

**CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARING & BUSINESS MEETING
March 16, 2009**

MEMBERS PRESENT: **Peter Paino
Diane Werner
Steve Balazs
Elizabeth Howard**

MEMBERS ABSENT: **Rich Fender**

STAFF PRESENT: **Heather Phile, Development Planner
Eric Fink, Asst. Law Director
Sheila Uzl, Transcriptionist**

I. CALL TO ORDER

Mr. Paino called the meeting to order at 7:00 p.m. He reminded everyone from the public to sign in with their name and address.

II. PLEDGE

The pledge was recited.

III. ROLL CALL

Elizabeth Howard, Steve Balazs, Diane Werner, and Peter Paino 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 Chairman of the Board and direct the question to the Chairman. The Chairman 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 Chairman'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

Sections: 1133.03(a)(2), 1133.02(b)(2) and 1167.10(a)

Requests: The applicant is requesting the following:

- 1) A 6613 square foot variance from the 12, 000 square foot two-family dwelling minimum lot size requirement to allow a lot size of 5387 square feet (Section 1133.03(a)(2)),**
- 2) A 25-foot variance from the 75-foot minimum lot width at the building line to allow a lot width of 50 feet at the building line (Section 1133.02(b)(2)),**
- 3) A variance from Section 1167.10(a) to allow parking within a front yard setback, and**
- 4) A variance from Section 1167.10(a) to allow parking within the side yard setback along the north property line.**

Mr. Paino stated that each variance would be voted on separately. He asked the applicant to present the case.

Ken Schutz, 31749 Bagley, North Ridgeville, Ohio and Stan Shutz, 35237 Queen Ann's Way, Avon, Ohio stated they were the owners of the property.

Ken Schutz stated that they have owned the house since November 2008. He and his brother purchased the house so his son and three other people could live there while attending Kent State University. He said they want to change the single family house in to a duplex to allow two unrelated people to live in each unit. One unit would be in the front of the house and the entire upstairs and the second unit would be in the back of the house that will have one bedroom, living room, kitchen, and a bathroom. The front unit will use the front door as an entrance and the unit in the back will use the back door as its main entrance/exit. Presently there is parking in the front yard. He said the driveway is long enough for all the cars and the front yard space is "a bonus" for them.

Mr. Paino asked what the house was used for before the applicants purchased it.

Mr. Schutz replied he was not sure.

Mr. Paino asked how many bedrooms are upstairs.

Mr. Schutz replied there are four up and one down.

Mr. Paino asked how many parking spaces are available.

Mr. Schutz replied there are five.

Mr. Paino asked if that included the one in the front.

Mr. Schutz replied yes.

Mr. Paino said that would be four in the driveway and one in the front.

Mr. Schutz agreed.

Ms. Howard asked if the drawing was showing existing or projected parking.

Ms. Schutz replied it is proposed parking. He then showed Ms. Howard the fencing around the property.

Mr. Balazs said that Mr. Schutz had said that parking was an issue at the time of purchase and asked what the tenants did now for parking.

He replied that the tenants have worked out an arrangement so that parking is not an issue.

There were no other questions or comments from the board at this time, so Mr. Paino asked if there were any comments from the public.

PUBLIC COMMENTS

Tracy Wallach, 231 Starr Avenue, Kent, Ohio stated that the lot is substandard for a single family unit and especially for a multi-family use. She said the parking in the front yard could be detrimental to the neighborhood.

Andrea Evans, 211 Linden, Kent, Ohio said she was concerned about the parking. She said prior to November 2008, it was a single family house. She was concerned for the safety of her child.

Angela Langstaff, 717 Crain Avenue, Kent, Ohio she said she was against the approval of the variances. She said it is not appropriate for a multi-family unit.

Stan Apseloff of 201 Sherman Street, Kent, Ohio stated he has lived in the area for many years. He was against more people coming into the area and was concerned about the increased traffic.

Board of Zoning Appeals
March 16, 2009
Page 5

Kasha Legaza, 216 Linden Street, Kent, Ohio stated she was against the variances and that the hardship was self-created.

Karen Carmany of 3770 Willow Brook, Ravenna, Ohio stated she was at the meeting on behalf of her brother who owns the rental property at 132 Wilson as well as on behalf of her mother, Edna Harth, who lives at 206 Wilson. She referred to portions of the letter received from her brother Kenneth M. Harth, he is the owner of lots 7 and 8 on Wilson Avenue, otherwise known as 132 Wilson. His property meets at the corners of the 207 property and my mother Edna Harth owns 206 Wilson immediately behind, so the backyards abut. Previously, I owned the property at 206 Wilson in 1983, from 1983 to approximately 1998, I believe. As I shouted out earlier inappropriately, the fence across the backyard is my fence...excuse me, is my mother's fence on her property. The Weeks, when they were redoing their backyard, they asked if they could abut their side fence up to the back fence of 206 Wilson, so that fence sits inside of the 206 Wilson property line. Continuing on with my brother's letter regarding each one of the variances: "1.) By the description of the first variance, the lot size is less than half the size required for a two family dwelling. For the R-3 zoning, this lot does not meet the 8000 square foot minimum requirement for a single family dwelling, so how can it be considered for a two family dwelling? This variance should be denied. 2.) The existing 50 foot width is the minimum width for a single family residence in the R-3 zoning. Approval of a 50 percent variance from the requirement is extreme and violates the basic purpose of the zoning criteria. This variance should be denied. 3.) A variance to allow parking in the front yard setback will turn this front yard into looking like a commercial parking area. Parking in the front yard setback could end up blocking the public sidewalk with cars or piles of snow shoveled off the parking area. Furthermore, parking in the front yard is completely inconsistent with the single family neighborhood. I do not recall any parking in any front yard along Linden on my walks to Susan's last fall. I do recall parking in the rear of some houses closer to East Main Street. This variance should be denied. 4.) The north side is the original drive to where a garage used to be located, similar to the neighboring 201 Linden. With the garage removed, (they tore the original garage down), there is concern that if parking extends all the way to the back of the lot, car light will shine in the 206 Wilson main bedroom. This lot is higher than 206 Wilson lot by about 2 feet. Also, without the garage in the back, cars could easily drive into the backyard, too. There would need to be some manner of physical barrier to prevent cars from going into the backyard if this is approved. To maintain the neighborhood, and in consideration of the immediate neighbors, this variance should be denied." She said that it sounds like all the residents and property owners are supposed to handle the problems the applicants have. She asked how two related people were defined.

Ms. Phile replied the people had to be related by blood, marriage, or adoption.

Board of Zoning Appeals
March 16, 2009
Page 6

Ms. Carmany stated that approval of the variances would be a substantial detriment to the neighborhood.

Pam Bozica, 200 Linden Street, Kent, Ohio stated she has lived in the neighborhood for eight years. She did not understand why the applicants' real estate agent had not told them that the area was zoned for single family homes. She does not want more boarding houses on the street and that it has been a single family house since she has been there.

Jona Burton, 216 Linden Street, Kent, Ohio stated that when he and his wife went to refinance their home, they were told that the close proximity of so much student housing was a detriment to their property value. Adding another house would not help it out at all.

John Hostler, 811 Crain Avenue, Kent, Ohio stated he agreed with his neighbors. He said the students just do not take care of things like an owner would. The property value goes down when there is student housing in the area. He is against the variances.

Dorata Sobieski, 127 Linden Street, Kent, Ohio stated that the street is getting to a tipping point where the street will look like a rental street full of boarding houses. She said the house has never been a multi-family unit.

Edna Harth, 206 Wilson Avenue, Kent, Ohio stated when she bought her home, all the houses were single family. She feels that this boarding house is too close to the neighbors.

Dan Szokal, 200 Linden Street, Kent, Ohio said he was against the variances.

There were no other comments from the public.

BOARD OF ZONING APPEALS DISCUSSION

In response to a question from Ms. Howard, Ms. Phile stated that the code says there is no parking in the front yard or side yard. The side yard setback is 10 feet. The applicants are proposing side yard parking.

Mr. Paino asked if parking had to be 10 feet off the property line.

Ms. Phile replied yes, but the applicants were proposing to put the parking right up next to the property line.

Mr. Paino said the driveway is partially in the side yard.

Board of Zoning Appeals
March 16, 2009
Page 7

Ms. Heather replied the driveway does not count as a parking area because it is the ingress/egress for the lot.

Mr. Paino asked how many legal spaces there are now.

Ms. Phile replied it is a single family unit now and there should be two spaces per unit so for a single family there would be two.

Ms. Werner asked how many cars park in the driveway currently.

Ms. Phile replied parking in the driveway does not count and there are currently two legal spaces. Front yard parking is illegal.

Mr. Paino asked how many spaces would be required as a duplex.

Ms. Phile replied four, two per unit.

Mr. Paino commented that in essence it only had two legal parking spaces. He stated that there has been a lot of testimony that the house has been a single family unit for a long time.

Mr. Balazs asked the applicants how they were going to address the parking issues that existed at the time they purchased the house.

Mr. Schutz explained that the driveway easily fits three cars.

Mr. Balazs asked the applicants if they knew it was a single family house when they purchased it.

Mr. Schutz replied they thought the house was set up for a boarding houses because of the way it was laid out. In response to a question from a board member, Mr. Schutz said there are deadbolt locks on the bedrooms.

Ms. Werner asked how many students could legally live there as it is currently.

Ms. Phile replied two unrelated people.

There were no other questions or comments, so Mr. Paino asked for a motion.

Motion: **Ms. Werner moved that in case BZ09-002, Ken & Stan Schutz, owners of the property located at 207 Linden Street, that the Board of Zoning Appeals approves the variance as defined in Section 1133.03(a)(2) in**

the City of Kent Zoning Code for a 6613 square foot variance from the 12,000 square foot two-family dwelling minimum lot size requirement to allow a lot size of 5387 square feet.

Mr. Balazs seconded the motion.

Mr. Paino asked if there were any comments.

Mr. Balazs stated that the three criteria that the board considers are hardship, safety and detriment to the public. He said the detriment to the public is the biggest factor.

Ms. Werner stated that the strict application of the zoning code would not result in a practical difficulty for the applicant. She said there is no hardship and granting the variance would be a detriment to the neighborhood because property values are lowered.

Ms. Howard agreed with Mr. Balazs and Ms. Werner. She said the strict application of the zoning code would not result in a hardship. She was not sure that there were any exceptional or extraordinary circumstances. She felt it would be a substantial detriment to the public interest and the adjacent properties.

Mr. Paino stated that the house is located in an R-3 Zoning District that allows for single family dwellings, two family dwelling and accessory buildings as well as some conditional uses that are allowed. He said the property owners should have researched the zoning.

Vote: The motion failed 0 – 4.

Motion: Mr. Balazs moved that in case BZ09-002, Ken & Stan Schutz, owners of the property located at 207 Linden Street, that the Board of Zoning Appeals approves a 25-foot variance from the 75-foot minimum lot width at the building line as defined in Section 1133.02(b)(2) in the City of Kent Zoning Code to allow a lot width of 50 feet at the building line.

Ms. Werner seconded the motion.

Mr. Balazs stated this was a substandard lot and something was trying to be squeezed into it. It is a detriment to the surrounding neighborhood.

Ms. Howard stated her comments were the same as she made for the first variance. She said the strict application of the code did not result in practical difficulties or an

unnecessary hardship. It would be a detriment to the surrounding neighborhood and no extraordinary circumstances existed.

Ms. Werner stated that there are three criteria that the board has to consider when considering a variance and she felt that the request does not meet any of these. There was no hardship and that granting the variance would be a detriment to the neighborhood.

Mr. Paino agreed that the strict application of the zoning ordinance would not result in a practical difficulty and there are no extraordinary or exceptional circumstances and that granting the variance would be a detriment to the surrounding neighborhood.

Vote: The motion failed 0 – 4.

Motion: Ms. Howard moved that in case BZ09-002, Ken & Stan Schutz, owners of the property located at 207 Linden Street, that the Board of Zoning Appeals approves a variance as defined in Section 1167.10(a) in the City of Kent Zoning Code to allow parking within a front yard setback.

Mr. Balazs seconded the motion.

Mr. Balazs stated that safety is the prime concern. He said there is no hardship and it would be a detriment to the public.

Ms. Werner stated that granting the variance would be a detriment to the public and she did not see a hardship.

Ms. Howard stated that a safety issue existed. She did not think a hardship existed and that there were no extraordinary circumstances. She agreed that it would be a detriment.

Mr. Paino agreed that a safety issue did exist. There is no hardship or extraordinary circumstances.

Vote: The motion failed 0 – 4.

Motion: Ms. Howard moved that in case BZ09-002, Ken & Stan Schutz, owners of the property located at 207 Linden Street, that the Board of Zoning Appeals approves a variance as defined in Section 1167.10(a) in the City of Kent Zoning Code to allow parking within the side yard setback along the north property line.

Ms. Werner seconded the motion.

Mr. Balazs stated there was no hardship and that granting the variance would be a detriment to the public and neighboring properties. It would reduce property values.

Ms. Howard stated there was no hardship or extraordinary circumstances. Granting this variance would be a detriment to the public and surrounding neighborhood.

Ms. Werner stated she had no additional comments to add.

Mr. Paino stated the house should remain a single family unit.

Vote: The motion failed 0 – 4.

**B. BZ09-003 MILLER VALENTINE/LINCOLN COMMONS
 SENIOR VILLAGE
 SOUTH LINCOLN STREET, JUST NORTH OF
 MARIGOLD LANE**

**Sections: 1165.03, 1109.01(g)(132)(A-J), 1133.03(b)(e), and
 1171.01(22)(f)**

Requests: The applicant is requesting the following:

- 1) A variance to allow a 4-foot by 10-foot free-standing sign within the R-3 zone district (Section 1165.03),**
- 2) An 8 percent variance from the 30 percent open space requirement, as outlined in Section 1109.01(g)(132)(A-J), to allow 22 percent open space (Section 1133.03(b)(e)), and**
- 3) A variance from Section 1171.01(22)(f) to allow buildings one and two to not face a courtyard.**

Mr. Paino asked the applicant to present his request.

Pete Schwiegeraht, 8915Hialeah, West Chester, Ohio stated he represented the Miller Valentine Group located at 9350 Water Stone Boulevard in Cincinnati, Ohio. He said that the same variances had been approved about a year ago which allowed them to submit their application for this senior housing project. Their project was not approved by the State of Ohio so they are before the Board of Zoning Appeals again to get approval for the same variances. Then the Miller Group can resubmit an application again for the senior housing project, because there is a significant demand for this type of senior housing. He said there are 36 units with two bedroom, 1½ baths, 920 square feet

living space and 1 car attached garage. The units have a modern design with a bar island in the kitchen, walk in closet, and laundry room. He said these units meet full universal standards which is a new standardized code for everyone. There will be wider doorways and hallways. There will be certain types of kitchen and cabinets type to make access easier. He said there is significant opens space and there will be an 850 square foot Clubhouse that will have a community room with a kitchenette, computer room and theater room. He said the project has been designed so that there is a park available to everyone that will have a grill and picnic area. There will be a recreational space as well as a community garden. He said the whole project will host a set of enterprise green standards including storm measures and infiltration and will use energy efficiency site standards as well as all green materials. He asked if there were any questions.

Mr. Paino asked if there were any changes from the plan submitted last year.

Mr. Schwiegeraht replied that the open space has been increased.

Mr. Balazs asked if the approval for the variances last year has expired.

Ms. Phile replied not yet.

Ms. Balazs asked the applicant if he was resubmitting the request because of the modifications to the site plan.

Mr. Schwiegeraht replied it was a time issue. He said when they resubmit the application the approval is needed for a period of time.

Mr. Balazs asked if they were going to expire soon.

Ms. Phile replied that they would resubmit the application to the State, but the applicant will not hear until July if it has been approved for funding and the previous approval will have expired.

In response to a question, Ms. Phile said the open space has increased and the variance request has decreased. She said the third variance is being requested because Buildings 1 and 2 will not face a public street or courtyard.

There were no other comments or questions from the board members, so Mr. Paino asked if there any comments from the public.

PUBLIC COMMENTS

None

BOARD OF ZONING APPEALS DISCUSSION

Ms. Phile stated that Building Department has not seen any of the schematics yet, but the plan has gone through all the other departments including the Police and Fire Department.

There were no other questions or comments, so Mr. Paino asked for a motion.

Motion: Mr. Balazs moved that in case BZ09-003, Miller Valentine/Lincoln Commons Senior Village located on South Lincoln Street, just north of Marigold Lane, that the Board of Zoning Appeals approves a 4 foot variance as defined in Section 1165.03 in the City of Kent Zoning Code to allow a 4 foot by 10-foot free-standing to be located within the R-3 Zone District at the entrance of the senior village.

Ms. Werner seconded the motion.

Mr. Paino asked if there were any comments.

Mr. Balazs stated he was in favor of approving this variance. He did not see any conflict.

Ms. Howard stated that it would be a practical difficulty for the applicant not to have a sign at the entrance. She did not see that this would be a detriment to the public.

Ms. Werner stated she was in favor of granting the variance.

Mr. Paino agreed with the comments made.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-003, Miller Valentine/Lincoln Commons Senior Village located on South Lincoln Street, just north of Marigold Lane, that the Board of Zoning Appeals approves an 8 percent variance from the 30 percent open space requirement from Section 1133.03(b)(e) and as defined in Section 1109.01(g)(132)(A-J) in the City of Kent Zoning Code to allow 22 percent open space.

Mr. Balazs seconded the motion.

Mr. Balazs stated that increasing the green space was a positive thing. He was in favor of granting the variance and said it would not be a detriment.

Ms. Howard stated there was a hardship because of the odd shaped lot and that there are extraordinary circumstances and practical difficulties. She said it would not be a detriment.

Ms. Werner agreed with the comments made and felt this project would be an asset to the area.

Mr. Paino said he was in favor of the request.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-003, Miller Valentine/Lincoln Commons Senior Village located on South Lincoln Street, just north of Marigold Lane, that the Board of Zoning Appeals approves a variance as defined in Section 1171.01(22)(f) in the City of Kent Zoning Code to allow buildings one and two to not face a courtyard.

Mr. Balazs seconded the motion.

Mr. Balazs stated it was approved a year ago and very little has changed so he was in favor of the variance.

Ms. Howard stated she was in favor of granting the variance and because of the odd shape of the lot there is a hardship and exceptional circumstances. She did not feel it would be a detriment to approve the variance.

Ms. Werner stated she was in favor the variance and that it would not be a detriment.

Mr. Paino had no further comments.

Vote: The motion passed 4 – 0.

C.	BZ09-004	WHITEHALL EAST TOWNHOMES 1621 WHITEHALL BOULEVARD
	Sections:	1135.03(a)(3), 1135.03(b)(3), 1135.03(c), 1135.03(e), 1109.01(g)(132)(A-J), 1135.03(f), and 1135.04(b)
	Requests:	The applicant is requesting the following: 1) A 6358 square foot variance from the 10,000 square foot minimum lot size requirement to allow a new parcel to be 3642 square feet (Section 1135.03(a)(3)),

- 2) **A 16-foot variance from the 100-foot minimum lot width at the building line to allow a new parcel to be 84 feet in width at the building line (Section 1135.03(b)(3)),**
- 3) **A 40-foot variance from the 40-foot minimum lot frontage to allow a new parcel to have no lot frontage (Section 1135.03(c)),**
- 4) **A 30 percent open space variance from Section 1135.03(e) to allow 0 percent open space for the newly created lot as defined in Section 1109.01(g)(132)(A-J),**
- 5) **A 13.7 percent variance from the 25 percent maximum lot coverage to allow a new parcel to have 38.7 percent lot coverage (Section 1135.03(f)),**
- 6) **A 20.5-foot variance from the 30-foot minimum rear yard setback to allow the building at 1521 Whitehall Blvd. to have a 9.5-foot rear yard setback (Section 1135.04(b)), and**
- 7) **A 30 percent open space variance from Section 1135.03(e) to allow 0 percent open space for the remainder of the lot owned by the association, as defined in Section 1109.01(g)(132)(A-J)).**

Mr. Paino asked the applicants to present their variance requests.

Keith Levan, 1190 Great Hunt Trail, Hinckley, Ohio and Chatsiri “Mu” Racharaks, 1425 Conestoga Trail, Copley, Ohio introduced themselves.

Mr. Levan stated that they have been working on the project about ten years. He said he and Mu own units at the complex. He said the Homeowners’ Association building was designated as a party room with a fitness center next to it but was not used as one because it was decided it was not a good idea to use it as a party room for the students and a fitness center was built near the complex. He said the taxes, utilities, and maintenance on the building has been about \$10,000 annually for this vacant building. There have been different ideas on what to do from knocking it down to making it a rental unit. He said they have worked with the City staff to get to where they are today. Mr. Levan referred to the site plan to show the location of the building, parking space, and dumpsters. He said they would still keep a storage room and have a property management office in the building.

Mr. Balazs asked about the relocation of the dumpsters.

Mr. Levan stated the dumpster will be moved and placed on a cement pad. He said there was not a parking issue because sufficient parking is available. He said there will be 192 spaces.

Mr. Balazs asked if was going to be another rental unit.

Mr. Levan replied yes, it would be a four bedroom, two bath rental unit while the other existing units have five bedrooms. In response to a question, he said the units are individually owned and that all the units are rented to students.

Ms. Howard expressed a concern about the noise that would exist around the mailboxes that are near the unit. She asked the applicants if they would be buying the common area.

Mr. Levan replied it is common area that is maintained and owned by the Homeowners' Association.

Ms. Howard asked why it was being made a separate lot.

Ms. Phile replied the applicants were separating this out so they could own the lot and it would be separate from the association. She said this case has already been seen and approved by the Planning Commission.

Mr. Paino asked if the other units met the open space requirement.

Ms. Phile replied it was all part of the variances the development got in 1990.

Mr. Paino asked if the entire common space for the whole project counted for open space.

Ms. Phile replied the entire site met the open space requirement which was less than what the open space requirement is now.

Mr. Paino said the board members had received correspondence against granting the variances from two individuals. One letter was from Marino Curati, 671 Sherman Street, Geneva, Ohio, the owner of unit 1507 Whitehall Boulevard, who stated in his letter that he was opposed to granting the variances because it would reduce the number of visitors' parking spaces from 10 to 6. The other letter was from Stephen D. Hardesty, owner of 1519 Whitehall Boulevard, who stated he opposed the conversion of the party room to a residential room because the visitors' parking would be reduced to 6.

Ms. Werner asked if there would be any frontage at all.

Ms. Phile replied there would be no street frontage. She said there is about 20 feet from the reception area to the parking spaces.

Mr. Balazs said he applauded what the applicants were trying to do.

Mr. Paino stated the applicants were only purchasing the building and the outside area was common ground owned and maintained by the Homeowners' Association.

Mr. Fink stated that a condominium association can write up their own rules as long as the owners follow them. He reminded the Board members that open space and green space are two different things.

Mr. Balazs asked if the project would have no open space.

Ms. Phile replied yes. The applicants were asking for a 30 percent variance.

Ms. Werner asked how tall the fence in back was.

Ms. Phile replied it was six feet.

PUBLIC COMMENTS

None.

Mr. Paino asked for comments from the board members.

Mr. Balazs said he was on the fence with this variance.

Ms. Howard stated she can see that a hardship exists and that it would not be a detriment to the surrounding area.

Ms. Werner agreed with Ms. Howard. She said this was probably the best solution to the vacant building.

Mr. Paino stated it is hard to grant so many variances but it did not make sense to tear down the building and it would not affect the neighbors. He told the applicants that since there was not a full board at the meeting, they had the option to postpone their variance requests until there was a full board.

The applicants wanted to proceed.

Motion: Ms. Howard moved that in case BZ09-004, Whitehall East Townhomes located at 1521 Whitehall Boulevard, that the Board of Zoning Appeals approves a 6358 square foot variance from the 10,000 square minimum lot size requirement as defined in Section 1135.03(a)(3) in the City of Kent Zoning Code to allow a new parcel to be 3642 square feet.

Ms. Werner seconded the motion.

Mr. Balazs stated he understood that the building was built in a different time with different requirements.

Ms. Howard stated that the strict application of the code would result in practical difficulties and unnecessary hardship. She did not feel that it would be a detriment.

Ms. Werner agreed with Ms. Howard's comments. She did think it would be a detriment to the surrounding area.

Mr. Balazs stated that in his opinion, they were changing the use.

Mr. Fink interjected to say that the Planning Commission decides the use. The Board of Zoning Appeals just considers the variances.

Mr. Balazs said he was conflicted because the use was being changed. He asked how he was supposed to decide on how to decide on the variances.

Mr. Fink replied he had to consider the three criteria that were read earlier.

Mr. Balazs stated that it would not be a detriment and there was no safety use and that the hardship would be conforming in the existing structure's location.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-004, Whitehall East Townhomes located at 1521 Whitehall Boulevard, that the Board of Zoning Appeals approves a 16-foot variance from the 100-foot minimum lot width at the building line as defined in Section 1135.03(b)(3) in the City of Kent Zoning Code to allow a new parcel to be 84 feet in width at the building line.

Mr. Balazs seconded the motion.

Mr. Balazs had the same comments and there is a hardship.

Ms. Werner said she had no additional comments.

Ms. Howard said she had no additional comments.

Mr. Paino stated the strict application of the zoning code would result in practical difficulties. There are exceptional and extraordinary circumstances and granting the variance would not be a detriment.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-004, Whitehall East Townhomes located at 1521 Whitehall Boulevard, that the Board of Zoning Appeals approves a 40-foot variance from the 40-foot minimum lot frontage as defined in Section 1135.03(c) in the City of Kent Zoning Code to allow a new parcel to have no lot frontage.

Ms. Werner seconded the motion.

Ms. Werner stated there were exceptional circumstances and that granting this variance would not be a detriment to the public interest or to the code.

Mr. Balazs agreed with Ms. Werner.

Ms. Howard had no additional comments and agreed with Ms. Werner.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-004, Whitehall East Townhomes located at 1521 Whitehall Boulevard, that the Board of Zoning Appeals approves a 30 percent open space variance from Section 1135.03(e) to allow 0 percent open space for the newly created lot as defined in Section 1109.01(g)(132)(A-J) in the City of Kent Zoning Code.

Ms. Werner seconded the motion.

Mr. Balazs had no additional comments.

Ms. Howard stated there was a hardship and that there would not be a detriment to the public interest.

Mr. Paino had no additional comments.

Ms. Werner agreed with Ms. Howard's comments.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-004, Whitehall East Townhomes located at 1521 Whitehall Boulevard, that the Board of Zoning Appeals approves a 13.7 percent variance from the 25 percent maximum lot coverage as defined in Section 1135.03(f) in the City of Kent Zoning Code to allow a new parcel to have 38.7 percent lot coverage.

Mr. Balazs seconded the motion.

Ms. Howard stated that the strict application of the zoning code would result in practical difficulties and unnecessary hardship. Granting the variance would not be a substantial detriment to the public interest or adjacent properties.

There were no other comments.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-004, Whitehall East Townhomes located at 1521 Whitehall Boulevard, that the Board of Zoning Appeals approves a 20.5-foot variance from the 30-foot minimum rear yard setback as defined in Section 1135.04(b) in the City of Kent Zoning Code to allow the building at 1521 Whitehall Boulevard to have a 9.5-foot rear yard setback.

Ms. Werner seconded the motion.

Mr. Balazs stated there was a hardship and that it would not be a detriment to the public interest.

Ms. Howard stated that the existing fence is a positive thing. She said the strict application of the code would result in practical difficulties.

Ms. Werner stated there was a hardship and that it would not be a detriment.

Vote: The motion passed 4 – 0.

Motion: Ms. Howard moved that in case BZ09-004, Whitehall East Townhomes located at 1521 Whitehall Boulevard, that the Board of Zoning Appeals approves a 30 percent open space variance from Section 1135.03(e) to allow 0 percent open space for the remainder of the lot owned by the Association as defined in Section 1109.01(g)(132)(A-J) in the City of Kent Zoning Code.

Mr. Balazs seconded the motion.

Mr. Balazs said his comments are the same as he made previously.

Ms. Werner stated her comments are the same as she made previously.

Ms. Howard had no additional comments.

Vote: The motion passed 4 – 0.

VII. ELECTION OF OFFICERS

Motion: Ms. Howard moved to leave Peter Paino as Chairman, Diane Werner as Vice Chairman and Steve Balazs as Secretary.

Mr. Balazs seconded the motion.

Vote: The motion passed 4 – 0.

VIII. ADJOURNMENT

The meeting adjourned at 10:16 p.m.