

Minutes
City of Huntington Board of Zoning Appeals
June 21, 2022

A meeting of the City of Huntington Board of Zoning Appeals was held on June 21, 2022 at 5:30 p.m. in the City Hall Council Chambers. *Mr. Anderson* called the meeting to order.

Members Present: Howard Anderson, Lee Canup, Dan Earl

Members Absent: C.W. Dolin, Jacqueline Proctor

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

Ms. Canup made a motion to approve the May Minutes; *Mr. Earl* seconded the motion. All were in favor and the May Minutes were approved.

Mr. Earl made a motion to approve the Orders; *Ms. Canup* seconded the motion. All were in favor and the Orders were approved.

BZA 22-C-21

A petition for a conditional use to allow for an off-site parking lot in a C-2 Highway Commercial District. The property is located at 1302 Washington Avenue.

BZA 22-V-22

A petition for a variance to the materials requirements for commercial parking lots to allow for a gravel parking lot in a C-2 Highway Commercial District. The property is located at 1302 Washington Avenue.

Petitioner: C & B Used Autos LLC, 1250 Washington Ave. Huntington, WV
Property Owner: William Slone, 1302 Washington Ave. Huntington, WV

Bob Lindsay, 957 Virginia Ave., informed the Board that the 1302 Washington Avenue location is used for overflow parking for the C&B Auto car lot. He briefly describe past work with the Planning office to get the property into compliance, but due to a death, the project was not completed. Mr. Lindsay further explained that the business is looking to downsize and has put the property up for sale with a buyer already interested.

Ms. Shell presented the Staff Report for the conditional use.

Mr. Earl – Are you seeking an approval for off-site parking, but plan for the lot to remain vacant?

Ms. Shell explained the lot was currently being used for overflow parking and the petitioner is requesting to allow for the use to continue with city approval.

Mr. Anderson asked the petitioner to present the request for a variance to allow for gravel as the surface material.

Mr. Lindsay explained that the lot would only be used sparingly.

Ms. Shell presented the Staff Report for the variance.

Mr. Earl made a motion to **conditionally approve** BZA 22-C-21 & BZA 22-V-22 with the condition that the petitioner follow through with compliance with the submitted site plan; *Ms. Canup* seconded the motion.

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

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

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

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

BZA 22-A-23

An appeal of the requirement, decision, or determination made by the administrative official charged with the enforcement of the Zoning Ordinance, regarding denial of a home occupation permit for firearm sales.

Petitioner: Matthew Shafer, 3004 3rd Ave. Huntington, WV

Matthew Shafer, 3004 3rd Ave., presented the petition, assuring the Board that he did not believe Planning Staff made their decision with any kind of political bias, but with a misunderstanding of how the business would operate. He explained that no guns would be sold from the residence, they would only be sold online or at gun shows; the residence would be used as an office, no one would be coming to the home buying guns. He informed the Board the ATF has regulations that must be followed, such as no more than six (6) guns are allowed to be stored in the home for sale at one time; and they must be located in a secure locked location.

Mr. Earl – What are the facts that you believe were misstated or information that was not known?
Mr. Shafer believes that staff did not understand how the business would operate. *Mr. Earl* confirmed that the Staff Report is not inconsistent with how he described his business.

Mr. Earl briefly described the role of the BZA in reviewing appeals and how they are different than the review of conditional uses and variances. Ms. Hernandez read into the record a memo regarding appeals and what the Board should consider in their decision making; principally, did staff make a proper and legal determination with the information available at the time of the decision.

Mr. Anderson – You mentioned sales would only occur at gun show? No, at home pick up? Will there be any signage?
Mr. Shafer confirmed that sales would only occur at gun shows and online, no sales would take place at the home. He explained that he had no intention of advertising his business with signage.

M. Canup – You mentioned previous sales at a different location. Where was this happening prior to moving to this address?
Mr. Shafer explained that he was previously running his business from his Cross Lanes location, but is now pursuing this location since his recent purchase of the property so as to not need to travel. He further assured the Board of the safety measures required by the ATF and FBI and his personal implementation of ADT home security and security cameras around the property.

M. Anderson – Are there any regular federal inspections required? And have you contacted the local authorities of your business?

Mr. Shafer explained the ATF will inspect the property to ensure regulatory standards every three (3) years, more often if there are issues, which he has never had. He told the Board that he has a memo to police chief drafted, but has not sent it as he is waiting on the decision to be made with the BZA.

Ms. Shell presented the Staff Report.

M. Earl – Is there a different method by which Mr. Shafer could get this done other than by through an appeal? Is there a condition that would allow him to move forward?

Ms. Shell explained that if the business were of a scale not normally permitted there is a method which a use could be allow as conditional. However, it is staffs opinion that the exclusion of firearm sales from other retail sales makes the use prohibited in the home. The way the Home Occupation ordinance is currently written there is no other path forward.

The Board discussed whether to allow public input.

M. Anderson – Does staff still feel comfortable in their decision to deny the request for a home occupation?

Ms. Shell affirmed the decision made by staff and restated the relational for the decision that was made.

Mr. Anderson expressed his desire to hear public comment. *Mr. Earl* made a motion to allow public comment with a time limit of three (3) minutes per speaker; *Ms. Canup* seconded the motion. All were in favor.

Linda Blough, 2741 Collis Ave., expressed her concern that with all the recent mass shootings in the country, allowing the storage of a large amount of firearms in the neighborhood would decrease the safety of the neighborhood and cause an increase gun activity. She reminded the Board that houses can be broken into and guns could be stolen despite safety measures being followed.

Pat Jones, 2564 3rd Ave., told the Board there is no law against owning guns, and an owner may have however many they want as long as they have not been designated as illegal. He expressed dismay as to why the petitioner would need to ask permission to sell guns. No harm, no foul. Don't tell. Send these things by mail.

M. Anderson – Is there a way to put a condition on reversing the decision to restrict the sales to online and at shows?

Ms. Hernandez explained that there are no conditions that could be attached in the case of an appeal, but they could redefine what the business model is, and provided an example if defining the use as retail sales instead of firearm sales.

Mr. Anderson – What recourse does the city have if he were to start selling out of the home? Fine or jail time? If he were no longer to be in compliance with city it would trigger the ATF?

Ms. Shell explained that the Home Occupation ordinance does not allow for sales from the home for any retail business and to do so would be a violation, which would result in a fine and their Home Occupation permit and Municipal Business License would be revoked.

Mr. Shafer explained that non-compliance with the ATF is a fine of \$500,000.00 or 10 years in prison.

M. Earl is sensitive to the testimony of the petitioner and the public, but believes the statute is clearly written and does not allow for this type of business to operate out of a home. He expressed that firearms sale are only allowed in certain districts and there is no carve out for this type of business to operate even in the manner stated by the petitioner. He reminded the other Board members that they do not have the authority to rewrite the law. He does not believe that staff misused their discretion in making the determination on this issue.

Ms. Canup believes the wording in the code is unfortunate and that firearms establishment implies a retail point of sale. She pointed out there is not an exclusion of firearm sales in the home occupation ordinance and compared this issue to an auto service station case heard recently where certain services were excluded.

Mr. Earl made a motion to **reverse** BZA 22-A-23; *M. Canup* seconded the motion.

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

BZA petition for an **Appeal** was **reversed** with a vote of 2 Yes to 1 No.

M. Canup made a motion to classify the business as clerical work; *Mr. Earl* seconded the motion. All were in favor of classifying the business as clerical work.

Mr. Earl made comment that he does not believe that this adequately classifies the business and the use is a clear violation of the firearms provision.

BZA 22-V-24

A petition for a variance to continue a non-conforming multi-family use in an R-2 Single Family District. The property is located at 2113 Madison Avenue.

Petitioner/Property Owner: Recovery Point of Huntington Inc. 1040 Adams Ave., Huntington, WV

Trenton Sturgill, 1040 Adams Ave., representative of Recovery Point, explained to the Board that the company acquired the six (6) unit townhouses development in September of 2021. Knowing that the property would be sold, the previous owner did not renew leases, and unfortunately, the Recovery Point board took some time in making the decision to purchase the property; thus, causing them to miss the time limit on the one year abandonment window. He listed improvements that being made to the property which include a new roof, window replacements, and many other internal renovations.

Ms. Shell presented the Staff Report.

Ms. Canup made a motion to **approve** BZA 22-V-24; *Mr. Earl* seconded the motion.

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

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

The meeting concluded at 6:37 p.m.

Date approved: 7/19/22

Chairperson: _____

C.W. Dolin, Chair

Prepared by: _____

Patricia Usher, Zoning Officer

Vice Chair 

