

Minutes
City of Huntington Board of Zoning Appeals
August 17, 2021

A meeting of the City of Huntington Board of Zoning Appeals was held on August 17, 2021, at 5:30 p.m. in the City Hall Council Chambers. *Ms. Proctor* called the meeting to order.

Members Present: Jacqueline Proctor, Howard Anderson, Sherry Houck, Dan Earl

Members Absent: Isabell Cross, C.W. Dolin

Staff Present: Breanna Shell, Planning Director
Janney Lockman, Planner
Patricia Usher, Zoning Officer
Ericka Hernandez, Assistant City Attorney

Corrections to the Minutes were brought to the attention of staff prior to the meeting. *Mr. Anderson* made a motion to approve the Minutes as amended; *Ms. Houck* seconded the motion. The July Minutes were approved as amended.

Corrections to the Orders were brought to the attention of staff prior to the meeting. *Mr. Anderson* made a motion to approve the Orders as amended; *Ms. Houck* seconded the motion. The July Orders were approved as amended.

BZA 21-V-06

A petition for a variance from the fence materials limitations of Article 1341.19(C) (7) to install fabric around a chain link fence. The property is located at 2935 Washington Boulevard.

Petitioner/Property Owner: Lynn Kast, 2935 Washington Blvd., Huntington, WV 25705

The petitioner requested to have their petition moved to the end of the agenda, and there were no objections by any members of the Board.

BZA 21-A-02

An appeal of the requirement, decision, or determination made by the administrative official charged with the enforcement of the Zoning Ordinance, Article 1359.01.1 regarding continuation of conditionally-permitted uses of a LVL/bar. The property is located at 733 Washington Avenue.

Petitioner: Chris Johnson, 318 23rd St. W. Huntington, WV 25704

Property Owner: Ron Myers, 733 Washington Avenue, Huntington, WV 25701

Ms. Lockman presented the revised Staff Report.

Scott McClure, the petitioner's attorney, claimed that when looking for the continued use of a property, the activities of the previous business owner are not the determining factor. The determining factor would be whether the property was used. The property owner and the new lessee should not be punished for the actions of the previous business owner.

Mr. McClure presented the Board with a cease and desist order from the City of Huntington issued on September 3, 2020 and challenged the Board to consider how a business could receive such an order if

they were not operating. He reiterated his stance that “lawful operation” is not permissible and asserted that the city has methods for seeking compliance for outstanding fees.

Mr. Earl – There are three issue in this petition. The first, whether the business had ceased operation for 6 months or more; the second, whether the business was lawfully operating; and the third, whether the failure to be lawfully operating is a characterization of the prior owner or the current owner. Would you agree, Mr. McClure?

Mr. McClure agreed with *Mr. Earl's* analysis of the situation.

Mr. Earl – As I understand it, we are all in agreement on the 6 month issue, and it seems the city may have even conceded to the 6 month issue based on the evidence presented. The next two issues are strictly legal issues and it is not the power of this Board to make legal determinations. Is there a legal interpretation for “lawful” and whether it is a characterization of the prior or current owner?

Ms. Hernandez affirmed that there is not a definition of “lawful” at the city or state level. She explained that the administration has interpreted “lawful” as doing all that is needed to avoid getting Cease and Desist letters, such as having a business license and paying all fees and taxes in full.

Mr. Earl asked for clarification on the third issue. Ms. Hernandez explained that in this case, the administration looked at whether the business was operating lawfully until the time that Ms. Stanley ceased operations or was it lawful from the beginning. There is no question that Mr. Johnson took over operation in October 2020.

Mr. Earl requested clarification on when the prior owner ceased lawful operation and why. Ms. Hernandez pointed to the expiration of the business license on June of 2020. Ms. Lockman, referring to the affidavit provided by the Finance department, added that the last city service fee was paid on June 30, 2019. Ms. Hernandez explained that taxes are confidential and could not be discussed in an open meeting. If the Board wishes to discuss the taxes of the prior owner, they would need to agree to go into executive session. Ms. Lockman noted that the Finance department has the last payment made to the city as June 30 2019. No other payments were made to the city after that date.

Mr. Anderson – Mr. McClure, in the follow up letter from the last meeting you were informed that if the prior owner paid their outstanding fees, the current owner could continue the use. Has any attempt been made to pay the amount that is owed by Ms. Stanley?

Mr. McClure stated no attempt has been made to pay the outstanding fee and added that the use of property has no bearing on taxes and fees. He pointed out that Ms. Stanley has been working with Autism Services and they have been paying her city service fee. He questioned why the city has not verified that information.

Ms. Proctor closed the public hearing and discussion ensued.

Mr. Anderson – The purpose of this hearing is to decide whether staff made the right determination with the information they were given. There has been new evidence submitted and with that evidence we are supposed to make a decision on the staff's determination. Does the petitioner have the right to bring a petition before this Board if they are denied here tonight?

Ms. Hernandez confirmed that the petitioner does have the right to bring the applicable petitions for the use before the Board. *Ms. Proctor* added that the petitioner has always had the right to do so.

Mr. Earl made a motion to **grant the appeal** in BZA 21-A-02; *Mr. Anderson* seconded the motion.

Roll Call BZA: Ms. Houck, Yes; Mr. Earl, Yes; Mr. Anderson, No; Ms. Proctor, No

BZA 21-A-02 petition for an appeal **failed** with a tie vote of 2 Yes to 2 No.

BZA 21-C-07

A petition for a Conditional Use Permit to allow for a Junk Yard and Salvage Center in an I-1 Light Industrial District. The property is located at 841 Jackson Avenue.

Petitioner/Property Owner: William Brennan, 55 Adams Ave. Huntington, WV 25701

Ms. Lockman presented the Staff Report.

William Brennan, 55 Adams Ave., presented the petition, explaining that he was approached by the city for storing cars on the property and told that if he wished to continue to use the property in that manner he would need to apply for a Conditional Use Permit with the BZA.

Ms. Proctor – What is the intended use for the property?

Mr. Brennan explained that he would like to dismantle the vehicles and sell the parts online.

Mr. Anderson – Have you ever operated a junk yard or salvage center? Did it occur to you that the city would have regulations regarding this type of use?

Mr. Brennan told the Board that he had not operated a junk yard or salvage center in the past. He did know that the city would have regulation, but has yet to take action. He claimed that he is not running a salvage center on the property, but a parking lot.

Mr. Anderson – Do you own the buildings that are on the lot?

Mr. Brennan told the Board that he is still owes money for the property, but that he does own the parking lot and the buildings.

Mr. Anderson – Were you given the drawing by Planning Staff that outlined the very limited area where cars could be stored?

Mr. Brennan confirmed that he had seen the drawing. *Mr. Anderson* expressed his concern that there is not enough usable space on the property for him to conduct his business without demolishing at least some of the current structures and asked if Mr. Brennan had any intention of demolishing any of the structures. Mr. Brennan told the Board that he would if it became necessary.

Shannon Harshbarger, 722 Jackson Ave, located across the street from the petitioner's property, has lived on Jackson Ave. for more than 45 years. He described the neighborhood as an island in a sea of industrial zoning. He listed several of the businesses in the area and indicated that they were all businesses that have been good neighbors and are contained on their own properties. He reminded the Board that Mr. Brennan has no idea what his business will entail. Mr. Harshbarger referenced the letter that was submitted by his neighbor, Ms. Maynard, detailing how this business does not meet current ordinances.

Charlie Fudge, 721 Jackson Ave., next door to the petitioner's property, has lived on Jackson Ave. for 59 years. He told the Board that his bedroom faces the property and he is fond of keeping his windows open to enjoy the fresh air. Due to health conditions, and many other factors, such as noise and rodents, he believes that this use will be detrimental to his health and the neighborhood.

Frank Ferguson, 718 Jackson Ave., has lived in the neighborhood for 74 years. In referencing the considerations the Board must examine for a Conditional Use, he asserted this use violates all of them. He is strongly against this petition being approved.

Dena Bartrum, 721 Jackson Ave., does not believe that this is the right neighborhood for a salvage yard. The petitioner does not maintain his property and the weeds are overgrown and encroaching onto her property.

Ms. Lockman summarized the letter from Ms. Maynard.

Ms. Proctor closed the public hearing and discussion ensued.

Mr. Anderson – This is not an appropriate business for this neighborhood. There is not enough room for the business to operate and I do not believe this is a viable property for what is being proposed.

Ms. Houck – I do not believe Mr. Brennan has a good handle on what it is he is wanting to do there and I do not believe this would bring value to the neighborhood.

Mr. Earl – The petition would only need to fail one of the criteria to be denied their petition, but as Mr. Ferguson pointed out, this proposal fails all of them.

Mr. Earl made a motion to **approve** BZA 21-C-07; *Mr. Anderson* seconded the motion.

Roll Call BZA: Mr. Earl, No; Mr. Anderson, No; Ms. Houck, No; Ms. Proctor, No

BZA 21-C-07 petition for a conditional use was **denied** with a vote of 0 Yes to 4 No.

BZA 21-C-08

A petition for a Conditional Use Permit to allow for a Medical Clinic in a C-1 Neighborhood Commercial District.

BZA 21-V-08

A petition for a variance from the height limitations of Article 1327.02 to build a six (6) story building in a C-1 Neighborhood Commercial Zone. The property is located at 1340 Hal Greer Boulevard.

Petitioner: Josh Dygart, 1401 6th Ave. Huntington, WV 25701

Property Owner: Cabell Huntington Hospital, 1340 Hal Greer Blvd. Huntington, WV 25701

Josh Dygart, 3626 Piedmont Rd., presented the petition, informing the Board that the hospital is proposing a new clinic to be located in a section of the existing parking lot. He briefly listed some of the services that would be provided and explained how this proposal is in line with Plan 2025.

Ms. Proctor closed the public hearing and discussion ensued.

Ms. Proctor – The building will be 6 stories? What will be the specific uses in the building?

Mr. Dygart explained there will 5 floors for medical use and the 6th floor will be the mechanical penthouse. He then went on to summarize the specific uses of each floor.

Ms. Proctor – How will the lost parking spaces be compensated?

Mr. Dygart assured the Board there is nearly a one for one replacement with the leased spaces in the 15th Street Marshall Health parking lot.

Ms. Lockman presented the Staff Report

Ms. Proctor – How close will this building be to the residential area of Fairfield?

Mr. Dygart illustrated that the new building is farther away from the neighborhood than the next closest medical building.

Mr. Anderson made a motion to **approve** BZA 21-C-08 and BZA 21-V-08; *Mr. Earl* seconded the motion.

Roll Call BZA: Ms. Houck, Yes; Mr. Earl, Yes; Mr. Anderson, Yes; Ms. Proctor, Yes

BZA 21-C-08 petition for a conditional use and BZA 21-V-08 a petition for a variance was **approved** with a vote of 4 Yes to 0 No.

BZA 21-V-06

A petition for a variance from the fence materials limitations of Article 1341.19(C) (7) to install fabric around a chain link fence. The property is located at 2935 Washington Boulevard.

Petitioner/Property Owner: Lynn Kast, 2935 Washington Blvd., Huntington, WV 25705

Lynn Kast, 2935 Washington Blvd., presented the petition, and provided the Board with a picture of the fabric on her fence before it was taken down. She explained that she did not want to use slats in the fence because her dog liked to yank them out and chew on them. Ms. Kast chose the fabric because it would be located on the outside of the fence where her dog would not be able to get to it.

Ms. Lockman presented the Staff Report.

Mr. Anderson – Who were your contractors for the fence? A Plus Contracting?

Ms. Kast explained that she went through Lowes for the materials and construction of her fence. Lowes hired the contractors who, she found out later, did not get a permit or tell her about the zoning regulations prohibiting the fence material.

Mr. Proctor – Have you explored other options for privacy in your back yard? Did A Plus provide you with other options for privacy, such as the wooden fences that are common in the neighborhood?

Ms. Kast explained that she had not considered other options because she believed the fabric would be okay. She claimed she was able to use fabric on her fence at her last home in Virginia. She had considered a wooden privacy fence, but due to cost and the potential that the wooden fence would trap in heat, she decided against a solid wooden fence.

Ms. Kast explained that the contracting company knew two months in advance they would be building her fence and did not get a permit or inform her of the regulations in the city. By the time they were ready to do the work, she had purchased all of the materials.

Mr. Earl – There are not objections from the neighborhood? This is a tough call.

Ms. Proctor – This would set a bad precedence if approved.

Mr. Anderson – There is a reason the ordinance objects to this type of material being used, and I agree with that. I do not believe the material is appropriate.

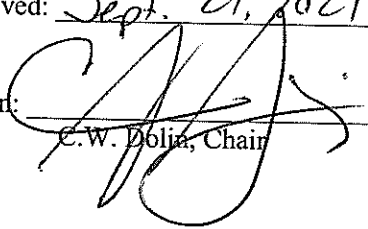
Mr. Anderson made a motion to **approve** BZA 21-V-06; *Mr. Earl* seconded the motion.

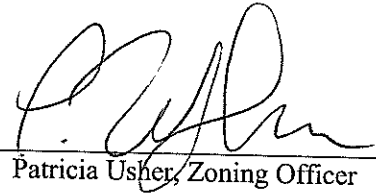
Roll Call BZA: Mr. Earl, No; Ms. Proctor, No Mr. Anderson, No; Ms. Houck, No;

BZA 21-V-06 petition for a variance was **denied** with a vote of 0 Yes to 4 No.

The meeting concluded at 7:00 p.m.

Date approved: Sept. 21, 2021

Chairperson: 
C.W. Dolja, Chair

Prepared by: 
Patricia Usher, Zoning Officer