



Agenda
Huntington Board of Zoning Appeals
Tuesday, August 20, 2024 - 5:30pm

1. Call to Order
2. Roll Call
3. Approval of the June 2024 Minutes
4. Approval of the June 2024 Orders
 - BZA 24-18
 - BZA 24-20
 - BZA 24-21
 - BZA 24-22
 - BZA 24-23
 - BZA 24-24
 - BZA 24-25
5. New Business

BZA 24-26

Petitioner/Property Owner: McGuire Properties, LLC, 1001 6th Avenue, Suite 100, Huntington, WV
Property Location: 633 & 639 5th Ave.

Issue 1: A petition to request reconsideration based on new information the June 16, 2024 decision of BZA 24-24, which was a denial of a variance to exceed the maximum allotted front yard setback in the C-3 Central Business District. If granted, the reconsideration will immediately follow.

BZA 24-24 – cont. on BZA 24-26

Issue 2: A petition for a variance to exceed the maximum allotted front yard setback in the C-3 Central Business District.

6. Announcements/Discussion
7. Adjournment

Minutes
City of Huntington Board of Zoning Appeals
June 18, 2024

A meeting of the City of Huntington Board of Zoning Appeals was held on June 18, 2024 at 5:30 p.m. in the City Hall Council Chambers. *Ms. Proctor* called the meeting to order and Mr. Williams confirmed a quorum was present.

Members Present: Jacqueline Proctor, Dan Earl & Sara Loftus

Members Absent: Gina Browning & Steven Yates

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

Mr. Earl motioned to approve May 2024 Minutes. *Ms. Loftus* seconded motion.

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

May 2024 Minutes were approved with a vote 3 Yes to 0 No.

Mr. Earl motioned to approve May 2024 Orders. *Ms. Loftus* seconded motion.

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

May 2024 Orders were approved with a vote 3 Yes to 0 No.

BZA 24-18

Petitioner: Vintage Ventures dba The Lighthouse Tavern, 119 Bridge St., Huntington, WV

Property Owner: Ronnie Myers, P.O. Box 2885, Huntington, WV

Property Location: 119 Bridge St.

Issue: A petition to appeal the planner's decision to reject a limited video lottery application in the C-1 Neighborhood Commercial District.

Mr. Williams read the Staff Report.

Richard McGuffin, 119 Bridge St., explained he only has 1 petition. He explained previously this location had limited video lottery machines. He only wants 4 machines; this was the amount of machines in operation under previous business ownership. He stated the VFW does not have active machines and he mentioned he received his information from the (West Virginia) Lottery Commission. He stated the petitioned location is within 125 feet of a residential zoning district.

Jay Michaels, 701 13th Ave., spoke in support of this petition. He stated it is important that someone is willing to take a risk in this neighborhood. He explained this tavern would look good with future surrounding development. Lastly, he stated he wanted to give support as the petitioner is running a good business.

Samuel McGuffin, 625 Division St. W, spoke in support of this petition. He explained his dad and step-uncle built this business and that he visits the business often along with his business partner. He noted many police officers utilize this business as a safe-haven to relax during their time off. He hopes to see

this area as up-and-coming. He believes his father and the community could benefit from the additional revenue generated from this venture. Lastly, he explained ways the business has been of benefit to the neighborhood.

Ms. Hernandez stated limited video lotteries are not permitted by right nor conditional use in the C-1 District. Previously, there was a limited video lottery (LVL) in operation by right as a non-conforming use at the petitioned location. She stated a conditional use is needed for an LVL unless there is a non-conforming use.

Ms. Proctor asked for a simple definition of a conditional use. Ms. Hernandez explained a conditional use is a use that City Council has determined may be compatible with a certain area but requires a public hearing due to its location, surrounding uses, and the nature of the use as the use may cause disruption. The hearing is designed to prevent disruption.

Mr. Earl questioned what this means in the context to what the Board is doing tonight. Ms. Hernandez explained the petitioner was denied the opportunity to apply for a conditional use as the previous non-conforming use has expired and the savings clause had run out. Additionally, LVLs are not permitted as a conditional use in the C-1 District.

Ms. Hernandez explained the next steps after appealing the Planner's decision would be complicated. She reiterated to the Board that LVLs are not permitted in this zoning district; this use is only permitted as a non-conforming use. The only potential way to allow a LVL in the past would have been to allow a variance to the 6 month savings clause for this use.

Trish Lilly, 117 Bridge St., spoke in support of this petition. She explained she takes care of an elderly parent with medical issues. She stated they live at this address due to its proximity to St. Mary's. She stated she does not object to the machines in the building before but opposes additional machines due to limited parking and noise.

Mr. Earl questioned how many machines were at the petitioned property before. Ms. Lilly thought there were 5 machines at most but wasn't sure.

Mr. Earl questioned the distance of the VFW and their active machines. Mr. Williams confirmed with the West Virginia Lottery Commission that were active LVL machines at the VFW during the process of crafting the Staff Report.

Ms. Loftus stated if the purposed use is not permitted, the Board cannot go forward with an appeal. She stated a criteria that must be met is conformance to land use which the proposed use is not in conformity.

Mr. Earl asked if the distance the petitioner mentioned from the property to a church was recognized by Staff. Mr. Williams explained when examining the Zoning Ordinance and the data the Planning & Zoning Department had available, it was confirmed 1st Baptist Church of Guyandotte was within 500 feet of the petitioned property.

Mr. Earl questioned if Staff's position changed after hearing the petitioner's viewpoint. Mr. Williams explained Staff's view had not changed as the use is not permitted by right in the C-1 District and if this was a conditional use there would be 3 petitions for a variance needed to be acquired.

Mr. Earl asked if surrounding landowners were given notice of this petition. Mr. Williams explained regardless of type of petition, everyone within a 400 foot radius of the petitioned property must be notified by physical mail.

Ms. Loftus questioned if this business has been operating as a bar. *Mr. McGuffin* confirmed this is true and the bar has been operating since February.

Ms. Loftus asked if the bar would continue without the LVL. *Mr. McGuffin* stated the bar would operate regardless of having LVL activity.

Ms. Loftus questioned how the LVL compares to the bar within the model of this business. *Mr. McGuffin* explained the LVL provides an opportunity for entertainment. Additionally, he stated there are a lot of people who walk in Guyandotte. He does not think his petition is different than other LVLs that have been approved in a C-1 District recently. Overall, the LVL would provide an opportunity for entertainment for visitors and patrons.

Ms. Loftus asked how many machines would be at this location. *Mr. McGuffin* stated he would only like to have 4 machines.

Mr. Earl questioned how many machines were at the VFW. *Mr. McGuffin* stated there are no machines there. *Mr. Williams* stated the West Virginia Lottery Commission did not provide a number of machines; they only confirmed active machines at the VFW.

Mr. Williams explained how the petition to appeal the Planner's decision arrived in front of the Board. He also explained the petitioner would have to come back to the Board for the variances if the appeal is granted.

Mr. Earl motioned to approve BZA 24-18. *Ms. Loftus* seconded motion.

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

BZA 24-18 was approved with a vote 2 Yes to 1 No.

BZA 24-20

Petitioner/Property Owner: Huntington City Mission, 624 10th St., Huntington, WV

Property Location: 621 & 625 11th St.

Issue 1: A petition for a conditional use to permit a shelter/mission in the C-3 Central Business District.

BZA 24-21

Issue 2: A petition for a variance from the requirement that the main entrance be located facing the street in the C-3 Central Business District.

BZA 24-22

Issue 3: A petition for a variance to permit a one-story building in the C-3 Central Business District.

Mr. Williams read the Staff Report.

Mitchell Webb, 624 10th St., represented these petitions. *Mr. Webb* explained the Mission started as a soup kitchen. Eventually, the Mission became a shelter for the unsheltered homeless population within the city; pews were removed inside of the chapel to house this population. In 2022, the City asked the Mission if funding could be appropriated for them, if the shelter could be open all year round instead of only during the winter months (currently the Mission is open all year round). Now, the Mission is asking to convert the chapel back to its original state. He explained the chapel was not designed as a shelter.

There is only 1 toilet, no showers, and no laundry facilities. The plan is to build a low-barrier shelter that includes 33 bunk beds, proper restrooms, and shower facilities. He stated it has been observed that folks come inside when it gets cold. Plans include a fenced-in courtyard for occupants to be able to enjoy the outdoors safely. Office space is being added in the building which would offer an observation area. Clients who are in need of medical attention will be able to see medical professionals for treatment. Offices will include spaces for other organizations that service the Mission's clients. The main entrance being located off of 11th Street was recommended by the Mayor's Taskforce on Homelessness and neighbors. The one-story building is being asked to avoid elevators. Overall, the Mission wants to give a space for the homeless population to stay. The shelter would benefit the community and encourage clients to participate in society. Additionally, Mr. Webb stated from a religious standpoint, as Jesus would, people in need should be helped. He also told a story about an elderly woman who took an Uber to the Mission to seek medical attention and stated the elderly is a growing demographic that make up the homeless population. Lastly, he explained the homeless population are human beings created in the image of God; this is the motivator for being the new shelter.

Johnathan Slone, 829 Washington Ave., spoke in support of these petitions. He stated in 2022 he was one of the individuals who was a part of the homeless population and was out in the cold. He said before he came to the shelter he was going down in a negative path. He grew as a person and transitioned to be a part of society with the grace of God. He stated there are various reasons why someone is homeless and they can be from anywhere. The Mission provides many services that help this population and they helped him too.

Jay Michaels, 701 13th Ave., spoke in support of these petitions. He stated he spoke with Mr. Webb and was pleased with the plans. He explained homelessness is a growing problem and the Mission is doing something that helps to address this issue.

Dave Duffield, 215 Greystone Dr., spoke in support of these petitions. He said he has been at the Mission for 35 years. He has covered all of the legal fees associated with proceedings involving the Mission. His firm (Duffield, Lovejoy & Boggs) helps the Mission because it is the right thing. He cited various programs that the Mission has started with the help of the firm Mr. Duffield created. He ended his view on this petition with a quote from Martin Luther King Jr and a plea for the Board's approval.

Kathleen Maynard, 1012 7th Ave., spoke in support of these petitions. She represented a neighboring organization to the Mission, Project Hope for Women & Children. She explained it is important for populations impacted by a substance use disorder and mental health issues to have access to care. Additionally, she stated it is our job to meet individuals where they are to offer change and opportunities. Her organization is asking the City and community to allow the opportunity for their unhoused neighbors to seek safety, support and basic needs.

Holly Mount, 126 Woodland Dr., spoke in support of these petitions. Ms. Mount spoke to the Board as a nurse for more than 20 years and a public servant. She has dedicated much of her life to public health, safety and wellbeing. She explained the utilization of the Housing First model encourages shelter for people. Data has proven housing encourages people to be more active participants in society. She emphasized the importance of the location of the shelter and the needs the Mission addresses.

Kelly Whitley, 540 10th St., spoke in support of these petitions. She represented herself and the organization she works for, Valley Health. They have seen proximity is key. Being near and having a space for the homeless population makes it easier to address the needs of this demographic. She stated when all partners are together in one space people are able to heal.

Cyndi Kirkhart, 1327 7th Ave., spoke in support of these petitions. She represented Facing Hunger

Foodbank. Folks who were not able to find shelter in the chapel have stayed on the grounds of the Foodbank. She stated there is a solution, a low-barrier shelter. She explained moving the homeless population and non-profits to other areas does not solve the problem.

Ally Layman, 2957 4th Ave., spoke in support of these petitions. She expressed her appreciation of being able to tour the chapel. She stated better facilities are needed. She asked for the Board's approval and stated City Council unanimously approved funding for the shelter.

Kevin Yingling, 1249 Hal Greer Blvd., spoke in support of these petitions. He represented the Marshall Health Network. He has served as a physician and pharmacist in the City for 40 years. He expressed the hot and cold temperatures our City experiences are a threat to human life. A shelter is needed to house the homeless population. The chapel is over capacity. He noted substance use abuse and infringements on mental health as concepts this demographic suffers from. It is clear this population has needs that are not being addressed. When this population is in a place with providers near, these needs can be addressed.

Larrecsa Barker, 109 Westwood Ln., spoke in support of these petitions. She stated the City Mission is an integral part of the community. She stated communities consist of social bonds, shared values and norms, a collective identity and mutual support. She stated the City Mission has been a hub to address health issues and instill trust.

Angela Maxwell from Ed Tucker Architects (1401 6th Ave.) provided more information about the plans for the project. She stated the conditional use is needed to address an ongoing need in a new place, the variance to eliminate the front door was done upon request, and the variance for building a one-story building due to the use of the space. She explained the shelter has been laid out for efficient circulation.

Ms. Loftus asked if the variance for the one-story building is for design and safety purpose. *Ms. Maxwell* confirmed this was true and explained the roof line has been modified to give the appearance the building is 2 stories.

Ms. Proctor questioned if there was architectural and infrastructural factors that could be considered in case a second floor needed to be added. *Ms. Maxwell* stated the construction of the roof would make this difficult.

Ms. Loftus wondered after the shelter is built if it will be at capacity as a one-story building. *Mr. Webb* explained there would be enough room to house the clients they tend to.

Ms. Proctor asked if the plans allow there to be space for expansion. *Ms. Maxwell* stated there should be space on the campus to address needs through existing structures.

Sam St. Clair, 1029 7th Ave., spoke in objection of these petitions. He stated in the past he mapped all of the non-profits in this part of town and tried to look into the Mission's financials. He stated a third of the businesses in the Downtown area do not pay property taxes and he had to line his buildings with barrel arms to prevent needles on his property. He explained he lives down the street and sees the homeless population every day. He is concerned if the shelter grows then more issues will transpire. He stated he is not against what the City Mission does but is against an expansion. He claims most of the crime is from the homeless population and folks who come into town for drug rehabilitation. He stated it is always a good thing to help your fellow man but when society is harmed it creates issues. Also, he analyzed the requirements the Board needs to evaluate with the viewpoint he has on these petitions.

Ms. Proctor asked *Mr. Webb* to come back up to podium to provide commentary. *Mr. Webb* agreed with *Mr. St. Clair's* statement on the needles and public defecation seen in the area which is another reason for

this shelter. Mr. Webb stated the Mission is not increasing beds but adding a sanitary place for their clients to utilize. Lastly, he explained not everyone on the street is homeless nor suffer from substance abuse.

Mr. Duffield explained service cannot keep being provided in the chapel. He explained limiting access for people into the Mission will cause negative effects.

Mayor Steve Williams, 800 5th Ave., spoke in support of this petition. The Mayor explained it is true there are unhoused souls in the city, addressing this issue has been in the works for at least 12 years, and a new shelter has been in the works for at least 5 years. He spoke about the extreme temperatures the City endured last winter and noted folks wanted action then and now those folks are not in agreement with this solution (the new shelter). He explained the new low-barrier shelter is a solution to solve this issue and stated the operations in the chapel were never intended to be permanent. He urged for a campus atmosphere; some groups supported the unsheltered but kept on crossing off potential locations while one group pitched a centralized concept for services. He cited the community partnerships to provide Continuum of Care services associated with the shelter's development: Marshall Health Network, Valley Health, Cabell Huntington Health Department, and Ohio Valley Physicians. In collaboration with these partners and the design talent of Ed Tucker Architects, the new shelter's campus is well-designed and constructed with community concerns in mind. He stated this shelter does not increase anything but offers a place with adequate sanitation facilities and Continuum of Care services for anyone wandering around to stay. He explained recently he drove up 11th Street and went past 6th Avenue and 7th Avenue. He noticed numerous people sitting down, shoulder to shoulder, up against a wall. He explained if the construction of the shelter is not authorized then the problem will get worse. He stated the shelter is a part of the solution because of the Huntington City Mission's collaboration with the partners listed above and Hospice of Huntington and Facing Hunger Food Bank and confirmed the City has contributed funds to the project but this development is not led by the City. He explained decisions need to be made now for the new shelter to be constructed by the end of the year. He stated as Mayor of the City of Huntington, the Administration supports this project and is prepared to do anything that is permitted by law to ensure this project proceeds.

Mr. Earl asked if other people are coming from other communities for solely social services. The Mayor explained sober living homes have recruited people for this purpose. There is also data indicating other cities in West Virginia are sending folks to the City for this reason. He explained the City is experiencing a phenomena other municipalities endure. Collaborative partnerships (referenced above) have allowed the City to be in a different and further stage of addressing homeless services than other municipalities he has been exposed to through the National League of Cities. He explained his administration has been active on the issue of homelessness services through his appointed Homeless Taskforce within his office and the HUD (Housing & Urban Development Authority) Point-In-Time data has shown the homeless population is increasing. The Mayor also explained the City's housing shortage and past initiatives the City has implemented to assist with the rehousing of this population.

Mr. Earl questioned if Huntington has become a destination for people in recovery or are homeless. In his opinion, upgrading the infrastructure to do so will make the problem worse. The Mayor stated a sober living facility does not open without his signature, for him to sign stringent criteria must be met; this makes sober living homes harder to open up. Also, he explained if there is an organization actually trying to help individuals then he has no problem with that. He acknowledged Substance Use Disorder and addiction is a disease and a health condition, not a moral failing, that can be aided with appropriate medical care, which his Administration welcomes and his policies support. He does not welcome places with flop houses who throw mattresses down and take advantage of vulnerable populations and if he could he would run those operations out-of-town.

Mr. Earl expressed concern of the expansion of the City Mission being in accordance with expanding the Downtown area in agreeance with the Comprehensive Plan. The Mayor explained the City Mission has been a part of the Downtown area and the new shelter ensures the current problem does not expand into other Business districts. He explains the alignment of petitions with the Comprehensive Plan through strategically managing the existing infrastructure of the Huntington City Mission and surrounding services.

Mr. Earl expressed the concern by building this shelter, the infringement it would have on the enjoyment of surrounding properties. The Mayor stated if nothing is done then that part of the Comprehensive Plan to support Business districts is being destroyed.

Ms. Loftus asked if the property being developed already had a conditional use as a homeless shelter. The Mayor suggested Staff would be the best to answer that question and reaffirmed that the proposed project will keep the main issue at bay.

Ms. Loftus questioned if some of the conversations that have occurred with stakeholders if they included how the Mission will address some of the negative neighbor influences. The Mayor listed several organizations that are located in this area are already engaged in collaboration through Continuum of Care and other meetings. His expectation is homelessness must be addressed and he hopes this project does that.

Mr. Earl asked if there is a comprehensive plan amongst the non-profits to address sober living and homelessness. The Mayor explained the City's Resiliency Plan clearly addresses issues relating to sober living and homelessness. The Mayor also stated he had several meetings with Harmony House and confirmed there is a plan. The City is collaborating with these partners on the Resiliency Plan and, while some elements have already been implemented, this collaboration is on-going.

Ms. Loftus explained she found herself in the same place as Mr. Earl. She stated all the neighbors are a part of the conversation. She recognized there will always be opposition. The Mayor stated there is opposition but there's overwhelming support from partners who are offering plans and resources. He restated the urgency related to the petitions.

Ms. Proctor stated the Board is seeing the other businesses are not at the meeting even though they have a right to be at the meeting. The Mayor explained if we don't allow the shelter to be built, what he saw along 11th Street will expand. He stated doing nothing is not acceptable.

Mr. St. Clair stated in the area there are utility companies and abandoned buildings. He doesn't think utility companies will come in-person to speak against. He claims as a City we created a database of drug addiction to create monetization of the afflicted.

Ms. Proctor stated she heard Mr. St. Clair's anger but if there is not some way of finding a path to protect his business while people are being taken off the streets then he will never be happy.

Mr. Webb mentioned there was a neighbor attending the meeting. He also stated he is unsure how sober living homes are associated with the City Mission.

Melanie Hall, 1101 6th Ave., spoke in support of these petitions. She represented Hospice of Huntington. She explained the Board of Trustees of her organization recognizes the need for this shelter and fully support these petitions. Their Board recognized the importance of serving the people they saw (in the area). The Hospice Board requested the front door be moved as even though her organization is a non-profit, they are a business. They have the same needs as surrounding businesses. Additionally, she stated

this project is a part of the solution and a way to balance the needs of everyone in the community.

Ms. Loftus stated she was relieved when it was discovered the conditional use can be looked at comprehensively.

Mr. Earl stated this issue is complicated but for today and the immediate future the shelter is a good idea.

Ms. Proctor disclosed a personal story she had experienced with the homeless population. She expressed concern with mental health and wishes persons on the street experiencing these issues get the help they need. She likes the entrance for the shelter is not on the front façade and the collaborative environment for the homeless population to get the attention they need.

Ms. Loftus asked why a conditional use is needed. *Mr. Williams* (Planner II) explained the low-barrier shelter in the Chapel was permitted during times of extreme temperatures in accordance with HUD regulations for emergency shelter utilization. Currently, a shelter is a conditional use. New developments have to be examined under the current zoning. Presently, the chapel is being used as a shelter.

Mr. Earl motioned to approve BZA 24-20. *Ms. Loftus* seconded motion.

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

BZA 24-20 was approved with a vote 3 Yes to 0 No.

Mr. Earl motioned to approve BZA 24-21. *Ms. Loftus* seconded motion.

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

BZA 24-21 was approved with a vote 3 Yes to 0 No.

Mr. Earl motioned to approve BZA 24-22. *Ms. Loftus* seconded motion.

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

BZA 24-22 was approved with a vote 3 Yes to 0 No.

BZA 24-23

Petitioner/Property Owner: McGuire Properties, LLC, 1001 6th Ave., Suite 100, Huntington, WV

Property Location: 633 & 639 5th Ave.

Issue 1: A petition for a conditional use to permit a drive-thru in the C-3 Central Business District.

BZA 24-24

Issue 2: A petition for a variance to exceed the maximum allotted front yard setback in the C-3 Central Business District.

BZA 24-25

Issue 3: A petition for a variance to permit a one-story building in the C-3 Central Business District.

Mr. Williams read the Staff Report.

Francis McGuire, 1001 6th Ave., explained the history of their property at 633 5th Ave. since it has been in his firm's ownership. His firm would like to put in a commercial strip with retail, including an outlet with

a drive-thru. They hope to bring new businesses to Huntington and assume they will have many tax dollars.

Angela Maxwell from Ed Tucker Architects, 1401 6th Ave., spoke in support of the petition. She explained the up-to-date plan the Board is seeing and the need for the petitions.

Ms. Proctor asked how much closer the project is to the public right-of-way. *Ms. Maxwell* stated the setback is 170 feet, this is 30 feet closer than the original plans. She also mentioned greenspace is found along 5th Avenue. *Ms. Maxwell* explained the overall plan in detail.

Ms. Proctor questioned the (front yard) setback regulation in the C-3 District. *Mr. Williams* explained in the C-3 District for commercial and mixed-use developments the maximum is 12 feet.

Ms. Loftus asked why the design is more aligned to a suburban environment instead of the current area. *Ms. Maxwell* gave examples of surrounding development. *Mr. McGuire* explained there is not a demand to build to suit for a business/an office but demand has been found for smaller units. He stated restaurants often do not like one-way streets. The market has dictated the type of development.

Ms. Loftus questioned if it had been considered to move more parking to the rear. *Mr. McGuire* stated customers do not like parking in the rear and walking around the building to enter into businesses.

Ms. Loftus explained there are a lot of properties in the areas that are businesses with parking in the back.

Mr. McGuire stated this is what the public wants.

Ms. Proctor wondered if other designs for the layout of the site were considered. *Mr. McGuire* said there were but this layout is what retailers want.

Ms. Proctor expressed appreciation for the greenspace but concern with the setback and curious if the planned setback can be adjusted.

Ms. Loftus explained there is a narrow set of rules the Board must follow. The reasoning for the variance for the setback is problematic when examining the criteria. *Mr. McGuire* mentioned they have tried to work with the City and revise the plans.

Mr. Earl questioned if a layout with the building butting up against the eastern or western side of the property has been considered. *Mr. McGuire* explained this was attempted but not perceived well.

Kevin McGuire, 1001 6th Ave., spoke in support of this petition. He explained this is a retail development. He thinks if the building is placed in front of the property, people are not going to walk from parking in the back. He stated the strip center mentioned is struggling due to its layout. *Kevin McGuire* and the Board discussed different parts of town with parking in the front and back and talked about surrounding development. *Kevin McGuire* also stated the design chosen is to have a modern style and have a development that is low maintenance.

Kevin McGuire stated the Downtown area is starving for a project like this. He understands the variances but the project also has to work for the firm of which he is a part.

Ms. Loftus explained the Board has a set of rules they have to follow.

Ms. Proctor stated she has never seen different versions of these plans and *Ms. Hernandez* confirmed there have not been other petitions on an agenda for this project. *Kevin McGuire* asked the Board to be

open-minded. *Ms. Proctor* stated the Board is trying to make the proposed plans happen under the rules.

Mr. Earl mentioned a previous project with a petition that was brought to the Board.

Ms. Proctor expressed concern with the parking lot being adjacent to 5th Avenue. She stated she thinks there would be more opportunity in the side yard for parking.

Mr. Earl motioned to approve BZA 24-23. *Ms. Loftus* seconded motion.

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

BZA 24-23 was approved with a vote 2 Yes to 1 No.

Mr. Earl motioned to approve BZA 24-24. *Ms. Loftus* seconded motion.

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

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

Mr. Earl motioned to approve BZA 24-25. *Ms. Loftus* seconded motion.

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

BZA 24-25 was approved with a vote 3 Yes to 0 No.

Good and Welfare

Ms. Proctor adjourned the meeting at 8:58 p.m.

Date approved: _____

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

**BEFORE THE BOARD OF ZONING APPEALS, HUNTINGTON, CABELL AND WAYNE
COUNTIES, WEST VIRGINIA**

BZA 24-18

Petitioner: Vintage Ventures dba The Lighthouse Tavern, 119 Bridge St., Huntington, WV 25702

Property Owner: Ronnie Myers, P.O. Box 2885, Huntington, WV 25728

Subject Property: This property is located at 119 Bridge St.

In re: A petition to appeal the planner's decision to reject a limited video lottery application in the C-1 Neighborhood Commercial District.

Individual Speaking on Behalf of Petition: Richard McGuffin, 119 Bridge St., Huntington, WV 25702

Other Interested Parties: Trish Lilly, 117 Bridge St., Huntington, WV 25702

Samuel McGuffin, 625 Division St. W, Huntington, WV 25701

Jay Michaels, 701 13th Ave., Huntington, WV 25701

ORDER

On June 18, 2024, Mr. McGuffin appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 24-18. Other citizens were permitted to voice their positions as well, per the practice of this Board, and interested parties provided testimony.

FINDINGS OF FACT

After reviewing all evidence at the June 18, 2024 meeting and hearing testimony from Mr. McGuffin and other interested parties, the Board finds as follows:

1. Mr. McGuffin is the petitioner.
2. Mr. Myers is the property owner.
3. Mr. McGuffin's business is known as The Lighthouse Tavern.
4. Historically, the business has served as both a bar and limited video lottery (LVL).
5. This property is located within the C-1 Neighborhood Commercial District.
6. The Planning & Zoning Department received an application for Certificate of Occupancy in December 2023.
7. Under current zoning, LVLs are prohibited while neighborhood bars are allowed with an approved conditional use.
8. The Lighthouse Tavern closed under previous ownership in August 2023 and reopened under new ownership in 2024.
9. The Lighthouse Tavern is within:
 - a. 1,000 feet of another LVL, Veterans of Foreign Wars Post 9738 East Huntington/VFW Auxiliary 9738.
 - b. 500 feet of an existing religious institution, 1st Baptist Church of Guyandotte.
 - c. 250 feet from a residential zoning district, an R-2 Single-family Residential District.
10. If allowed the petitioner would like to have 4 LVL machines at The Lighthouse Tavern.

STANDARD OF REVIEW

The Board of Appeals is empowered with the ability to determine whether an administrator of the zoning

ordinance made a proper decision on the request with the information available at the time. City of Huntington Ordinance §1361.01(i). Specifically, the Board must determine whether the zoning administrator’s decision was unreasonable, an abuse of discretion, or otherwise illegal. If the Board concludes that the decision was unreasonable, an abuse of discretion, or otherwise illegal, then the Board may reverse or affirm, wholly or partly, or modify the order or requirements of the decision made by an administrative official.

When considering an **Appeal**, the following criteria should be considered:

1. Interest in the subject property
2. Describe the property and state the uses that are being restricted by the Ordinance
3. Describe the nature of the surrounding uses
4. Describe the decision of the administrative body or Official
5. Provide facts which show unreasonableness, abuse of discretion, or other illegalities

The Board may conduct a de novo review of the evidence provided.

CONCLUSIONS OF LAW

A non-conforming use is “a use or activity which was lawful prior to the adoption revision or amendment of a zoning ordinance, but which fails, by reasons of such adoption, revision or amendment, to conform to the present requirements of the zoning district.” City of Huntington Ordinance §1315.02.N. The zoning code states that “if a licensed limited video lottery and/or Keno establishment ceases operation for a period of 180 days or more regardless of any intent to resume operation, it may not recommence operation in that location.” The West Virginia Supreme Court has held that there may be a right to continue a nonconforming use “when there is something less than actual use.” *H.R.D.E., Inc. v. Zoning Officer of City of Romney*, 189 W. Va. 283, 288, 430 S.E.2d 341, 346 (1993). The *Romney* Court stated that

the following factors are to be weighed when determining whether or not a landowner has acquired a vested right to a nonconforming use: (1) whether the landowner has made substantial expenditures on the project; (2) whether the landowner acted in good faith; (3) whether the landowner had notice of the proposed zoning ordinance before starting the project at issue; and (4) whether the expenditures could apply to other uses of the land.

Id.

We believe the Planner’s decision to deny limited video lottery (LVL) activity to be restored at The Lighthouse Tavern was unreasonable in light of the evidence presented. Evidence showed that Petitioner had sought a Certificate of Occupancy inspection as early as December 2023. Since the previous owner operated at this location either until or through August 2023, only 5 months had passed before seeking the certificate of occupancy. Certificates of Occupancy are the last step before actual occupancy and use of a premise; therefore, Petitioner must have made all necessary changes and updates prior to the request. It is our belief that Petitioner successfully applied within the 180 day window. Even if, arguably, Petitioner LVL request was beyond the 180-day limit, by requesting a Certificate of Occupancy and performing the work necessary toward issuance of the certificate of occupancy and subsequent reopening, Petitioner would have vested its right to reopen a LVL in the same location.

DECISION

WHEREFORE, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the decision of the Planner is **REVERSED**, which shall allow the

petitioner to begin the process to restore LVL activity at the establishment at which their business operates.

Within 30 days of this Order, any person aggrieved with this decision may appeal by filing a verified petition for a writ of certiorari with the circuit clerk of the county where the subject property is located.

The Clerk of the Board of Zoning appeals is directed to forward a true and correct copy of this entered Order to the petitioner and all known interested parties.

ENTERED

Date

Chairperson: _____ Prepared by: _____
Jaqueline Proctor, Chair Cade Williams, Planner II

**BEFORE THE BOARD OF ZONING APPEALS, HUNTINGTON, CABELL AND WAYNE
COUNTIES, WEST VIRGINIA**

BZA 24-20; BZA 24-21; BZA 24-22

Petitioner/Property Owner: Huntington City Mission, 624 10th St., Huntington, WV 25701

Subject Property: This property is located at 621 & 625 11th St.

In re: A petition for a conditional use to permit a shelter/mission in the C-3 Central Business District.

A petition for a variance from the requirement that the main entrance be located facing the street in the C-3 Central Business District.

A petition for a variance to permit a one-story building in the C-3 Central Business District.

Individual Speaking on Behalf of Petition: Mitchell Webb, 624 10th St., Huntington, WV 25701

Other Interested Parties: Larreca Barker, 109 Westwood Ln., Huntington, WV 25704

Dave Duffield, 215 Greystone Dr., Huntington, WV 25704

Melanie Hall, 1101 6th Ave., Huntington, WV 25701

Cyndi Kirkhart, 1327 7th Ave., Huntington, WV 25701

Ally Layman, 2957 4th Ave., Huntington, WV 25702

Angela Maxwell, 1401 6th Ave., Huntington, WV 25701

Kathleen Maynard, 1012 7th Ave., Huntington, WV 25701

Jay Michaels, 701 13th Ave., Huntington, WV 25701

Holly Mount, 126 Woodland Dr., Huntington, WV 25705

Sam St. Clair, 1029 7th Ave., Huntington, WV 25701

Johnathan Slone, 829 Washington Ave., Huntington, WV 25704

Kelly Whitley, 540 10th St., Huntington, WV 25701

Mayor Steve Williams, 800 5th Ave., Huntington, WV 25701

Kevin Yingling, 1249 Hal Greer Blvd., Huntington, WV 25701

ORDER

On June 18, 2024, Mr. Webb appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 24-20, 24-21, and 24-22. Other citizens were permitted to voice their positions as well, per the practice of this Board, and these citizens provided testimony.

FINDINGS OF FACT

After reviewing all evidence at the June 18, 2024 meeting and hearing testimony from Mr. Webb, the Board finds as follows:

1. Huntington City Mission is the petitioner and property owner.
2. The Huntington City Mission has been in operation for 35 years.
3. The Huntington City Mission started out as a soup kitchen.
4. The shelter used to be only open during the cold weather months; currently the shelter is open all year round.
5. The planned new low-barrier shelter will be one-story tall.

6. Although the proposed building would be one story, it has elements that would give the appearance of a two-story building including a roof that slopes up to 20 feet on the 11th Street façade.
7. The development needs to be one-story to permit equitable physical access to the services provided within the development for the users.
8. The City Mission sees an increase in people seeking shelter during inclement weather.
9. The new shelter will include 33 beds, office space, restrooms and shower facilities, etc.
10. The shelter would offer a space for service providers to tend to the clients of the Huntington City Mission.
11. Plans indicate for the development to have a fenced-in courtyard.
12. Plans indicate the front door entrance will face the interior of the parcel.
13. The proposed development is adjacent to other City Mission properties.
14. This project was developed in partnership with other community care providers.
15. The consensus between the City Mission, Harmony House, and adjoining neighbors was that a side entry with a more secure campus enclosed environment would benefit both the clients and the adjoining neighbors, as well as contribute to the campus-like atmosphere.
16. This property is location within the C-3 Central Business District.
17. The specific block where the shelter will be developed is transitional and underutilized with a lack of commercial and industrial activity.

STANDARDS OF REVIEW

When considering a **Conditional Use Permit**, the Board should consider:

1. The effect upon the Comprehensive Plan;
2. Public health, safety, morals, and general welfare;
3. Potential injury to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted;
4. The effect upon the normal and orderly development and improvement of surrounding properties for uses already permitted in the district;
5. Adequate provisions for utilities, access roads, drainage, and other necessary facilities; and
6. Adequate ingress and egress so designed to minimize traffic congestion in the public street.

When considering a **Variance**, the Board must consider:

1. The requested variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;
2. That the variance arises from special conditions or attributes which pertain to the property for which a variance is sought. Such special conditions may not be created by the person seeking the variance;
3. That the variance would eliminate an unnecessary hardship and permit a reasonable use of the land; and
4. That the variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

CONCLUSIONS OF LAW

“The purpose of the C-3 district is to ensure continuation of the highly diverse and integrated land uses serving a variety of missions to an assortment of persons. It also serves to provide a cohesive and viable central business district for the City of Huntington, while preventing the intrusion of certain incompatible commercial or industrial uses.” City of Huntington Ordinance §1331.01.

New principal buildings in the C-3 District must be a minimum of 2 stories/30 feet in height. City of Huntington Ordinance §1331.02. The main entrance location of the mixed use building in the C-3 District must be located on the front façade. City of Huntington Ordinance §1331.02. Missions/shelters are permitted with an approved conditional use in the C-3 District. COH Ord. §1320.04.

A. Conditional use to permit a shelter/mission in the C-3 Central Business District

The Huntington City Mission seeks to build a new low-barrier shelter to tend to their clients who are a part of a population that needs care. The location is adjacent to other City Mission properties, so this development would increase the campus feel of the City Mission. The area the shelter will be developed in is transitional with a lack of commercial and industrial activity. The project provides infill development, which is a goal of the current Comprehensive Plan, while establishing the grounds to foster community/economic development and further the Huntington City Mission’s goal of addressing a significant public health concern. The development will take a vacant property and transform the parcel into a campus dedicated to helping the City’s disadvantaged citizens.

We are very cognizant of the concerns of some of the neighbors regarding placing a shelter at this location, effectively increasing the capacity of the City Mission, may potentially injure the neighbors’ use and enjoyment of their properties; however many of the issues being experienced currently, such as homeless people trespassing on private property to sleep in alcoves and doorways, can be alleviated by providing them with shelter from the elements, particularly when combined with services from partner organizations. Given the location of the space, the orientation of the development, and the due diligence of the Huntington City Mission to communicate with stakeholders and address pressing and foreseeable issues, we believe concerns regarding public safety or injury to the use and enjoyment of neighboring properties have been adequately addressed. Additionally, there is an abundance of space to allot for provisions to infrastructure and the placement of the entrance of the shelter toward the interior of the property will reduce traffic congestion. Thus, permitting a shelter/mission at this location through the approval of the petition of a conditional use would be appropriate.

B. Variance from the requirement that the main entrance be located facing the street in the C-3 Central Business District.

A goal of the C-3 District is to promote walkability to support a vibrant downtown core. Because of this ideal, the zoning ordinance requires all main entrances to buildings to face the street. However, the overall “purpose of the C-3 district is to ensure continuation of the highly diverse and integrated land uses serving a variety of missions to an assortment of persons.” COH Ord. §1331.01.

The development, particularly building and entrance orientation, has been designed specifically to minimize any adverse effect on the health, safety, or welfare, or the rights of the adjacent property owners, residents, and general public. The location of the low barrier shelter needs to be near the other City Mission buildings in order to successfully provide the services needed by the clients. Locating at too far of a distance away from the other buildings would require users to either walk during inclement weather or find transportation, which generally requires money that the users may not have access to. Orienting the door towards the interior helps mitigate concerns of adjacent property owners. We believe this variance is necessary to uphold the purpose and intent of the zoning ordinance in the Central Business District; therefore, permitting a variance for the main entrance to be located towards the interior of the parcel would be appropriate.

C. A petition for a variance to permit a one-story building in the C-3 Central Business District.

Petitioner seeks to limit the building height to 1 story. The immediate area surrounding this proposed development is not characteristic to the majority of the Central Business District and has buildings of various heights as well as parcels without buildings. One form of mitigation proposed by Petitioner is to construct the building in such a way that it slopes up to 20 feet on the 11th Street façade, providing continuity along the 11th Street streetscape. A variance to permit this development to be one story will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents, particularly when combined with the reorientation of the main entrance. Additionally, the structure needs to be one-story so all clients of the Huntington City Mission have access to services provided within the development, regardless of the any physical disability. A shelter on the campus of the City Mission is a reasonable use of the land. A variance from the height requirement, where steps have been taken to mitigate any negative effect of the development, will allow the intent of the zoning ordinance to be observed. Therefore, permitting a variance from the minimum height requirement of the C-3 Central Business District is appropriate.

DECISION

WHEREFORE, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 24-20 for a **Conditional Use**, **APPROVES** petition BZA 24-21 for a **Variance**, and **APPROVES** petition BZA 24-22 for a **Variance**.

Within 30 days of this Order, any person aggrieved with this decision may appeal by filing a verified petition for a writ of certiorari with the circuit clerk of the county where the subject property is located.

The Clerk of the Board of Zoning appeals is directed to forward a true and correct copy of this entered Order to the petitioner and all known interested parties.

ENTERED

Date

Chairperson: _____ Prepared by: _____
Jaqueline Proctor, Chair Cade Williams, Planner II

**BEFORE THE BOARD OF ZONING APPEALS, HUNTINGTON, CABELL AND WAYNE
COUNTIES, WEST VIRGINIA**

BZA 24-23, BZA 24-24, BZA 24-25

Petitioner/Property Owner: McGuire Properties, LLC, 1001 6th Ave., Suite 100, Huntington, WV
Subject Property: This property is located at 633 & 639 5th Ave.

In re: A petition for a conditional use to permit a drive-thru in the C-3 Central Business District.

In re: A petition for a variance to exceed the maximum allotted front yard setback in the C-3 Central Business District.

In re: A petition for a variance to permit a one-story building in the C-3 Central Business District.

Individual Speaking on Behalf of Petition: Francis McGuire, 1001 6th Ave., Huntington, WV 25701

Other Interested Parties: Angela Maxwell, 1401 6th Ave., Huntington, WV 25701

Kevin McGuire, 1001 6th Ave., Huntington, WV 25701

ORDER

On June 18, 2024, Mr. McGuire appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 24-23, BZA 24-24, and BZA 24-25. Other citizens were permitted to voice their positions as well, per the practice of this Board, and these citizens provided testimony.

FINDINGS OF FACT

After reviewing all evidence at the June 18, 2024 meeting and hearing testimony from Mr. McGuire, the Board finds as follows:

1. McGuire Properties, LLC is the petitioner and property owner.
2. The petitioner seeks to develop a shopping strip center.
3. The development has a design that is more common in a suburban setting.
4. In the Comprehensive Plan, this block is identified as being part of the Central Business District, both currently and on the future land use map.
5. The subject property is rectangular in space is predominantly flat.
6. The property currently is directly adjacent to a Neighborhood Commercial Zoning District to the west and south and, in the future land use map, directly adjacent to the Downtown Transition District to the west.
7. A drive-thru is planned to be on the western side of the building; there will be a one-direction lane that will have motorists exit onto the alley behind the development.
8. Two other businesses on the 600 block of 5th Avenue have drive-thrus that exit onto 5th Avenue.
9. The proposed building will be one-story in height and house multiple businesses.
10. The building has a proposed set back of over 100 feet from the public right-of-way.
11. The maximum setback for this district is 12 feet.
12. The other buildings on this block have setbacks that range from approximately 10 feet to 45 feet.
13. The proposed development has parking located in front and behind of the building with most parking in the front and has incorporated green space within the plan.

14. The property is currently vacant land, but was formerly the site of the YWCA, which has been vacant and unused for many years.

STANDARD OF REVIEW

When considering a **Conditional Use Permit**, the Board must consider:

1. The effect upon the Comprehensive Plan;
2. Public health, safety, morals, and general welfare;
3. Potential injury to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted;
4. The effect upon the normal and orderly development and improvement of surrounding properties for uses already permitted in the district;
5. Adequate provisions for utilities, access roads, drainage, and other necessary facilities; and
6. Adequate ingress and egress so designed to minimize traffic congestion in the public street.

When considering a **Variance**, the Board must consider:

1. The requested variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;
2. That the variance arises from special conditions or attributes which pertain to the property for which a variance is sought. Such special conditions may not be created by the person seeking the variance;
3. That the variance would eliminate an unnecessary hardship and permit a reasonable use of the land; and
4. That the variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

CONCLUSIONS OF LAW

“The purpose of the C-3 district is to ensure continuation of the highly diverse and integrated land uses serving a variety of missions to an assortment of persons. It also serves to provide a cohesive and viable central business district for the City of Huntington, while preventing the intrusion of certain incompatible commercial or industrial uses.” City of Huntington Ordinance §1331.01. A drive-thru is permitted with an approved conditional use in the C-3 District. City of Huntington Ordinance §1320.04. The maximum front yard setback in the C-3 District is 12 feet. City of Huntington Ordinance §1331.02. The minimum building height for principal uses in the C-3 District is 30 feet/2 stories. City of Huntington Ordinance §1331.02.

A. A conditional use to permit a drive-thru in the C-3 Central Business District.

This block is identified as being part of the Central Business District, both currently and on the future land use map. Under current zoning, it is directly adjacent to a Neighborhood Commercial District to the west and south and, in the future land use map, it is directly adjacent to the Downtown Transition District to the west. Because of its location on a district border, it is no surprise that this block shares more characteristics with its neighboring district than its designated one, such as medium to high density development, development that is transitional between downtown core and neighborhood, and large residential buildings being repurposed for business use. *See* Plan2025 at p. 130. Given this block’s transitional character, having a drive-thru in the proposed development could be characterized as being supportive of the current Comprehensive Plan.

As there are some motorist friendly developments within the vicinity of this proposed development, including two other drive-thrus, another drive-thru on this block would be unlikely to contribute to any negative effect on public safety, the use and enjoyment of the neighboring properties and uses, or their normal and orderly development. Additionally, with the alterations made in the site plan, adequate provisions have been made and it is evident various types of circulation are supported including egress onto the alley to mitigate traffic on the nearby thoroughfare. Thus, the Board thinks it is appropriate to grant this conditional use.

B. A variance to exceed the maximum allotted front yard setback in the C-3 Central Business District.

Petitioner's request for a variance from the front yard seeks a setback that is roughly ten times the setback requirement for the district, possibly more. We recognize that only one of the other buildings on the block is set near the required maximum setback. The prevailing setback for this block is approximately 27 feet. Since the lot is rectangular and flat, we can find no special conditions that would require a setback so much greater than the maximum required or even prevailing to make the land developable. Without a special condition or hardship relating to the property, we cannot approve the variance.

C. A variance to permit a one-story building in the C-3 Central Business District

Petitioner seeks to limit the building height to 1 story. The immediate area surrounding this proposed development is not characteristic to the majority of the Central Business District and has buildings of various heights. One form of mitigation proposed by the Petitioner is to construct the façade of the building in such a way that it is more compatible with two-story buildings. We do not find any negative effect on the public health, safety, or welfare, or the rights of the adjacent property owners or residents that would result from permitting a one-story building at this location. Additionally, the structure needs to be one-story because that is what the market will support for this type of development. Permitting this variance would promote a reasonable use of this land and would support the intent of the Zoning Ordinance for the C-3 District.

DECISION

WHEREFORE, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 24-23 for a **Conditional Use**, **REJECTS** petition BZA 24-24 for a **Variance**, and **APPROVES** petition BZA 24-25 for a **Variance**.

Within 30 days of this Order, any person aggrieved with this decision may appeal by filing a verified petition for a writ of certiorari with the circuit clerk of the county where the subject property is located.

The Clerk of the Board of Zoning appeals is directed to forward a true and correct copy of this entered Order to the petitioner and all known interested parties.

ENTERED

Date

Chairperson: _____ Prepared by: _____
Jaqueline Proctor, Chair Cade Williams, Planner II

Staff Report: A petition to request a reconsideration of BZA 24-24. If approved, BZA 24-24 will be reheard: a petition for a variance to exceed the maximum allotted front yard setback.

Legal Ad

BZA 24-26 & BZA 24-24

Issue 1: A petition to request reconsideration based on new information of the June 18, 2024 decision of BZA 24-24, which was a denial of a variance to exceed the maximum allotted front yard setback in the C-3 Central Business District. If granted, the reconsideration will immediately follow.

Issue 2: A petition for a variance to exceed the maximum allotted front yard setback in the C-3 Central Business District.

Petitioner/Property Owner: McGuire Properties, LLC, 1001 6th Avenue, Suite 100, Huntington, WV.

Introduction

McGuire Properties, LLC, is petitioning to request a reconsideration of BZA 24-24, a petition to exceed the maximum front yard setback in the C-3 Central Business District, as an updated design has been presented. The petitioned properties include 633 and 639 5th Ave.

Existing Conditions / Background

McGuire Properties, LLC petitioned the Board for a variance to allow a 107 foot front yard setback in the C-3 District. At the June 18, 2024 Board of Zoning Appeals meeting the Board rejected the variance. Since the date of the meeting, the petitioner has requested the Board to reconsider if the petition should be reheard upon an updated site plan being submitted.

Proposed Conditions

The Board of Zoning Appeals must determine whether or not the hearing can be reconsidered.

If granted, a reconsideration of BZA 24-24 to exceed the maximum allotted front yard setback in the C-3 Central Business District will occur.

Reconsideration

This Board first must decide whether to grant a reconsideration. In order to grant a reconsideration, you must find that there are new facts that are relevant to the matter in question or material changes in the petition. [1] Minor changes or corrections are not enough.[2] A "new fact" would include facts "come to the knowledge of the party since the original [petition] was filed"[3] or facts that have not "been previously considered" [4] and could not have been anticipated at the time the petition was filed. [5] Staff recommends examining these petitions with caution before making a verdict.

[1] Wolfe v. Forbes, 217 S.E.2d 899 (W.Va. 1975); Mustard v. City of Bluefield, 45 S.E.2d 326 (W.Va. 1947).

[2] 8A McQuillens Mun. Corp. §25:274.

[3] Miller v. Mitchell, 52 S.E. 478 (W.Va. 1905) (citing Foutty v. Poar, 12 S.E. 1096 (W.Va. 1891)).

[4] Tate v. State Comp. Dir., 138 S.E.2d 636, 638 (W.Va. 1964); see also Eady v. State Comp. Comm'r, 132 S.E.2d 642, 646 (W.Va. 1963).

[5] Wilson v. Workers' Compensation Com'r, 328 S.E.2d 485, 488 (W.Va. 1984).

Zoning Ordinance

Per *Article 1331.02*, the maximum front yard setback is to be no more than 12 feet in the C-3 District.

Pictures



View of proposed properties for development looking south from 5th Avenue. Two driveways will be constructed to connect parking from the front yard to 5th Avenue. This will provide egress and ingress for motorists. Also, a sidewalk will be constructed along the eastern side of the development and go south from the sidewalk along the southern side of 5th Avenue to the front façade of the shopping center.



Another view of the properties posed for development. The electric poles and wiring in the background are located beside the alley that will be utilized for traffic mitigation from motorists utilizing the drive-thru.

Staff Comments

Plan2025 designates this area as a Central Business District, which is characterized by:

- High density
- Buildings to front of street
- No parking on-site, parking towards fringe
- Active storefronts with offices and housing above

Staff recommends examining this request for reconsideration in two parts. First, this request was made as a new site plan has been provided by the petitioner. The petitioner has added a substantial amount of greenspace and a green wall into the site plan. As a result, the character of this development has changed.

However, the proposed front yard setback has not changed. This variance was rejected by the Board during the June 18th meeting due to the large distance from the front façade of the shopping center to the public right-of-way. The Board recognized the proposed front yard setback may negatively impact the streetscape. Most structures along this block and the block across the road are not placed along the immediate front of 5th Avenue. However a majority of these structures are within 30 feet of the public right-of-way. The proposed setback is over 100 feet from the public right-of-way to accommodate for parking in the front. Plans indicate a sidewalk to be installed from the public right-of-way to allow pedestrians to access storefronts located along the front façade safely.

Nonetheless, *Table 1343.A* states retail establishments must have 1 vehicular spot per 300 square feet and at least 2 bicycle parking spots; if a restaurant is present there must be at least 1 vehicular spot per every 4 interior seats with an additional spot per 2 employees and at least 2 bicycle parking

spots. This development will have 42 vehicular parking spots and 5 bicycle parking spots. Section *1331.03* waives parking requirements for new developments in the C-3 District. Parking is included in the plans upon the desire of the petitioner.

Overall, the reconsideration would give the opportunity for the Board to reexamine a previous petition. The character of this development has been altered; however, the setback itself has not changed. The only modification made to the site plan is the addition of greenspace, including a green wall.

Summary / Findings of Fact

1. McGuire Properties, LLC is the petitioner and owner.
2. The petitioner is requesting BZA 24-24 to be reconsidered.
3. An updated site plan has been submitted with the addition of greenspace and a green wall. However, the proposed front yard setback has not changed.
4. The lot will be comprised of 2 consolidated parcels.
5. Even though parking is not required for new developments in the C-3 District, off-street parking will be provided in the front and rear yards.
6. The property is currently zoned in the C-3 Central Business District.

Attachments

- Aerial map
- Zoning map
- Future Land Use map
- Site Plans
- Application



PLANNING & ZONING

City of Huntington
Planning & Zoning
P.O. Box 1659 | Huntington, WV 25717
(304) 696-5540, option 3
planningdept@huntingtonwv.gov

Application for an Appeal to the Board of Zoning Appeal

Applicant Name: McGuire Properties, LLC Phone: 304-715-6577

Address (city, state, zip): 1001 6th Ave, Suite 100, Huntington, WV 25701

Email: ~~gmcguire@callmcguire.com~~ fmcguire@callmcguire.com

Property Owner: McGuire Properties, LLC Phone: 304-715-6577

I/We, the undersigned, hereby request the Board of Zoning Appeals review the following order, requirement, decision, or determination made by n/a (Planning staff) or the Planning Commission under the provisions of Article 9 of Chapter Eight A of the Code of West Virginia, effective date June 13, 2004 and under the provision of Article 1361 of the City of Huntington Zoning Ordinance, adopted December 14, 1998, as amended.

Decision made by official or Board:

To reject BZA 24-24 at the June 18th, 2024 meeting. The rejection was an application for a variance to Article 1331.02 of the City of Huntington Zoning Ordinance requiring a minimum/maximum front yard setback of 0 feet to 12 feet.

Give description of property including District, Tax Map, Parcel, lot number (if applicable), street address and/ or other description.

633 5th Ave, Huntington, WV 25701; Tax Map: 29; Parcel: 106; Lot: 633

This appeal is requested for the following reasons (state any reason which the Board of Zoning Appeals should be aware of in forming its decision):

Revisions to the front parking area have been made to provide additional landscaping and a decorative screen to reduce the visual impact of the parking area.

(Attach extra pages, if needed, for any additional information)

This Application Must Be Accompanied By:

- Site Plan of Real Estate involved (if applicable): **Drawn to Scale** with scale shown, with the direction of North clearly indicated on the drawing, showing all boundary lines and placement of existing and/ or proposed structures, and with all dimensions shown (setbacks, buildings, etc).
- Any and all documentation and evidence to support the request.
- Treasurers receipt for One Hundred Sixty Dollars (\$160.00) non-refundable filing fee.

I/We, the undersigned, am/are aware that a Public Hearing by the Board of Zoning Appeals will be held on the third **Tuesday** of the month, August 20, 2024 unless otherwise noted. It is my responsibility to attend (or send a representative) to the above meeting to City Hall Council Chambers. The filing deadline for this petition is July 16, 2024.

Francis Wm McGuire
Signature of Applicant

July 16, 2024
Date

***All applications to be submitted must be typed or legibly written in blue or black ink.**

For office use only	
Received:	Project Name:

5TH AVENUE
RETAIL
DEVELOPMENT

FOR MCGUIRE
REALTY CO.

5TH AVENUE
HUNTINGTON, WV 25701

**Edward Tucker
ARCHITECTS, INC.** | etarch.com
1401 Sixth Avenue
Huntington, West Virginia 25701
304.697.4990 telephone
304.697.4991 facsimile



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SHEET REVISIONS

#	DATE	DESCRIPTION

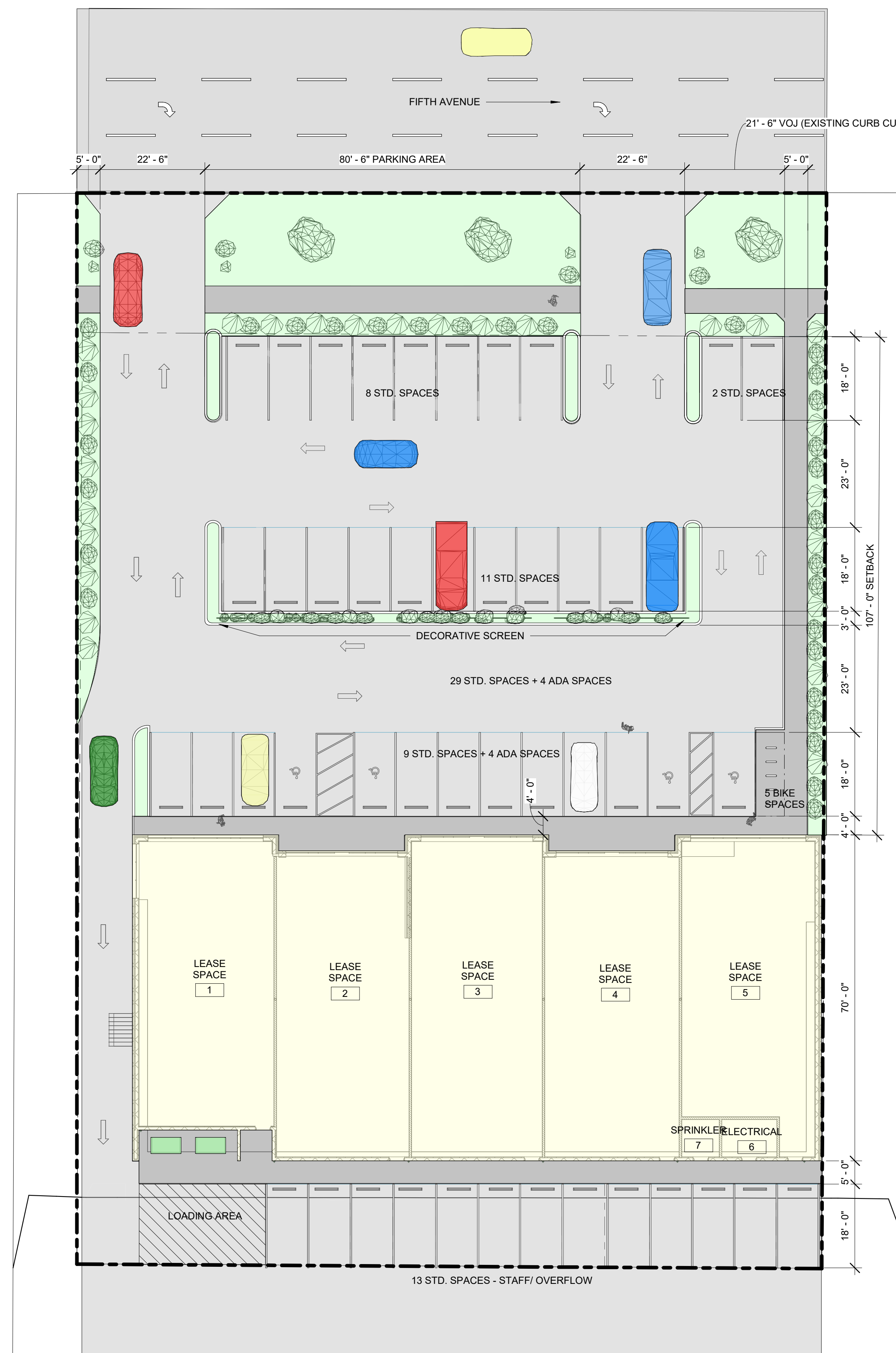
PRELIMINARY NOT FOR
CONSTRUCTION

SITE PLAN

C1.1

ETA PROJECT #: 2022-0926

DATE: JULY 16, 2024



1 SITE PLAN
C1.1 1/16" = 1'-0"



1 SOUTHEAST VIEW OF FRONT-2
A13.1C 12" = 1'-0"



2 SOUTHWEST VIEW-2
A13.1C 12" = 1'-0"



3 FRONT VIEW
A13.1C 12" = 1'-0"

5TH AVENUE
RETAIL
DEVELOPMENT

FOR MCGUIRE
REALTY CO.

5TH AVENUE
HUNTINGTON, WV 25701

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304.697.4991 facsimile



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SHEET REVISIONS

#	DATE	DESCRIPTION

PRELIMINARY NOT FOR
CONSTRUCTION

RENDERINGS

A13.1C

ETA PROJECT #: 2022-0926

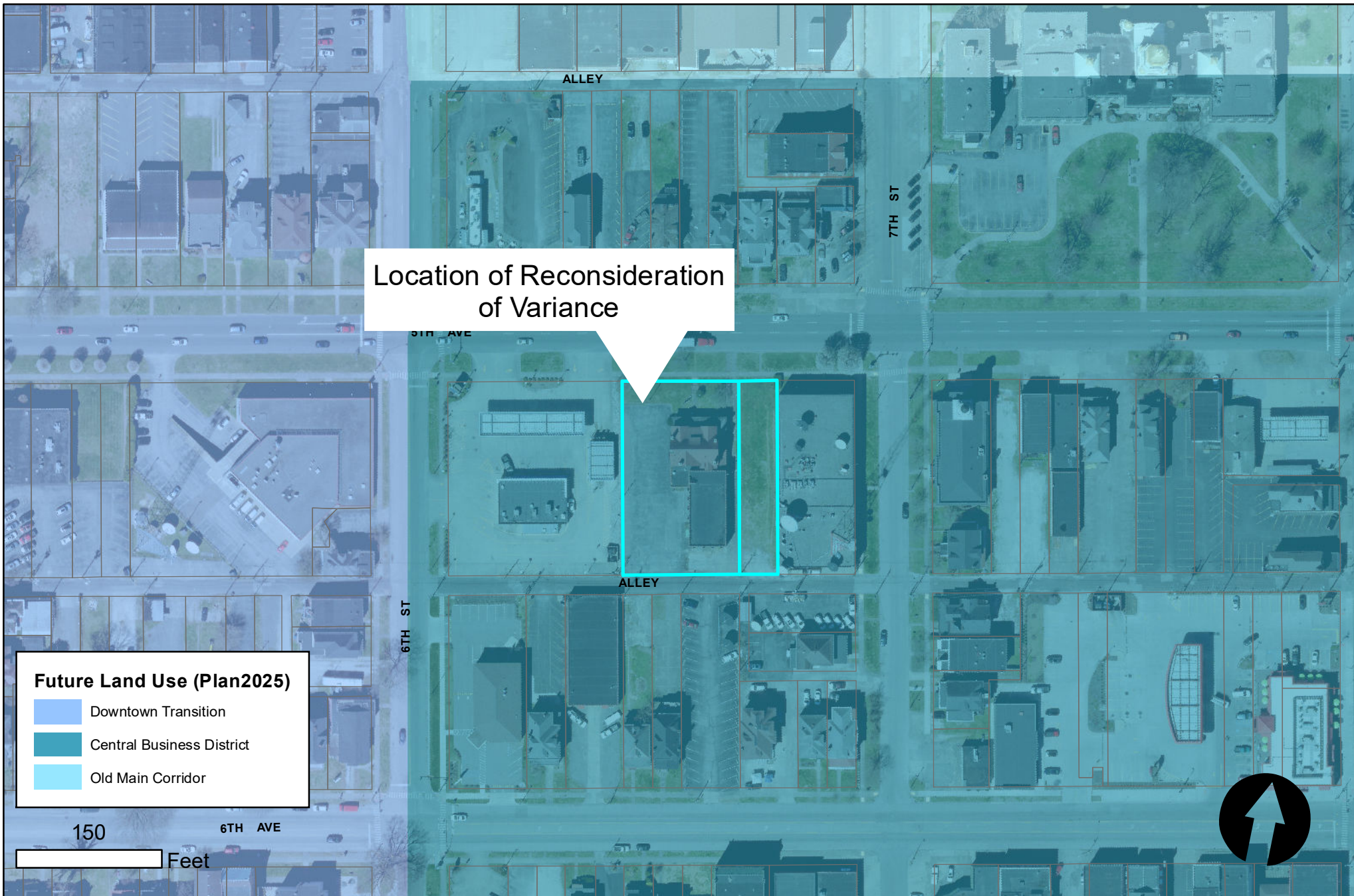
DATE: JULY 16, 2024



633 5th Avenue
Cabell County Tax District 7, Map 29
Parcels 107 and 106
BZA 24-23, 24-24, 24-25

A petition to request reconsideration based on new information of the June 16, 2024 decision of BZA 24-24, which was a denial of a variance to exceed the maximum allotted front yard setback in the C-3 Central Business District.

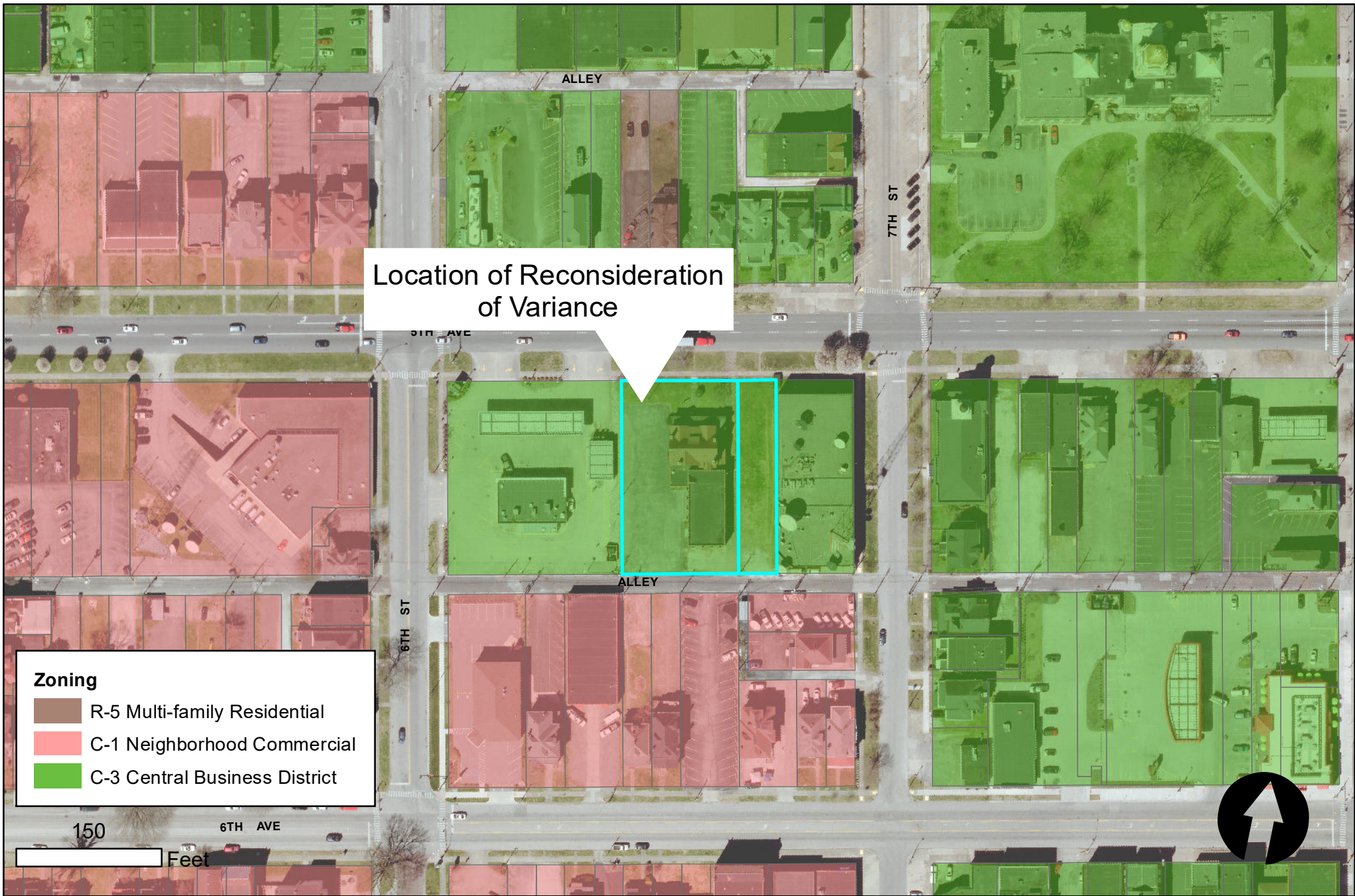




633 5th Avenue
 Cabell County Tax District 7, Map 29
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