

Steven E. Strah
President

330-384-5726

October 31, 2008

Mr. David Ruller
City Manager
City of Kent
215 E. Summit Street
Kent, OH 44240



Dear Mr. Ruller:

We are pleased with the productive working relationship we have with your community, which has benefited your residents and our customers for many years. That's why we take great exception to the October 22 memorandum NOPEC Executive Director Leigh Herington sent to you and other member communities. In it, he misrepresents the decision of our company's competitive subsidiary, FirstEnergy Solutions, not to extend NOPEC's five percent generation discount beyond its contractual expiration date. He also misrepresents the terms of FirstEnergy's Electric Security Plan (ESP) and the consequences if the Public Utilities Commission of Ohio (PUCO) alters it in the manner suggested by NOPEC's management.

What Mr. Herington is not telling you is, unlike NOPEC's previous supplier, we fulfilled all the terms and conditions of our agreement – a deal which constituted a bailout of NOPEC management after their out-of-state supplier pulled up stakes and left town. This agreement allowed a continuation of the generation discount for member communities such as yours. Without it, your constituents would have lost this discount three years ago.

While their letter claims \$28 million in savings from their arrangement with our company – a deal that FirstEnergy voluntarily agreed to because of our long-standing, good relationship – it fails to mention the \$2 million NOPEC management retained for their "administrative expenses," money that never flowed through to customers. That means that roughly seven percent of the "savings" was confiscated by NOPEC management.

NOPEC management also misrepresents standby charges as non-bypassable when, in fact, these charges can be waived if the aggregation community agrees to pay market-based prices if their third-party supplier defaults, a situation that has happened to NOPEC in the past. There also is a non-bypassable charge – called a minimum default service charge – that is allowed as a separate, distinct item under Senate Bill 221.

Mr. David Ruller
Page 2
October 31, 2008

Under Ohio's new energy law, there is only one option if he succeeds in derailing the ESP: FirstEnergy customers would pay market prices for generation. This result occurs because, if the Commission alters the ESP in a manner unacceptable to FirstEnergy, under Ohio law FirstEnergy can reject the modified ESP and flow through market prices.

We want you and your constituents to have the facts about this important issue. We've fulfilled our obligation to NOPEC when your out-of-state supplier defaulted. NOPEC management makes money through its electricity generation sales – whether it benefits customers or not.

Mr. Herington's letter also contains many other erroneous and misleading statements. We will be happy to meet with you and discuss any of them at your convenience.

Sincerely,



Steven E. Strah
President

**JOINT MEETING OF KENT CITY PLANNING COMMISSION
BOARD OF ZONING APPEALS, ENVIRONMENTAL COMMISSION
AND KENT CITY COUNCIL**

NOVEMBER 18, 2008

**COUNCIL CHAMBERS
KENT CITY HALL
325 S. DEPEYSTER STREET
7:00 P.M.**

A G E N D A

- I. CALL TO ORDER
- II. ROLL CALL
- III. READING OF PREAMBLE
- IV. ADMINISTRATION OF OATH BY ASSISTANT LAW DIRECTOR
- V. CORRESPONDENCE
- VII. OLD BUSINESS
- VIII. NEW BUSINESS
 - A. Comprehensive Zoning Code Review
Session II – Planning Commission / Board of Zoning Appeals
Procedures
 - 1. Public Comment
 - 2. Discussion/Action
- IX. OTHER BUSINESS
- X. ADJOURNMENT

SESSION #2

Planning Commission & Board of Zoning Appeals (BZA) Procedures

Purpose

The purpose of this Session is to review, discuss and possibly modify / redefine the roles and procedures followed by the Planning Commission and Board of Zoning Appeals as their duties relate to the administration of the Kent Zoning Code. The onset of the discussion should consider the bigger picture and identify the intent and objectives of these reviews as they apply to the entire development review process in the City, which as it currently exists, reaches well beyond these two bodies.

The development review process involves internal staff review as well as external review by the Planning Commission. While determining when zoning variances should be granted, the BZA's role in the overall development review process is quite limited, although not insignificant. Most development projects go through a two phase process with the first phase involving initial discussions with staff and ultimately Planning Commission and/or BZA review. Some consider this a conceptual review. The second phase of the process is primarily internal, conducted by staff, and one which leads to the issuance of building and zoning permits. The process will vary depending on the zoning district and project, but the basic flow is the same.

Overview

The Planning Commission and Board of Zoning Appeals are two separate and distinct boards that have responsibilities under the Kent Zoning Code. These responsibilities are spelled out in the zoning code and it should also be noted that each board has additional responsibilities outside of the zoning code. This discussion is limited to each body's responsibilities under the zoning code.

The Planning Commission has three general areas of responsibility under the zoning code. One of these deals with reviewing and approving site plans. Chapter 1119 of the current Zoning Code governs the type of projects that are required to undergo site plan review. The Commission is provided assistance by City staff, primarily through the Community Development Department in regard to this responsibility. Site plan reviews are required when certain provisions of Chapter 1119 apply to a proposed project, and may be conducted as stand alone event (when a use is a permitted use), in conjunction with an expansion of a nonconforming use, or in conjunction with a conditionally permitted use. It is not uncommon for projects submitting for site plan review to also have to seek one or more zoning variances.

A second Planning Commission responsibility under the zoning code is to review requests for Conditional Zoning Certificates (Permits) and to approve such requests when deemed appropriate. Conditional uses have additional requirements that are required to be met and these are articulated in Chapters 1113 and 1171 of the zoning code.

Session #2 – Planning Commission / Board of Zoning Appeals

Requirements identified in Chapter 1171 are only applicable as prescribed for individual conditional uses identified in each zoning district. Chapter 1113 is the chapter of the zoning code that controls the Conditional Use review process.

The third area of responsibility for the Planning Commission in the zoning code falls under the matter of zoning code amendments. The code outlines a formal zoning amendment process in Chapter 1117 which involves both the Planning Commission and the City Council. The Planning Commission's role in this process is basically advisory to City Council. Amendments may include both changes to the zoning code text and/or the zoning map. The Planning Commission also has responsibilities under the City's Subdivision Code but those are not discussed here.

Comparatively, the Board of Zoning Appeals has much more limited authority under the zoning code than does the Planning Commission. It also has three areas of responsibility, all of which are defined in Chapter 1115 of the Zoning Code. The Board of Zoning Appeals, like the Planning Commission, can initiate a zoning amendment, however, the Board of Zoning Appeals is not involved in that process itself.

The first area of responsibility for the Board of Zoning Appeals is to hear requests for variances to the Zoning Code. Similar to this but somewhat separate is the Board's responsibility to review most nonconforming use expansions and substitutions. These two areas of responsibility generate nearly all of the Board's case load. The Board of Zoning Appeals also has two other areas of responsibility – hearing appeals on decisions of the Zoning Inspector and the Planning Commission (zoning related actions) and to render, upon request, interpretations of the zoning code. These latter two areas are rarely utilized.

Bicentennial Plan Discussion:

Staff could not find any discussion in the Bicentennial Plan that related to the powers and duties of either the Planning Commission or the Board of Zoning Appeals, or the processes they administered.

UDC Draft Discussion

The draft Unified Development Code (UDC) that was worked on previously provided more detail in regard to the processes and procedures related to the operation of both the Planning Commission and the Board of Zoning Appeals. There were seven (7) chapters in the UDC that are related to the Planning Commission and Board of Zoning Appeals and these are provided for reference as a separate file attachment (See file named Session 2 UDC Chapters.pdf).

Issues

Several issues related to the Planning Commission and/or Board of Zoning Appeals have been raised with staff and there are some additional issues that deserve at least some discussion while on the topic of how these two board's operate. There may, of course, be additional issues not listed here that may come out of future discussions.

1. How projects are routed to the Planning Commission and Board of Zoning Appeals in terms of which body reviews their piece first.
2. Does the City require too much detail on plans at this stage of the overall review process?
3. Should the Planning Commission have broader authority to grant some zoning variances in cases where it is already reviewing a project for site plan or conditional use ?
4. Are there projects that are not currently going through a site plan review that should, and vice-versa ?

Implications of Issues

- How projects are routed to the Planning Commission and Board of Zoning Appeals in terms of which body reviews their piece first.

Discussion: There has been some recent debate and discussion as to the current process of having the Planning Commission review a project that has to go before both the Planning Commission and the Board of Zoning Appeals before the project is presented to the Board of Zoning Appeals for consideration of variances. As memory serves, this practice was started in the early 1990's as a result of discussions between the two bodies with the intent being that the Planning Commission could deal with site plan issues and recommend (or not) whether variances should be granted for the plan. Prior to that time, it was the practice that projects needing the approval of both bodies would first go to the Board of Zoning Appeals and then to the Planning Commission. Recent criticisms of the current practice, as we understand them, indicate that there is some belief that any action of the Planning Commission with regard to the conditional approval of a plan puts the Board of Zoning Appeals in a compromised position in dealing with the variances. The concern is the same in nature as the one raised in the early 1990's by the Planning Commission (that the BZA decision on a variance locked them into a site plan).

Session #2 – Planning Commission / Board of Zoning Appeals

The concern raised by both bodies is not without merit and at least in staff's opinion points to a potential disconnect in the process. While not all projects are required to go before both bodies, many do, this being a result of needing zoning variances and either a site plan approval and/or a conditional zoning permit. (Note: As we go through the rest of the process of reviewing the zoning code, some of the common requirements that require variances may be evaluated and possibly modified. This may eliminate some dual reviews but not all.) The disconnect presents itself in the fact that the two bodies, being two different groups of people using different evaluation criteria, are required to review the same plan for different reasons and then find some way to agree on a plan without the opportunity for mutual discussion or sharing of thought processes. Later in this document, we will present for the purpose of discussion, another alternative that could be considered in regard to how the issue of variances and site plan reviews / conditional zoning permits can be handled.

However, assuming that the desire is to maintain the current roles and responsibilities of both bodies, staff is of the opinion that it would be better and more practical to have projects requiring dual review go before the Board of Zoning Appeals first in order to receive a determination on any variances. This could be accomplished with less cost to the applicant since the variances and potential layout of a project could be determined (or defeated) prior to detailed plans being prepared as required for the Planning Commission review. Any decisions made by the BZA would be binding on the Planning Commission (as they are now).

- Does the City require too much detail on plans at this stage of the overall review process?

Discussion: Staff used to hear a lot of complaints about what the City required in regard to detail on plans but these complaints have diminished over the years in that other communities have generally caught up to Kent's requirements. The area where we have the most difficulty in plan quality and detail are with those who do not have or want to spend money, possibly up to several thousand dollars, to have proper plans prepared. State law was also changed several years ago to require "sealed" plans for submittal on commercial projects requiring building permits. Staff has attempted to use some discretion in not requiring certain items on plans where it was felt that it was not needed, but there have been some internal disagreements on this from time to time too. Staff is of the opinion that the City does not require too much detail on plans at this stage of the review process. We also believe that the ability to use some discretion in waiving certain submittal requirements is reasonable and workable. Last, the implementation of our recommendation that projects go to BZA before Planning Commission could potentially reduce the need to prepare and present detailed information when basic issues related to the approval of the proposed project by the granting of variances are at hand.

Session #2 – Planning Commission / Board of Zoning Appeals

- Should the Planning Commission have broader authority to grant some zoning variances in cases where it is already reviewing a project for site plan or conditional use ?

Discussion: This issue ties into the first issue discussed previously with regard to the order of review. As we noted earlier, we believe that the current process has a disconnect in it, insofar as the discussion of the potential variances for a project is not connected to the decision to approve a site plan. In fact, the current criteria for granting variances to the zoning code is based on the demonstration by an applicant that they have a practical difficulty or unnecessary hardship which may be unique to their project.

The BZA's decision in this regard is not necessarily tied to what constitutes good site planning or design. This in turn limits the Planning Commission's ability to work with a project on design elements when the Commission may think a different layout is preferable from a design standpoint, but having no way to give variances to allow that layout (if needed). Under the current process, an applicant would have to go back and forth between the Planning Commission and BZA to try to implement a change without necessarily knowing that one group or the other is going to be in agreement. This can cost time and money and can be frustrating, not to mention inefficient.

Staff believes that there may be some merit to discussing allowing the Planning Commission to grant zoning variances applicable to a project based on what they believe to be proper site layout and design. This effectively makes the code somewhat more "design" based than what it is now. Certainly, there are other portions of the zoning code that would need to be modified to make the code more "design" oriented. The current zoning code provides the Planning Commission the ability to grant certain variances with regard to the number of parking spaces and the amount of open space required. Using this alternative format, the nature and type of variance would still have to be disclosed and the Planning Commission could factor in the questions of difficulty or hardship just as the Board of Zoning Appeals does now. The Board of Zoning Appeals would still deal with zoning variances not related to site plan reviews and conditional zoning permits, and would still have the authority to hear appeals on decisions of the Planning Commission or Zoning Inspector. The BZA has also taken on some responsibilities outside of the zoning code with regard to property maintenance appeals and may eventually see some increased workload if the proposed property maintenance code is adopted. This change would represent a significant change from the status quo and may be seen by some as intrusive to the authority of the BZA. The more important question related to this is whether giving the Planning Commission some additional authority in this regard can represent a more effective and efficient way to move toward design based standards and to improve the workings of a process that arguably has some bumps in it.

Session #2 – Planning Commission / Board of Zoning Appeals

- Are there projects that are not currently going through a site plan review that should, and vice-versa ?

Discussion: This question usually generates some debate among staff and it is easy to find examples of projects that we believe should or should not have had to go through a formal Planning Commission site plan review. Most people would agree that the larger projects and those which significantly change the use of a property / properties are projects that should be subject to some formal review.

One of the fundamental issues related to this topic focuses on the responsibility that the Planning Commission is to fulfill in the development review process. At least for the past 30 years, the Commission has been tasked with the responsibility of reviewing plans and determining whether conditional zoning permits should be granted. In this, the Commission performs two tasks: 1) it takes information from the applicant on a project and also input from the public, and 2) the Commission reviews and discusses the plan, its approval or modification and any conditions that should be applied to an approval. Prior to a plan going to the Planning Commission, it has received review and comment by most of the City Department's, with this effort being coordinated through the Community Development Department. In many cases, as a result of potential technical issues (issues related to code, utility services, traffic, drainage, etc.) the plan may have already been modified to address some of these concerns. It would be safe to say that the Planning Commission relies on staff to deal with and address most of the technical issues. Using the process just described, the Commission brings essentially two functions to the table. The first is to serve as a sounding board through which the public can comment on a project. These comments can range from substantive issues that need to be addressed to statements of preference for or against a project. The second function is to serve as a "Check and Balance" process whereby the appointees to the Commission have the ability to review and assess on their own whether a plan does or does not meet the requirements of the zoning code. Their opinion may agree or disagree with staff's. Arguably, the Planning Commission's historical role as being the primary group looking at site plans and conditional use permits (in the absence of having staff to assist) has diminished while the staff's role in reviewing the same plans has increased over the years.

To this end, what is the appropriate role for the Planning Commission to play? First, there is nothing wrong or inappropriate with the role it currently plays. Generally, the Commission over the years has been thoughtful, attentive to public concerns, cognizant of what they can and cannot do under the zoning code, and constructive. Does the Commission's value as a sounding board for public concerns about a project serve an important purpose? Staff is of the opinion that in this regard the Commission does serve an important purpose. Does it need to be involved in the actual review of plans to the degree that it currently is? Maybe not.

Session #2 – Planning Commission / Board of Zoning Appeals

There are several areas where the criteria for causing a site plan review (as per Chapter 1119 of the current zoning code) could be relaxed. One is in the area of parking lots. Under the current code, almost any parking lot alteration, expansion or construction or any driveway relocation conducted by a multifamily, commercial or industrial use requires a Planning Commission review (site plan). This could perhaps be modified to only cause a site plan review to be conducted in situations where only parking lots larger than a certain size or number of spaces requires Planning Commission review and secondly only in those situations where the parking areas are being constructed adjacent to a residential use. Otherwise smaller parking areas being constructed or modified could be reviewed internally by staff without going to the Planning Commission.

A second area where provisions could be relaxed as far as Planning Commission review is concerned involves certain building additions. Currently any commercial, industrial or multifamily addition which is larger than 50% of its existing building area is subject to a Planning Commission site plan review. If any of these projects are conditional uses in their zoning district they will go to the Planning Commission regardless of size. With smaller buildings, growing by half of their size may not be all that significant thus the City may just want to consider a flat size increase requirement whereby a site plan review is required.

A third area that should be evaluated when we get into the discussions of the various zoning district regulations are what uses should be considered permitted or conditionally permitted. We will likely have some comments later on this subject when we get into those discussions.

If there is interest in either of these changes, staff could prepare and present a more detailed draft code amendment for consideration.

Closing Remarks

We do not believe that there are significant problems in the area of the functions of the Planning Commission or Board of Zoning Appeals other than the issue of order of review. There are some areas that could be tweaked and as this subject is discussed there should be some affirmation that the current process is appropriate and not unwieldy. Staff does believe that there is some merit in considering giving the Planning Commission additional authority to review and consider site plan / conditional use related zoning variances so as to provide more flexibility in achieving preferable designs and layouts.

A G E N D A

CITY OF KENT
BOARD OF ZONING APPEALS
PUBLIC HEARINGS & BUSINESS MEETING
NOVEMBER 17, 2008
7:00PM
COUNCIL CHAMBERS – KENT CITY HALL
325 SOUTH DEPEYSTER STREET

I. CALL TO ORDER

II. PLEDGE

III. ROLL CALL

IV. PREAMBLE

V. ADMINISTRATION OF THE OATH

VI. NEW BUSINESS

A. BZ08-018 FAISAL MIRZA
1337 SOUTH WATER STREET

Section: 1169.05(1)

Request: The applicant is requesting variance from Section 1169.05(1) to allow a non-conforming use to increase the size of the existing structure 46.7 percent.

1. Public Comment

2. Board of Zoning Appeals Discussion / Action

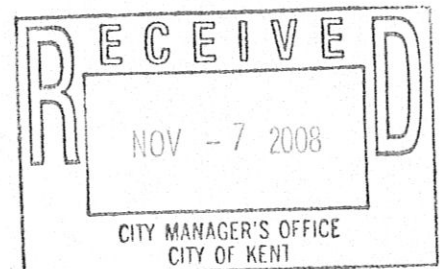
VII. MEETING MINUTES

A. Meeting Minutes from the July 21, 2008 meeting

B. Meeting Minutes from the August 18, 2008 meeting

C. Meeting Minutes from the September 15, 2008 meeting


VIII. ADJOURNMENT





CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: NOVEMBER 7, 2008
TO: KENT CITY BOARD OF ZONING APPEALS
FROM: HEATHER PHILE, DEVELOPMENT PLANNER 
RE: STAFF REPORT FOR THE NOVEMBER 17, 2008 BOARD OF ZONING APPEALS MEETING



The following cases appear on the agenda for the November 17, 2008 Board of Zoning Appeals meeting:

NEW BUSINESS

CASE NO.: BZ08-018

APPLICANT: Faisal Mirza

SITE LOCATION: 1337 South Water Street

STATUS OF APPLICANT: The applicant is the owner of the property.

REQUESTED ACTION: The applicant is requesting a variance from Section 1169.05(1) to allow a non-conforming use to increase the size of the existing structure 46.7 percent.

ZONING: This property is currently located in an R-C: High Density Residential – Commercial Zone District.

TRAFFIC: The property is accessible from South Water Street.

SURROUNDING LAND USES: The property is surrounded by other commercial uses on all sides.

APPLICABLE CODE SECTION: 1169.05(1)

ANALYSIS:

This property at 1337 South Water Street is currently zoned R-C and is currently a gas station and convenience store. This location has been home to a gas service station since at least 1968, according to the City of Kent building department files. Currently, the gas station is a legal, non-conforming use in this zone district.

In October, the Board voted to approve the 20-foot rear yard setback variance to allow a 10-foot rear yard setback. The Board voted against the size increase of 48.5 percent.

Page 2
Staff Report to the Board of Zoning Appeals
November 17, 2008 meeting

The applicant is now requesting a variance from Section 1169.05(1) to allow his addition to be 46.7 percent larger than the existing structure. The existing building is 1480 square feet in size. Twenty-five percent of the existing building would be 370 square feet. The applicant is proposing to construct a 692 square foot addition onto the existing structure. An interior layout plan is enclosed with the applicants submittal items.

Should the Board wish to approve this project, the following language may be used for the motions:

Move that in Case BZ08-018, the Board of Zoning Appeals approve the variance from Section 1169.05(1) to allow a non-conforming use to increase the size of the existing structure 48.5 percent for the property at 1337 South Water Street.

cc: Applicant
Case file
Gary Locke, Community Development Director
Eric Fink, Asst. Law Director