMENTS

None

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Mail stated that when they were creating the signs as design elements, they should have been referring to the code to see what their limits were. He stated that because it is a public building on a public corner, he feels that 24 inch letters will still be very visible. He questioned the size of the police department sign.

Ms. Susel stated that the police department has a comprehensive sign plan. She stated that it was decided to not seek a comprehensive sign plan for the administration building but rather the variance that is before them now.

Mr. Burton stated that he agrees that smaller is better where it is appropriate.

Mr. Mail stated that the rear sign can be a simple sign next to the door to direct those in the parking lot to the entrance.

Mr. Sellman suggested discussing the first four variances and then coming back to the signs.

Mr. Mail stated that he feels that the variances regarding the placement of the building make sense given the odd lot with topographical changes. He stated that he is not opposed to the first four variances.

Mr. Sellman stated that because this building is a standalone building, the proposed setbacks will not affect the adjacent structures.

MOTION: In Case BZ21-016, City of Kent, 319 S. Water St., Mr. Burton moved that the Board of Zoning Appeals grant a 40 percent variance request from the 70 percent minimum lot frontage requirement from Section 1146.03(c) to allow a new building to occupy 30 percent of the frontage along Day Street.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-016, City of Kent, 319 S. Water St., Mr. Burton moved that the Board of Zoning Appeals grant a 14 percent variance request from the 70 percent minimum lot frontage requirement from Section 1146.03(c) to allow a new building to occupy 56 percent of the frontage along Haymaker Street.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-016, City of Kent, 319 S. Water St., Mr. Burton moved that the Board of Zoning Appeals grant a 6-foot variance request from the zero front yard setback requirement from Section 1146.04(a) to allow a new building to be constructed 6 feet from the front property line of Day Street.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

MOTION: In Case BZ21-016, City of Kent, 319 S. Water St., Mr. Burton moved that the Board of Zoning Appeals grant a 19-foot variance request from the zero front yard setback requirement from Section 1146.04(a) to allow a new building to be constructed 19 feet from the front property line of Water Street.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

Ms. Heckman stated that the Smithers Oasis sign on the adjacent corner appears to be approximately 68 sq. ft. She stated that the letter height is 3 feet 7 inches.

The Board discussed signs and lighting of the surrounding area and how it affects the proposed administrative building signage.

Ms. Baker stated that they are offering to reduce the height of the front sign letters from 30 inch to 24 inch and also reduce the rear sign from 14 inch to 12 inch; a total of 76 sq. ft. of signage, which is 26 sq. ft. less than the original variance request.

Mr. Mail stated that he feels that it is agreeable.

Mr. Sellman stated that he also feels that it is a reasonable compromise. He noted that it is a static sign and not animated or lit.

Ms. Douglas stated that she is agreeable to the reduction, especially the front sign being reduced to 64 sq. ft.

Ms. Susel explained that the variance is for the total square footage of all signs and it is still the applicant's decision as to how it is delineated.

MOTION: In Case BZ21-016, City of Kent, 319 S. Water St., Mr. Burton moved that the Board of Zoning Appeals grant a 26 square foot variance request from the 50 square foot maximum total area for all signs requirement from Section 1165.05 to allow a total of 76 square feet for all building signage.

Ms. Douglas seconded the motion.

VOTE: The motion carried 4-0.

Mr. Sellman read for the record the Policies and Procedures for Evaluating Nonconforming Status provided by Assistant Law Director, Eric Fink, to all the Board Members. The section outlines the purpose, procedure, and requirements in considering such cases, which are different from the standard preamble.

**D. BZ21-013 DAVID ADAMS
554 SOUTH LINCOLN STREET**

Request: In accordance with Section 1109.10(b), the applicant is requesting an appeal from the Community Development Department's decision to deny a certificate of non-conforming use to allow the property to be recognized as a duplex and to allow up to three unrelated residents in one unit of the duplex.

Barbara Griffin, Esq., Williams, Kratcoski & Can, LLC 11 S. River St., Suite A, Kent, representative for Four Point Residences, LLE, stated that she has been sworn in.

Mr. Fink stated that staff feels that the applicant has shown sufficient evidence that the property has been used as a duplex, but based upon the City's standard of evidence, Staff feels that there is insufficient evidence to show that the unit has been used to house more than 2 unrelated individuals consistently since 1983. Mr. Fink stated that usually applicant's need to go back to 1971 for evidence, however, this particular parcel is located in an R-5 zoning district that was in existence until 1983. He stated that when the City updated the zoning code in 1983, it eliminated the R-5 and R-6 zoning districts, which were high and very high density residential zoning districts. He stated that this type of use would have been permitted under the R-5 zoning code in 1983 and would have become a nonconforming use if it was in existence in 1983.

Ms. Griffin stated that Four Point Residences became the owner of this property in February 2020 and since that time there have been 3 unrelated people living in the upper Unit B of this and the other two properties being discussed tonight. She stated that the lower Unit A is a 1 bedroom apartment and Unit B is a 3 bedroom apartment. She stated that affidavits provided by the previous owner, Mr. Jay Waligia, stated that Unit B has been occupied by 3 unrelated people since at least 2000 and also while his brother owned the property. She explained that Mr. Jay Waligia's brother previously owned the property

in the early 1970's but he is now deceased. She stated that the property is located very close to Kent State University and that S. Lincoln St. area has been historically known for student housing. She stated that a single family would most likely not rent an apartment where there is another one bedroom unit below. She stated that the idea is that it would be rented to students. She stated that the apartment has consistently been rented to students as was shown in the evidence that was able to be located. She stated that the phone record in 1995 lists the property as student housing. She stated that the previous owners did not save their rental records and the lack of documentation should not be held against Four Points Residences today. She stated that they also submitted other affidavits that attest that Unit B was consistently rented to 3 unrelated individuals for the last 10 years.

Mr. Fink stated that while the property owner has done a fine job of presenting evidence for the last few years, it is the applicant's duty is to show that this has been going on since 1983, which according to City requirements, are lacking. He stated that the Board of Zoning Appeals is bound by a different standard and if the Board was to view the evidence differently, it does not mean that the City was wrong in their determination.

PUBLIC COMMENTS

Mr. Sellman stated that they have received more affidavits from Arasin Hughes, Anne Money Penny, and Jack Kohl, all of which are for 2000 or later.

Ms. Griffin stated that the affidavit from Jay Waligia addresses the issue from 1983 – 2000 during his brother's ownership.

BOARD OF ZONING OF APPEALS DISCUSSION

Mr. Sellman confirmed that the other Board members have the referenced affidavits.

Mr. Burton stated that he finds it a little unlikely that a brother would know the details and inner workings of his brother's rental business to be able to affirm the state of his rentals dating back 40 years. He stated that he feels that it is unusually specific.

Mr. Sellman stated that he tends to feel the same as Mr. Burton. He stated that he doesn't see a preponderance of evidence to support the claim that Unit B has been a 3 person rental since 1983.

Mr. Mail stated that he recognizes that the structure is a legal nonconforming duplex but feels that they should follow the code for occupancy.

Mr. Fink stated that the evidence they used to determine that the structure was a duplex included telephone records and address listings.

Mr. Sellman noted that 554 S. Lincoln only has one electrical meter.

Mr. Mail stated that he doesn't see any compelling evidence that there has always been 3 unrelated people in Unit B. He stated that the City has already adjudicated the structure as a duplex but not the number of people in Unit B. He stated that he is not comfortable with overturning the City decision.

Mr. Burton stated that he agrees, as he also doesn't feel that there is a preponderance of evidence in the applicant's favor.

MOTION: In Case BZ21-013, David Adams, 554 S. Lincoln St., Mr. Burton moved that the Board of Zoning Appeals deny the appeal from the Community Development Department's decision based on Section 1109.10(b) to deny a certificate of non-conforming use to allow up to three unrelated residents in the duplex.

Mr. Mail seconded the motion.

VOTE: The motion carried 4-0.

**E. BZ21-014 DAVID ADAMS
544 SOUTH LINCOLN STREET**

Request: In accordance with Section 1109.10(b), the applicant is requesting an appeal from the Community Development Department's decision to deny a certificate of non-conforming use to allow the property to be recognized as a duplex and to allow up to three unrelated residents in one unit of the duplex.

Ms. Griffin stated that because the evidence for this case is the same as BZ21-013, she asked that this case be continued until further evidence can be obtained.

**F. BZ21-015 DAVID ADAMS
558 SOUTH LINCOLN STREET**

Request: In accordance with Section 1109.10(b), the applicant is requesting an appeal from the Community Development Department's decision to deny a certificate of non-conforming use to allow the property to be recognized as a duplex and to allow up to three unrelated residents in one unit of the duplex.

Ms. Griffin stated that because the evidence for this case is the same as BZ21-013, she asked that this case be continued until further evidence can be obtained.

VI. MEETING MINUTES

May 17, 2021

MOTION: Mr. Mail moved to approve the May 17, 2021 meeting minutes as written. Ms. Douglas seconded. The motion carried 4-0.

VII. OTHER BUSINESS

Ms. Susel notified the Board that beginning in July 2021 meetings will be in person at the Fire Station. It will be the same procedures and protocol as prior to the pandemic.

VIII. ADJOURNMENT

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

The meeting adjourned at 8:28 pm.