

Minutes
City of Huntington Board of Zoning Appeals
March 15, 2022

A meeting of the City of Huntington Board of Zoning Appeals was held on March 15, 2022 at 5:30 p.m. in the City Hall Council Chambers. *Mr. Dolin* called the meeting to order.

Members Present: Lee Canup, Jacqueline Proctor, C.W. Dolin, Sherry Houck, Dan Earl

Members Absent: Howard Anderson

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

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

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

BZA 22-C-08

A petition for an expansion of a Conditional Use Permit for a Bar to add outdoor dining. The property is located in the C-3 Central Business District at 411 9th Street.

Petitioner: Alejandro Vence, 127 Camelot Dr. Huntington, WV

Property Owner: River City Properties LLC, P.O. Box 116, Huntington, WV

Mr. Earl recused himself of the petition due to a conflict of interest.

Alejandro Vence, owner of the bar, presented the petition, explaining to the Board that he would like to expand his bar into the public right-of-way 3.5 feet. He has sought approval from the ABCA, Fire Marshal, and Building Inspectors to ensure safety and ADA standards.

Mr. Dolin closed the public hearing.

Ms. Lockman presented the Staff Report.

Ms. Canup made a motion to **approve** BZA 22-C-08; *Ms. Proctor* seconded the motion.

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

BZA petition for a **conditional use** was **approved** with a vote of 4 Yes to 0 No.

BZA 22-A-09

An appeal of the requirement, decision, or determination made by the administrative official charged with the enforcement of the Zoning Ordinance, regarding the definition and conditional use of an Auto Service Station.

Petitioner: Swell's Autobody, LLC. 2208 County Road 31, Chesapeake, OH

Ms. Canup recused herself of the petition due to a conflict of interest.

Mark Sadd, legal representation for Swell's Auto Body, presented the petition, detailing the timeline of events that lead Chris Adkins, the owner of Swell's, to the appeal of the decision made by the planning office. Mr. Sadd believes the planning office incorrectly categorized Swell's Auto Body as an Auto Service Station and claimed that it should have been categorized as a Repair Shop. He pointed out that Auto Repair is not explicitly defined in the ordinance and believes since that definition is not there, staff should define the use as a Repair Shop in order to allow the business to open without a Board hearing.

Ms. Lockman presented the Staff Report.

Mr. Sadd responded to the Staff Report by claiming that when a use definition is missing in the ordinance, the use should be strictly construed be defined in favor of the property owner and they should be granted leniency.

Mr. Earl – Do you agree with Mr. Sadd's comment that the regulations should be strictly construed against the city?

Ms. Hernandez does not agree and explained that the Supreme Court has determined that ordinances are to be construed as statutes and statutes are construed by the language used and in harmony with other statutes, meaning an ordinance must be in harmony with other ordinances and those take precedence over any strict construction.

Mr. Earl highlighted the issues of Mr. Sadd's argument that an Auto Repair Shop should be regulated as a Repair Shop and suggesting that regulating this type of business in this way would set a bad precedent.

Ms. Hernandez illustrated her point about an ordinance being interpreted in harmony with other ordinances by emphasizing the allowed uses in the ordinance for a Home Occupation, which allows for small scale repair shops as an approvable business to operate out of a home, but not a business whose operations consist of the repair and maintenance of automobiles.

Chris Adkins, owner of Swell's, was asked to answer questions from the Board.

Ms. Proctor – Will you be performing the same type of work or will you be adding any other operations at the new location?

Mr. Adkins confirmed that he would not be adding any other services.

Ms. Proctor – Is your issue with the way you are defined due to the requirement for a Conditional Use Permit to operate? Please explain in your own words.

Mr. Adkins detailed his concern that stipulations would be put on his business that would inhibit his operations and the additional costs associated with any conditions. He listed a number of speculative questions he saw as potential threats that would prevent him from operating his business in the proposed location.

Ms. Proctor – What would be required of Mr. Adkins to operate his business in the proposed location?

Ms. Lockman explained to the Board that the use specific standards for an Auto Service Station apply more to businesses with fuel sales, but there are a few regarding the safe storage of parts. The only other requirements, outside of a hearing, for Swell's to operate in the proposed location would be a Certificate of Occupancy which is required for all businesses operating in a new location and a Sign Permit. She explained that this business would not have any additional

standards that would cause the business to operate any differently than it is now, unless the Board issues extra conditions with an approval.

Ms. Lockman further explained that a Conditional Use Permit lasts for the life of the business and can be transfer with a change in ownership. A Conditional Use Permit expires one year after the use has been abandoned.

Ms. Proctor – Do you have plans to expand?

Mr. Adkins explained that he would like to expand in the future, but is concerned that he would not be able to do so. Ms. Lockman and Ms. Hernandez detailed the conditions for being able to expand in the future.

Mr. Dolin closed the public hearing and discussion ensued.

Ms. Proctor expressed confusion on the change made to the ordinance that created this dilemma and hoped that changes would be made to remedy the omission of this use from the ordinance.

Mr. Earl believes that the use would be closer to the definition of an Auto Service Station if the definition had not been expressly forbidden the specific operations listed by Swell's. He does not see a clear definition for this business in the ordinance and is concerned about precedence. Ms. Hernandez clarified that the Board is not bound to any decisions they make.

Mr. Earl made a motion to **reverse** the decision made by planning staff; *Ms. Houck* seconded the motion.

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

Mr. Earl made a motion to **classify Swell's as a Repair Shop**; *Ms. Houck* seconded the motion.

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

BZA 22-A-09 petition for an **appeal** was **reversed** with a vote of 3 Yes to 1 No.

Swell's Auto Body was determined by the Board to be a **Repair Shop** with a vote of 4 Yes and 0 No.

BZA 22-C-10

A petition for a Conditional Use Permit to operate an Auto Service Station in a C-1 Neighborhood Commercial District. The property is located at 111 W. 8th Avenue.

Petitioner: Swell's Autobody, LLC, 2208 County Road 31, Chesapeake, OH

Property Owner: Stendo Machine, LLC, 111 W. 8th Ave, Huntington, WV

Due to the outcome of BZA 22-A-09, BZA 22-C-10 is moot; therefore, the petitioner withdraws their request for a Conditional Use Permit.

BZA 22-C-11

A petition for a Conditional Use Permit to open a retail location over 6,000 square feet in a C-1 Neighborhood Commercial District. The property is located at 115 6th Avenue. The proposed project would be 21,904 square feet.

Petitioner: Dollar Tree, 500 Volvo Pkwy, Chesapeake, VA

Property Owner: Huntington Realty Corporation, 2001 McCoy Rd, Ste. 101, Huntington, WV

Seth Marinoff and Donna Elliott presented the petition. Mr. Marinoff detailed the proposed location as a 20,000 sq. ft. combination Family Dollar and Dollar Tree and listed a number of product types sold by both businesses.

Mr. Dolin – What is the average size of your other locations and will any other locations in the area close in order to join with this location?

Mr. Marinoff explained that most Family Dollars and Dollar Trees are around 9,000 to 10,000 sq. ft. The proposed location will house both stores in one location. There are plans to close down one Family Dollar in the area.

Ms. Proctor – Are there any plans for lighting or security for the business?

Mr. Marinoff detailed the company standards for lighting, signage, and other measures taken by the company. Ms. Lockman told the Board that a lighting plan has not been submitted, but that it would be required prior to the business changing the lighting in the lot.

Ms. Canup – Will you be offering curb side pick-up or anything like that at this location?

Mr. Marinoff explained that this type of service is only offered at a few location and it is not likely the service will expand farther as the customer base for their business does not utilize this option.

Ms. Lockman presented the Staff Report.

James Frye, neighbor to the location, is in favor of the business going in, but wanted to make the Board and the business owners aware of the alley trash issue and asked that the business do what it can to make sure their trash does not end up on the streets.

Ms. Proctor expressed her desire that the business put in some greenery if possible.

Mr. Earl made a motion to **approve** BZA 22-C-11; *Ms. Proctor* seconded the motion.

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

BZA 22-C-11 petition for a **Conditional Use Permit** was **approved** with a vote of 5 Yes to 0 No.

Ms. Hernandez informed the Board that changes were to be made to the Board of Zoning Appeals ordinance to keep it in line with state code.

The meeting concluded at 6:57 p.m.

Date approved: April 19, 2022

Chairperson/ Jacqueline Proctor
G. W. Dolin, Chair
Co-Chair

Prepared by: Patricia Usher
Patricia Usher, Zoning Officer