



## Agenda

Huntington Board of Zoning Appeals  
Tuesday, March 19, 2024 - 5:30pm

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1. Call to Order
2. Roll Call
3. Approval of the February 2024 Minutes
4. Approval of the February 2024 Orders
  - BZA 23-V-41
5. Old Business
  - a. October 2023

### **BZA 23-C-32**

*Issue 1:* A petition for a conditional use to permit a bar to be located in the C-2 Highway Commercial District.

*Petitioner:* Sherry Kipp, 1713 Chestnut St., Kenova, WV

*Property Owner:* Ronnie Myers, P O Box 2885, Huntington, WV

*Property Location:* 2333 Adams Ave.

6. New Petitions

### **BZA 24-08**

*Issue 1:* A petition for a variance to allow a second driveway on the same parcel in an R-2 Single-family Residential District. The property is located at 417 Division Street.

*Petitioner/Property Owner:* Jeremy Whipkey, 417 Division St., Huntington, WV.

7. Announcements/Discussion
8. Adjournment

**Minutes  
City of Huntington Board of Zoning Appeals  
February 20, 2024**

A meeting of the City of Huntington Board of Zoning Appeals was held on February 20, 2024 at 5:32 p.m. in the City Hall Council Chambers. *Ms. Proctor* called the meeting to order and confirmed a quorum was present.

Members Present: Jacqueline Proctor, Gina Browning, Steven Yates, Dan Earl & Sara Loftus

Members Absent: None

Staff Present: Cade Williams, Planner II  
Bre Shell, Planning Director  
Ericka Hernandez, Assistant City Attorney  
Steve Curry, Planner II  
Stephanie Petruso, Senior Planner

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

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

**BZA 23-C-32;**

A petition for a conditional use to permit a bar to be located in the C-2 Highway Commercial District.

**BZA 23-C-33;**

A petition for a variance to the distance requirement between a residential area and a limited video lottery location.

**BZA 23-V-34;**

A petition for a variance to the distance requirement between two limited video lottery locations.

**BZA 23-V-35;**

A petition for a variance to the distance requirement between a church and a limited video lottery location.

**BZA 23-V-36;**

A petition for a conditional use to permit a limited video lottery to be located in the C-2 Highway Commercial District.

*Petitioner:* Sherry Kipp, 1713 Chestnut St., Kenova, WV

*Property Owner:* Ronnie Myers, P O Box 2885, Huntington, WV

*Property Location:* 2333 Adams Ave.

Robert Sharp, 1713 Chestnut St., Kenova, WV, spoke on behalf of the petitioner for these petitions. He explained the petitioner could not be at the meeting due to a family-related medical emergency. He requested for BZA 23-C-32 to be moved to the next meeting and wanted to withdraw BZA 23-C-33 thru BZA 23-V-36.

*Mr. Earl* motioned to move BZA 23-C-32 to the March meeting. *Ms. Browning* and *Mr. Yates* seconded motion.

BZA Roll Call: *Ms. Loftus*, Yes; *Mr. Yates*, No; *Ms. Browning*, Yes; *Mr. Earl*, Yes; *Ms. Proctor*, Yes.

BZA 23-C-32 was approved to be moved to the March meeting with a vote 4 Yes to 1 No.

*Mr. Earl* motioned to withdraw BZA 23-C-33 thru BZA 23-V-36. *Mr. Yates* seconded motion.

BZA Roll Call: *Mr. Yates*, Yes; *Ms. Browning*, Yes; *Mr. Earl*, Yes; *Ms. Loftus*, Yes; *Ms. Proctor*, Yes.

BZA 23-C-33 thru BZA 23-V-36 were approved to be withdrawn.

#### **BZA 23-V-41**

A petition for a variance to exceed the height requirement for a fence in the front yard of a residential property in the R-5 Multi-family Residential District. The property is located at 210 6<sup>th</sup> Ave.

*Petitioner/Property Owner*: Anthony C. Almeida, 210 6<sup>th</sup> Ave., Huntington, WV 25701.

Anthony Almeida, 210 6<sup>th</sup> Ave., represented the petition and explained the reasoning for the fence. He stated he received a stop order from the City. He mentioned to the *Board* his plans for the fence if he is allowed to finish the project. Lastly, he reiterated the reason for installing the fence was to keep his family safe.

*Ms. Shell* read the Staff Report.

*Mr. Earl* questioned if the fence shown in the plan would be the final product and the reasoning for the fence to be over the maximum height requirement. *Mr. Almeida* explained the height was instituted for the design and to prevent people from getting into his yard.

*Ms. Proctor* stated the fence looked like a construction fence the last time she saw it. She added 6<sup>th</sup> Avenue is an area with problems becoming nicer and safe. Lastly, she emphasized the fence takes the house and the fence itself out of character with the townscape.

Mary Ann Dolen, 28 Hamill Rd., spoke in opposition of this petition. She expressed all one can see is the fence when looking at that property off of 6<sup>th</sup> Ave. She noted one side of her home had drug activity recently and the other side of her home is vacant to help explain the type of activity in this area. She explained the neighborhood has a lot of issues and she has no problem with the petitioner building a fence but has an issue with the height.

Mary Dean, 615 2<sup>nd</sup> St., spoke in opposition of this petition. She stated the neighborhood has improved (in terms of safety). She explained there has been issues in the past but these problems like prostitution have gone away. She added locals have built fences in the past but constructed them in a fashion that complimented neighborhood character. She added she is appreciative of people being concerned but as a 70-year-old she utilizes services like Grub Hub and Uber at night and no one ever bothers her nor has in

the past. Overall, from her perspective, she explained the neighborhood is safer and would rather see a wrought-iron fence at this property like has been done with nearby properties.

*Ms. Loftus* stated the variance could eliminate a hardship for the petitioner and there is a condition occurring at the residence that is not created by the petitioner.

*Ms. Proctor* questioned if the height requirement for fencing in the City Ordinance counts for either blind or visible fences.

*Ms. Shell* stated the City Ordinance covers both material and height requirements for fencing. *Ms. Hernandez* stated transparency would have to be at least 50%.

*Mr. Earl* expressed his dissatisfaction with the fence. He recommended the petitioner explore other safety methods.

*Mr. Yates* stated he is not concerned with the height but is concerned that this fence would not be a solution to safety issues in the area. His other concern is the fence does not fit the character of the neighborhood.

*Ms. Loftus* asked for clarification on the correlation with transparency and material requirements in contrast to fence height. *Ms. Shell* elaborated the height and privacy in the front yard is in question.

*Ms. Browning* questioned the percentage of transparency present. *Ms. Shell* explained how transparency is calculated for fencing.

*Mr. Yates* expressed, in his opinion, the safety of the petitioner's family should be weighed more than the aesthetics of the fence.

*Ms. Loftus* made a motion to approve BZA 23-V-41. *Mr. Earl* seconded motion.

BZA Roll Call: *Ms. Browning*, Yes; *Ms. Loftus*, Yes; *Mr. Yates*, Yes; *Mr. Earl*, No; *Ms. Proctor*, No.

BZA 23-V-41 was approved with a vote 3 Yes to 2 No.

**BZA 24-06;**

A petition for a variance to exceed the height requirement for a structure in the R-1 Single-family Residential District. The property is located at 111 Kings Hwy.

*Petitioner/Property Owner*: West Virginia American Water, 1600 Pennsylvania Ave., Charleston, WV.

**BZA 24-07**

A petition for a variance to construct a fence with barbed wire in the R-1 Residential District.

*Ms. Loftus* recused herself.

Kennon Chambers from Ghosh Engineers, 1 Dunbar Plz, Suite 200, Dunbar, WV, represented the petition on behalf of West Virginia American Water. The petitioner would like to construct a new water tower at 111 Kings Hwy. A new water storage tank is needed as a nearby tank is at the end of its life expectancy. The existing tank cannot be rebuilt due to its location. A variance for height is needed as the new tank will be 74 feet in height due to site conditions.

*Ms. Shell* read the Staff Report.

*Mr. Yates* questioned the end result for the old tank. *Mr. Chambers* stated the old tank will be removed from service which includes tearing the tower down.

*Mr. Yates* wondered where the adjacent site is located. *Mr. Chambers* explained the location of this site in relevance to 111 Kings Hwy.

*Ms. Proctor* asked why the new tower has to be taller than the existing nearby tower. *Mr. Chambers* stated the base of the current tank sits higher than the new tank. Thus, a higher base is needed to ensure the overflow height of the tanks match if not be close in height. *Ms. Shell* added the typical height for a structure in the R-1 District is 2.5 stories or 35 feet. She stated Public Utility Installations are permitted in all districts within need and reason. Lastly, *Mr. Chambers* stated the current tower has been in place since 1953.

*Mr. Earl* questioned how many households are serviced by the current tank. *Mr. Chambers* estimated 300 customers are serviced by the current tank.

*Mr. Earl* asked for elaboration on the increase to fire response with the implementation of the new tank. *Mr. Chambers* responded by disclosing the new tank will have more storage capacity than the current tank.

*Ms. Proctor* questioned the need for a variance to build a barbed wire fence. *Mr. Chambers* stated he could not confirm with the Bureau of Public Health this was a requirement by them but it is strongly encouraged to have barbed wire fencing on site. He stated sanitary surveys are needed too. He explained these rules were implemented after the 9/11 terrorist attacks.

*Ms. Proctor* asked if there was barbed wire fencing around the current tower. *Mr. Chambers* stated there is no fencing around the site. *Ms. Proctor* questioned why there was no fencing at the current site. *Mr. Chambers* stated older facilities do not have fencing and after 9/11 water companies wrapped barbed wire around overflow pipes and cut ladders that lead to tanks to prevent someone from contaminating the water with an unknown agent. Lastly, he noted putting a fence around the current tank would be costly. Due to the location and condition of the current tank, it's more cost effective to choose to build a new tank on a nearby lot.

*Mr. Yates* questioned if there was a possibility the tank could be rehabilitated. *Mr. Chambers* confirmed this was not possible and explained the reasoning behind this conclusion.

*Mr. Earl* asked what the typical lifespan was for a tank. *Mr. Chambers* stated if tanks are painted and maintained they can last for 100 years. He added the new tank will be made of bolted steel resulting in less need for upkeep.

*Mr. Yates* wondered if there was an option to tear down the current tank, put it out of service, and build a new tank on the grounds of the old one. *Mr. Chambers* stated this was not possible as customer's quality of service will suffer. Additionally, it would hard to operate under these conditions as the pump will be working all the time. *Mr. Yates* asked if the reason to build on a new site is because it is cheaper. *Mr. Chambers* stated this is not the case, the current site is difficult to access and the current state of the tank makes it ideal to build a new tank at a different site.

Walter Nanto, 95 Kings Hwy, spoke in support of these petitions. He explained the water pressure is horrendous and he's attempted to contact the water company multiple times and has heard the company cannot fill the tower to create the necessary pressure due to the tower's condition. He has witnessed

numerous leaks on the tower and bubbles underneath the grass when there is a leak. As a resident he wants better water. He thinks something needs to be done to ensure better water pressure can be provided.

John Krieger, 99 Kings Hwy, spoke in objection of these petitions. He stated he has lived at this address since 1956. He stated there was a Water Maple Tree that was planted in front of the tower. After the tree died, he planted Landen Cyprus trees around the tank: this was done 30 years ago. Now the trees provide a buffer between his residence and the tower. He's going to be faced with looking at a new tank. He noted the water company has been working with him and his wife; but, he wishes there could be a new location for the tank besides the proposed site. Lastly, he had an appraiser evaluate his property in the scenario the new tank is built. He was told his property value would go down by \$75,000 to \$100,000. He is wondering who would pay for this loss. He knows there needs to be a new tank; but, he believes the location of the new tank will be harmful to him and his neighbors. *Ms. Proctor* asked him when the old tank is deconstructed if his trees will be taken out. Mr. Krieger believes this is possible. He stated he is not going to have the water company destroy his property to tear down the current tower. Additionally, he stated he was informed it will take 2 months to take the tower down. *Mr. Earl* asked if the new tank could be hidden. Mr. Krieger alluded this is not possible because there is nowhere an immediate screen can be created due to the layout of his property.

Caroline Hunter, 125 Kings Hwy, spoke in objection of these petitions. She stated she has been a resident on this street for about 2.5 years. She lives about 3 lots down from the proposed site of the new tower and has some concerns. She wonders what has been done to prevent land erosion and slippage. She would like to advocate for proper engineering procedure due to the amount of water this tank will hold and the slope the tank will stand on. She noted she works from home and has concern about traffic on Kings Hwy due to the project as the road does not have enough room for 2 cars in some areas. Lastly, she has some concerns about how the appearance of the tower will impact real estate values of surrounding properties. Additionally, she wants to know how wide this tower will be. Also, she thinks the barbed wire fence will negatively impact the neighborhood. She alluded she would like to see some sort of agreement that contributes to the appearance of the tower.

Sarah Loftus, 91 Kings Hwy, spoke in objection of these petitions. She stated at times water from the faucet drips. She stated people call and the water company does not answer. To her knowledge, the project has been going through a quiet process. She had no idea about this new tower until the Planning Office notified impacted residents. She has seen little detail about the project. She stated the area is filled with single-family residential homes and the fact the tower needs to be replaced due to poor upkeep is concerning. She thinks this project is going to be extremely disruptive during construction. She stated there is a spring under the hill the new tower will be on and property values will be impacted. She pondered if this site is a good place to build a tower due to the topography. *Mr. Earl* asked if the home that was torn down for the proposed new tower was in a state of despair. Ms. Loftus stated the house was not in this state and loosely explained the progression of the time from the house being destroyed to the notification of a new water tower being proposed. Ms. Loftus explained the lots behind homes in this neighborhood are wooded and owned by nearby property owners.

Brian Gallagher, 300 Roland Park Dr., spoke in objection of these petitions. He stated to him the project process has been quiet and people have been nice but he wants straight answers. He stated he live on the other side of the street so his home is between Kings Hwy and Roland Park Dr. A lot of the wooded lots are vacant. He stated the site for the proposed new tower has a very steep slope and there have been a lot of drainage issues. He said there has been tremendous runoff since the demolition of the home on the proposed site. Lastly, he described there being water leaks in the past.

Allen Hill, 83 Kings Hwy, spoke in objection of the petition. His concerns include ensuring the old tank is removed and if the new tank will actually improve water pressure. He alluded addressing those concerns may change his decision in regards to his feelings towards these petitions.

Mr. Chambers came back up to the podium to provide more information on these petitions. *Ms. Proctor* questioned the removal process of the old tower. He stated removal of the old tank is a planned project for the future: the concern at the moment is to get past the step to build a new water tower.

*Ms. Proctor* asked for clarification on the existence of the old tower in correlation to the new tower. Mr. Chambers confirmed the old tower will stay when the new tower is up. The plan is for the old tank to be removed.

*Ms. Proctor* questioned if there was a timeline for removal. Mr. Chambers explained that estimated time for the tank to be removed by will be 2026 while construction of the new tower will start by 2025.

*Mr. Earl* asked how much time will be slated for the old tank to be standing when the new tank is in service. Mr. Chambers stated that is to be seen. A solid plan needs to be in place to remove the current tank.

*Ms. Proctor* wondered why it looks like West Virginia America Water neglected the tank all this time to end up facing this issue. Mr. Chambers did not know the reason why this occurred.

*Ms. Browning* asked if there is an option where a partially constructed tank can be placed in the spot of the current tower once it is deconstructed. Mr. Chambers stated that is not an option due to site restrictions and alluded to potential foundation issues.

*Mr. Earl* questioned what “plan b” is if these variances aren’t approved in an alluded fashion. Mr. Chambers did not know what an alternative would be. He stated the system in the City is old so if this project at this site cannot be done there will be problems as changing the functionality for customers is another ball game.

*Mr. Earl* wondered if other properties have been examined. Mr. Chambers stated this had been done but there are no other properties at the right elevation for the tank to be constructed to maintain service for customers.

*Mr. Earl* asked if a new tower is built on this property if there is a way for it be concealed (from the view of residents). Mr. Chambers indicated that was a great point and stated the water company is willing to dress up the tower as much as possible.

Mr. Chambers explained the reasoning for a tank to hold more volume of water is to increase more consistent pressure.

*Ms. Proctor* wanted clarification if there is another spot to build this tower. Mr. Chambers explained to match the elevation of the current tower the new tower would need to be 4 feet higher. *Ms. Proctor* wanted to confirm the new tank has a new spot. Mr. Chambers confirmed this is true. He stated another property could not be found to match the elevation of the current tower with the new tower.

*Ms. Browning* and *Ms. Proctor* questioned if a higher structure could be built to match the elevation on a different property. Mr. Chambers explained if the tank is moved around it will not function the same way.

*Mr. Earl* wondered if *Mr. Chambers* could go back to the drawing board and put into consideration the neighbor's opinions: potentially start dialogue with the neighbors. *Mr. Chambers* explained this has happened with some of the neighbors. He said plants can be planted and fencing has to be installed.

*Mr. Yates* alluded commentary on the appearance of the tower would come from the neighborhood. He stated this will be a significant infrastructure project and it almost looks like the water company overlooked the community and their other interests when examining other things like ensuring hot showers and transit: there seems to be this other side of costs and the community was mostly not engaged in a constructive manner.

*Mr. Earl* suggested addressing some of the neighbor's concerns and coming back to the *Board*. *Ms. Browning* agreed with this notion.

*Ms. Proctor* asked if these variances could be passed or tabled. *Ms. Hernandez* explained these variances can be passed to the next meeting and explained these parties are slated to go in front of Planning Commission. It is possible the feedback from that meeting may cause them to come back to the *Board*. She stated if the petitions were voted down tonight these petitions will not be able to be reintroduced until a year after.

*Mr. Yates* questioned if pushing these petitions to March would be enough time for dialogue with the neighbors to occur. *Ms. Hernandez* stated the *Board* can choose a date to continue hearing these petitions.

*Mr. Yates* made a motion to move BZA 24-06 and BZA 24-07 to the April meeting. *Ms. Browning* and *Mr. Earl* seconded the motion.

BZA Roll Call: *Mr. Yates*, Yes; *Ms. Browning*, Yes; *Mr. Earl*, Yes; *Ms. Proctor*, Yes.

BZA 24-06 and BZA 24-07 were approved to be moved to the April meeting with a vote 4 Yes to 0 No.

### **Good and Welfare**

*Ms. Proctor* questioned an update on the Annual Report.

*Ms. Shell* noted the Annual Report will be ready for review in advance of the March Agenda. Additionally, she announced *Ms. Cross* has submitted her resignation as an Alternate. A new alternate member is needed.

*Ms. Proctor* asked for an update on the Comprehensive Plan. *Ms. Shell* explained the plan is on hold too. A document is being created based off of the feedback from the last steering committee meeting that will help explain changes that will be proposed to future land use.

*Ms. Proctor* questioned when the Annual Report will be ready. *Ms. Shell* stated the Annual Report will be ready in the next couple of weeks. She announced *Mr. Williams* will be staffing the March meeting and potentially the April meeting.

*Ms. Proctor* adjourns the meeting at 7:28 p.m.

Date approved: \_\_\_\_\_

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



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

**BZA 23-V-41**

*Property Owner/Petitioner:* Anthony C. Almeida, 210 6<sup>th</sup> Ave., Huntington, WV  
*Subject Property:* 210 6<sup>th</sup> Ave

*In re:* A petition for a variance to exceed the height requirement for a fence in the front yard of a residential property in the R-5 Multi-family Residential District. The property is located at 210 6<sup>th</sup> Avenue.

*Individual Speaking on Behalf of Petition:* Anthony C. Almeida  
*Other Interested Parties:* Mary Dean, 615 2<sup>nd</sup> St., Huntington, WV  
Mary Ann Dolen, 28 Hamill Rd., Huntington, WV

**ORDER**

On February 20, 2024, Mr. Almeida appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 23-V-41. Other citizens were permitted to voice their positions as well, per the practice of this Board, and two individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the February 20, 2024 meeting and hearing testimony from Mr. Almeida, the Board finds as follows:

1. Mr. Almeida is both the petitioner and owner.
2. The fence was constructed without a permit.
3. The petitioner's fence is in the front yard.
4. The petitioner's fence surpasses 4 feet.
5. The petitioner testified that the neighborhood is not as safe as it used to be when he lived there previously.
6. Specifically, the petitioner testified that one of his family members had been threatened by a person with a knife.
7. Additionally, other mischief has occurred such as theft and individuals defecating on his property.
8. The petitioner testified that he is putting up the fence to protect his family.
9. The style and material of the fence is out of character with the neighborhood's streetscape.
10. Fences in the front yard of neighboring properties are wrought iron.
11. This property is zoned in the R-5 Multi-family Residential District.

**STANDARD OF REVIEW**

When considering 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;

2. That the variance arises from special conditions or attributes 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 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.

### **CONCLUSIONS OF LAW**

“Any fence located in the front yard or required front yard, whichever is greater, . . . shall not exceed four feet in height.” City of Huntington Ordinance § 1341.19.C.2. It is unfortunate that the level of crime and mischief has increased in Petitioner’s neighborhood, but we cannot find that Petitioner created these conditions. Permitting the additional height, therefore, will alleviate this unnecessary hardship. We find that permitting the increase will allow the intent of the zoning ordinance to be satisfied while granting Petitioner substantial justice.

Regarding the effect on the neighborhood, although the style of fencing is not the best fit for the neighborhood, this is where Petitioner needs to take care. Although fencing of various types are seen throughout the city, the dominant fencing type in the neighborhood is wrought iron. Wrought iron complements the character of the neighborhood and allots for transparency. According to Petitioner, the style of his fence is intended to be based on Japanese architecture, but we are concerned that it will negatively impact the streetscape along 6<sup>th</sup> Avenue. The proposed fencing as it stands as of this public hearing consists of wooden panels and greatly limits transparency. From the pedestrian view one may not be able to see the first story of the home. Petitioner testifies, however, that the appearance of the fence will improve upon completion. Since there was not a request to vary from the requirement that a front yard fence in a residential district “have a minimum ratio of 1:1 open to structural areas (such as picket fence or split rail fence),” *id.*, we expect that Petitioner will be adhering to this portion of the ordinance. If he does, we do not believe the additional height will adversely affect the public health, safety, or welfare, or the rights of the immediate neighbors and therefore find the standard for granting a variance to be supported.

### **DECISION**

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 23-V-41 for a **Variance**. Any changes that deviate from what has been approved and does not meet the zoning regulation must come back before the BZA for approval.

Within 30 days of this Order, any person aggrieved with this decision may appeal by filing a verified petition for a writ of certiorari with the circuit clerk of the county where the subject property is located.

The Clerk of the Board of Zoning appeals is directed to forward a true and correct copy of this entered Order to the petitioner and all known interested parties.

\_\_\_\_\_

Date

Chairperson: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Jacqueline Proctor, Chair Cade Williams, Planner II

**Staff Report:** A petition for a conditional use to permit a bar.

**Legal Ad**

**BZA 23-C-32**

*Issue:* A petition for a conditional use to permit a bar in the C-2 Highway Commercial District. The property is located at 2333 Adams Ave.

*Petitioner:* Sherry Kipp, 1713 Chestnut St., Kenova, WV.

*Property Owner:* Ronnie Myers, P O Box 2885, Huntington, WV.

**Introduction**

Sherry Kipp is petitioning for a conditional use to allow a bar to open at 2333 Adams Ave.

**Existing Conditions / Background**

The property is owned by Ronnie Myers. Currently, the property sits vacant. Historically, the building on this property has been used as a bar/lounge. The property is surrounded by other businesses primarily on the same side of the street and residential uses across the street.

**Proposed Conditions**

The petitioner would like to redevelop the building on the property into a bar.

**Zoning Ordinance**

Per *Article 1320*, bars are conditionally permitted uses in a C-2 Highway Commercial District.

*§1341.02* requires Bars to meet the transparency requirements of their district.

*§1333.02* requires new commercial or mixed-use structures to have 60%

transparency for the ground floor, front façade.

**Pictures**



*Image of 2333 Adams Avenue to include the edge of adjacent parking lot.*



*Closer image of existing building. This façade of the building will need to be improved to meet the 60% transparency requirement.*

## Staff Comments

Plan2025 designates this area as a Convenience Commercial District, which is characterized by higher intensity commercial uses that are primarily accessed by cars. Characteristics include:

- Low density and large lots
- Commercial uses along primarily state routes
- Parking available on-site or in shared lot
- Larger scale commercial and service for the region

Staff's recommendation is to take this petition with the context of the neighborhood in mind. Additionally, in consideration of the bar it is important to balance this particular business owner's proposal with previous uses at this location.

Although the business owner has changed, the property owner has been the same through both this business owner and the previously licensed location which was operating as Harley's Shop and closed in December of 2019. Since the conditional use for a bar expired within a year of abandonment, this is what is triggering the renewal of the conditional use for the bar as proposed.

In consideration of the Bar, the Board should consider the factors for the conditional use including how the business owner intends to design the business model to ensure that security, parking, lighting, and reduction of any unintended consequences for the neighboring uses, in particular the residential uses across the street. Consideration of the abilities of the business owner to manage this business model and their personal skill set could shed light on how they manage this location.

Important to note for the Bar is the structure will need to at minimum come into compliance on the physical building to meet the C-2 Highway Commercial transparency requirements to include 60% transparency. For their street facing wall that is approximately 30ft, the transparency requirement would be approximately 108 square feet of windows or doors that are operable or are able to be visually seen inside.

Finally, in consideration of terms or effect of public health, safety, or general welfare of the rights of adjacent property owners or residents. History of the impact of this type of business on the adjacent property owners (even with a new business owner) are appropriate to bring into consideration on the decision of this being approved. Consideration could be given to weigh if the new business owner has the ability to decrease the impact on adjacent uses, since we cannot be 100% assured on how this business will operate in reality.

In summary, staff recommends proceeding with caution, in particular with the understanding of how this business can be approved to operate, balanced with the fact that there has been a similarly situated use in this location in the past. Careful consideration of the impact on the neighboring uses, in particular the consideration of the residential and religious uses nearby. Without strong neighborhood support or mitigation of the distance to these other uses, it may be hard to justify the criteria for approving the conditional use can be met.

### **Summary / Findings of Fact**

1. Sherry Kipp is the business owner and petitioner.
2. Ronnie Myers is the property owner.
3. The petitioner is requesting a conditional use to open a bar.
4. The petitioner will need to modify the front façade of the building to meet the transparency requirement in the C-2 Highway Commercial District.
5. Neighboring uses are appropriate to evaluate for approving the conditional use.
6. The property is currently zoned C-2 Highway Commercial District.

### **Attachments**

- Aerial map
- Zoning map
- Future Land Use map
- Site Plans
- Application





## PLANNING & ZONING

City of Huntington  
Planning & Zoning  
P.O. Box 1659 | Huntington, WV 25717  
(304) 696-5540, option 3  
planningdept@huntingtonwv.gov

### Conditional Use Permit Application

Applicant Name: Sherry Kipp Phone: 304-544-9764  
Mailing Address (city, state, zip): 1713 Chestnut St Kenova WV 25530  
Email: Kippb@mtg.edu  
Property Owner (if applicable): Ronnie Myers Phone: 304-544-9921  
Mailing Address (city, state, zip): \_\_\_\_\_

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

2333 Adams Ave Huntington WV 39, 163, PT LT 12

#### 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 1320.04 to allow the following:

BAR and Limited Video Lottery

#### 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) non-refundable filing fee for each Conditional Use sought.

All of the above documentation is to be submitted to the Planning Commission office by \_\_\_\_\_.  
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**, \_\_\_\_\_ 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.

Sherry Kipp  
Signature of Applicant

9-12-23  
Date

Ronnie Myers  
Signature of Property Owner

9-12-23  
Date

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

For office use only	
Received:	Project Name:



## PLANNING & ZONING

City of Huntington  
**Planning & Zoning**  
P.O. Box 1659 | Huntington, WV 25717  
(304) 696-5540, option 3  
planningdept@huntingtonwv.gov

### Application for Conditionally Permitted Use

#### **ATTACHMENT B**

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.

List all each 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** \_\_\_\_\_

Brief description of the requirement:

---

How will the requirement be met:

---

**Article** \_\_\_\_\_

Brief description of the requirement:

---

How will the requirement be met:

---

**Article** \_\_\_\_\_

Brief description of the requirement:

---

How will the requirement be met:

---

**Article** \_\_\_\_\_

Brief description of the requirement:

---

How will the requirement be met:

---

**Article** \_\_\_\_\_

Brief description of the requirement:

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How will the requirement be met:

---



Written Statement for Conditional Use Permit Application for [Your Sports Bar & Video Lottery Lounge]  
Address: 2333 Adams Ave, Huntington, WV  
City: Huntington

1. Effect Upon the Comprehensive Plan

The proposed sports bar/lounge with video lottery machines aligns with the City of Huntington's Comprehensive Plan, which aims to diversify local businesses and create vibrant community spaces. The addition of video lottery machines will offer a unique entertainment option, thereby attracting a wider range of patrons and contributing to the local economy. We will adhere to zoning regulations and land-use policies to ensure that our business complements the existing urban fabric.

2. Public Health, Safety, Morals, and General Welfare

Our establishment will prioritize public health and safety by adhering to all local, state, and federal regulations, including those related to COVID-19 and gaming. Rigorous sanitation protocols will be implemented, and staff will be trained in responsible beverage and gaming service to uphold public morals. Security measures, including surveillance cameras and security personnel, will be in place to ensure the general welfare of our patrons and staff.

3. Potential Injury to the Use and Enjoyment of Other Property in the Immediate Vicinity

We are committed to being good neighbors. Our establishment will maintain reasonable operating hours and soundproofing measures to minimize noise pollution, including noise generated by the video lottery machines. This will ensure that the use and enjoyment of other properties in the immediate vicinity are not adversely affected.

4. Effect Upon the Normal and Orderly Development and Improvement of Surrounding Property for Uses Already Permitted in the District

Our sports bar/lounge aims to enhance the local area by providing a high-quality establishment that residents can enjoy. The inclusion of video lottery machines will add a unique entertainment option that complements existing businesses. We anticipate that our business will encourage further development and improvement in the district, potentially increasing property values and attracting additional permitted uses.

5. Adequate Provisions for Utilities, Access Roads, Drainage, and Other Necessary Facilities

We have conducted a thorough assessment of the site and have made provisions for utilities, access roads, and drainage. All necessary facilities, including electrical systems to support the video lottery machines, will be constructed to code, ensuring that they are both adequate and sustainable. We will work closely with city engineers and planners to ensure that our plans meet all requirements.

6. Adequate Ingress and Egress So Designed to Minimize Traffic Congestion in the Public Street

Our location has been strategically chosen to ensure easy access and minimize traffic congestion. Adequate parking spaces will be provided, and we will work with local traffic authorities to develop a traffic management plan that facilitates smooth ingress and egress to and from our establishment.

7. Unique Value Despite Proximity to Other Video Lottery Establishments

While there are other video lottery establishments nearby, our sports bar/lounge offers a unique blend of entertainment options, including sports viewing, dining, and socializing, in addition to video lottery. This multi-faceted approach will attract a diverse clientele and offer something for everyone, making our establishment a complementary addition to the existing entertainment landscape rather than a competitor.

Sincerely,  
Sherry Kipp





**2333 Adams Avenue  
Cabell County Tax District 7, Map 39,  
Parcel 163  
BZA 23-C-30  
Conditional use to permit a bar in the C-2 Highway Commercial District.**







**2333 Adams Avenue**  
**Cabell County Tax District 7, Map 39,**  
**Parcel 163**  
**BZA 23-C-30**  
**Conditional use to permit a bar in the C-2 Highway Commercial District.**







**2333 Adams Avenue**  
**Cabell County Tax District 7, Map 39,**  
**Parcel 163**  
**BZA 23-C-30**  
**Conditional use to permit a bar in the C-2 Highway Commercial District.**





**Staff Report:** A petition for a variance to allow a second driveway on the same parcel.

**Legal Ad  
BZA 24-08**

*Issue:* A petition for a variance to allow a second driveway on the same parcel in an R-2 Single-family Residential District. The property is located on 417 Division St.

*Petitioner/Property Owner:* Jeremy Whipkey, 417 Division St., Huntington, WV.

**Introduction**

Jeremy Whipkey is petitioning for a variance to allow a second driveway to be added on his parcel.

**Existing Conditions / Background**

This property is owned by Jeremy Whipkey. The petitioner has an existing one lane driveway on the southern side of the front yard of his property already and the petitioner claims the driveway is only suitable for compact vehicles. Additionally, the alley that runs beside the driveway limits opportunity for expansion. This property is zoned R-2 Single-family Residential. Any primary use that is residential is required to only have one driveway per parcel.

**Proposed Conditions**

The proposed driveway would be implemented on the northern side of the front yard and end towards the front of the shed located in the side yard close to the front yard.

**Zoning Ordinance**

Per *Article 1343.08(D)*, in residential areas there may only be one single-lane driveway per property.

**Pictures**



*Image of the front yard looking northwest off of Division St. Original driveway is seen on the right side of the fence.*



*New driveway will be along the direction of the parked truck shown in the image above. The driveway would end in front of the shed the truck is parked in front of.*

## Staff Comments

Plan2025 designates this area as a Traditional Residential District, which is characterized by:

- Medium density
- Sidewalks throughout
- Primarily single-family with commercial uses scattered sparsely with conditions
- New development maintains single-family character

Staff recommends examining this petition with a holistic view. This area of town is made up of a network of narrow streets. A second driveway may help alleviate the stress of public on-street parking. This would aid in ensuring local vehicular traffic can navigate the neighborhood in a safe manner. Additionally, most properties on this street have private off-street parking for at least one to two vehicles.

Lot coverage would not be a concern with the addition of this secondary driveway. §1321.02 acknowledges impervious surfaces can take up to 70% of lot coverage. However, as the proposed new driveway will be crossing a sidewalk to connect to Division Street, it is important to consider pedestrian traffic. §1343.B.05.a states in no manner may a driveway or parking area block a city sidewalk. The new driveway will need to be constructed in a fashion that ensures pedestrians may utilize the sidewalk in a safe and efficient manner. The petitioner will need to contact Public Works to have a curb-cut done to be able to safely utilize the new driveway.

New driveways usually are only permitted in the side or rear yards. However, due to the layout of the property, this would be challenging to pursue. The petitioner's

property is at the northwestern corner of the intersection of Division Street and an alley. The house on the lot butts up against the alley. The rear yard could be accessed through the alley if the petitioner were to tear down the fencing and shed on that section of the property. However, there would not be enough clearance for adequate ingress and egress. The alley is less than 12 feet in width and there is an electric pole located across the alley from a potential access point to enter into the rear yard. Installing a driveway in the rear yard would be problematic due to nature of the alley. §1321.03.A.01.ii provides the opportunity for front yard parking to be permitted if there is no improved alley or secondary street access. The alley has not been improved to support this type of function.

The proposed new driveway will be 10 feet in width and 48 feet in length from the road to the shed. The driveway flare will be 14 feet. §1343.08.Table E specifies single-lane driveways can be a minimum of 8 feet and a maximum of 12 feet in width. Additionally, the driveway flare may span out up to an additional 18 inches. The proposed driveway width will be compliant with zoning code. However, a condition can be set if this variance is approved to shrink the width of the driveway flare to ensure the petitioner stays compliant.

Overall, Staff recognizes there is a hardship that is not caused by the petitioner. The petitioner cannot build a new driveway while observing the ordinance due to the topography of his property and the surrounding area. Staff recommends if the Board approves this petition to set a condition that the driveway flare may only be a maximum of 13 feet in width.

### **Summary / Findings of Fact**

1. Jeremy Whipkey is the owner and petitioner.
2. The petitioner is requesting to install a second driveway in this front yard.
3. The petitioner is installing the driveway on the northern side of the house.
4. A driveway may be permitted in the front yard as the alley is not improved to support adequate clearance for ingress and egress.
5. The property is currently zoned R-2 Single-family Residential District.

### **Attachments**

- Aerial map
- Zoning map
- Future Land Use map
- Site Plans
- Application



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### Variance of Zoning Regulations Application

Applicant Name: Jeremy Whipkey Phone: 304-771-3420  
Mailing Address (city, state, zip): 417 Division St.  
Email: JeremyWhipkey@gmail.com  
Property Owner (if applicable): Jeremy Whipkey Phone: 304-771-3420  
Mailing Address (city, state, zip): 417 Division St.

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

417 Division St. Map 3, Parcel 76

Variance request pursuant to:

Article 1343 and/or Figure \_\_\_\_\_ of the City of Huntington Zoning Ordinance.

Description of the variance being requested:

Having an additional driveway.  
The current driveway was designed for 1 compact car.  
Alleyway cuts off additional space.

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

- Site plan the property involved (if applicable); drawn to scale, showing all boundary lines and the placement of existing and/or proposed structures, and with all dimensions shown (setbacks, buildings, ect.).
- Valid State and Federal Photo ID.
- Any and all documentation and evidence to support the request.
- One hundred sixty dollars (\$160) non-refundable filing fee for each variance sought.

All of the above documentation shall be submitted in full to the Planning and Zoning office by Feb 20 in order to be placed on the next Board of Zoning Appeals (BZA) agenda. An incomplete submittal will delay the applications 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, Mar. 19. 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.

Signature

Date

02/20/2024

For office use only

Received: \_\_\_\_\_ Project Name: \_\_\_\_\_





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### Variance of Zoning Regulations Application

#### ATTACHMENT A

In making its decision to approve or deny a Variance request, The Board of Zoning Appeals must consider four criteria. Please provide a written statement on how the proposed Variance will affect each of the following considerations:

1. Effect upon public health, safety, or general welfare, or the rights of adjacent property owners or residents:

Driveway is set off 6-7 ft from adjoining parcel. There would be no negative effect.

2. What is the special condition or attribute of the property for which the variance is sought (must not be created by the person seeking the variance):

The current driveway from 1950 is cut off from the turn of the alley, putting an additional driveway with a better location.

3. How an approval of the Variance would eliminate an unnecessary hardship and permit a reasonable use of the land:

The additional parking would aid the neighborhood in getting one less vehicle off the already narrow streets.

4. How would an approval of the Variance allow for the intent of the Zoning Ordinance to be observed and substantial justice done:

This variance of a driveway would complement the additional work to the house. There is to be "half" hedges planted on the right side of the driveway.

## DEVELOPMENT SITE PLAN

Property Owner: Jeremy Whipkey

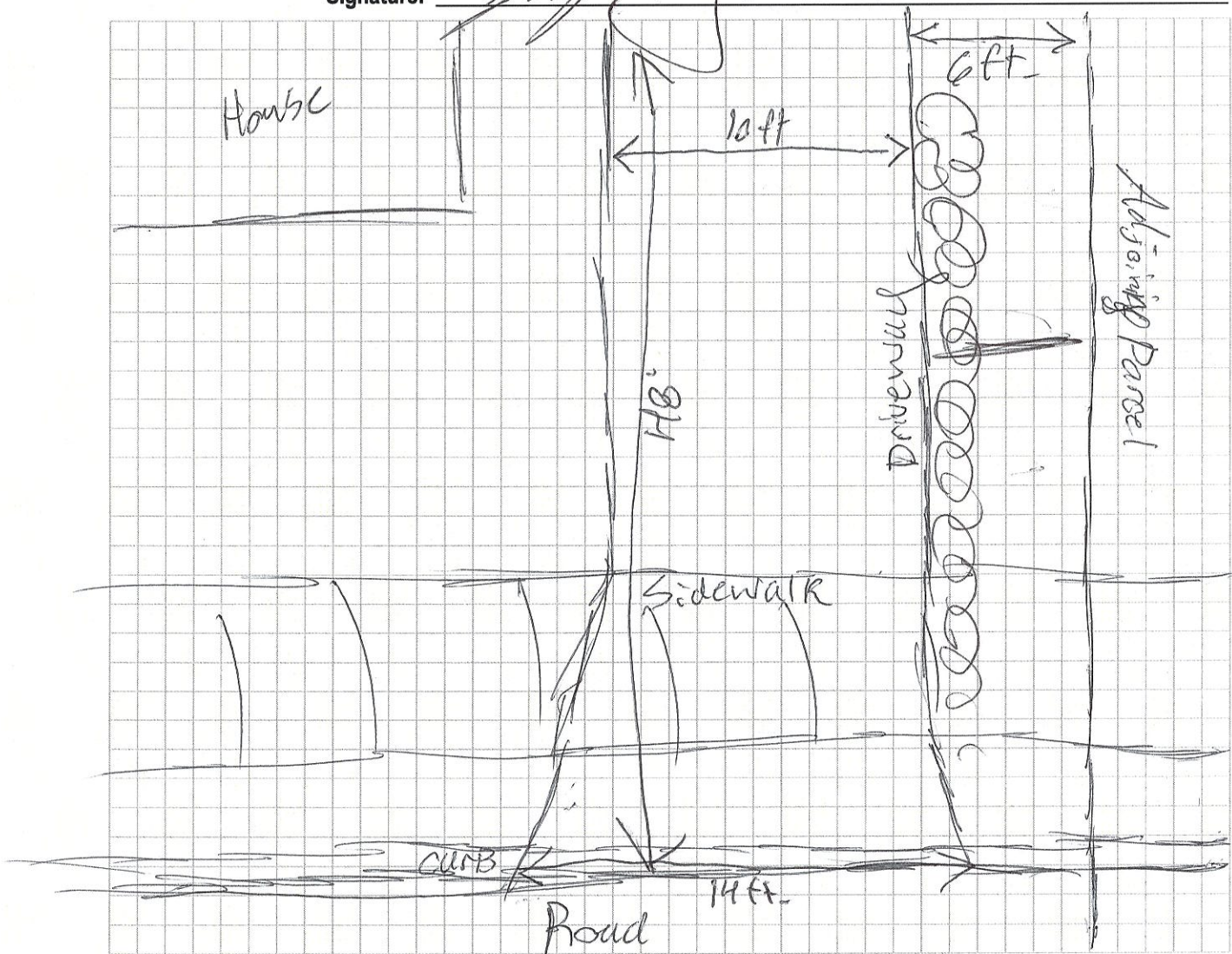
Site Address: 417 Division St.

I, the undersigned, acknowledge this is a true and accurate representation of the proposed development to the best of my knowledge.

Signature: \_\_\_\_\_

### Label and include:

- Property lines
- Location of existing structures on the property
- Location and dimension of proposed structure(s)



Please use the Cabell or Wayne County GIS Maps to reference property lines:

Cabell County: <https://agdonline.maps.arcgis.com/apps/webappviewer/index.html?id=b7a855c356b64d94bbfae33e8585b636>

Wayne County: <https://agdonline.maps.arcgis.com/apps/webappviewer/index.html?id=4559a85477a0499295d07ab6f17656a6>

### For office use

#### Planning and Zoning Review

- ☐ Approved  
☐ Denied

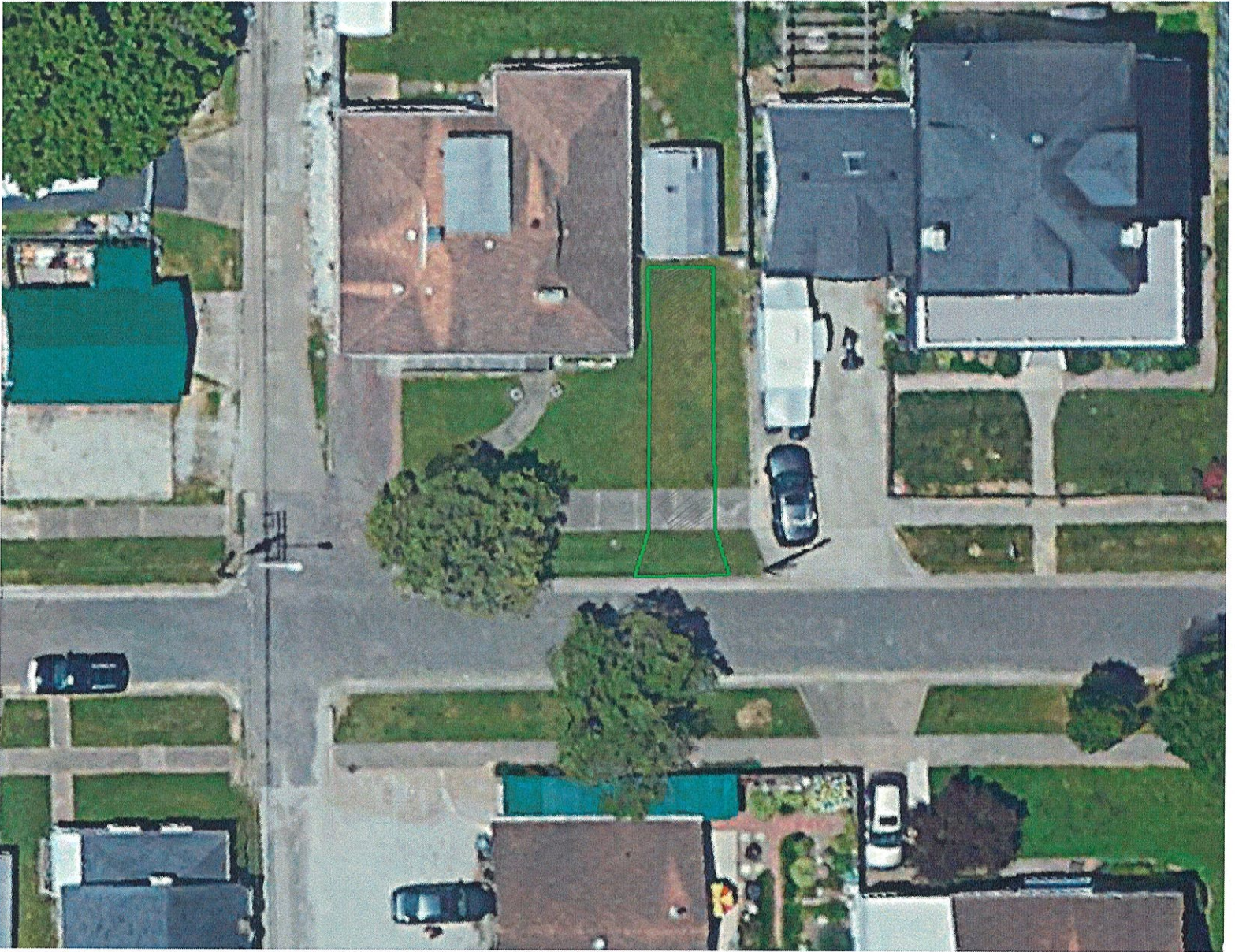
#### Public Works Review

- ☐ Approved  
☐ Denied

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_









**417 Division Street**  
**Cabell County Tax District 5, Map 3,**  
**Parcel 76**  
**BZA 24-08**  
**Variance to permit a second driveway in the R-2 Single-Family Residential District**







**417 Division Street**  
**Cabell County Tax District 5, Map 3,**  
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**Variance to permit a second driveway in the R-2 Single-Family Residential District**







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