

**Minutes
City of Huntington Board of Zoning Appeals
September 19, 2023**

A meeting of the City of Huntington Board of Zoning Appeals was held on September 19, 2023 at 5:30 p.m. in the City Hall Council Chambers. *Ms. Proctor* called the meeting to order.

Members Present: Jacqueline Proctor, Steven Yates, Sara Loftus

Members Absent: Gina Browning, Dan Earl

Staff Present: Cade Williams, Planner II
Bre Shell, Planning Director
Ericka Hernandez, Assistant City Attorney

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

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

BZA 23-V-27

A petition for a variance to allow a second driveway on the same parcel in an R-1 Residential District. The property is located on 2030 Military Road.

Property Owner/Petitioner: Kendall Staggs, 6900 Merritts Creek Rd., Huntington, WV

Ms. Shell presented the Staff Report.

Kendall Staggs, 2030 Military Road, began by describing the background to his scenario. He began by stating he was a victim of the ice storm from a couple of years ago. A tree fell on part of his house and he decided to renovate the home. During renovations he realized the part of the home impacted by the fallen tree was resting on top of a parking pad. His friend recommended he install a driveway for off-street parking. He disclosed the renters at this establishment never used the existing driveway and mentioned it is not big enough for parking modern-day vehicles. He apologized for laying the new, secondary driveway without a permit. He thinks there was a gravel driveway on the property at some point and mentioned him as well as his friends poured the driveway to allow for a future sidewalk and curb. He spoke to most of his neighbors and claims they support the second driveway. He stated this new driveway can park up to four cars. He also mentioned there were a handful of homes between this residence and Ritter Park with two driveways in the front yard or a double-lane driveway (original driveway is only wide enough for one vehicle).

Mr. Yates – Why did you decide to put in a new driveway in versus resurfacing or widening the current existing?

Mr. Staggs explained there a couple of reasons why he pursued this option. One of them being space allotted as he only has 2 feet from the original driveway to the neighbor's yard. The other reason is he already had a concrete pad (18' x 20') on the upper portion of the new driveway.

Ms. Proctor – So when did you pour this driveway?

Mr. Staggs stated he poured the driveway in March of this year.

Ms. Proctor – And when did you contact the city about inspecting it or looking at it? You said you had someone out?

Mr. Staggs explained he got a permit to work on the house prior to the second driveway. At the time of the permit he was not planning on installing a second driveway. However, he was told by the permit department as long as he was doing the work by himself he would be fine. He acknowledged he should have went back and added the driveway onto to the scope of his plans for the permit.

Ms. Proctor – Is your intention for your renters to park head-to-tail 2 cars or 3 cars?

Mr. Staggs explained you can fit on the pad 2 cars side-by-side and 1 on top of driveway. He stated you could fit another car on the driveway but that would block in the other cars.

Ms. Proctor – Is your intent for this driveway in anticipation of a larger family or larger group of people in the home to rent your home?

Mr. Staggs inclined this is not his intention and that he believes at one time there would be only 3 drivers in the home. He added he planned on the pad being used as a patio and to park 1 car.

Ms. Loftus – This house is up for sale right now?

Mr. Staggs confirmed the house is currently up for sale.

Ms. Proctor – I'm still curious did you ever not use that pad to park your truck off the street or is that not wide enough?

Mr. Staggs stated when he had a Toyota Camry he would park off the street every once in a while. This was really when he was out-of-town so his car would be off the street. He noted whenever you park in the current driveway there was a hill you would hit beside the path when you opened your door so you would have to squeeze out of the car. He stated another option would be to keep your right side wheels in the grass if you were to park on the driveway.

Ms. Proctor recommended to turn old garage into a sunroom as an extension to have more space.

Mr. Staggs presumes the space will be used by new buyers for lawn equipment.

Ms. Proctor closes window to public discussion and other board members state they have no issue with second driveway.

Ms. Shell disclosed her observation of the driveway layouts of nearby yards of local homeowners. Stated the zoning code is designed to prevent areas of conflict while providing an opportunity for off-street parking.

Ms. Proctor expressed concern of the inclusion of a second driveway to be too much of an instance of an exception that it would look odd.

Ms. Shell mentioned there are houses with driveways for off-street parking. Specified there is no alley for Mr. Staggs to enter as a way to exit driveway. She stated off-street parking in front of house is more common in this neighborhood compared to other parts of town that are flatter and more gridded.

Mr. Yates made a motion to approve BZA 23-V-27. Ms. Loftus seconded the motion.

Roll Call BZA; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

BZA petition for a variance was approved with a vote 3 Yes to 0 No. Ms. Proctor noted to let future owners know if they want to do future things to the property to inform the city.

BZA 23-V-28

A petition for a variance to exceed the maximum height requirement for a fence in a front yard in a C-3 Commercial District. The property is located at 623 Hal Greer Blvd.: also known as 621-625 Hal Greer Blvd.

Property Owner/Petitioner: Robert B. Gleason, 7 Bayberry Dr., Huntington, WV

Bob Gleason, 416 10th St, stated 13 years ago he cleared lot and built this apartment complex. He claims over the years random pedestrians have been coming up to the building to sit on the steps and linger around the premises. Presently, these non-permissive parties are going onto the property and are actively partaking in illegal drug activity. States some trespassers are getting into a blocked off area where utilities are located. He proclaims renters are moving out due to safety concerns. Additionally, he alleged a trespasser broke into a tenant's apartment recently. He also stated the fenced gate he wants to install in the front of the building is 15 feet from the sidewalk. Overall, he expressed the spot is troublesome, rough, and scary.

Ms. Loftus – Why won't they come in the back way... the vagrants?

Mr. Gleason confirmed there will be a fence on the back side of the building. He disclosed he was informed he could do it anytime.

Ms. Proctor – Who said you could do it anytime? Miss Bre?

Ms. Shell explained the height requirements for fencing in the rear weren't as stringent compared to the front side of the property. Mr. Gleason explained the front is most important but the back will be get attention. He added in the structure will look nice too.

Ms. Loftus – So the middle alley will have something towards the back?

Mr. Gleason exclaimed he will secure both the front and back of that alleyway that goes through the middle of the building. This will be done the same way and will look halfway decent. It finished with stating it will look nice.

Ms. Loftus – And so structurally does it have to go all the way up to the top? Because it does look a little weird compared to the road.

Mr. Gleason thought the design looked better this way as it would look flush with the façade of the building. He offered to bring it down some. He added that is how other ones have been done that he has seen.

Ms. Proctor – Miss Bre, does the back entrance need to be done simultaneously with the front?

Ms. Shell confirmed in a commercial district in the rear and side yards the maximum height allowed is 8 feet. The front yard shall not exceed 4 feet. The front and back fenced gates don't have to be done at the same time but probably will as it would make more sense. Mr. Gleason agreed and expressed a sense of urgency of building these fenced gates as soon as possible with potentially a week or so break in between the installation of the front and back fenced gates.

Mr. Yates – Is the rest of the fencing going to change or are you going to change that?

Mr. Gleason explained the fencing will stay the same, the exception will be a door will be added. The look will remain the same.

Ms. Proctor – A couple of things, Miss Bre how far back should the setback be? I mean I see the sidewalk, I see the number. How far should it be setback for this zone? Is the 15 feet correct? I mean we can't move the building it is already done.

Ms. Shell confirmed with Mr. Gleason the 15 foot is the distance of the public right of way in front of the building, the building and proposed fence is right up to the property line.

Ms. Proctor wanted to confirm this in case there were any issues.

Ms. Shell described the front yard is calculated from the property line. This does not include anything on the right-of-way.

Ms. Proctor knew from previous experience in different districts setbacks were taken into account and wanted clarification.

Ms. Shell explained this is nuanced because in commercial districts the setback is from the structure to the right-of-way. In this scenario there is no front yard: the property line is at the front of the structure. This is a different kind of scenario than would be seen in a typical residential area, especially because of the mixed-use of residential and commercial. She added the right-of-way is wide.

Ms. Proctor – Okay, my next question is... what is to stop a vagrant, or whomever, to go over the banister?

Mr. Gleason explains this is possible but won't be as likely to because of the effort that would be involved to do so. He added for him to do it he would need a step-ladder.

Ms. Proctor explained younger populations would be able to do so, even without a step-ladder.

Mr. Gleason explained you can only do so much to prevent people from coming in. Ms. Proctor agreed.

Ms. Proctor – What else is on your property that is security that gives your tenants confidence that they can live there on such a busy boulevard? Is there any other ring type of situation or is there any recording so you can protect your tenants or do you have anything like that?

Mr. Gleason states he does not but few other tenants have installed a ring doorbell.

Ms. Proctor asked from personal experience of a friend who has an issue who packages being stolen. It amazes her someone will steal a package without a second thought (the “pure audacity” for them to do this). Ms. Proctor questioned why he is only doing the fencing for security.

Mr. Gleason reiterated he did not come because of the packages; but because of the people shooting up or someone sleeping on the steps or sitting on the steps doing nothing as a result of trespassing. He added he recommends his tenants to have their packages sent to this jewelry store for security. It is on the tenants to come pick up their packages from the store.

Ms. Proctor – Do you know yet who is going to construct this fencing for you? And do you have the ability to vary it because as you know with the 2025 Plan and all the work being done on Hal Greer even though it is aggravating to a lot of people currently. It is going to be a better entrance as you come into our town... My point being is I’m not a big fan of this because it makes the area look industrial and while it is the C-1 district that it is, it doesn’t have to look like you are driving past “sing-sing”. I don’t want that I prefer not that... is there some other way or other design such as ...if you were to make the gate red here or I think you should make it white.

Mr. Gleason confirmed he was not going to make the fenced gate red. Mr. Gleason and Ms. Proctor agreed red would look ugly. Mr. Gleason confirmed structure will be white.

Ms. Proctor expressed that the current fencing on the front side of the building looks dreadful. She added as a community member she advocates anything that can be done to add to aesthetics for ourselves and visitors.

Ms. Proctor closes the public discussion. Ms. Loftus was concerned how it will look and Mr. Yates thinks Mr. Gleason will make it look nice. Ms. Proctor is also concerned with looks of final product. But, all board members did not object to the petition.

Mr. Yates made a motion to approve BZA 23-V-28. Ms. Loftus seconded the motion.

Roll Call BZA; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

BZA petition for a variance was approved with a vote 3 Yes to 0 No. Ms. Proctor noted to the petitioner to please keep beauty in mind.

BZA 23-V-29

A petition for a variance to build a 10’ by 18’ carport in the front yard in an R-1 Residential District. The property is located at 221 Baer St.

Petitioner: David Jones of General Building Supply, 618 7th Ave., Huntington, WV

Property Owner: Lorna Klein, 221 Baer St., Huntington, WV

Ms. Shell presented the staff report.

David Jones, 618 7th Ave., explained the owner is elderly and cannot walk stairs to get to the basement. He explained the logistics of the carport that will be placed in the front yard. States owner's carport would be white aluminum and does not block views from the physical sides so Ms. Klein can see traffic.

Ms. Loftus – Is this an accommodation for a disability?

Ms. Hernandez explained that would be through the Reasonable Accommodation Process not the Board of Zoning Appeals process.

Ms. Loftus expressed she thought this may be classified under that legislation. Ms. Hernandez stated that is a different legal process. Ms. Loftus thinks this petition may be reasonable due to the homeowner's age. Mr. Jones and Ms. Loftus agreed there is a safety concern for the elderly like the homeowner when they are exposed to inclement weather including an elderly person with disabilities.

Ms. Proctor – Is Reasonable Accommodation a part of our authority or someone else?

Ms. Hernandez explains this comes through her office. She explained the premises of a variance which is only allowed if conditions are present that are not caused by the landowner or some sort of hardship. For a reasonable accommodation she explained in general has to help relieve disability and proof must be provided how the accommodation would be allow the disabled person live more like the average individual.

Ms. Proctor – If we say yes we are confirming a reasonable accommodation, if we say yes but they have to go someplace else for reasonable accommodation?

Ms. Hernandez explained the petition of matter currently is a variance and reiterated the qualifications for a variance. She stated if this would come to her office she would request additional information so we could get the documentation needed for a proper analysis.

Ms. Loftus confirmed with Mr. Jones that the homeowner (Ms. Klein) cannot get to her basement where the garage is located due to physical limitations caused by aging. Ms. Hernandez offers to the board chairperson to go into executive session to provide additional legal counsel regarding variances and reasonable accommodations. Ms. Proctor (chairperson) agrees.

Ms. Loftus makes motion to go into executive session for legal advice. Mr. Yates seconds motion.

Roll Call Executive Session; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

Executive Session was approved with a vote 3 Yes to 0 No. Meeting was paused and legal advice was administered by Ms. Hernandez to board members. Only these parties were in council chambers at this time.

Normal session resumes.

Mr. Yates makes a motion to exit from executive session. Ms. Loftus seconds motion.

Roll Call to exit Executive Session; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

Mr. David Stone, 207 Baer St., came up in opposition of petition. He was shock this petition has made it this far. He explained the previous history of the property regarding the basement garage and driveway.

He would like to see a stairwell be installed instead. According to Mr. Stone, Ms. Klein had previously installed a patio in which she enclosed. This was located in the front yard and created a safety issue for any driver going by her house. To his knowledge the city made her tear the structure down.

Ms. Loftus – Are you the immediate neighbor to the right?

Mr. Stone his the location of his residence in comparison to Ms. Klein’s home.

Ms. Proctor – You’re indicating the parking pad in front of the house was not there 7 years ago?

Mr. Stone stated Ms. Klein installed the parking pad in the front yard when she moved in. Additionally, he noted once she put a cover over the patio (from the previous patio covering), the overhang became blinding.

Ms. Proctor – How far out does her roof extend out on the (existing) porch?

Mr. Jones stated the porch itself extends 6 feet, once the overhang is included the number raises to 7 feet.

Mr. Jones mention she from the road to the existing porch there is 11 feet Ms. Klein would like covered.

Ms. Proctor – To cover two cars, one which is on the longer side, she (Ms. Klein) wants a side-by-side?

Mr. Stone confirmed Ms. Klein would like to have a carport to cover two cars, one which is significantly longer.

Ms. Proctor closes window for public discussion.

Mr. Yates questioned if there was permission granted for the front yard pad/driveway. Ms. Shell has no reference of a permit being granted for the construction of the parking pad/driveway.

Ms. Proctor questioned if Mr. Jones can do something for his client as an alternative if the board rejected the petition. Ms. Hernandez disclosed that Ms. Klein would be able to apply for reasonable accommodation with the city.

Ms. Loftus makes a motion to approve the extension to be limited to 9 feet from the home.

Roll Call BZA; Mr. Yates, No; Ms. Loftus, Yes; Ms. Proctor, No.

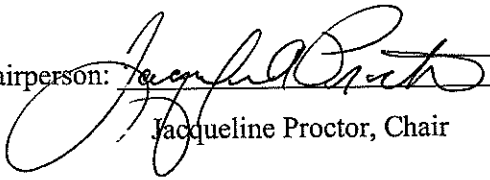
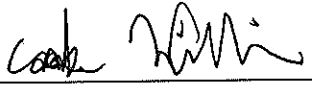
BZA petition for a variance was rejected with a vote 1 Yes to 2 No. Ms. Proctor noted Mr. Jones must talk to his client and figure out a potential alternative solution. Mr. Yates added for Mr. Jones to discuss with his client if the parking pad in the front yard was permitted to be installed.

Good and Welfare

Ms. Shell provided an update with the Planning and Zoning department in terms of hiring and expressed thankfulness for patience during this time of staff transitioning. Additionally, she did imply for now she will be the staff member from the department to speak upon BZA petitions until further notice.

Ms. Proctor expressed her gratitude for the department and offered the opportunity for advice on potential candidates to fill vacancies in the department. She also expressed appreciation for Ms. Hernandez's efforts.

Ms. Proctor adjourns the meeting at 7:25 p.m. Date approved: Oct 17, 23

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