

Minutes
City of Huntington Board of Zoning Appeals
April 16, 2024

A meeting of the City of Huntington Board of Zoning Appeals was held on April 16, 2024 at 5:32 p.m. in the City Hall Council Chambers. *Ms. Proctor* called the meeting to order and confirmed a quorum was present.

Members Present: Jacqueline Proctor, Dan Earl & Steven Yates

Members Absent: Gina Browning & Sara Loftus

Staff Present: Cade Williams, Planner II
Ericka Hernandez, Assistant City Attorney
Stephanie Petruso, Senior Planner

Hearing no corrections or objections, *Ms. Proctor* approved the March Minutes, and all present were in favor.

Hearing no corrections or objections, *Ms. Proctor* approved the March Orders, and all present were in favor.

BZA 24-06

Petitioner/Property Owner: West Virginia American Water, 1600 Pennsylvania Ave., Charleston, WV.

Property Location: 111 Kings Hwy.

Issue 1: A petition for a variance to exceed the height requirement for a structure in the R-1 Residential District.

Building height for utilities is exempt (*Per Article 1315.07.C of the City Ordinance.*).

Mr. Yates made a motion to remove BZA 24-08. *Mr. Earl* seconded motion.

BZA Roll Call: *Mr. Yates*, Yes; *Mr. Earl*, Yes; *Ms. Proctor*, Yes.

BZA 24-06 was removed with a vote 3 Yes to 0 No.

BZA 24-07

Issue 2: A petition for a variance to construct a fence with barbed wire in the R-1 Residential District.

West Virginia American Water requested a continuance of this petition.

Mr. Yates motioned to move BZA 24-07 to the May meeting. *Mr. Earl* seconded motion.

BZA Roll Call: *Mr. Earl*, Yes; *Mr. Yates*, Yes; *Ms. Proctor*, Yes.

BZA 24-07 was moved with a vote 3 Yes to 0 No.

BZA 24-09

Petitioner: Gordon Merry III, 846 8th Ave., Huntington, WV.

Property Owner: Cabell County EMS, 846 8th Ave., Huntington, WV.

Property Location: 831-845 8th Ave.

Issue 1: A petition for a variance to surpass from the maximum lot width in the C-1 Neighborhood Commercial District.

BZA 24-10

Issue 2: A petition for a variance to surpass the maximum front yard setback in the C-1 Neighborhood Commercial District.

BZA 24-11

Issue 3: A petition for a variance to exceed the maximum fence height in the front yard of a property within the C-1 Neighborhood Commercial District.

Mr. Williams read the Staff Report.

J.D. Maynard, 217 33rd St. W, is with DJM Architecture and explained the reasoning for the petitions. He stated the owner is in process of combining two parcels making the lot 220 feet wide. The building needs to be 176 feet wide. Both properties are needed for the project. Additionally, he explained the reasoning for the location of ambulance bays and the shape of the lot. Lastly, he explained the purpose for the general layout of the fence. The fence will be vinyl-coated chain link.

Ms. Proctor questioned if a condition would be recommended from Staff for the fencing in the front yard along 9th Street. Mr. Maynard provided additional context to the portion of the fence in question. Also, *Ms. Proctor* questioned if the fence was pulled back if there would be an additional requirement. *Ms. Hernandez* stated a variance will be needed regardless of the fence layout unless the fence is pushed back to the building.

Mr. Earl asked if there was an issue with consolidating the lots. Mr. Maynard confirmed this is not an issue.

Ms. Proctor asked if there was anything else causing him problems with his development. Mr. Maynard stated there are no other problems.

Ms. Proctor explained the reasoning for Staff and *Ms. Hernandez's* viewpoints earlier in the discussion. Based on dialogue, she wondered if Staff had any other input on the fence in the front yard along 9th Street. Mr. Williams explained with the information disclosed during the meeting there is justification for the fence layout in this portion of the lot. He went into detail for the reasoning behind a proposed condition to alter the fence to accommodate for unobstructed greenspace. Mr. Maynard explained there will be greenspace with the proposed plans.

Mr. Earl made a motion to approve BZA 24-09 on the condition the two existing parcels are consolidated before construction begins. *Mr. Yates* seconded the motion.

BZA Roll Call: *Mr. Yates*, Yes; *Mr. Earl*, Yes; *Ms. Proctor*, Yes.

BZA 24-09 was conditionally approved with a vote 3 Yes to 0 No.

Mr. Yates motioned to approve BZA 24-10. *Mr. Earl* seconded motion.

BZA Roll Call: *Mr. Earl*, Yes; *Mr. Yates*, Yes; *Ms. Proctor*, Yes.

BZA 24-10 was approved with a vote 3 Yes to 0 No.

Mr. Earl motioned to approve BZA 24-11. *Mr. Yates* seconded motion.

BZA Roll Call: *Mr. Yates*, Yes; *Mr. Earl*, Yes; *Ms. Proctor*, Yes.

BZA 24-11 was approved with a vote 3 Yes to 0 No.

BZA 24-12

Petitioner: Bob Booten, PO Box 861, Barboursville, WV.

Property Owner: Jeremy Savage, 63 Township Rd., South Point, OH.

Property Location: 421 16th St. W.

Issue 1: A petition for a conditional use to permit a bar in the C-2 Highway Commercial District.

BZA 24-13

Issue 2: A petition for a variance to allow a limited video lottery within 1,000 feet of another limited video lottery within the C-2 Highway Commercial District.

BZA 24-14

Issue 3: A petition for a conditional use to permit a limited video lottery in the C-2 Highway Commercial District.

Mr. Williams read the Staff Report.

Max Booten, 89 Taylor Rd., represented these petitions. He explained the plan was to do something with this building. Currently, he operates another LVL (Limited Video Lottery) in the City, Java Joe's, and operates 3 other location within city limits. He stated if the petitions are approved he would like to invest in the property to make it suitable for business and listed planned improvements. He stated if approved he will come back to expand the parking lot due to its small size. He knows there are wiring issues with the building. The only potential issue he would see is meeting the transparency requirement for bars but the intention is there to meet this requirement.

Mr. Earl questioned the previous use of the building. Mr. Booten stated he knew the facility was used for fitness and before COVID-19 the property was slated to become a car sales lot.

Mr. Yates asked if alcohol would be served at this establishment. Mr. Booten explained alcohol is sold and alluded half of beverage sales come from this.

Cindy Null, 1501 Washington Ave., spoke in objection of BZA 24-13. She stated she is representing her mother Geraldine Null. She listed off properties and businesses that may be impacted by the distance variance if approved. She listed off two LVLs that are less than 1,000 feet from the proposed LVL. Lastly, she said her father tried to open an LVL in the past but could not because of this regulation. She would like the variance to not be approved due to her proximity to the proposed LVL and the number of these establishments in the area.

Judd Roseberry, 302 North Blvd., spoke in objection of these petitions. He stated he has five business facilities in the City including 1501 Madison Avenue and across the street is an LVL. He is also redoing the Chandler Building, there is also an LVL across the street from this location too. He expressed he does not think another LVL would be good in this portion of town nor in the City in general. *Ms. Proctor* questioned what the intentions are for the Chandler Building. Mr. Roseberry alluded the company he is a part of makes conveyer accessories in this building.

Michael Smith, 3617 Brookshire Dr., Hurricane, WV 25526, spoke in objection of BZA 24-13 as the proposal violates the existing ordinance and the precedent of past denied variance requests.

Ashley Stewart, 1502 Madison Ave., spoke in objection of BZA 24-13. She stated she recently made a major investment in her property. She is concerned another bar or LVL would saturate the market and potentially hurt the investment in the Madison Ave. property. She thinks if more businesses are allowed to come in, especially if these entities are allowed to violate the distance requirement, this could hurt her property as well as other properties.

Beth Stewart, 17 Washington Ave., spoke in objection of BZA 24-13. She represented her company Stogies Incorporated. She has a problem with the variance for distance as she tried to put an LVL into an old car wash but could not due to this regulation. She considered other locations for an LVL due to this regulation. She has an issue with if this person could apply for this variance when she abided by the distance requirement in choosing a location to put an LVL at.

Lauren Stewart, 1 Mohawk Tr., spoke in objection to BZA 24-13. She is an owner of Stewart Enterprises and the operator of Joe's Lounge and Stogie's. She is against the variance as it would allow 4 LVLs within 1,000 feet of each other. She stated the market is officially saturated and variances have to be created to support more LVLs. She feels threatened as this industry is her livelihood.

Matthew Shefer, 3004 3rd Ave., spoke with a neutral opinion towards the petitions. He believes the business should be able to compete in the market and it finds it hypocritical that others have said the market is saturated. He thinks these voices are ones that are scared to compete. Additionally, he came in front of the Board in the past for a variance from an ordinance that he thought was wrong. He stated just because an ordinance exists that it does not make it right. He explained he sells fire arms and goes to shows to do business. He operates the administrative and clerical side from his home.

Patrick Miller, 1 Mohawk Tr., provided a rebuttal to Mr. Shefer's opinion. He thinks it has been demonstrated that the opening of this potential LVL would benefit few while harming several and the imposed radius (the 1,000 feet distance requirement) is meant to allow everyone (LVL operators) to exist. He stated operators pay a lot of money for things such as licenses to operate and alluded everyone would be at risk if this variance was approved.

Mr. Earl stated he does not think the 1,000 feet requirement is in place to prohibit competition and thinks it is for other purposes. It is a matter of legislative intent and is not the *Board's* place. He explained the petition for the variance fails every type of criteria and the conditional use fails at least 3 pieces of criteria. He stated the rule is if one piece of criteria is failed for a conditional use that it cannot happen.

Mr. Yates expressed agreement towards *Mr. Earl's* viewpoint. He stated he does not know what the intent of the 1,000 feet distance requirement is. Nonetheless, he agrees with *Mr. Earl's* thoughts on the criteria.

Ms. Hernandez stated there is no distance requirement for the bar (the first conditional use).

Mr. Yates thinks the concern is with the LVL and thinks the variance should be voted on first. *Mr. Earl* agreed with this. *Mr. Williams* explained the conditional use for a bar will need to be voted on first.

Ms. Proctor expressed concern with not seeing plans for this potential establishment.

Mr. Yates made a motion to approve BZA 24-12. *Mr. Earl* seconded the motion.

BZA Roll Call: *Mr. Yates*, Yes; *Mr. Earl*, No; *Ms. Proctor*, No.

BZA 24-12 was rejected with a vote 1 Yes to 2 No.

Ms. Proctor asked if the other petitions are moot. *Ms. Hernandez* confirmed the other petitions are moot as a bar is needed to operate a LVL.

Ms. Proctor declared as BZA 24-12 was not approved BZA 24-13 and BZA 24-14 cannot be considered and the condition moot.

BZA 24-15

Petitioner: Classic Construction Company, Inc., 1403 8th Ave., Huntington, WV.

Property Owner: Gary E. & Jina L. Ward, 1403 8th Ave., Huntington, WV.

Property Location: 1338-1340 9th Ave.

Issue: A petition for a variance to exceed the height requirement for a fence in the front yard of a property within the C-1 Neighborhood Commercial District.

Mr. Williams read the Staff Report.

Gary Ward, 627 Hawthorne Way, explained he wants to put up a fence, 5 feet in height, to deter people from trespassing on his lot. He claims people come onto the lot and partake in drugs and sleep. He has to clean up trash and needles due to these activities. He stated he is in the process in investing half a million dollars into this building. Lastly, he noted he owns almost 2 city blocks and nothing he has done has been unattractive.

Mr. Yates asked about the design and material of the fence. Mr. Williams explained this information is in the packet. Mr. Ward stated the fence will not be chain-link but black and aluminum.

Ms. Proctor asked if the “Series A” option on the chart Mr. Ward submitted with his application for the variance was the desired design. Mr. Ward confirmed this to be true.

Ms. Proctor questioned if there will be a gate. Mr. Ward stated there will be a gate, 16 feet in length, to allow customers to access some parking. The gate is supposed to help secure the parking lot.

Mr. Earl stated he is familiar with the property and sees the need for a fence. He stated his other properties look good. Additionally, he thinks the fencing on his other properties is higher than 5 feet.

Mr. Yates expressed providing security and protection of property is important.

Ms. Proctor stated it is a good thing the proposed fence is a reasonable decent looking. The area is still a neighborhood and people don’t necessarily need to live in an industrial looking area. She thinks he has made a reasonably good job to make the fence fit in. She complimented the petitioner on the upkeep of the property and emphasized as a citizen it is important to not industrialize the area.

Mr. Earl made a motion to approve BZA 24-15. *Mr. Yates* seconded the motion.

BZA Roll Call: *Mr. Yates*, Yes; *Mr. Earl*, Yes; *Ms. Proctor*, Yes.

BZA 24-15 was approved with a vote 3 Yes to 0 No.

BZA 24-16

Petitioner: Pretera Health Services, 4020 US Route 60 E, Huntington, WV.

Property Owner: MountWest Community & Technical College, 1 MountWest Way, Suite 101D, Huntington, WV.

Property Location: 2002 7th Ave. aka 2008 7th Ave.

Issue: A petition for a conditional use to permit the redevelopment of a closed church in the R-5 Multi-family Residential District.

Mr. Williams read the Staff Report.

Joyel Finley, 4020 U.S. Route 60 E, explained how the former church has been redeveloped. She explained the services Pretera Health Services provide and the types that are provided at this location. Overall, this location hosts mainly administrative offices with some outpatient services.

Mr. Earl asked if maintaining the historical architectural character and transparency of the former church would be a problem. Ms. Finley stated this will not be an issue.

Mr. Earl questioned if bike parking would be an issue. Ms. Finley expressed this will not be a problem and if needed this can happen.

Mr. Earl asked how many bike spots would be required. Mr. Williams stated if a condition was set there will only need to be 2 spots offered.

Mr. Earl questioned about the safety concerns along Buffington Avenue. Mr. Williams explained there is a flush grade between the parking lot and Buffington Avenue. There is evidence people have entered and exited the parking lot from the road. Staff would like to see a driveway developed if this activity is happening. If this is not happening, Staff would like to see a barrier installed to prevent such action from happening.

Mr. Yates asked why a conditional use is being obtained for a redevelopment. Mr. Williams explained if a closed church is being repurposed for a new activity in any residential district a conditional use is required.

Mr. Earl questioned if MountWest Community College should have obtained a conditional use in the past to use this property. Ms. Hernandez explained as MountWest Community College is an agency of the State they are exempted from zoning.

Ms. Proctor asked why Pretera Health Services is now coming in front of the *Board* as they have been in operation at this location for 2 years. Ms. Finley stated she thinks it became noticed when they tried to get a sign.

Ms. Proctor questioned if there are beds at this location. Ms. Finley confirmed there are no beds at this location. She stated the administrative offices are located at this building for the supervisors who oversee the group homes.

Ms. Proctor asked if 4 bike parking spots could be offered and if there is any security at this location. Ms. Finley stated the only security would be Marshall University's police due to the proximity to their facilities but they do have cameras. Also she explained there is a space beside the entrance of the building where a bike rack can be placed.

Melody Freeman, 4020 U.S. Route 60 E, spoke in support of this petition. She stated the agency did have a business license and has operated in the City for years. During the move from the old location, somebody dropped the ball and it was unveiled when the agency attempted to acquire a sign permit. She

stated the agency does a lot for the community and has never had the police called on them. Lastly, she concluded the agency would like to keep on offering services at this location.

Mr. Earl made a motion to approve BZA 24-16 with the condition the historical architectural character and current transparency are maintained, bike parking is installed with no less than 4 spaces, and a barrier is added along Buffington Avenue. *Mr. Yates* seconded the motion.

BZA Roll Call: *Mr. Yates*, Yes; *Mr. Earl*, Yes; *Ms. Proctor*, Yes.

BZA 24-16 was conditionally approved with a vote 3 Yes to 0 No.

Good and Welfare

Mr. Earl asked about the Annual Report. *Mr. Williams* explained this has been put on hold while *Ms. Shell* is on maternity leave.

Ms. Proctor stated the *Board* is still waiting on that document.

Ms. Proctor adjourned the meeting at 7:14 p.m.

Date approved: 5-7-24

Chairperson:  Prepared by: 
Jacqueline Proctor, Chair Cade Williams, Planner II