



Agenda
Huntington Board of Zoning Appeals
Tuesday, July 20, 2021 - 5:30pm

1. Call to Order
2. Roll Call
3. Approval of the June Minutes
4. Approval of the June Orders
 - BZA 21-C-04
 - BZA 21-V-05
5. New Petitions

BZA 21-C-06

Issue: A petition for a Conditional Use Permit to allow for a Day Care in a R-2 Residential District. The property is located at 1309 18th Street.

Petitioner: Marcelena White 1309 18th Street, Huntington, WV 25701

Property Owner: Jerrod Sneed 1309 18th Street, Huntington, WV 25701

BZA 21-A-02

Issue: 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

BZA 21-V-06

Issue: 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

BZA 21-V-07

Issue: A petition for a variance from Article 1345.12(E) to use a non-conforming sign cabinet that exceeds the size requirement for a wall sign in a C-1 commercial zone more than six months after discontinuation of use. The property is located at 2501 Washington Boulevard.

Petitioner: Paris Signs, 2500 5th Street Road, Huntington, WV 25701

Property Owner: 402 Holdings, 2189 Kennon Lane, Huntington, WV 25705

BZA 21-A-03

Issue: An appeal of the requirement, decision, or determination made by the administrative official charged with the enforcement of the Zoning Ordinance Article 1320 denying continuation of an alleged non-conforming use of a duplex in an R-2 Single-family Residential District. The property is located at 2687 Collis Avenue.

Petitioner/Property Owner: Thor Meeks, P.O. Box 1046, Hurricane, WV 25526

6. Announcements/Discussion
7. Adjournment

Minutes
City of Huntington Board of Zoning Appeals
June 15, 2021

A meeting of the City of Huntington Board of Zoning Appeals was held on June 15, 2021 at 5:30 p.m. in the City Hall Council Chambers. *Mr. Dolin* called the meeting to order.

Members Present: Isabell Cross, Lee Canup, C.W. Dolin

Members Absent: Howard Anderson, Dan Earl, Jacqueline Proctor

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

Hearing no corrections or objections, *Mr. Dolin* approved the May Minutes.

Hearing no corrections or objections, *Mr. Dolin* approved the Orders.

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

There was no one present to represent the petition at the time of the public hearing.

Ms. Canup made a motion to move the petition to the end of the meeting to allow time for a representative to arrive; *Ms. Cross* seconded the motion.

Roll Call BZA: Ms. Canup, Yes; Ms. Cross, Yes; Mr. Dolin, Yes

BZA petition was moved to the end of the agenda with a vote of 3 Yes to 0 No.

BZA 21-C-04

A petition for a Conditional Use Permit to allow for a Bar to be located in a C-3 Central Business District. The property is located at 1518 4th Avenue.

Petitioner: Evan Fonner, 5269 Doc Bailey Rd., Cross Lanes, WV 25313

Property Owner: Frank Fuscardo, 124 Stanford Park Dr., Huntington, WV 25705

Evan Fonner presented the petition and began by describing his history in the restaurant industry. He told the Board that he rebranded his business, Bombay Smokehouse, to Premier Pub and Grill in order to bump his business up higher on the charts of the app Grubhub. He briefly described his full service menu. The purpose for the conditional use request is to become a bar in order to keep the business open on nights when alcohol sales exceed food sales. Mr. Fonner explained that in the time that the business has been there have been no instances of violence or the need for police interference.

Mr. Dolin – Will your hours change with the shift to being a bar?

Mr. Fonner explained that he hopes to be open more hours with the change and the opening up of businesses post pandemic. He was forced to cut back during pandemic and the reopening has seen a change in staff and shorter hours. His hope is to be open 12 pm – 2 am, Monday – Saturday.

Ms. Cross – You currently serve alcohol now, correct?

Mr. Fonner confirmed that his establishment does serve alcohol.

Ms. Canup – There is a condition here in the report that states that you will have to change your current signage. Could you speak to that and explain what you are required to do?

Mr. Fonner explained that the signage is required to be more transparent. The way it is now, the windows are completely covered in stickers. He assured the Board the stickers would be removed and replaced with signage that meets this requirement and is comfortable with the changing of the signage being a condition of an approval.

Ms. Cross – Will there be any changes to the interior of the establishment? Do you plan to arrange live music or dj nights? What do you want to accomplish becoming a bar when you already serve alcohol?

Mr. Fonner explained that he does not intend to change his business model. The switch to a bar would allow him to remain open in the scenarios where alcohol sales exceed food sales. With the reopening of businesses and the loosening of restrictions, the business has not recovered well and food sales are lower than alcohol sales. He has several booths and tables and seating at the bar. He has televisions around the establishment that play sports and stream video games.

Ms. Lockman presented the Staff Report.

Lowell Austin, 1530 4th Ave, is a resident close to the proposed bar location and is concerned about fights spilling onto the street, loud music being play well after the bar has closed, and the trash that is created by the patrons once they leave the bars. He assured the Board that he does want the business to succeed.

Ms. Cross – Will there be security at the bar?

Mr. Fonner explained that he has one security personnel employed at this time that works in the evening on weekends and checks bags. He has not had a problem with violence in the three years that he has been open at the current location and does not see a need to increase security at this time.

Ms. Canup – What are the duties of the security staff? How do they ensure safety?

Mr. Fonner stated that security checks all bags entering the establishment and checks for valid identification to ensure the patrons after 10:30 are old enough to consume alcohol.

Mr. Dolin – When do you intend to stop serving food under this new designation as a bar?

Mr. Fonner does not intend to stop serving food at any time during hours of operation.

Ms. Cross – Will you be implementing more security measures if granted the bar status?

Mr. Fonner does not feel that he will need increased security. He claims that his clientele are not the type to cause violence and he does not believe that the business will change much from the way it is now, but he is willing to be adaptive if the need should arise for greater security.

Mr. Dolin closed the public hearing and discussion ensued.

Ms. Canup is sympathetic to the food to alcohol ratio that is limiting his hours of operations, but questions if the current coverings on his windows played a negative role in the success of his business. She believes that the change in signage will be good for his establishment overall and is comfortable approving his request to be classified as a bar.

Ms. Cross echoed *Ms. Canup's* words, agreeing with and approval of the bar status.

Mr. Dolin was also in agreeance and added that he is pleased with the inclusion of food during open hours as many have requested bar status and eliminated the food which in turn changed the way the establishment is viewed by the patrons.

Ms. Canup made a motion to approve BZA 21-C-04; *Ms. Cross* seconded the motion.

Roll Call BZA: Mr. Cross, Yes; Mr. Canup, Yes; Mr. Dolin, Yes

BZA petition for a Conditional Use Permit was **approved** with a vote of 3 Yes to 0 No.

BZA 21-C-05

A petition for variance from Article 1337.02.H requiring parcels in the B&O Right-of-Way Special Zoning District to have driveway access by Bradley Road only. Petitioner seeks to have driveway access on Waverly Road. The property is located between Bradley Rd and Waverly Rd, west of Carson St. in Wayne County.

Petitioners/Property Owners: Tracy Fuller & Andrew Batista, 529 Jefferson Rd., Huntington, WV 25704

Tracy Fuller and Andrew Batista presented the petition. *Ms. Fuller* excitedly informed the Board that she purchased the lots, combined them, and bought a manufactured home to put on the lots and intends to make it all look very nice. She explained that the request to enter from Waverly Rd. is due to the parking on Bradley. Her house would be the only structure on the south side of the road and the parking is located on the south side of the road making it challenging to turn into from off of the road. Additionally the slope of the property would increase the cost for her to build a driveway.

Mr. Batista further justified the request for the entrance on Bradley Rd. explaining that Bradley Rd. has a curb that would also add to the expense of the driveway. He assured the Board of his willingness to comply with all regulations with the city and the state and indicated that he moved the driveway further east than was required by the DOH.

Ms. Lockman Began the presentation of the Staff Report by explaining that the B&O Right-of-Way District has unique restrictions. She confirmed that the petitioners have been working with the city and the state in order to meet all regulations for their proposed development. She explained that their request with the DOH is called an Encroachment Permit which requires a review of the plans and site by the DOH for determination.

Mr. Dolin closed the public hearing and discussion ensued.

Ms. Canup expressed her bewilderment at the differences in regulations for the zone and advised the petitioners to turn at their own risk off of Waverly.

Mr. Dolin noted that this is a unique piece of property and believes that a home is a great use of the land.

Ms. Cross is concerned there will be people that will try to use their driveway to access Bradley Rd.

Ms. Cross made a motion to conditionally approve BZA 21-V-05 on the condition that the DOH approve of the driveway access off of Waverly; *Ms. Canup* seconded the motion.

Roll Call BZA: *Ms. Canup*, Yes; *Ms. Cross*, Yes; *Mr. Dolin*, Yes

BZA petition for a Variance was **conditionally approved** with a vote of 3 Yes to 0 No.

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. Hernandez informed the Board that she contacted the petitioner’s representation and they were under the impression that their request would be on the July agenda.

Mr. Dolin stated that he would normally lean toward striking the item from the agenda, but would be willing to entertain laying the petition over to the July meeting if someone made a motion.

Ms. Hernandez cautioned the Board about the ongoing nature of this issue, informing them that the petitioner’s request for the LVL/Bar was first submitted in January and the appeal was submitted in April right after the May deadline had passed.

Ms. Canup is willing to layover the petition if they intend to show up in July, but believes it should be stricken if they do not show.

Ms. Canup made motion to layover the petition until the July agenda; *Ms. Cross* seconded the motion.

Mr. Dolin reiterated that the petition would be stricken if there is a second no show for the petition.

Roll Call BZA: *Ms. Cross*, Yes; *Ms. Canup*, Yes; *Mr. Dolin*, Yes

BZA petition for an Appeal was **laid over** with a vote of 3 Yes to 0 No.

The meeting concluded at 6:20 p.m.

Date approved: _____

Chairperson: _____ Prepared by: _____
C.W. Dolin, Chair Patricia Usher, Zoning Officer

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

BZA 21-C-04

Owner: Frank Fuscardo, 124 Stanford Park Dr., Huntington, WV 25705

Petitioner: Evan Fonner, 5269 Doc Bailey Rd., Cross Lanes, WV 25313

Subject Property: 1518 4th Avenue

A petition for a Conditional Use Permit to allow for a Bar to be located in a C-3 Central Business District.

Individual Speaking on Behalf of Petition: Evan Fonner

Other Interested Parties:

ORDER

On June 15, 2021, Mr. Fonner appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 21-C-04. Other citizens were permitted to voice their positions as well, per the practice of this Board, and one individual provided testimony.

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.

FINDINGS OF FACT

After reviewing all evidence at the May 25, 2021 meeting and hearing testimony from Mr. Fonner, the Board finds as follows:

1. Frank Fuscardo is the property owner.
2. Evan Fonner is the petitioner.
3. This establishment is currently permitted to operate as a restaurant serving alcoholic beverages.
4. Petitioner represented that in all the time he has operated this establishment, there have been no instances of violence or police involvement.
5. The property is zoned C-3, as are all adjacent properties.
6. The lot is approximately 4,800 sf.
7. Petitioner represented that he has to limit operating hours to stay within the limit of serving less alcohol than food and other beverages.

CONCLUSIONS OF LAW

The Board is comfortable that the proposed change in use meets the standard for a Conditional Use. Operation of a bar and restaurant in the C-3 district is in line with the Comprehensive Plan. Since this business has been operation for a few years now with no instances or violence or need for police action, the Board is satisfied that the public health, safety, and general welfare shall be preserved, that the use and enjoyment of other properties in the immediate vicinity would not be injured, and that the normal and orderly development and improvement of surrounding properties will not be effected. Lastly, the Board sees no negative impact on either access or traffic.

Based on the above, the Board concludes the Conditional Use Permit would be a reasonable use of the property.

DECISION

THEREFORE, based on the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 21-C-06 for a Conditional Use Permit for a Bar.

ENTERED

Date

Chairperson: _____ Prepared by: _____
C.W. Dolin, Chair Patricia Usher, Zoning Officer

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

BZA 21-V-05

Petitioner/Property Owner: Tracy Fuller and Andrew Batista, 529 Jefferson Rd., Huntington, WV 25704

Subject Property: located between Bradley Rd. and Waverly Rd., west of Carson St. in Wayne County

A petition for a **Variance** from *Article 1337.02.H* of the City of Huntington Zoning Ordinance requiring parcels in the B&O Right-of-Way Special Zoning District to have driveway access by Bradley Road only. Petitioner seeks to have driveway access on Waverly Road.

Individual Speaking on Behalf of Petition: Tracy Fuller and Andrew Batista

Other Interested Parties: None

ORDER

On June 15, 2021, Ms. Fuller and Mr. Batista appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 21-V-05. Other citizens were permitted to voice their positions as well, per the practice of this Board, and no individuals provided testimony.

When hearing 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. In determining this, the Board must find that such Variance will not:
 - a. Alter the land use characteristics of the district;
 - b. Impair the adequate supply of light and air to adjacent property;
 - c. Increase the hazard from fire, flood, and other dangers of said property;
 - d. Diminish the marketable value of adjacent lands and buildings; or
 - e. Increase the congestion of the streets;
 - f. Otherwise impair the public health, safety, convenience, comfort, or general welfare;
2. That the Variance arises from special conditions or attributed 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.

FINDINGS OF FACT

After reviewing all evidence at the June 15, 2021 meeting and hearing testimony from Ms. Fuller and Mr. Batista, the Board finds as follows:

1. Tracy Fuller and Andrew Batista are the petitioners and property owners.
2. The property is zoned B&O Right-of-Way Special Zoning District.
3. Waverly Road is a state highway Right-of-Way.

4. The lot is approximately 26,175 sf.

CONCLUSIONS OF LAW

The Board is satisfied by the evidence presented that the rights of adjacent property owners will not be impacted negatively, the land use characteristics of the district will not be altered, the supply of light and air to adjacent property will not be impaired, and the variance would not diminish the marketable value of adjacent lands and buildings. The Board observed that the B&O Right-of-Way District has unique regulations compared to the rest of the districts, and although the petition does not arise from special conditions created by the property, the Board believes that granting a conditional approval would allow the intent of the Zoning Ordinance to be observed and substantial justice done. Therefore, the approval of the variance 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 **CONDITIONALLY APPROVES** petition BZA 21-V-05 for a **Variance** with the condition that the Department of Transportation also approve driveway access onto Waverly Rd. Any changes that deviate from what has been approved and does not meet the zoning regulation must come back before the BZA for approval.

ENTERED

Date

Chairperson: _____ Prepared by: _____
C.W. Dolin, Chair Patricia Usher, Zoning Officer

Staff Report A petition for a Conditional Use Permit to allow for a daycare in an R-2 Residential District.

Legal Ad

BZA 21-C-06

A petition for a Conditional Use Permit to allow for a Day Care in an R-2 Residential District. The property is located at 1309 18th Street.

Petitioner: Marcelena White, 1309 18th Street, Huntington, WV 25701

Property Owner: Jerrod Sneed, 1309 18th Street, Huntington, WV 25701

Introduction

Marcelena White is petitioning to allow a day care to be located in an R-2 Residential District.

Existing Conditions / Background

Ms. White approached the Planning and Zoning office to apply for a permit to operate a day care at 1309 18th Street as a Home Occupation. However, through further questioning and discussion, it was determined that the proposed business does not meet the definition of a day care as a home occupation. Per *Section 1341.13* of the zoning code, a *Day Care Center as an Accessory Use to a Residential Use*, a maximum of six children under age 15 may be cared for in any dwelling unit, in addition to children who are residents of the dwelling. Ms. White recently received certification from the state to expand her day care operation to up to 12 children with additional staff; a home occupation only allows for a maximum of 6 children with only one additional staff member.

Proposed Conditions

The petitioner proposes to operate a day care at this site that would serve up to 12 children at a time with two additional staff members. The appearance of the structure would not be altered; however, a fence will be installed to ensure safety for children during outdoor play. Parking is available both in the driveway for the house and on-street at this location.

Zoning Ordinance

Per *Article 1320*, a day care for children or adults is a conditionally permitted use in the R-2 residential district.

Per *Article 1341.09*, all day care facilities must adhere to the following:

- Use shall comply with any applicable county, state, and federal regulations including registration certificate or license.
- Convenient parking shall be provided for drop-off or pick-up.
- The use shall have a lot area of at least 8,000 square feet.
- Use shall have adequate measures to ensure the safety of children from traffic or other nearby hazards.
- The condition regarding outdoor play area setbacks from abutting dwellings does not apply in this proposal as there will be fewer than 25 children at the facility.
- In residential districts, any permitted day care center shall maintain an exterior appearance that resembles

and is compatible with any existing dwellings in the neighborhood.

Attachments

Please see attached Aerial, Zoning, Context, and Future Land Use Maps for reference.

Staff Comments

Plan2025 designates this property as Traditional Residential. This designation calls for medium density residential development that is walkable, with sparse commercial development with conditions. Therefore, staff feels that the use is in line with the comprehensive plan. Staff feels that the proposed use will have a positive impact on the public health, safety, and welfare in the neighborhood; would not create potential injury to the use and enjoyment of other properties; or negatively impact the normal and orderly development of the area.

Pictures



1309 18th Street: Location of Proposed Day Care

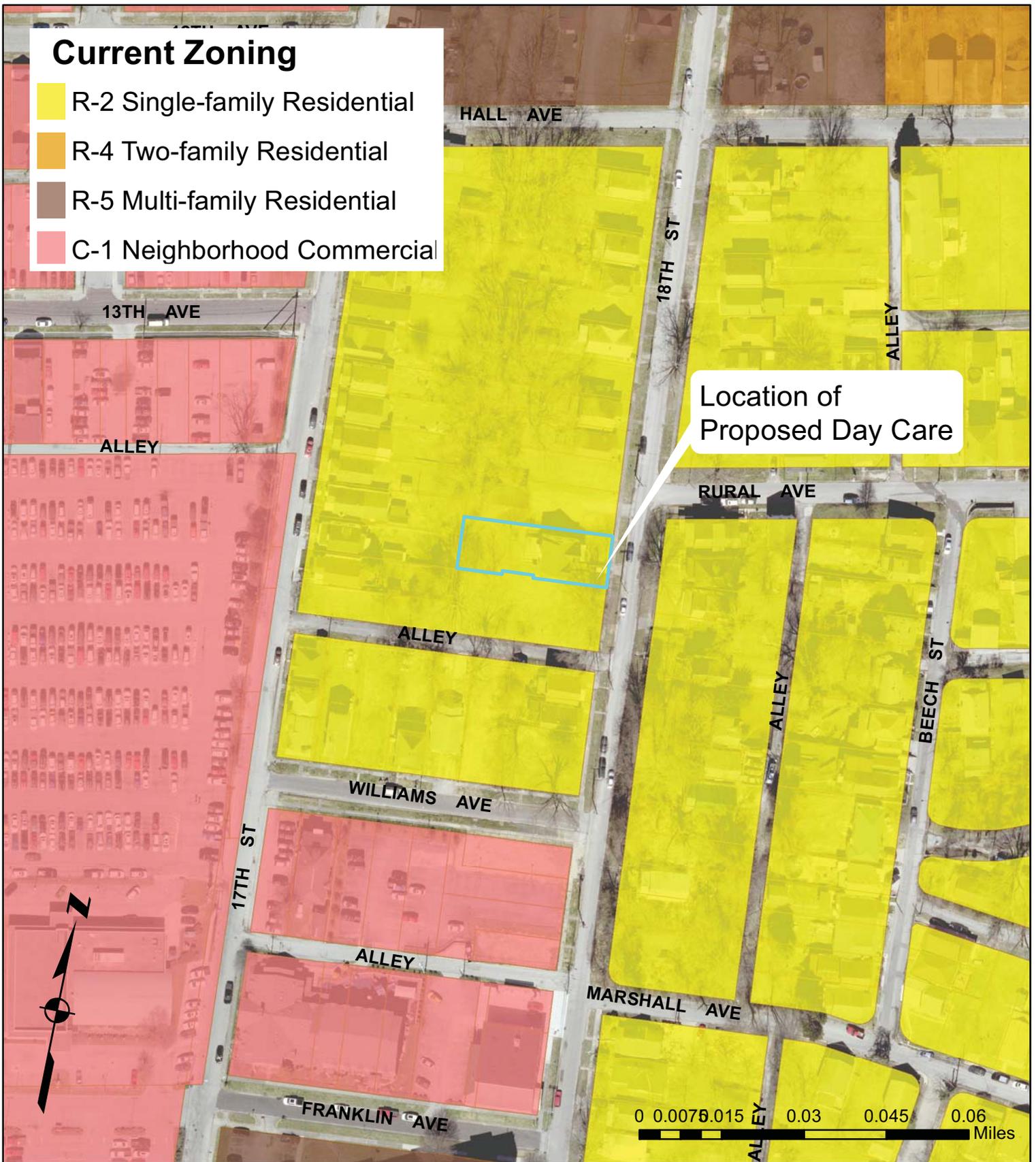
Summary / Findings of Fact

1. Jerrod Sneed is the property owner.
2. Marcelena White is the petitioner.
3. The property is zoned R-2 Residential, as are all adjacent properties.
4. The petitioner is requesting to open a day care in an R-2 Residential District
5. The lot is approximately 8,900 sf.



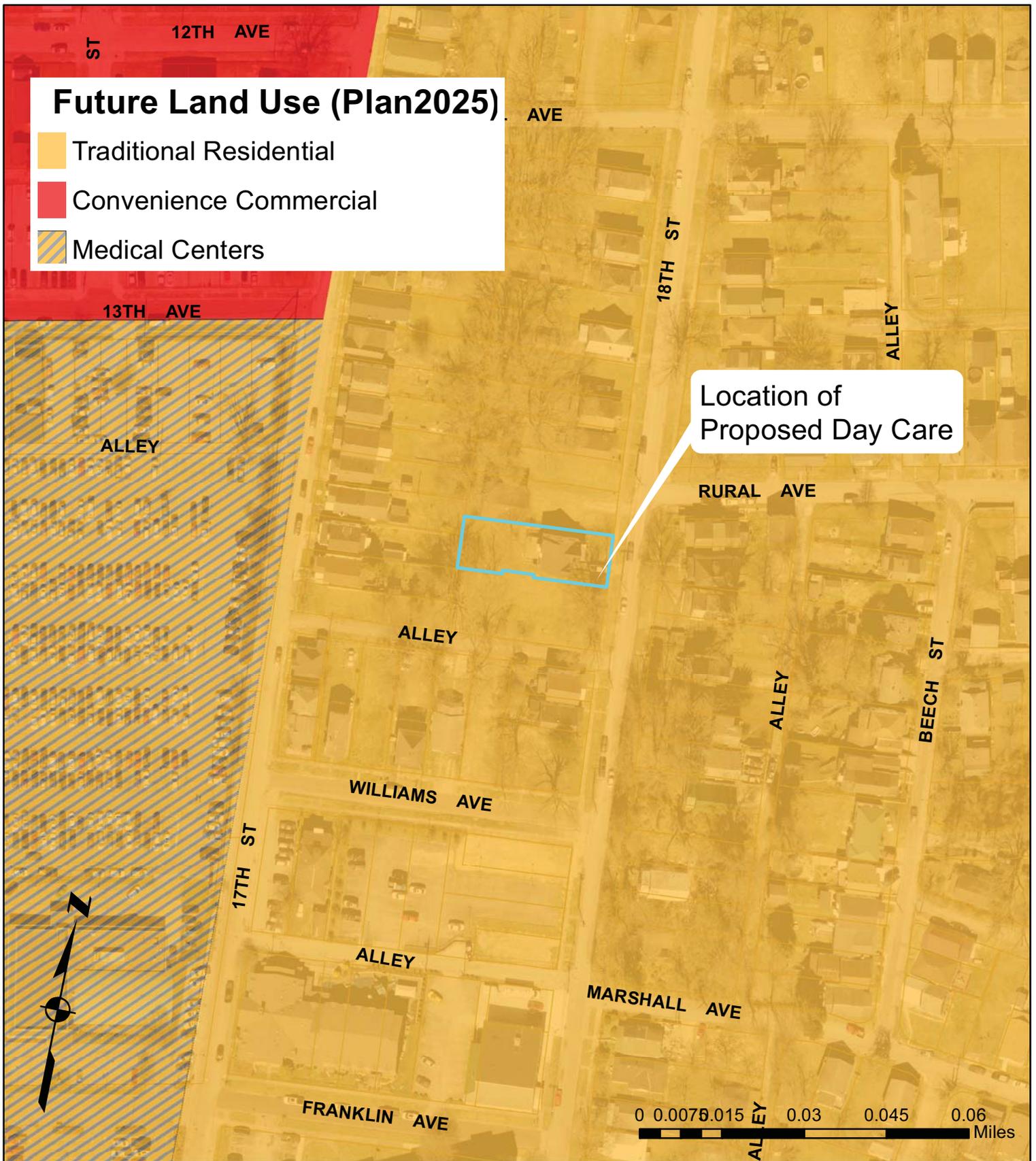
1309 18th Street Conditional Use for a Day Care in a Residential District





1309 18th Street Conditional Use for a Day Care in a Residential District





1309 18th Street Conditional Use for a Day Care in a Residential District





APPLICATION FOR
CONDITIONALLY
PERMITTED USE

Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3

Applicant Name: Marcelena White Phone: 304.412.6984

Address (city, state, zip): 1309 18th St. Huntington WV 25701

Email: marcywhite27@yahoo.com

Property Owner (if applicable): Jerrod Speed Phone: 304.962.2729

Address (city, state, zip):

Please list the Location (address) and Description (Tax Map Number, Parcel, and Lot.):
05-76-589

Description

Under the terms and conditions indicated in Article 1359 of the Zoning Ordinance, application is hereby made for a Conditional Use pursuant to Article 1320 to allow the following:

Day care in an R-2 Residential District

The following exhibits are to be attached and made part of this application:

- Site Plan of Real Estate involved (if applicable): Drawn to Scale with scale shown, 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).
Valid State or Federal Photo ID.
Any and all documentation and evidence to support the request.
Treasurers Receipt for One Hundred Sixty Dollars (\$160.00) filing fee for each Conditional Use sought.

All of the above documentation is to be submitted to the Planning Commission office by June 15, 2021. Incomplete documentation will delay applicants review by the Board of Zoning Appeals.

Notice of Procedure

I/We, the undersigned am/are aware that the Board of Zoning Appeals will hold a public hearing on the request for a Conditional Use on Tuesday, July 20 at 5:30pm in City Hall Council Chambers. It is my responsibility to attend (or send a representative/agent) to this meetings to present plans and to answer any questions regarding the request for a Conditional Use.

Signature of Applicant: Marcelena White

Date: June 8, 2021

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

FOR OFFICE USE
Received: 6/8/21
Staff Initials: JZ
Project Number: 21-C-0506
Meeting Date: 7/20/21

BZA Decision:
o Approved
o Denied
o Approved with conditions
Conditions:



APPLICATION FOR CONDITIONALLY PERMITTED USE

Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3

Attachment A

In making its decision to approve or deny a request for Conditional Use, the Board of Zoning Appeals must consider the following six issues. Please provide a written statement how the proposed Conditional Use will affect each of these considerations.

1. Effect upon the Comprehensive Plan (available online or from the Planning and Zoning Office).

This will not change the residential part of the neighborhood.
It will remain to appear as a home.

2. Public health, safety, morals, and general welfare.

It wouldn't affect anyone in the community in a negative capacity.

3. Potential injury to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.

No potential injuries that I can foresee.

4. Effect upon the normal and orderly development and improvement of surrounding property for uses already permitted in the District.

It has been in operation as a ChildCare for over 5 years and no complaints or disruptions.

5. Adequate provisions for utilities, access roads, drainage, and other necessary facilities.

Yes there will still be adequate provisions for all areas mentioned above.

6. Adequate ingress and egress so designed to minimize traffic congestion in the public street.

There is off-street parking and spaces in front that wouldn't hinder the public.

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



APPLICATION FOR
CONDITIONALLY
PERMITTED USE

Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3

Attachment B (If applicable)

Additional requirements pertaining to the Conditional Use may exist in the City of Huntington Zoning Ordinance. These additional requirements may exist within the General Regulations, specific districts to include overlay districts, or other articles of the ordinance. Please consult with the Planning and Zoning Office to help identify these additional requirements.

Please list all Article and Section numbers pertaining to this Conditional Use and give a brief description as to how each of the requirements shall be met.

Article 1341.09 A

Brief description of requirement:

Yes, I will have the proper licensing and registration prior to official date of opening.

How will the requirement be met:

There are two spaces off street & a few on street that wouldn't inconvenience other residents. I will take whatever classes that are required off me & obtain the proper paperwork.

Article 1341.09 B

Brief description of requirement:

There are two spaces off street & a few on street that wouldn't inconvenience other residents.

How will the requirement be met:

There will be proper parking signs & parent will be instructed where to park prior to start date.

Article 1341.09 D

Brief description of requirement:

Children will be safe as possible when engaging in outdoor play.

How will the requirement be met:

Fencing will be installed in the next two weeks, house sits back off street as well.

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



APPLICATION FOR CONDITIONALLY PERMITTED USE

Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3

Attachment B (If applicable)

Additional requirements pertaining to the Conditional Use may exist in the City of Huntington Zoning Ordinance. These additional requirements may exist within the General Regulations, specific districts to include overlay districts, or other articles of the ordinance. Please consult with the Planning and Zoning Office to help identify these additional requirements.

Please list all Article and Section numbers pertaining to this Conditional Use and give a brief description as to how each of the requirements shall be met.

Article 1341.09 E

Brief description of requirement:

How will the requirement be met:

This will not apply, I'm only permitted to have 12 children at one time.

Article 1341.09 F

Brief description of requirement:

The house will still look like a home from the outside.

How will the requirement be met:

The outside will look homely and very welcoming. Nothing on the outside of the structure will be changed.

Article _____

Brief description of requirement:

How will the requirement be met:

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

City of Huntington Board of Zoning Appeals

June 15, 2021

Staff Report An appeal of the requirement, decision, or determination made by the administrative official charged with zoning enforcement.

Legal Ad

Issue: An appeal of the requirement, decision, or determination made by the administrative official charged with the enforcement of the Zoning Ordinance, Sections 1314.47.E & 1359.01.I regarding continuation of conditionally-permitted uses of a Limited Video Lottery/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

Introduction

Chris Johnson is appealing a decision made by the Planning office regarding the denial of the continuation of a conditional use permit for an Limited Video Lottery (LVL) location and a Bar located at 733 Washington Avenue.

Existing Conditions / Background

Mr. Johnson submitted documents to the Planning and Zoning Office in order to open a new establishment, Bottle Cap, at 733 Washington Avenue. This property previously operated as Alley Cat II, a bar and limited video lottery establishment.

This property is located in a C-2 Highway Commercial Zone. The properties across the street and to the rear are zoned R-5 Residential. Please see the attached Zoning Map.

In addition, this property is located less than 1000 feet of two other limited video lottery establishments: Annie's (804 Washington Avenue), and Cookie Carnival (553 Washington Avenue).

Upon review and consultation with the finance and legal offices, Planning and Zoning staff determined that the prior use has not been operating lawfully since at least June 2019. Both bars and nonconforming uses expire after 12 months of disuse; LVLs expire after 6 months of disuse, therefore, Mr. Johnson would need to petition the BZA for conditional use permits for a bar and a LVL establishment, as well as a variance to be located within 250 feet of a residential building, and a variance to be located within 1000 feet of another LVL establishment.

This determination was made based on evidence that the lawful operation of Alley Cat II ended on June 30, 2019. (See Affidavit, provided.) While the business last obtained a business license on July 23, 2019, there is no evidence that Alley Cat II made lawful use of the business license after June 30, 2019. Thus, any conditional or legal non-conforming uses at this location would be abandoned under the law.

Staff also reviewed the following information provided by the petitioner that shows that the establishment was in operation during 2020:

- Sales sheets for January, February, March, June, July, and August 2020.

- Monthly collections for LVL for 2018, 2019, and January-March 2020 from Southern Amusement Company, Inc. the owner of the LVL terminals at the establishment.
- A copy of a LVL receipt from October 1, 2020.

Timeline:

June 30, 2019 – Last payment made to City Service Fee by Alley Cat II.

July 23, 2019 – Alley Cat II last obtained a business license.

December 27, 2019 – 180 days from expiration of lawful operation of the Business– Expiration of non-conforming use for limited video lottery/keno establishment.

June 30, 2020 – 1 year from expiration of lawful operation of the Business– Expiration of conditional use for bar establishment.

January 11, 2021 – Mr. Johnson submitted Limited Video Lottery or Keno Establishments Checklist and On-Site Alcohol Consumption Application to Planning and Zoning Office.

January 12, 2021 – Planning Staff informed Mr. Johnson that the previous use of the establishment as an LVL/Bar had expired and he would need to apply for the applicable Conditional Use Permits and Variances.

January 21 – March 19, 2021 – Correspondence between Planning Staff, the legal team, and a representative for Mr. Johnson occurred concerning the lawful operation of the previous use.

April 21, 2021 - Application for Appeal of Zoning Regulations was submitted.

Proposed Conditions

If the appeal is granted by the Board, Mr. Johnson would not need to apply for Conditional Use Permits or Variances prior to opening Bottle Cap.

Zoning Ordinance

Article 1320 designates Bars and Limited Video Lottery/Keno Establishments as conditional uses in a C-2 Highway Commercial Zone.

Article 1341.47.C.3 states that it is unlawful to operate a limited video lottery establishment within 1000 feet of an existing establishment that already provides limited video lottery and/or Keno, and/or 250 feet from a residentially zoned district.

Article 1341.47.E states that if a lawfully-operating limited video lottery 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 without first applying for a Conditional Use.

Article 1359.01.I states that if a lawfully-operating Conditional Use ceases operation for a period of 12 months or more regardless of any intent to resume operation, it may not recommence operation in that location without first applying for a Conditional Use.

Summary / Findings of Fact

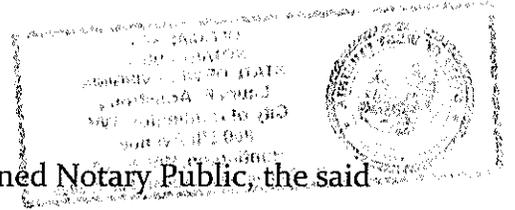
1. Chris Johnson is the petitioner.
2. Ron Myers is the owner.
3. The public records indicate that the lawful operation of Alley Cat II at 733 Washington Avenue ceased in June 2019.
4. The lot is approx. 3,875 sf.
5. This property is zoned C-2 Highway Commercial District.

Attachments

- Please see attached Affidavit, Aerial, Location, and Zoning Maps for reference.

AFFIDAVIT OF KATHY MOORE

**STATE OF WEST VIRGINIA,
COUNTY OF CABELL, TO-WIT:**



After first being duly sworn before me, the undersigned Notary Public, the said affiant avers and says:

1. She is the Director of Finance and Treasurer for the City of Huntington.
2. In her position, she oversees and is familiar with the city records of all businesses lawfully operating in the City.
3. That, to be a lawfully operating business in the City, said business must have a business license and be up-to-date on all business-related fees and taxes.
4. That having a business license alone does not make a business lawfully operating.
5. That she is familiar with the business Alleycat II, formerly located at 733 Washington Avenue.
6. That, upon review of the City's records, Alleycat II last obtained a business license on July 23, 2019.
7. That there is no evidence that Alleycat II made lawful use of the business license after June 30, 2019.

AND FURTHER THE AFFIANT SAITH NAUGHT.

Kathy S. Moore
Affiant

Acknowledged before me this 11th, day of June, 2021, by
Kathy S. Moore.

My commission expires January 7, 2025.



Laura E. Armstrong
Notary Public

McCLURE GOAD PLLC

401 10th Street, Suite 350, Huntington WV 25701

Phone: (304) 521-4341 Fax: (304)964-6630

www.mccluregoadlaw.com

Scott McClure
Attorney
scott@mccluregoadlaw.com

Jason Goad
Attorney
jason@mccluregoadlaw.com

VIA FIRST CLASS MAIL AND ELECTRONIC TRANSMISSION TO usherp@huntingtonwv.gov and
DamronS#Huntingtonwv.gov

January 21, 2021

DEPARTMENT OF DEVELOPMENT & PLANNING
CITY OF HUNTINGTON

Patricia Usher, Zoning Officer
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717

Re: Business License/Conditional Use Permit for Bottle Cap/733 Washington Ave.

Ms. Usher,

Please be advised that this office represents Chris Jackson and Bottle Cap Inc., in regard to his recent application to the City of Huntington seeking a business license to operate a bar/tavern/Limited Video Lottery ("LVL") establishment at the property located at 733 Washington Avenue within the corporate limits of the City of Huntington, West Virginia. As you're likely aware Bottle Cap Inc., is properly registered with the West Virginia Secretary of State's office and my client is pursuing licensure for LVL and Keno through the State of West Virginia. Mr. Johnson commenced this process on November 14, 2020. Further, the location of 733 Washington Avenue, according to my client, has previously had a bar/tavern/LVL establishment in full operation as recent as September 30, 2020. My client indicates that you have advised him that his requests for licensure/permit must be approved by the Board of Zoning Appeals. As you can see from the foregoing, the continued use of this property as a bar/tavern and limited video lottery/keno establishment is secured by the grandfather provisions of state and local law.

My client further advises me that despite that fact that he is properly registered by the State of West Virginia and has satisfied their requirements for non-intoxicating beer/liquor licensure/LVL, and despite the fact that the location for which he is seeking licensure has recently accommodated a bar/tavern/LVL establishment (and to which he has entered into a lease agreement with the property owner) the City of Huntington refuses to issue his business license and/or permits. As mentioned, Bottle Cap Inc., is licensed to do business in the state of West Virginia. Also, inasmuch as the location at 733 Washington Avenue was a location previously operated as a bar/tavern within the past four months, there appears no legal reason why my client should not receive his business license without delay from the City of Huntington.

The law relating to the issuance of non-intoxicating beer, liquor and limited video lottery licenses is so well established as to be beyond any dispute whatsoever; here it is:

The power delegated by the Legislature to the State to grant licenses for the sale of non-intoxicating beer are exclusive; and the right to exercise the privileges conferred upon a licensee, under a license granted by the State to carry on the business covered thereby

in a municipality, may not be denied to such licensee by a refusal of the municipality to grant a license for the same business. The sole right of the municipality, in respect to the license, is to impose a tax thereon as authorized by the Legislature.

This is the holding in *Brackman's V. City of Huntington*, 126 W.Va. 21 (1943) and it is still the law today. Any additional processes required by the City of Huntington seem intended to merely thwart or delay my client's lawful right to engage in business activity in the State of West Virginia. When a municipal government has a non-discretionary duty to perform an act, that city may be subject to mandamus proceeding to compel such act.

Further, regardless of what the City of Huntington's ordinances say in regard to conditional use permits and "grandfathering" of the same, West Virginia Code provides the following guidance: "Abandonment" 'means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.' W.Va. Code 8A-1-2 (a). Moreover, the State Code further instructs us that an "existing use" 'means any use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinance by the county or municipality.¹ **If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year...**' W.Va. Code 8A-1-2(g).² Accordingly, the operation of a bar/LVL establishment has not been "abandoned" as the same is defined in State Code; and, the location is still an "existing use" under state law.

To the extent that a municipal ordinance conflicts with the general laws of the state of West Virginia, the ordinance, being the inferior law must fail. *McCallister v. Nelson*, 411 S.E.2d 456, (W.Va. 1991) at 460. Surely the City of Huntington is not endeavoring to circumvent well-established law as it relates to existing uses.

The location at 733 Washington Avenue has had a nonintoxicating beer/alcohol bar and LVL establishment operating on this premise in the past four months so the proposed use is protected by the "grandfather clause" of state and local law; there is no need for zoning approvals as you have suggested to my client.

Please advise this office when as to when my client may expect to receive his City of Huntington business license. I respectfully ask that you respond to this correspondence no later than the close of business on Friday, January 22, 2021. I look forward to hearing from you in regard to this very urgent matter.

Respectfully,



Scott E. McClure

SEM/

Cc: Chris Johnson
Scott Damron, City Attorney

¹ The LVL permit for the 733 Washington Avenue location was in effect until December 20, 2020.

² Of course a bar/LVL establishment was in operation at 733 Washington Avenue on October 29, 2019 when Ordinance No. 2019-O-25 was approved by the Mayor.



OFFICE OF THE CITY ATTORNEY

City Hall, P. O. Box 1659
Huntington, WV 25717-1659
Telephone: (304) 696-5540
Fax: (304) 781-5538

January 20, 2021

Scott McClure, Esq.
401 10th St., Ste.350
Huntington, WV 25701

VIA ELECTRONIC MAIL

Dear Scott:

According to our records, the last time there was any business in operation at 733 Washington Avenue was June 2019. A license for the following year was obtained, but it appears no business actually operated under said license (no income, no employees). Therefore, any nonconforming use would be abandoned under the law. If your client states a business was in operation during 2020, it was operating illegally. Could your client be confusing it with a different location?

The deadline for the BZA agenda for February was yesterday, so Mr. Johnson would be looking at a March hearing date at this point.

Best regards,

A handwritten signature in blue ink, appearing to read 'Ericka B. Hernandez', is written over a horizontal line.

Ericka B. Hernandez

Cc: Scott Damron, City Attorney
Breanna Shell, Planning Director
Patricia Usher, Zoning Officer

McCLURE GOAD PLLC

401 10th Street, Suite 350, Huntington WV 25701

Phone: (304) 521-4341 Fax: (304)964-6630

www.mccluregoadlaw.com

Scott McClure
Attorney
scott@mccluregoadlaw.com

Jason Goad
Attorney
jason@mccluregoadlaw.com

VIA FIRST CLASS MAIL AND ELECTRONIC TRANSMISSION TO HernandezE@Huntingtonwv.gov

February 1, 2021

Ericka Hernandez, Assistant City Attorney
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717

Re: Business License/Conditional Use Permit for Bottle Cap/733 Washington Ave.

Ericka,

Pursuant to your letter of January 20, 2021 and our discussion last Friday please find attached hereto the following documentation;

1. Sales sheets for the business establishment at 733 Washington Avenue for the months of January, February, March, June, July and August of 2020 as provided by the previous operator;
2. Monthly Collections for Limited Video Lottery for calendar years of 2018 and 2019 and for January-March of 2020 as provided by Southern Amusement Company, Inc., the owner of the LVL terminals located at the establishment.
3. A copy of a Limited Video Lottery receipt for the location at 733 Washington Ave dated October 1, 2020.

In your letter of January 20, you indicated that there was little evidence of the establishment at 733 Washington Avenue in operation after June of 2019. I believe the documents attached hereto reflect actual use of the permit through October of 2020. Obviously, as we discussed, there were brief occasions when the establishment was shut down altogether; specifically, by edict of the Governor of West Virginia for a period of time and at various other times in 2020 due to health concerns of patrons and employees during the global pandemic. During these times the landlord and prior tenant engaged in significant remodeling activities at the location.

We believe it irrational to assume that any temporary closures necessitated by a global pandemic were in any way "voluntary" as businesses sought to comply with various governmental shutdowns and health-related recommendations while simultaneously doing their best to stay in business. Despite their best efforts, the previous permit holder reluctantly decided in October of 2020

that continued operations were no longer viable and have since abandoned the lease. As I mentioned to you on Friday, my client has a lease agreement with the property owner to continue the existing use.

I ask that you provide this information to the City of Huntington's Zoning Office for review. As Mr. Johnson is anxious to commence operations at the subject location, I ask that an expedited review of these documents be conducted, and a response be provided as soon as possible. Should you require anything further, please advise. I look forward to hearing from you regarding this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Scott", written in a cursive style.

Scott E. McClure

SEM/

Cc: Chris Johnson

Alley Cat II

Jan 2020

Date	Total	Beer	Draft	Liq	Soda	Chips	Food	other	other	
1	3									
2	2									
3	1									
4	4									
5	6									
6	2									
7	3									
8	3									
9	6									
10	3									
11	3									
12	4									
13	0									
14	2									
15	4									
16	6									
17	6									
18	2									
19	3									
20	3									
21	0									
22	3									
23	3									
24	2									
25	6									
26	2									
27	3									
28	3									
29	0									
30	0									
31	8									
Total	96									

$96 \div 1.07 = 8972$ Sales
 $\frac{628}{8972}$ TAX

Alley Cal II

Feb 2020

Date	Total	Beer	Draft	Liq	Soda	Chips	Food	other	other	
1	6									
2	3									
3	2									
4	3									
5	3									
6	1									
7	0									
8	4									
9	0									
10	6									
11	2									
12	3									
13	3									
14	4									
15	7									
16	1									
17	0									
18	3									
19	4									
20	3									
21	2									
22	2									
23	3									
24	3									
25	4									
26	2									
27	2									
28	4									
29	3									
30										
31										
Total	78									

$78 \div 1.07 = 72.90$ Sales
5.10 TAX
78.00

Alley Cal II
 March 2020

Date	Total	Beer	Draft	Liq	Soda	Chips	Food	other	other	
1	6									
2	4									
3	3									
4	6									
5	2									
6	2									
7	4									
8	0									
9	3									
10	0									
11	4									
12	3									
13	2									
14	2									
15	3									
16	5									
17	6									
18										
19										
20										
21										
22										
23										
24										
25										
26										
27										
28										
29										
30										
31										
Total	55									

4.107 = 51.46 Sales
3.60 Tax

Alley Cat II

June 2020

Date	Total	Beer	Draft	Liq	Soda	Chips	Food	other	other	
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16	12									
17	4									
18	3									
19	6									
20	10									
21	2									
22	3									
23	3									
24	2									
25	2									
26	3									
27	4									
28	7									
29	6									
30	6									
31										
Total	73									

6822 Sales
 478 Tax

 7300 - 1

-uly 2020
 Alley cat #

Date	Total	Beer	Draft	Liq	Soda	Chips	Food	other	other	
1	3									
2	2									
3	2									
4	10									
5	2									
6	2									
7	3									
8	4									
9	5									
10	3									
11	3									
12	2									
13	3									
14	6									
15	3									
16	3									
17	2									
18	10									
19	2									
20	4									
21	2									
22	3									
23	2									
24	2									
25	4									
26	3									
27	2									
28	1									
29	0									
30	2									
31	8									
Total	108									

100.93 Sales
 7.07 Tax

SOUTHERN AMUSEMENT CO., INC.

----- Location Monthly Collections ALLEY KATS -----

Date: January 29, 2021

Page: 1

Month	cmsn 2021	cmsn 2020	cmsn 2019	cmsn 2018
January		1,018.00	2,620.00	1,713.00
February		2,147.00	1,629.00	1,322.00
March		1,911.00	1,550.00	192.00
April			721.00	5,317.00
May			1,849.00	1,780.00
June			2,883.00	1,649.00
July			2,468.00	2,399.00
August			1,333.00	1,429.00
September			1,621.00	3,417.00
October			947.00	2,161.00
November			1,451.00	1,388.00
December			708.00	4,112.00
TOTAL>>>		5,076.00	19,780.00	26,879.00

--End Of Report (Total: 13 records) ---

SOUTHERN AMUSEMENT CO., INC.

----- Location Monthly Collections ALLEY KATS -----

Date: January 22, 2021

Page: 1

Month cmsn 2020

January 1,018.00

February 2,147.00

March 1,011.00

April

May

June

July

August

September

October

November

December

TOTAL: 5,076.00

---End Of Report (Total: 13 records) ---

Alley Cat II (LR004244)
733 Washington Ave Huntington, West Virginia 25

WVL CASH TICKET



VALIDATION # 00-0757-9728-0863-4658
10/01/2020 09:30:00 TICKET # 0956
ONE DOLLAR AND SEVEN FIVE CENTS
35 Credits Credit = 6 Cents

\$1.75

Ticket Void after 10/01/2020

MACHINE# 9329-101

00-0757-9728-0863-4658



Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3
planningdept@huntingtonwv.gov

March 19, 2021

Scott McClure
401 10th Street, Suite 350
Huntington, WV 25701
scott@mccluregoadlaw.com

RE: Bottle Cap

Mr. McClure:

Thank you for the information you provided; however, the documentation submitted is not sufficient evidence to prove that Alley Cat II was lawfully operating in the year 2020.

The City of Huntington Zoning Ordinance (**Section 1359.01.I**) states that if a Conditional Use lawfully operating ceases for "twelve (12) months or more regardless of any intent to resume" the use may not recommence operation without first applying and receiving approval from the Board of Zoning Appeals; for a limited video lottery and/or KENO establishments (**Section 1341.47**) the period is "180 day or more".

Your client, by right, may apply for Conditional Use Permits for a Limited Video Lottery Establishment and a Bar respectively. This location also requires variances due to the distance requirement set forth in the city's ordinance for limited video lottery establishments; specifically, the locations proximity to residential uses/districts and other limited video lottery establishments.

The deadline for the May agenda is **April 20, 2021**; the meeting will be held Tuesday at **5:30 pm** on **May 17, 2021**. Your client or a representative must attend to present the petition. The completed applications, all supporting documentation, and a **\$160 fee for each petition** are due at the time of submittal.

Your client was provided with all the necessary documents during our interactions in January; however, if new copies are needed we would be glad to provide them and assist in anyway. If you have any questions or would like copies of the applications, please feel free to reach out.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bre Shell".

Bre Shell
Planning Director

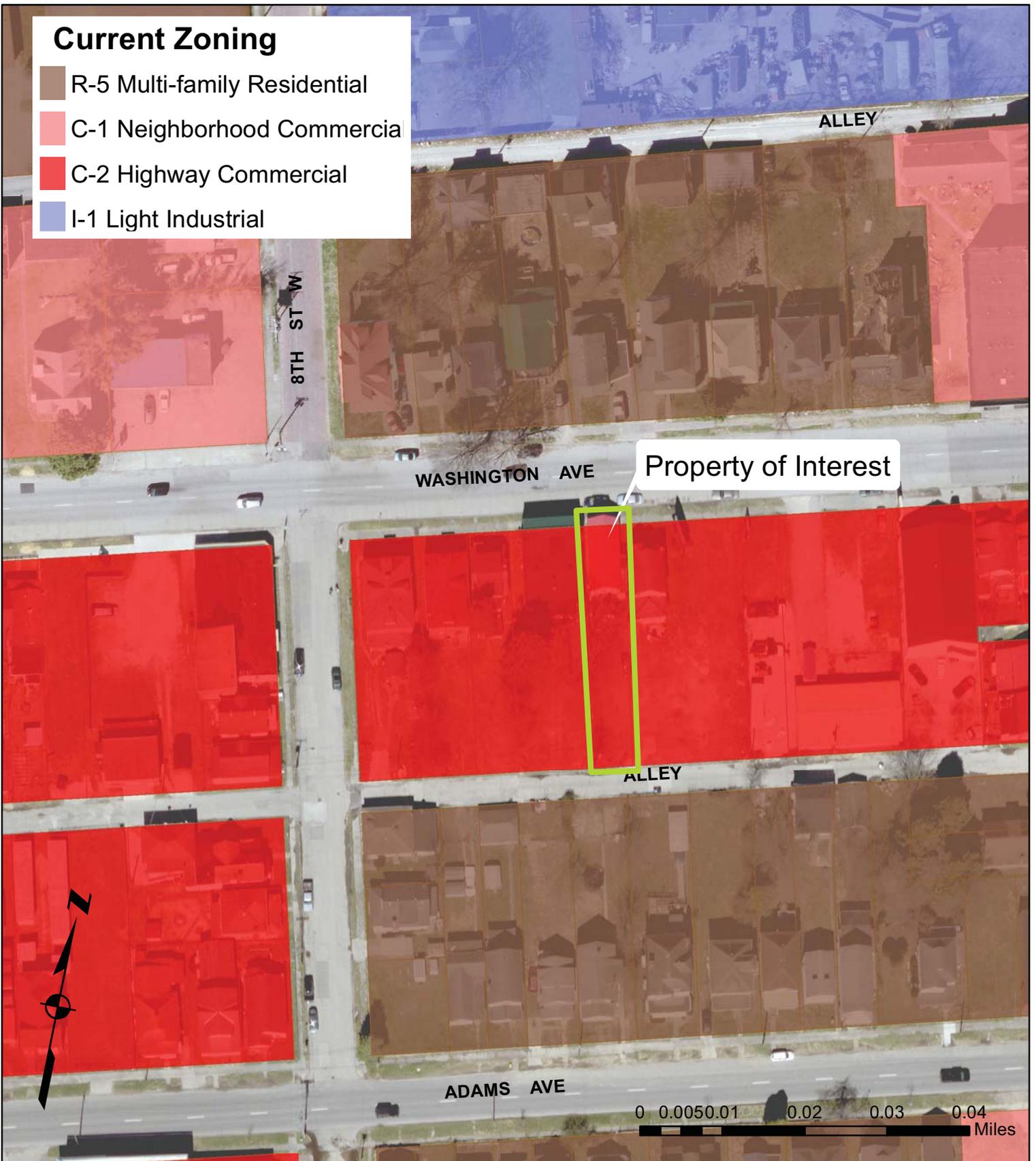


733 Washington Ave Appeal of Zoning Regulations



Current Zoning

- R-5 Multi-family Residential
- C-1 Neighborhood Commercial
- C-2 Highway Commercial
- I-1 Light Industrial



733 Washington Ave Appeal of Zoning Regulations



Future Land Use (Plan2025)

- Convenience Commercial
- Transition Commercial



733 Washington Ave Appeal of Zoning Regulations





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

Owner: Ron Myers Phone (business): c/o Scott McClure, Attorney (cell) _____
Address: 733 Washington Ave Email: (304) 521-4341

Applicant: Chris Johnson Phone (business): _____ (cell) _____
Address: then his attorney 421 18th St. Suite 350 Email: scott@mccluregalloway.com

Occupant: SAME Attorney (304) 521-4341 Phone (business): _____ (cell) _____
Address: _____ Email: _____

I/We, the undersigned, hereby request the Board of Zoning Appeals to review the following order, requirement, decision, or determination made by Planning Director (Official) or Planning Commission under the provisions of Article 9 of Chapter 8A of the Code of West Virginia, effective 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: Denial of conditional use permit LVL/has
alleging the existing uses have been abandoned - see attached letter
from Planning Director

Give description of property including tax map, parcel, lot number (if applicable), street address and/or other description:
733 Washington Ave

This variance is requested for the following reason (state any reason which the Board of Zoning Appeals should be aware of in forming its decision): Uses were never voluntarily abandoned in accordance with
applicable law and permits should have been issued as existing use
See Attached documents
(Attach additional pages if necessary)

This application must be accompanied by:

- Site plan of Real Estate involved (if applicable); drawn to scale with scale shown, with direction 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.).
- Treasurers' receipt for One Hundred Fifty dollars (\$150.00) filing fee.

All of the above documentation is to be submitted to the office of the Planning Commission by: _____ in order to be placed on the next Board of Zoning Appeals agenda.

I/We, the undersigned, am/are aware that a Public Hearing by the Board of Zoning Appeals will be held on the third Thursday of the month, _____. It is my responsibility to attend (or send a representative) to the above meeting to present plans and to answer any questions regarding the request for an appeal. All meetings are held in the City Council Chambers of Huntington City Hall.

Scott EMD Attorney on 4/2/2021
Signature of applicant behalf of owner/applicant Date

REV 08/13

P.O. Box 1659 | Huntington, WV 25717 | phone: 304.696.4438 | fax: 304.696.4493 | ShellB@CityofHuntington.com

Staff Report: A petition for a variance to permitted fencing materials.

Legal Ad

BZA 21-V-06

Issue: 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

Introduction

The petitioner is requesting a variance to use a privacy fabric covering around the outside of a chain link fence in their rear yard. The rear yard of this property faces the front yard of the houses along Beverly Road.

Existing Conditions / Background

This property is located between Washington Blvd. and Beverly Rd. The petitioner hired A Plus Contracting to install a chain link fence with a fabric cover on the outside of the fence; however, work began before proper permitting was received. The chain link fence has been permitted and the property owner was given the option to request a variance to the fencing materials ordinance in order to install the fabric cover.

Proposed Conditions

The petitioner proposes to install a privacy fabric cover on the outside of the existing chain link fence.

Zoning Ordinance

Per *Article 1341.19(C)(7)*, a fence shall not be constructed out of fabric, junk, junk vehicles, appliances, tanks, or barrels.

Pictures



View of chain link fence from Beverly Road.



Temporary chain link fence with fabric cover

Staff Comments

The fence materials regulation exists to maintain a harmonious appearance and consistent character throughout the neighborhood. Staff visited the neighborhood and the prevailing rear yard

fences of the area are 6 foot wooden privacy fences. While fabric fence covers have a place in a construction or industrial setting, this material is not consistent with the character of a residential area. Staff does not believe that this petition arises from special conditions created by the property, nor is the regulation considered a hardship to the property owner.

Summary / Findings of Fact

1. Lynn Kast is the petitioner and property owner.
2. The property is zoned R-1 Residential District.
3. The petitioner is requesting to erect fabric on the outside of their chain link fence.
4. Section 1341.19.C.7 prohibits fabric as a material for fencing.
5. The fence is located in the rear yard of this property which faces the front yards of the properties along Beverly Rd.
6. No other property in the area uses fabric as a fencing material.
7. The lot is approximately 7,874 sf.

Attachments

Please see attached Aerial, Zoning, Context, and Future Land Use Maps, and site plan for reference.

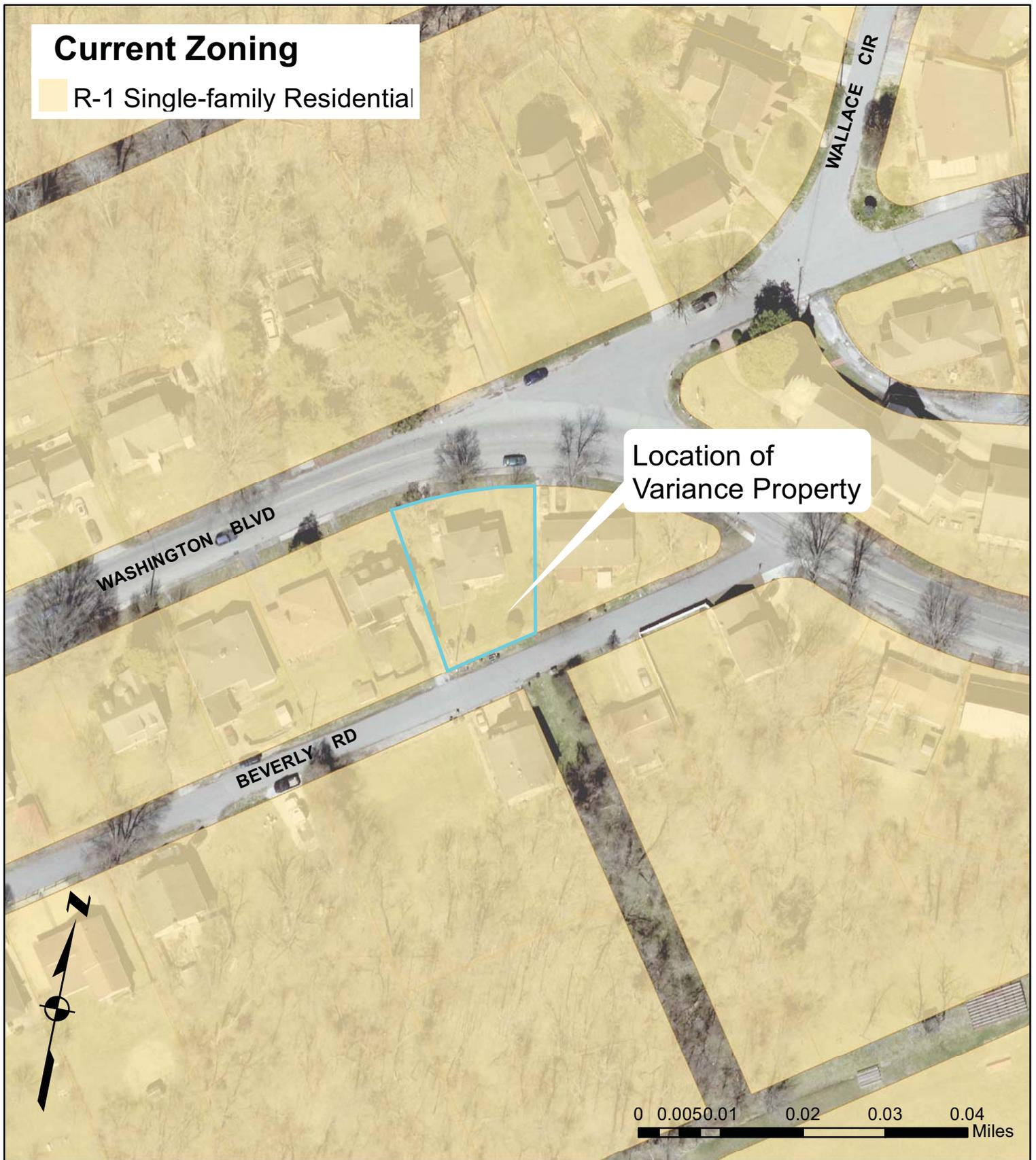


2935 Washington Blvd Variance to Use Mesh Fabric as a Material for a Fence



Current Zoning

R-1 Single-family Residential



2935 Washington Blvd
Variance to Use Mesh Fabric
as a Material for a Fence



Future Land Use (Plan2025)

Hills Residential



2935 Washington Blvd
Variance to Use Mesh Fabric
as a Material for a Fence





**BUILDING PERMIT
APPLICATION**

Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717

Instructions: Please complete the application and include the total cost of labor and materials. A \$20.00 application fee is included for all building permits. *Permits are valid for six (6) months.*

APPLICANT INFORMATION

General Contractor Property Owner Lessee Agent
Applicant Name: Donnetta McCracken Phone: (606) 922-1930
Email Address: apluscontractorsky@gmail.com

CONTRACTOR INFORMATION

Business Name: A Plus Contractors, LLC Phone: (606) 932-2222
COH Contractor License #: 20007 Email: apluscontractorsky@gmail.com
Are subcontractors working on this project: Yes No

PROPERTY INFORMATION

Property Owner: Lynn East Phone: (840) 835-7495
Property Address: 2935 Washington Blvd Email: moreofyou201689@gmail.com
Rental Property: Yes No

PERMIT INFORMATION

- | | | | |
|--|-------------------------------------|---|-------------------------------------|
| <input type="checkbox"/> New Construction | <input type="checkbox"/> Demolition | Residential: | <input type="checkbox"/> Commercial |
| <input type="checkbox"/> Renovation | <input type="checkbox"/> Excavation | <input checked="" type="checkbox"/> Single Family | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Addition / Alteration | <input type="checkbox"/> Repair | <input type="checkbox"/> Multi-family | |

Total Cost of Labor and Materials: \$ 10,039.33

DESCRIPTION OF WORK

- Electric Plumbing HVAC Framing Roofing Other

Description of Work: Install 126' of 10' tall Chain Link
Square footage of Structure: _____
Square footage of site: _____

OTHER PERMITS

- Certificate of Occ Sign Right-of-way Special privilege Floodplain

Article 1705.99 Providing false, incomplete, or misleading information on this application is subject to a \$500 fine.

Building Permit Fee: \$ _____
Application Fee: \$ 20.00
Total: \$ _____

I acknowledge that the above information is true and correct to the best of my knowledge, and I agree to comply with all state, county, and city codes and ordinances.

Applicant Signature: Donnetta McCracken Date: 06 / 15 / 2021

Technician/Inspector: _____ Date: _____ / _____ / 20



WEST VIRGINIA SERVICES SOLUTIONS INSTALLED SALES CONTRACT

LOWE'S AUTHORIZED REPRESENTATIVE	SALES ID	DATE
Jason Loftis	1989981	05/20/2021

CUSTOMER NAME
Lynn Kast

STORE NO	STREET ADDRESS
0454	700 Mail Rd

STREET ADDRESS
2935 Washington Blvd

CITY	STATE	ZIP
Barboursville	WV	25504

CITY	STATE	ZIP
2935	WV	25705

TELEPHONE
304-736-8900

TELEPHONE
540-835-7495

EMAIL
jason.a.loftis@store.lowes.com

EMAIL
moreofyou201689@gmail.com

LOWE'S CONTRACTOR LICENSE #	LOWE'S REPRESENTATIVE LICENSE #
WV014655 (general building)	018 (if Applicable)

CREDIT/CHECK	CASH	DEBIT CARD	STRIPE
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

This is only a quote for the merchandise and services printed below; Lowe's does not offer services to paint, seal or stain fences. This becomes an agreement upon payment and issuance of a Lowe's receipt, upon payment, the order requirement, including the specifically completed pages of this document, the Terms and Conditions included with this document and any other addenda and attachments herein, shall be referred to herein as this "Contract." PLEASE READ THIS ENTIRE DOCUMENT, INCLUDING THE "NOTICES," "TERMS AND CONDITIONS," AND "ADDENDUM" CONTAINED WITHIN THIS CONTRACT ON THE FOLLOWING PAGES BEFORE SIGNING.

INSTALLATION STREET ADDRESS	CITY	STATE	ZIP
2935 Washington Blvd	Huntington	WV	25705

MERCHANDISE AND INSTALLATION SUMMARY (LIST ITEM NUMBERS, COLORS, DIMENSIONS, CONSIDERATIONS):

Install 126' of 6' tall black chain-link fence.
 Install three 4' wide walk gates.
 Install Privacy fabric on entire fence.
 All post to be set in concrete when applicable.
 Haul away all job related debris.
 Excess dirt from post holes to be spread along fence line.

CONTRACT TOTAL \$8,039.33
 (INCLUDING TAX)

Work is to commence upon reasonable availability of Contractor and/or any special order or customer made Good(s) which is anticipated to be 07/10/2021 (fill in date). Estimated completion date is 08/10/2021 (fill in date). COVID-19 has affected manufacturers and labor markets, with the production of fence, deck and generator material experiencing significant delays and installation start dates that are at least four (4) months away in most cases. Please also note that weather can delay start dates for these and other exterior categories, particularly in colder climates.

A plus Fence Material List

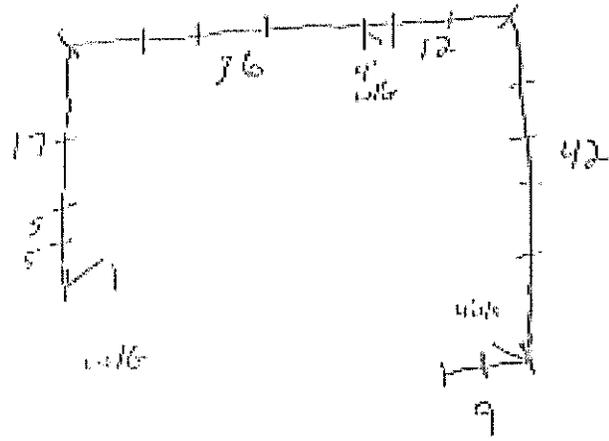
Store#: 457

Chainlink

- Concrete 50# red 33
- Concrete 10# 12
- Line post 12
- Top rail 12
- Loop cap 12
- Top cap 12
- Ten bar 12
- Rad end 12
- Trace bit 2 1/2 10
- Ten bar 2 1/2 10
- Gas 10
- Dolls 1 1/2 10
- Walk gate 10
- Drive gate 10
- Gate kit walk 10
- Drive hinge 10
- Drive latch 10
- Drop rod 10
- Tension wire 10
- Mag rings 10
- Fabric 10
- Patrol 10
- Chain 10
- Zip ties 10

Customer Name: Lynn Rest
 Address: 2935 Washington Blvd
 City, State, Zip: Huntington WV 25705
 Phone: 540-875-7495

126 10' White chain privacy ext 15



Wood

- Concrete 50# red
- Concrete 10#
- Post 4x4
- Pickets
- 2x4
- 4x6
- Hinges
- Latch
- Drop rod
- 2x8
- Gravel
- Sag cable 674905

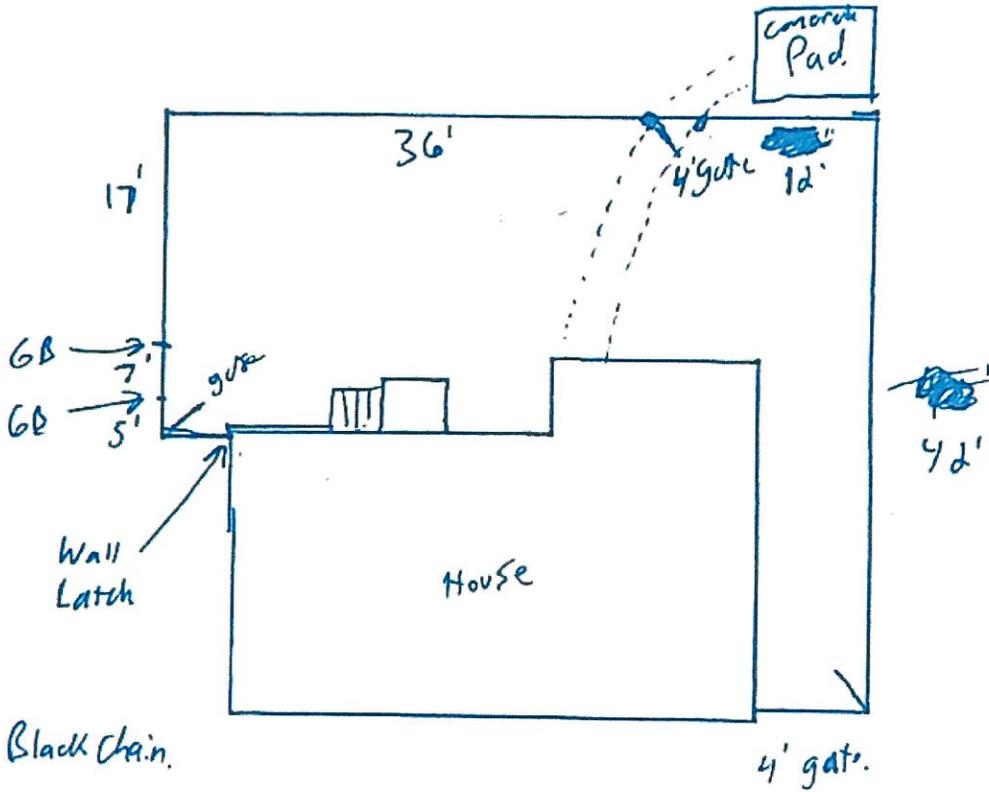
Vinyl

- Concrete 50# red
- Concrete 10#
- Gravel
- Insert
- Corner post
- Line post
- End post
- Post
- Panel
- Cap
- Walk gate
- Drive gate
- Hinges
- Latch
- Drop rod
- Stickets
- Gate
- End Cover
- Handles
- Sag Cable 674905

Aluminum

- Concrete 50# red
- Concrete 10#
- Post
- End post
- Corner post
- Line post
- Panel
- Walk gate
- Drive gate
- Hinges
- Latch
- Drop rod
- Stickets
- Gate
- End Cover
- Handles
- Sag Cable 674905

Lynn Kast ~~540-835-7495~~ 540-835-7495
2935 Washington Blvd.
Huntington, WV 25705



6' Tall Black Chain
with Canvas

124'
3 gates

9'



APPLICATION FOR APPEAL FOR VARIANCE OF ZONING REGULATIONS

Planning and Zoning Huntington City Hall 800 Fifth Avenue P.O. Box 1659 Huntington, WV 25717 (304) 696-5540, opt 3

Applicant Name: Lynn Kast Phone: 540 835 7495

Address (city, state, zip): 2935 Washington Blvd Huntington WV

Email: moreofyou201689@gmail

Property Owner: Lynn Kast Phone: 540 835 7495

Address (city, state, zip): 2935 Washington Blvd

Please list the Location (address) and Description (Tax Map Number, Parcel, and Lot,): 2935 Washington Blvd

Variance requested pursuant to:

Article 1341.19.7 and/or Figure of the City of Huntington Zoning Ordinance.

Description of the variance being requested: mesh fabric around chain link fence

Description of property including tax map, parcel, lot number (if applicable), street address and/or other description:

Please describe the special conditions or attributes which pertain to the property or hardships for which the variance is sought (state any reason which the Board of Zoning Appeals should be aware of in forming its decision): To use the slats in the fence instead of the fabric my dog would probably destroy them where as the fabric would be on the outside of the fence

(Attach additional pages if necessary)

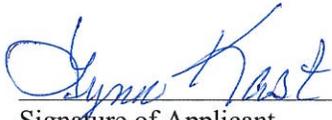
The following exhibits are to be attached and made part of this application:

- Site plan of Real Estate involved (if applicable); drawn to scale with scale shown, with direction 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.).
- Valid State or Federal Photo ID.
- Any and all documentation and evidence to support the request.
- One Hundred Sixty dollars (\$160.00) filing fee for each variance sought.

All of the above documentation is to be submitted to the office of Planning and Zoning by: _____ in order to be placed on the next Board of Zoning Appeals agenda. Incomplete documentation will delay applicants review by the BZA.

I/We, the undersigned, am/are aware that a Public Hearing by the Board of Zoning Appeals will be held on Tuesday, _____. It is my responsibility to attend (or send a representative) to the above meeting to present plans and to answer any questions regarding the request for a Variance. All meetings are held at 5:30 p.m. in the City Council Chambers of Huntington City Hall.

FOR OFFICE USE
Received: <u>6-17-2021</u>
Staff Initials: <u>PJ</u>
Project Number: <u>21-VOL</u>



Signature of Applicant

6/17/21

Date



Signature of Property Owner

6/17/21

Date

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

FOR OFFICE USE ONLY

Board of Zoning Appeals

<input type="checkbox"/> Approved	Date of Decision: _____
<input type="checkbox"/> Denied	Conditions: _____

Planning Staff: _____ Title: _____ Date: _____

Staff Report A petition for a variance to use a non-conforming sign cabinet after more than six months of discontinuation of use.

Legal Ad

BZA 21-V-07

Issue: A petition for a variance from Article 1345.12(E) to use a non-conforming sign cabinet that exceeds the size requirement for a wall sign in a C-1 commercial zone more than six months after discontinuation of use. The property is located at 2501 Washington Boulevard.

Petitioner: Paris Signs, 2500 5th Street Road, Huntington, WV 25701

Property Owner: 402 Holdings, 2189 Kennon Lane, Huntington, WV 25705

Introduction

Paris Signs is petitioning on behalf of King Mart for a variance to replace an existing non-conforming sign cabinet that exceeds the size requirement for a wall sign in a C-1 Neighborhood Commercial District with a new sign face.

Existing Conditions / Background

The existing cabinet is approximately 88.75 sq. ft. and mounted approximately 14 feet above ground level. This sign is mounted through a steel structure that penetrates the exterior wall in several locations. The linear square frontage of the building is 46 sq. ft. The maximum wall sign size permitted by right at this location is 69 sq. ft.

The previous business at this location closed over six months ago and was not using the existing sign cabinet.

Proposed Conditions

The petitioner proposes to install a wall sign using the existing 88.75 sq. ft. cabinet. See attached application for sign design.

Zoning Ordinance

Per Article 1345.12.E, whenever the use of a nonconforming sign, or the use which the sign serves has been discontinued for a period of six (6) consecutive months, then the sign thereafter shall be made to conform to current regulations.

Per Article 1347.07.C.1, the maximum sign area in a C-1 Commercial district shall be 1.5 sq. ft. per linear foot of building façade within the Built-to Zone or on the Build-to Line.

Pictures



Existing sign cabinet with temporary sign.

Staff Comments

Plan2025 designates this area as
“Neighborhood Center.”

The staff does not feel that the approval of the variance will have a negative impact on the public health, safety, and welfare. It will eliminate an unnecessary hardship and allow for a reasonable use of the land.

Summary / Findings of Fact

1. Paris Signs is the petitioner.
2. 402 Holdings is the property owner.
3. The existing sign cabinet is 88.75 sf.
4. The maximum area for a wall sign at this location is 69 sf.
5. The property is zoned C-1 Neighborhood Commercial District.
6. The lot is approximately 9,110 sf.

Attachments

Please see attached Aerial, Zoning, Context, and Future Land Use Maps for reference.

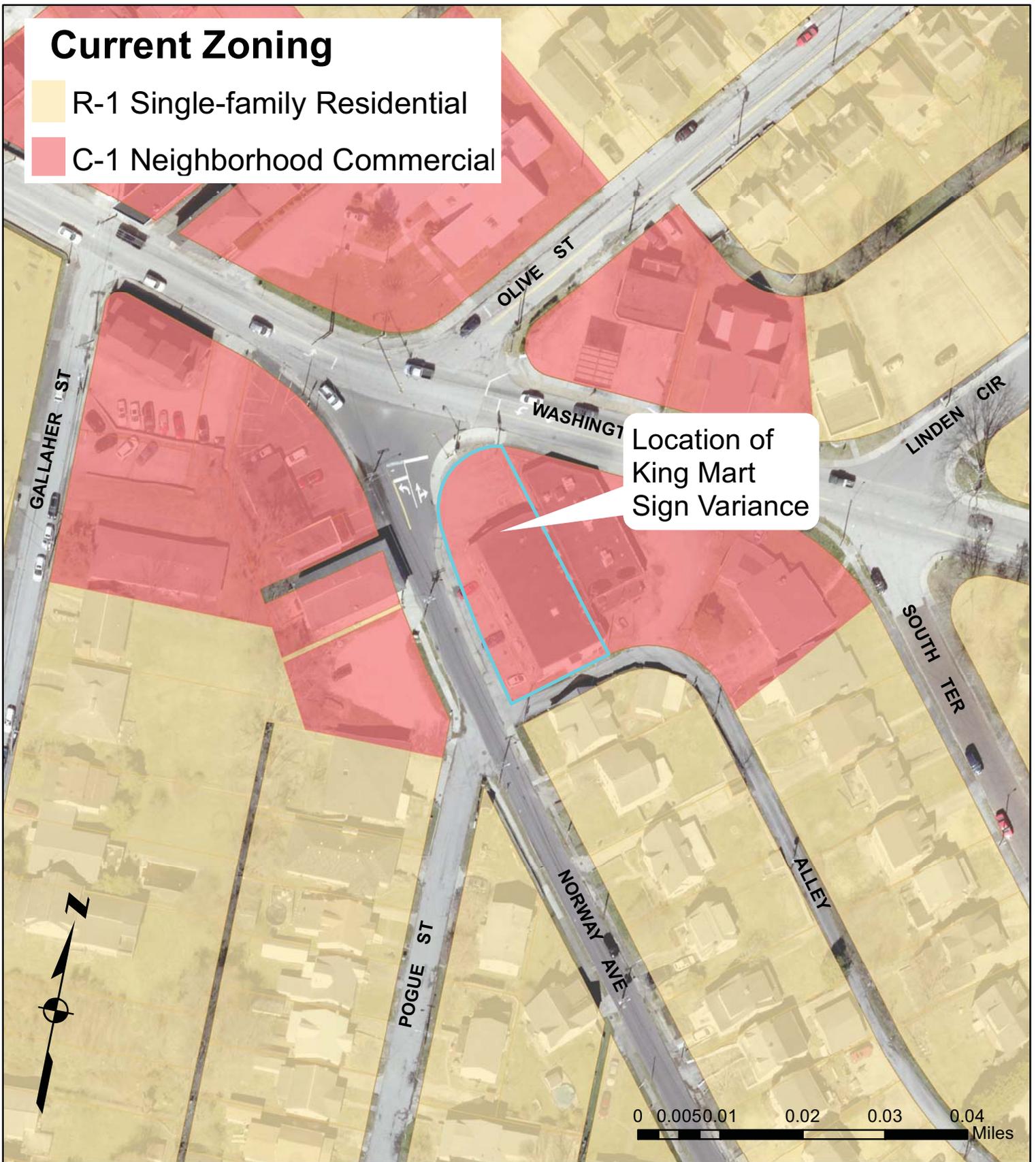


2501 Washington Blvd
Variance to allow for a Sign to
Exceed Maximum Surface Area



Current Zoning

- R-1 Single-family Residential
- C-1 Neighborhood Commercial

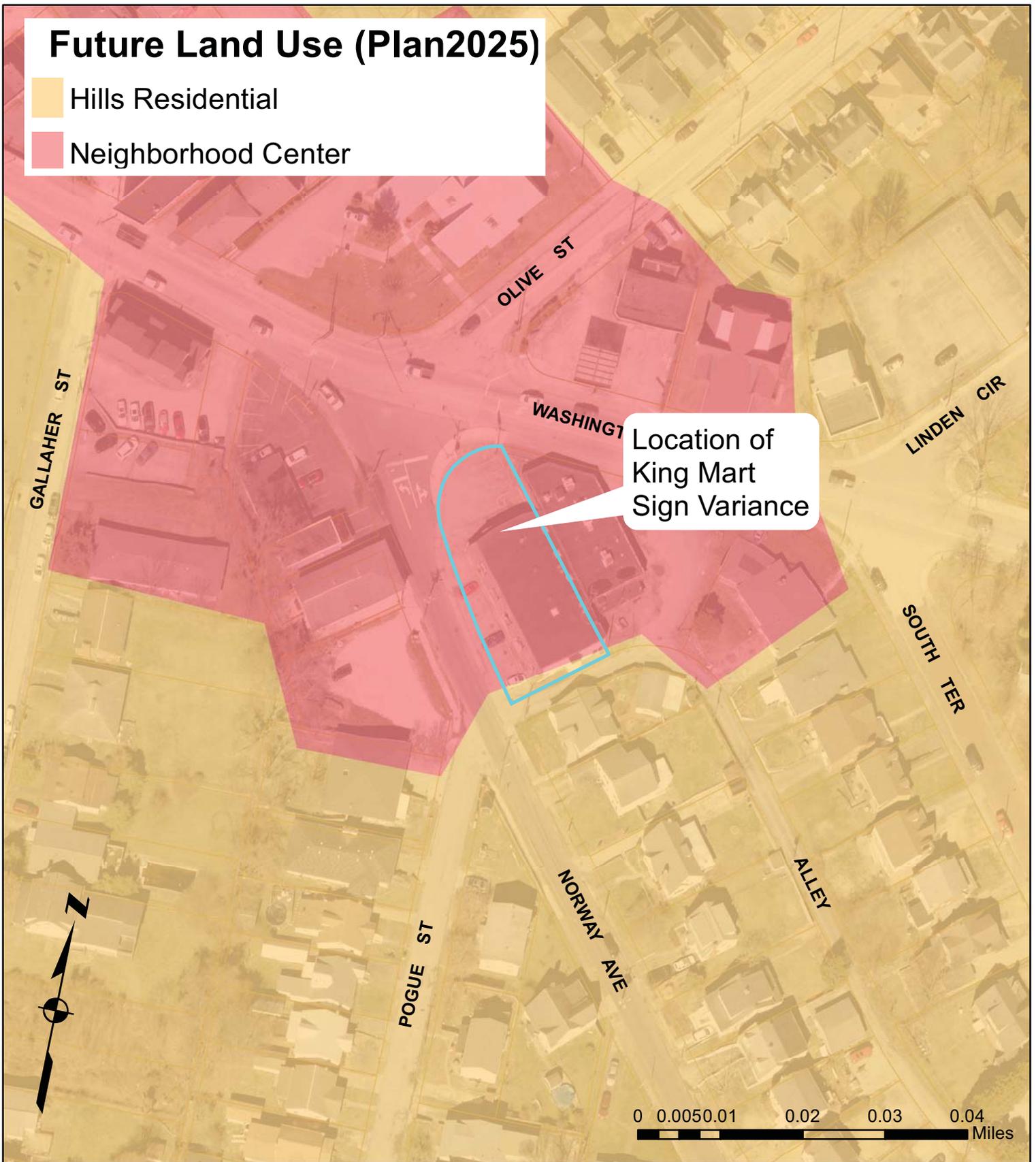


2501 Washington Blvd
Variance to allow for a Sign to
Exceed Maximum Surface Area



Future Land Use (Plan2025)

- Hills Residential
- Neighborhood Center



2501 Washington Blvd
Variance to allow for a Sign to
Exceed Maximum Surface Area





APPLICATION FOR
APPEAL FOR
VARIANCE OF
ZONING
REGULATIONS

Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3

Applicant Name: Paris Signs on behalf of King Mart Phone: 304.522.7503

Address (city, state, zip): 2400 5th Street Rd, Huntington, WV 25701

Email: Saul@parisSigns.com

Property Owner: 402 Holdings Phone: 304.633.5467

Address (city, state, zip): 2501 Washington Blvd, Huntington, WV 25705

Please list the Location (address) and Description (Tax Map Number, Parcel, and Lot.):

2501 Washington Blvd.

Parcel: 06-05-0063-0302-0000

Variance requested pursuant to:

Article 1345 and/or Figure 1345.12.E of the City of Huntington Zoning Ordinance.

Description of the variance being requested:

We are requesting permission to replace the current sign face with a new face with the tenants name.

Description of property including tax map, parcel, lot number (if applicable), street address and/or other description:

Store front - 2501 Washington Blvd

Parcel: 06-05-0063-0302-0000

Please describe the special conditions or attributes which pertain to the property or hardships for which the variance is sought (state any reason which the Board of Zoning Appeals should be aware of in forming its decision):

King Mart is requesting to replace an existing cabinet with a new sign face. The current cabinet face is 88.75 sq. ft. The current sign is mounted through a steel structure that penetrates the exterior wall in several locations.

(Attach additional pages if necessary)

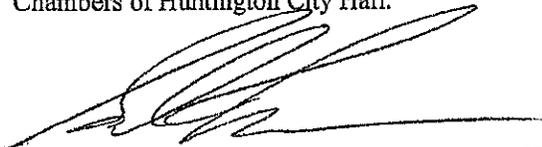
The following exhibits are to be attached and made part of this application:

- Site plan of Real Estate involved (if applicable); drawn to scale with scale shown, with direction 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.).
- Valid State or Federal Photo ID.
- Any and all documentation and evidence to support the request.
- One Hundred Sixty dollars (\$160.00) filing fee for each variance sought.

All of the above documentation is to be submitted to the office of Planning and Zoning by: Paris Syms in order to be placed on the next Board of Zoning Appeals agenda. Incomplete documentation will delay applicants review by the BZA.

I/We, the undersigned, am/are aware that a Public Hearing by the Board of Zoning Appeals will be held on Tuesday, July 20th. It is my responsibility to attend (or send a representative) to the above meeting to present plans and to answer any questions regarding the request for a Variance. All meetings are held at 5:30 p.m. in the City Council Chambers of Huntington City Hall.

FOR OFFICE USE
Received: _____
Staff Initials: _____
Project Number: <u>BZA 21-V-07</u>



Signature of Applicant

6-16-21

Date

Signature of Property Owner

Date

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

FOR OFFICE USE ONLY

Board of Zoning Appeals

Approved Date of Decision: _____

Denied Conditions: _____

Planning Staff: _____ Title: _____ Date: _____



SIGN PERMIT APPLICATION

Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3

Applicant Name: Paris Signs Phone: 304-522-7509
Address: 2400 5th St Rd Email: Saul@parisdesigns.com
Property Owner: 402 Holdings Phone: 304-693-5467

Sign Information

Business Name: KING Mart Phone: 631-693-9924
Address: 2501 Washington Blvd Email: thabitoffice@gmail.com
Sign Fabricator: Paris Signs Phone: 304-522-7503
Sign Installer: Paris Signs Phone: ''
Total Estimated Cost (labor and materials): \$8,829.40

**A Sign/Site Plan MUST be submitted with this application **

Please answer the following questions regarding the proposed signage:

- 1. What is the linear street frontage of the commercial space or building? 46
2. Please list the specifications for each new sign below:

Sign 1: Current building sign
Dimensions: 36 x 360
Square footage: 90
Projection from wall: N/A
Height Mounted: 14 ft
Illumination type: Internal
Facings: Single-sided
If window sign:
Window Dimensions: x

Sign 2: Pole sign
Dimensions: 60 x 72
Square footage: 30
Projection from wall: N/A
Height from Grade: 15 ft
Illumination type: Internal
Facings: Double-sided
If window sign:
Window Dimensions: x

Sign 3:
Dimensions: x
Square footage:
Projection from wall:
Height from Grade:
Illumination type:
Facings:
If window sign:
Window Dimensions: x

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

Saul Thompson
Print Name
Signature of Applicant
Date: 6-2-21

I, the undersigned, do hereby certify that I have read and examined this document and do certify that all information included therein is true and correct to the best of my knowledge, and I authorize the City of Huntington to investigate all statements or other information contained in this application form and any attachments submitted with it. I understand and agree that any misrepresentation, falsification, or material omission of information may result in denial of my permit. I will comply with all applicable laws and ordinances whether specified herein or not. I understand that the granting of a permit does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or performance of construction. I certify that all building requirements have been met, including wind load. Furthermore, I, the undersigned, do hereby agree to assume responsibility for any and all other liabilities which may arise or occur, including, but not limited to, any personal injuries or property damage, arising out of the use of said permit.

FOR OFFICE USE ONLY

FOR OFFICE USE
Received: <u> <i>PU</i> </u>
Staff Initials: <u> <i>6.2.2021</i> </u>
Permit Number: _____

Zoning and Parcel: *C-1, 5-63-302*

- Variance required
- Project Number: _____
- Approved
- Denied
- Conditions: _____

Reviewed by: _____ Title: _____ Date: _____

Drawing #28458a

bl



Lexan Face

King Mart-Huntington - Translucent impact resistant Lexan faces with translucent decoration to show bright day and night. All exterior parts of this product at rustproof and are designed for exterior applications in all weather conditions.

Face Graphics Color: ■ Black ■ Red ■ Gold

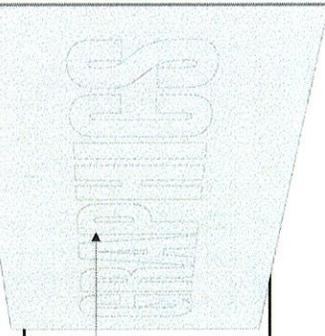
Lexan Face
Translucent impact resistant Lexan faces with translucent decoration to show bright day and night



Tel. (800) 863-0107 (304) 522-7503
www.parissigns.com

Fax: (304) 522-7505

Client Approval: / _____ Customer Signature / Date, Required Prior to Production
Please review artwork carefully, any changes made after signing may result in additional charges.



City of Huntington Board of Zoning Appeals

July 20, 2021

Staff Report An appeal of the requirement, decision, or determination made by the administrative official charged with zoning enforcement.

Legal Ad

Issue: An appeal of the requirement, decision, or determination made by the administrative official charged with the enforcement of the Zoning Ordinance Article 1320 denying continuation of an alleged non-conforming use of a duplex in an R-2 Single-family Residential District. The property is located at 2687 Collis Avenue.

Petitioner/Property Owner: Thor Meeks, P.O. Box 1046, Hurricane, WV 25526

Introduction

Mr. Meeks is appealing a decision made by the Planning office regarding denial of continuation of a non-conforming duplex at 2687 Collis Avenue.

Existing Conditions / Background

The property on Collis Avenue was demolished in December 2020. To date, Mr. Meeks has not fulfilled the obligation for the completion of the demolition by filling in the hole left by the removal of the structure.

On March 17, 2021, Mr. Meeks reached out to the Planning and Zoning Office asking for information to build a duplex at 2687 Collis Avenue and was informed that duplexes are not a permitted use in the area.

This property is located in an R-2 Single Family Residential Zone and is surrounded by properties that are also zoned R-2 Residential. Duplexes are not permitted in an R-2 Residential Zone.

According to the petitioner, the single-family house on this site was converted into a duplex before he bought it in 2009. The property was vacant for approximately two years before it was demolished in December 2020.

Upon review of information from the Cabell County Assessor's Office, the City of Huntington Finance Office, the Building Department, police records, and local real estate listings, the Planning and Zoning Office was unable to find evidence that the structure was a lawful non-conforming duplex. For the structure to be legally operating as nonconforming duplex it must have been converted into a two-unit building with separate units, utilities, and refuse fee accounts, prior to the establishment of the single family zoning district. Mr. Meeks confirmed that the utilities were on one meter and mail was not separated by unit.

Mr. Meeks was given the opportunity to provide documentation proving that the structure was operating as a lawful non-conforming duplex. He provided the following evidence: two leases with dates that did not overlap.

According to the petitioner, prior to demolition of the structure, the property had been vacant for two years. Per Article 1355.G, the structure and any alleged non-conforming use would be considered abandoned.

Pictures



View of property from Collis Avenue



View from Collis Avenue. Lot inspection is still pending due to demolition not being completed properly.

Timeline:

July 2020 – Last payment on municipal service fee and refuse fee account for 2687 Collis Avenue.

September 14, 2020 – 2687 Collis Avenue listed as a single family, three bedroom home on realtor.com.

December 8, 2020 – Demolition permit pulled for 2687 Collis Avenue.

May 17, 2021 – Mr. Meeks contacted planning office regarding rebuilding a duplex on the property.

May 20, 2021 – Planning Official emailed Mr. Meeks, stating that evidence could not be found that the structure was ever a duplex, and gave Mr. Meeks the opportunity to provide any evidence that it was a duplex with a deadline of May 28th in order to allow time for legal to review before the July agenda deadline of June 15, as the petitioner would still need to request a variance in order to allow for the redevelopment of a non-conforming use.

June 15, 2021 – Mr. Meeks emailed two leases with different rent amounts and different rental dates, one from March 2016 - April 2017 rented at \$900/month and one from July 2017 - June 2018 at \$500/month.

Proposed Conditions

If the appeal is granted by the Board, Mr. Meeks would be able to pursue a variance to the length of time of abandonment of a lawful non-conforming use in order to construct a duplex at this property.

Zoning Ordinance

Article 1320 designates single-family duplexes as a prohibited use in an R-2 District.

Article 1355.G states that if a legal nonconforming use of any building or premises is discontinued for a period of one (1) year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned.

Summary / Findings of Fact

1. Thor Meeks is the petitioner and owner.
2. The structure was vacant for two years prior to its demolition in December 2020.

3. Staff found no evidence of the structure converting to or operating as a duplex.
4. Documents provided by the petitioner were determined insufficient to support the claim that a duplex was operating.
5. The petitioner is appealing the decision made that a duplex was not operating at this location.
6. The City of Huntington has one refuse fee account for 2687 Collis Avenue.
7. This property is zoned R-2 Single-Family Residential.
8. The lot is approx. 6,800 sf.

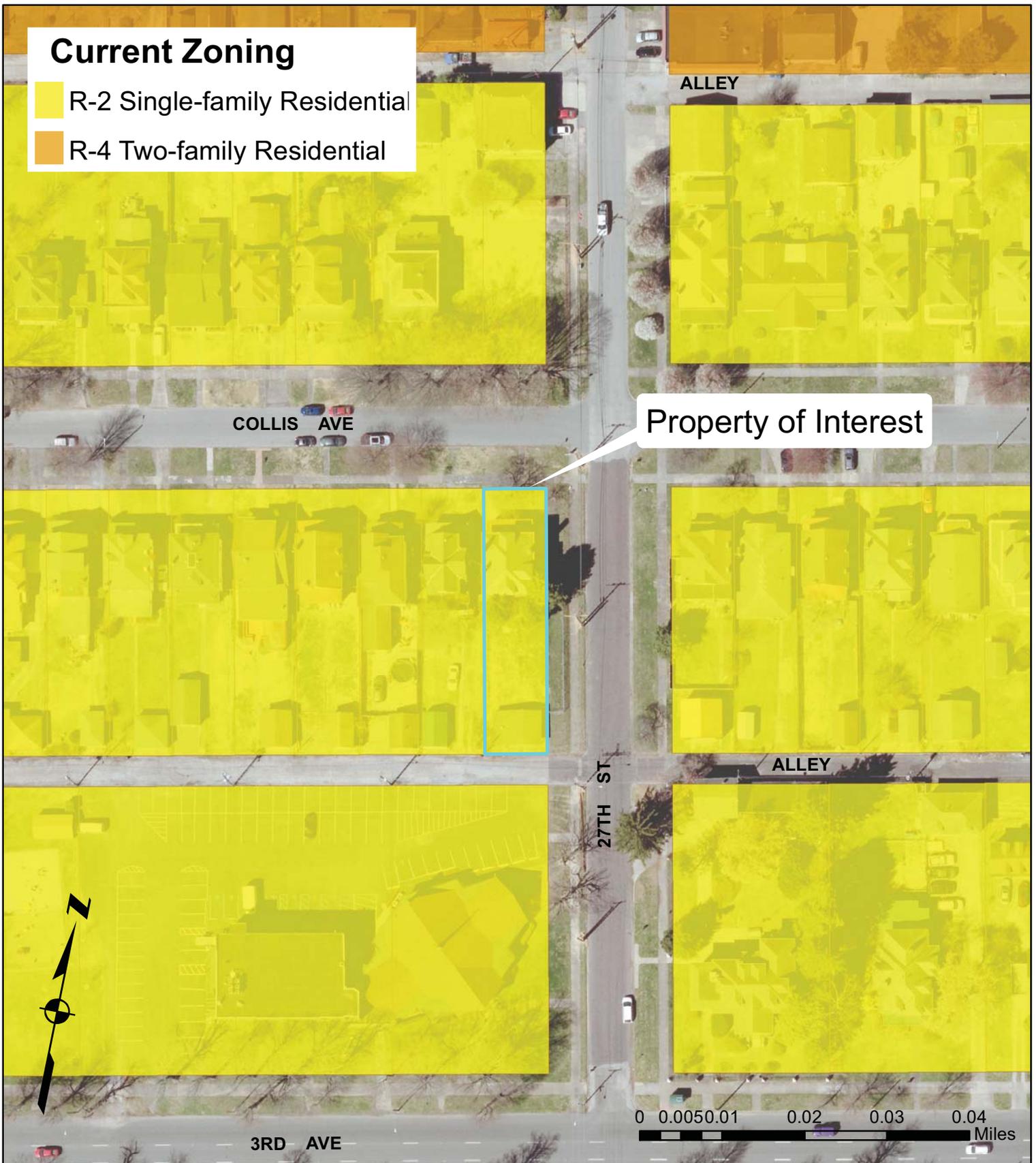
Attachments

- Please see attached Aerial, Location, and Zoning Maps for reference.



2687 Collis Avenue Appeal of the Zoning Regulations





2687 Collis Avenue Appeal of the Zoning Regulations





2687 Collis Avenue Appeal of the Zoning Regulations





2687 Collis Avenue Appeal of the Zoning Regulations





APPLICATION FOR AN
APPEAL TO THE
BOARD OF ZONING
APPEALS

Planning and Zoning
Huntington City Hall
800 Fifth Avenue
P.O. Box 1659
Huntington, WV 25717
(304) 696-5540, opt 3

Applicant Name: THOR MEEKS Phone: 304-550-2251

Address (city, state, zip): PO Box 1046 HURRICANE, WV 25526

Email: THOR@MEEKSRENTALS.COM

Property Owner (if applicable): THOR REAL ESTATE, LLC Phone: 304 419 2008

Address (city, state, zip): 2687 COLLIS AVE HUNTINGTON, WV 25701

I/We, the undersigned, hereby request the Board of Zoning Appeals review the following order, requirement, decision, or determination made by BREANNA LEGAL (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: Now Confirming Dwelling

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

2687 COLLIS AVE. BLK 255 LT 23 HL 2687 COLLIS

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):

THE DWELLING THAT WAS TORE DOWN WAS USED FOR YEARS AS A DUPLEX. I WOULD LIKE TO GO BACK W/ A DUPLEX.

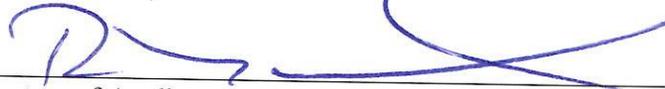
(Attach extra pages, if needed, for any additional information)

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 Fifty Dollars (\$160.00) 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, July 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

JUNE 30, 2021.


Signature of Applicant

6/28/21
Date

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

BZA Decision:

- Approved
- Denied
- Approved with conditions

Conditions: _____

FOR OFFICE USE
Received: _____
Staff Initials: _____
Project Number: _____
Meeting Date: _____

THOR REAL ESTATE, LLC
PO BOX 1046
HURRICANE, WV · 25526
304-419-2608



ORIGINAL

www.meeksrentalsandleasing.com

RESIDENTIAL LEASE/RENTAL AGREEMENT PARTIES:

LANDLORD: ROBERT T. & MELISSA D. MEEKS

TENANT(S): Ricky Davis

PROPERTY ADDRESS: 2687 Collis, Huntington, WV 25702

In consideration of said leasing the Landlord and Tenant further agree as follows:

1. **RENTAL AMOUNT:** Tenant agrees to pay to Landlord, without demand, to Landlord for a term of **ONE YEAR** to commence on 7/1/2017 and to end on 6/30/2018. Rent is due by the 1st of the month and considered late after the 5th of each month with a 6% late fee added.

This lease goes to a month to month lease after the initial lease is fulfilled.

Tenant will pay monthly installments of 500.00 payable in advance on the first day of each month.

Once a rent has gone into the following month eviction will be filed on the 10th of that following month.

2. **SECURITY DEPOSITS:** TENANT shall deposit with landlord the sum of **500.00** as a damage deposit to secure TENANTS faithful performance of the terms of this lease. After all the TENANTS have vacated, leaving the premises vacant, the LANDLORD may use the damage deposit for the **cleaning of the premises, any unusual wear and tear to the premises or common areas, and also for last month utilities if not paid before leaving.** and any rent or other amounts owed pursuant to the lease agreement. TENANT may not use said deposit for rent owed during the term of the lease. Within 30 days of the TENANT vacating the premises, LANDLORD shall furnish TENANT a written statement indicating any amounts deducted from the damage deposit and returning the balance to the TENANT. A walk through must be scheduled with tenant before leaving premises. If walk through is not scheduled with landlord, deposit will be forfeited. There is a \$50.00 fee for failure to return keys upon exiting premises. If TENANT fails to furnish a forwarding address to LANDLORD, then LANDLORD shall send said statement and any security/damage deposit refund to the leased premises.
3. **INITIAL PAYMENT:** TENANT shall pay the first month rent of **500.00** and the security deposit in the amount of **0.00** for a total of _____. Said payment shall be made in the form of cash, check, money order, or credit/debit card. Total due prior to occupancy. There is a \$25.00 credit card fee for usage of card each month but not on initial payment.

There is a \$500.00 non-refundable pet deposit.

If pet deposit applies, total initial payment will be \$_____.

4. **OCCUPANTS:** The premises shall not be occupied by any person other than those designated above as TENANT with the exception of the following named persons: _____. If LANDLORD, with written consent, allows for additional persons to occupy the premises, the rent shall be increased by \$100 for each such person. Any person staying 14 days cumulative or longer, without the LANDLORDS written consent, shall be considered as occupying the premises in violation of this agreement. Upon learning of others staying and/or living that LANDLORD is not aware of, eviction proceeding will be set forth.
5. **SUB-LETTING OR ASSIGNING:** TENANT agrees not to assign or sublet the premises, or any part thereof, without first obtaining written permission from LANDLORD.
6. **UTILITIES:** TENANT shall pay for all utilities and/or services supplied to the premises. If there is not a dumpster at your location you will need contact the proper refuse collection company for the service. If bags of trash are found on the ground and not in the dumpster you will be charged a \$35.00 pick up fee. If the dumpster is full and needs an extra pick up please call us at 304-419-2608 so that we may schedule the extra dump.

THOR REAL ESTATE, LLC
PO BOX 1046
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- 7. PARKING:** TENANT does not have assigned parking. TENANT may wash, but not repair or paint in this space or at any other common area on the premises. Only vehicles that are operational and currently registered may park in this space. Any vehicle that is leaking any substance must not be parked everywhere on the premises. Please be respectful of parking that involves guests.
- 8. CONDITION OF PREMISES:** TENANT acknowledges that the premises have been inspected. Tenant acknowledges that said premises have been cleaned and all items, fixtures, appliances, and appurtenances are in complete working order. TENANT promises to keep the premises in a neat and sanitary condition and to immediately reimburse landlord for any sums necessary to repair any item, fixture or appurtenance that needed service due to TENANTS, or TENANTS invitee, misuse or negligence. TENANT shall also be responsible for repair or replacement of the garbage disposal where the cause has been a result of bones, grease, pits, or any other item which normally causes blockage of the mechanism. IF TENANT, is in single dwelling they are responsible to maintain yard with mowing and clutter free. If this is not handled by TENANT, the LANDLORD will have it taken care of with the proper charges not to be LESS THAN \$50.00.
- 9. ALTERATIONS:** TENANT shall not make any alterations to the premises, including but not limited to installing aerials, lighting fixtures, or other items without first obtaining written permission from LANDLORD. *TENANT shall not change or install locks*, or wallpaper said premises without LANDLORDS prior written consent, TENANT shall not place placard, signs, or other exhibits in a window or any other place where they can be viewed by other residents or by the general public. **If locks are changed without prior written consent there is a \$100.00 charge.**
- 10. LATE CHARGE/BAD CHECKS:** A late charge of 6% of the current rental amount shall be incurred if rent is not paid when due. If rent is not paid when due. Rent is due on or before the 5th of each month. TENANT shall be liable in the sum of \$25.00 for each check that is returned to LANDLORD because the check has been dishonored. Once a client has had 2 checks returned we will only accept cash, credit, or debit card at that time.
- 11. NOISE AND DISRUPTIVE ACTIVITIES:** TENANT or his/her guests and invitees shall not disturb, annoy, endanger or inconvenience other tenants of the building, neighbors, the LANDLORD or his agents, or workmen nor violate any law, nor commit or permit waste or nuisance in or about the premises. Further, TENANT shall not do or keep anything in or about the premises that will obstruct the public spaces available to other residents. We do not tolerate any disturbance. Any report of disturbance of any type, loud cars, music, domestic disputes, etc. that interrupt the lives of your neighbors are cause for eviction. One warning will be sent and second offense will be eviction.
- 12. LANDLORDS RIGHT OF ENTRY:** LANDLORD is permitted to make all alterations, repairs and maintenance that in LANDLORDS judgment is necessary to perform. If the work performed requires that TENANT temporarily vacate the unit, then TENANT shall vacate for this temporary period upon being served a 7 days notice by LANDLORD. TENANT agrees that in such event that TENANT will be solely compensated by a corresponding reduction in rent for those many days that TENANT was temporarily displaced. If the work to be performed requires the cooperation of TENANT to perform certain tasks, then those tasks shall be informed upon serving 24 hours written notice by LANDLORD. (EXAMPLE -removing food items from cabinets so that the unit may be sprayed for pests)
- 13. REPAIRS BY LANDLORD:** Where a repair is the responsibility of the LANDLORD, TENANT must notify LANDLORD of what item needs servicing or repair. TENANT must give LANDLORD a reasonable opportunity to service or repair said item. Repairs that have not been reported and must be repaired upon the ending of tenancy the cost of said repair will be withheld from security deposit.
- 14. PETS:** No dog, cat, or other domestic pet or animal of any kind may be kept on or about the premises without LANDLORD'S written consent. **There is a \$500.00 non refundable pet deposit.** If Tenant chooses to have a pet on the premises, Tenant agrees that they have waived their right to have deposit returned upon inspection if any repairs are necessary. Also upon inspection of area, Landlord reserves the right to bill for any and all repairs above and beyond the amount held. It is the pet owners responsibility to handle pet waste and dispose of properly. If it is not handled and disposed of pet owner will be charged a \$25.00 per month fee.

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- 15. INSURANCE:** TENANT must maintain a personal property Insurance policy to cover any losses sustained to TENANT'S personal property or vehicle. It is acknowledged that LANDLORD does not maintain this insurance to cover personal property damage or loss caused by fire, theft, rain, water overflow/leakage, acts of GOD, and/or any other causes. It is acknowledged that LANDLORD is not liable for these occurrences. It is acknowledged that TENANT'S Insurance policy shall solely indemnify TENANT for any losses sustained. TENANT'S failure to maintain said policy shall be a complete waiver of TENANT'S right to seek damages against LANDLORD for the above stated losses. The parties acknowledge that the premises are not to be considered a security building which would hold LANDLORD to a higher degree of care.
- 16. TERMINATION OF LEASE/RENTAL AGREEMENT:** If this lease is based on a fixed term, pursuant to paragraph 2, then at the expiration of said fixed term landlord will notify tenant and set up date for yearly inspection and lease renewal upon agreement of both parties at that time. **Where said term is a month to month tenancy, either party may terminate this tenancy by the serving of a 30 day written notice. If there is no 30 day notice given in writing, the tenant waives any and all deposits.**
- 17. POSSESSION:** If premises cannot be delivered to TENANT on the agreed date due to loss, total or partial destruction of the premises, or failure of previous TENANT to vacate, either party may terminate this agreement upon written notice to the other party at their last known address. It is acknowledged that either party shall have no liability to each other except that all sums paid to LANDLORD will be immediately refunded to TENANT. Also note that tenant must have all utilities in his or her name and proof of such before receiving keys to rented property.
- 18. ABANDONMENT:** It shall be deemed a reasonable belief by the LANDLORD that an abandonment of the premises has occurred where the rent has been unpaid for 30 consecutive days and the TENANT has been absent from unit for 30 days. In that event, LANDLORD may serve written notice which will remain posted on the premises and property shall be deemed abandoned. Per code property then becomes the property of the Landlord to dispose of in any manner he may choose.
- 19. VALIDITY/SEVERABILITY:** If any provision of this agreement is held to be invalid, such invalidity shall not affect the validity or enforceability of any other provision of this agreement.
- 20. ATTORNEY FEES:** In the event action is brought by any party to enforce any terms of this agreement or to recover possession of the premises, the prevailing party shall recover from the other party reasonable attorney fees. It is acknowledged, between the parties, that jury trials significantly increase the costs of any litigation between the parties. It is also acknowledged that jury trials require a longer length of time to adjudicate the controversy. On this basis, all parties waive their rights to have any matter settled by jury trial.
- 21. APPLICATION:** All statements in TENANT'S application must be true or this will constitute a material breach of this lease.
- 22. ENTIRE AGREEMENT:** The foregoing agreement, including any attachments incorporated by reference, constitute the entire agreement between the parties and supersedes any oral or written representations or agreements that may have been made by either party. Further, TENANT represents that TENANT has relied solely on TENANT'S judgment in entering into this agreement. TENANT acknowledges having been advised to consult with independent legal counsel before entering into this Agreement and has decided to waive such representation and advice. TENANT acknowledges that TENANT has read and understood this agreement and has been furnished a duplicate original.

Paul J. Meeks LANDLORD/AGENT

6-27-17 DATE

[Signature] TENANT

6-27-17 DATE

_____ TENANT

_____ DATE

Hold Harmless Agreement

The HOLD HARMLESS AGREEMENT (this "Agreement") is made effective on 7/1/2017 by and between, Thor Real Estate, LLC, (hereinafter, Landlord) and Ricky Davis (hereinafter tenants) of 2687 Collis, Huntington, WV 25702 are sometimes individually referred to as "Party" and collectively "Parties".

WHEREAS, Ricky Davis desires to hold harmless, Thor Real Estate, LLC from any claims and/or litigation arising out of the leasing of the property and any actions in connection with 2687 Collis, Huntington, WV 25702 NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, Thor Real Estate, LLC and Ricky Davis hereby agree as follows:

TERMS

1. HOLD HARMLESS, Ricky Davis shall defend, indemnify and hold harmless, Thor Real Estate, LLC from any and all actual or alleged claims, demands, causes of action, liability, loss and/or injury (to property or person, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Ricky Davis, its friends, family, personnel, employees, agents, contractors, or volunteers in connection with or arising out of Ricky Davis's actions. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorney fees, and related costs or expenses, and any reimbursements to Thor Real Estate, LLC for all legal expenses and costs incurred by them.
2. AUTHORITY TO ENTER AGREEMENT: Each Party warrants that the individuals who have signed this Agreement have the legal power; right and authority make this Agreement and bind each respective Party.
3. AMENDMENT; MODIFICATION. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
4. WAIVER. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppels, or otherwise.
5. Attorneys' Fees and Costs. If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees and other elated costs, in addition to any other relief to which the Party is entitled.

Landlord

Ricky Davis

Date

6-27-17

Tenant

Ricky Davis

Date

6-27-17

Tenant

Date

THOR REAL ESTATE, LLC
PO BOX 1046
HURRICANE, WV 25526
304-419-2608
www.meeksrentalsandleasing.com

RESIDENTIAL LEASE/RENTAL AGREEMENT PARTIES:

LANDLORD: Thor Real Estate, LLC
TENANT(S): Chrissy Cabell
PROPERTY ADDRESS: 2687 Collis Avenue, Huntington, WV 25702

In consideration of said leasing the Landlord and Tenant further agree as follows:

- 1. RENTAL AMOUNT:** Tenant agrees to pay to Landlord, without demand, to Landlord for a term of **ONE YEAR** to commence on 5/1/2016 and to end on 4/31/2017. Rent is due by the 1st of the month and considered late after the 5th of each month with a 6% late fee added.

This lease goes to a month to month lease after the initial lease is fulfilled.

Tenant will pay monthly installments of \$900.00 payable in advance on the first day of each month.

Once a rent has gone into the following month eviction will be filed on the 10th of that following month.

- 2. SECURITY DEPOSITS:** TENANT shall deposit with landlord the sum of **\$900.00**, as a damage deposit to secure TENANTS faithful performance of the terms of this lease. After all the TENANTS have vacated, leaving the premises vacant, the LANDLORD may use the damage deposit for the *cleaning of the premises, any unusual wear and tear to the premises or common areas, and also for last month utilities if not paid before leaving*, and any rent or other amounts owed pursuant to the lease agreement. TENANT may not use said deposit for rent owed during the term of the lease. Within 30 days of the TENANT vacating the premises, LANDLORD shall furnish TENANT a written statement indicating any amounts deducted from the damage deposit and returning the balance to the TENANT. A walk through must be scheduled with tenant before leaving premises. If walk through is not scheduled with landlord, deposit will be forfeited. There is a \$50.00 fee for failure to return keys upon exiting premises. If TENANT fails to furnish a forwarding address to LANDLORD, then LANDLORD shall send said statement and any security/damage deposit refund to the leased premises.

- 3. INITIAL PAYMENT:** TENANT shall pay the first month rent of **\$900.00** and the security deposit in the amount of **\$900.00** for a total of **\$900.00**. Said payment shall be made in the form of cash, check, money order, or credit/debit card. Total due prior to occupancy. There is a \$15.00 credit card fee for usage of card each month but not on initial payment.

There is a \$500.00 non-refundable pet deposit. If pet deposit applies, total initial payment will be

\$ _____

- 4. OCCUPANTS:** The premises shall not be occupied by any person other than those designated above as TENANT with the exception of the following named persons: _____ If LANDLORD, with written consent, allows for additional persons to occupy the premises, the rent shall be increased by \$100 for each such person. Any person staying 14 days cumulative or longer, without the LANDLORDS written consent, shall be considered as occupying the premises in violation of this agreement. Upon learning of others staying and/or living that LANDLORD is not aware of, eviction proceeding will be set forth.
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West Virginia

ID

GOVERNOR Earl Ray Tomblin

4a. Iss: 11/15/2012

NON-OPER ID CARD

NOT FOR FEDERAL IDENTIFICATION



4d. **I429517**

4b. Exp: 07/22/2018

3. DOB: 07/22/1973

5. 2012110514380887601292460

16. Ht: 5-08

17. Wt: 220

18. Eye: HL

15. Sex: M

Ricky E Davis

1. DAVIS

2. RICKY EUGENE JR

3. 1306 CROSSROADS VLG

NITRO, WV 251430000

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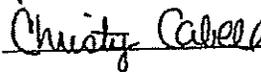
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LANDLORD/AGENT

4-27-16 DATE



TENANT

4-27-16 DATE

TENANT

DATE