



## Agenda

Huntington Board of Zoning Appeals  
Tuesday, October 17th, 2023 - 5:30pm

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1. Call to Order
2. Roll Call
3. Approval of the September 2023 Minutes
4. Approval of the Orders
  - BZA 23-C-23
  - BZA 23-V-25
  - BZA 23-V-26
5. New Petitions

### **BZA 23-C-30**

An application for a conditional use permit for a self-storage development in the I-1 Light Industrial/Commercial District. The property is located at 4711 Piedmont Rd.

*Property Owner/Petitioner:* Brian Browning, 5821 E Pea Ridge Rd #19, Huntington, WV

### **BZA 23-V-31**

*Issue:* A petition for a variance to the minimal transparency requirement for the front façade of a building in the I-1 Light Industrial/Commercial District. The property is located on 1502 Madison Ave. at the northwest intersection of Madison Avenue and 15th Street West.

*Petitioner/Property Owner:* Ashley Stewart, Ashley Claire Stewart Revocable Trust, 17 Washington Ave., Huntington, WV.

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

*Issue:* A petition for a conditional use to be permitted for a limited video lottery to be established 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, 2333 Adams Ave., Huntington, WV

### **BZA-23-C-33**

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

### **BZA-23-V-34**

*Issue:* A petition for a variance to the distance requirement from a limited video lottery for a new limited video lottery to be established in the C-2 Highway Commercial District. The property is located at 2333 Adams Ave.

**BZA-23-V-35**

*Issue:* A petition for a variance to the distance requirement from a church for a limited video lottery to be established in the C-2 Highway Commercial District. The property is located at 2333 Adams Ave.

**BZA23-V-36**

*Issue:* A petition for a variance to the distance requirement from a residential area for a limited video lottery to be established in the C-2 Highway Commercial District. The property is located at 2333 Adams Ave.

**BZA 23-C-37**

A petition for a conditional use permit for opening or relocation of a bar in the central business district. The property is located at 907 4<sup>th</sup> Avenue.

*Petitioner:* BAC LLC d/b/a Hank's, 517 9<sup>th</sup> St., Huntington, WV

*Property Owner:* Premier Properties LLC

6. Announcements/Discussion
7. Adjournment

**Minutes  
City of Huntington Board of Zoning Appeals  
September 19, 2023**

A meeting of the City of Huntington Board of Zoning Appeals was held on September 19, 2023 at 5:30 p.m. in the City Hall Council Chambers. *Ms. Proctor* called the meeting to order.

Members Present: Jacqueline Proctor, Steven Yates, Sara Loftus

Members Absent: Gina Browning, Dan Earl

Staff Present: Cade Williams, Planner II  
Bre Shell, Planning Director  
Ericka Hernandez, Assistant City Attorney

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

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

**BZA 23-V-27**

A petition for a variance to allow a second driveway on the same parcel in an R-1 Residential District. The property is located on 2030 Military Road.

*Property Owner/Petitioner:* Kendall Staggs, 6900 Merritts Creek Rd., Huntington, WV

Ms. Shell presented the Staff Report.

Kendall Staggs, 2030 Military Road, began by describing the background to his scenario. He began by stating he was a victim of the ice storm from a couple of years ago. A tree fell on part of his house and he decided to renovate the home. During renovations he realized the part of the home impacted by the fallen tree was resting on top of a parking pad. His friend recommended he install a driveway for off-street parking. He disclosed the renters at this establishment never used the existing driveway and mentioned it is not big enough for parking modern-day vehicles. He apologized for laying the new, secondary driveway without a permit. He thinks there was a gravel driveway on the property at some point and mentioned him as well as his friends poured the driveway to allow for a future sidewalk and curb. He spoke to most of his neighbors and claims they support the second driveway. He stated this new driveway can park up to four cars. He also mentioned there were a handful of homes between this residence and Ritter Park with two driveways in the front yard or a double-lane driveway (original driveway is only wide enough for one vehicle).

Mr. Yates – Why did you decide to put in a new driveway in versus resurfacing or widening the current existing?

Mr. Staggs explained there a couple of reasons why he pursued this option. One of them being space allotted as he only has 2 feet from the original driveway to the neighbor's yard. The other reason is he already had a concrete pad (18' x 20') on the upper portion of the new driveway.

Ms. Proctor – So when did you pour this driveway?

Mr. Staggs stated he poured the driveway in March of this year.

Ms. Proctor – And when did you contact the city about inspecting it or looking at it? You said you had someone out?

Mr. Staggs explained he got a permit to work on the house prior to the second driveway. At the time of the permit he was not planning on installing a second driveway. However, he was told by the permit department as long as he was doing the work by himself he would be fine. He acknowledged he should have went back and added the driveway onto to the scope of his plans for the permit.

Ms. Proctor – Is your intention for your renters to park head-to-tail 2 cars or 3 cars?

Mr. Staggs explained you can fit on the pad 2 cars side-by-side and 1 on top of driveway. He stated you could fit another car on the driveway but that would block in the other cars.

Ms. Proctor – Is your intent for this driveway in anticipation of a larger family or larger group of people in the home to rent your home?

Mr. Staggs inclined this is not his intention and that he believes at one time there would be only 3 drivers in the home. He added he planned on the pad being used as a patio and to park 1 car.

Ms. Loftus – This house is up for sale right now?

Mr. Staggs confirmed the house is currently up for sale.

Ms. Proctor – I'm still curious did you ever not use that pad to park your truck off the street or is that not wide enough?

Mr. Staggs stated when he had a Toyota Camry he would park off the street every once in a while. This was really when he was out-of-town so his car would be off the street. He noted whenever you park in the current driveway there was a hill you would hit beside the path when you opened your door so you would have to squeeze out of the car. He stated another option would be to keep your right side wheels in the grass if you were to park on the driveway.

Ms. Proctor recommended to turn old garage into a sunroom as an extension to have more space.

Mr. Staggs presumes the space will be used by new buyers for lawn equipment.

Ms. Proctor closes window to public discussion and other board members state they have no issue with second driveway.



Ms. Shell disclosed her observation of the driveway layouts of nearby yards of local homeowners. Stated the zoning code is designed to prevent areas of conflict while providing an opportunity for off-street parking.

Ms. Proctor expressed concern of the inclusion of a second driveway to be too much of an instance of an exception that it would look odd.

Ms. Shell mentioned there are houses with driveways for off-street parking. Specified there is no alley for Mr. Staggs to enter as a way to exit driveway. She stated off-street parking in front of house is more common in this neighborhood compared to other parts of town that are flatter and more gridded.

Mr. Yates made a motion to approve BZA 23-V-27. Ms. Loftus seconded the motion.

Roll Call BZA; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

BZA petition for a variance was approved with a vote 3 Yes to 0 No. Ms. Proctor noted to let future owners know if they want to do future things to the property to inform the city.

### **BZA 23-V-28**

A petition for a variance to exceed the maximum height requirement for a fence in a front yard in a C-3 Commercial District. The property is located at 623 Hal Greer Blvd.: also known as 621-625 Hal Greer Blvd.

*Property Owner/Petitioner:* Robert B. Gleason, 7 Bayberry Dr., Huntington, WV

Bob Gleason, 416 10<sup>th</sup> St, stated 13 years ago he cleared lot and built this apartment complex. He claims over the years random pedestrians have been coming up to the building to sit on the steps and linger around the premises. Presently, these non-permissive parties are going onto the property and are actively partaking in illegal drug activity. States some trespassers are getting into a blocked off area where utilities are located. He proclaims renters are moving out due to safety concerns. Additionally, he alleged a trespasser broke into a tenant's apartment recently. He also stated the fenced gate he wants to install in the front of the building is 15 feet from the sidewalk. Overall, he expressed the spot is troublesome, rough, and scary.

Ms. Loftus – Why won't they come in the back way... the vagrants?

Mr. Gleason confirmed there will be a fence on the back side of the building. He disclosed he was informed he could do it anytime.

Ms. Proctor – Who said you could do it anytime? Miss Bre?

Ms. Shell explained the height requirements for fencing in the rear weren't as stringent compared to the front side of the property. Mr. Gleason explained the front is most important but the back will be get attention. He added in the structure will look nice too.

Ms. Loftus – So the middle alley will have something towards the back?

Mr. Gleason exclaimed he will secure both the front and back of that alleyway that goes through the middle of the building. This will be done the same way and will look halfway decent. It finished with stating it will look nice.

Ms. Loftus – And so structurally does it have to go all the way up to the top? Because it does look a little weird compared to the road.

Mr. Gleason thought the design looked better this way as it would look flush with the façade of the building. He offered to bring it down some. He added that is how other ones have been done that he has seen.

Ms. Proctor – Miss Bre, does the back entrance need to be done simultaneously with the front?

Ms. Shell confirmed in a commercial district in the rear and side yards the maximum height allowed is 8 feet. The front yard shall not exceed 4 feet. The front and back fenced gates don't have to be done at the same time but probably will as it would make more sense. Mr. Gleason agreed and expressed a sense of urgency of building these fenced gates as soon as possible with potentially a week or so break in between the installation of the front and back fenced gates.

Mr. Yates – Is the rest of the fencing going to change or are you going to change that?

Mr. Gleason explained the fencing will stay the same, the exception will be a door will be added. The look will remain the same.

Ms. Proctor – A couple of things, Miss Bre how far back should the setback be? I mean I see the sidewalk, I see the number. How far should it be setback for this zone? Is the 15 feet correct? I mean we can't move the building it is already done.

Ms. Shell confirmed with Mr. Gleason the 15 foot is the distance of the public right of way in front of the building, the building and proposed fence is right up to the property line.

Ms. Proctor wanted to confirm this in case there were any issues.

Ms. Shell described the front yard is calculated from the property line. This does not include anything on the right-of-way.

Ms. Proctor knew from previous experience in different districts setbacks were taken into account and wanted clarification.

Ms. Shell explained this is nuanced because in commercial districts the setback is from the structure to the right-of-way. In this scenario there is no front yard: the property line is at the front of the structure. This is a different kind of scenario than would be seen in a typical residential area, especially because of the mixed-use of residential and commercial. She added the right-of-way is wide.

Ms. Proctor – Okay, my next question is... what is to stop a vagrant, or whomever, to go over the banister?

Mr. Gleason explains this is possible but won't be as likely to because of the effort that would be involved to do so. He added for him to do it he would need a step-ladder.

Ms. Proctor explained younger populations would be able to do so, even without a step-ladder.

Mr. Gleason explained you can only do so much to prevent people from coming in. Ms. Proctor agreed.

Ms. Proctor – What else is on your property that is security that gives your tenants confidence that they can live there on such a busy boulevard? Is there any other ring type of situation or is there any recording so you can protect your tenants or do you have anything like that?

Mr. Gleason states he does not but few other tenants have installed a ring doorbell.

Ms. Proctor asked from personal experience of a friend who has an issue who packages being stolen. It amazes her someone will steal a package without a second thought (the “pure audacity” for them to do this). Ms. Proctor questioned why he is only doing the fencing for security.

Mr. Gleason reiterated he did not come because of the packages; but because of the people shooting up or someone sleeping on the steps or sitting on the steps doing nothing as a result of trespassing. He added he recommends his tenants to have their packages sent to this jewelry store for security. It is on the tenants to come pick up their packages from the store.

Ms. Proctor – Do you know yet who is going to construct this fencing for you? And do you have the ability to vary it because as you know with the 2025 Plan and all the work being done on Hal Greer even though it is aggravating to a lot of people currently. It is going to be a better entrance as you come into our town... My point being is I’m not a big fan of this because it makes the area look industrial and while it is the C-1 district that it is, it doesn’t have to look like you are driving past “sing-sing”. I don’t want that I prefer not that... is there some other way or other design such as ...if you were to make the gate red here or I think you should make it white.

Mr. Gleason confirmed he was not going to make the fenced gate red. Mr. Gleason and Ms. Proctor agreed red would look ugly. Mr. Gleason confirmed structure will be white.

Ms. Proctor expressed that the current fencing on the front side of the building looks dreadful. She added as a community member she advocates anything that can be done to add to aesthetics for ourselves and visitors.

Ms. Proctor closes the public discussion. Ms. Loftus was concerned how it will look and Mr. Yates thinks Mr. Gleason will make it look nice. Ms. Proctor is also concerned with looks of final product. But, all board members did not object to the petition.

Mr. Yates made a motion to approve BZA 23-V-28. Ms. Loftus seconded the motion.

Roll Call BZA; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

BZA petition for a variance was approved with a vote 3 Yes to 0 No. Ms. Proctor noted to the petitioner to please keep beauty in mind.

### **BZA 23-V-29**

A petition for a variance to build a 10’ by 18’ carport in the front yard in an R-1 Residential District. The property is located at 221 Baer St.

*Petitioner:* David Jones of General Building Supply, 618 7<sup>th</sup> Ave., Huntington, WV

*Property Owner:* Lorna Klein, 221 Baer St., Huntington, WV

Ms. Shell presented the staff report.

David Jones, 618 7<sup>th</sup> Ave., explained the owner is elderly and cannot walk stairs to get to the basement. He explained the logistics of the carport that will be placed in the front yard. States owner's carport would be white aluminum and does not block views from the physical sides so Ms. Klein can see traffic.

Ms. Loftus – Is this an accommodation for a disability?

Ms. Hernandez explained that would be through the Reasonable Accommodation Process not the Board of Zoning Appeals process.

Ms. Loftus expressed she thought this may be classified under that legislation. Ms. Hernandez stated that is a different legal process. Ms. Loftus thinks this petition may be reasonable due to the homeowner's age. Mr. Jones and Ms. Loftus agreed there is a safety concern for the elderly like the homeowner when they are exposed to inclement weather including an elderly person with disabilities.

Ms. Proctor – Is Reasonable Accommodation a part of our authority or someone else?

Ms. Hernandez explains this comes through her office. She explained the premises of a variance which is only allowed if conditions are present that are not caused by the landowner or some sort of hardship. For a reasonable accommodation she explained in general has to help relieve disability and proof must be provided how the accommodation would be allow the disabled person live more like the average individual.

Ms. Proctor – If we say yes we are confirming a reasonable accommodation, if we say yes but they have to go someplace else for reasonable accommodation?

Ms. Hernandez explained the petition of matter currently is a variance and reiterated the qualifications for a variance. She stated if this would come to her office she would request additional information so we could get the documentation needed for a proper analysis.

Ms. Loftus confirmed with Mr. Jones that the homeowner (Ms. Klein) cannot get to her basement where the garage is located due to physical limitations caused by aging. Ms. Hernandez offers to the board chairperson to go into executive session to provide additional legal counsel regarding variances and reasonable accommodations. Ms. Proctor (chairperson) agrees.

Ms. Loftus makes motion to go into executive session for legal advice. Mr. Yates seconds motion.

Roll Call Executive Session; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

Executive Session was approved with a vote 3 Yes to 0 No. Meeting was paused and legal advice was administered by Ms. Hernandez to board members. Only these parties were in council chambers at this time.

*Normal session resumes.*

Mr. Yates makes a motion to exit from executive session. Ms. Loftus seconds motion.

Roll Call to exit Executive Session; Mr. Yates, Yes; Ms. Loftus, Yes; Ms. Proctor, Yes.

Mr. David Stone, 207 Baer St., came up in opposition of petition. He was shock this petition has made it this far. He explained the previous history of the property regarding the basement garage and driveway.

He would like to see a stairwell be installed instead. According to Mr. Stone, Ms. Klein had previously installed a patio in which she enclosed. This was located in the front yard and created a safety issue for any driver going by her house. To his knowledge the city made her tear the structure down.

Ms. Loftus – Are you the immediate neighbor to the right?

Mr. Stone his the location of his residence in comparison to Ms. Klein's home.

Ms. Proctor – You're indicating the parking pad in front of the house was not there 7 years ago?

Mr. Stone stated Ms. Klein installed the parking pad in the front yard when she moved in. Additionally, he noted once she put a cover over the patio (from the previous patio covering), the overhang became blinding.

Ms. Proctor – How far out does her roof extend out on the (existing) porch?

Mr. Jones stated the porch itself extends 6 feet, once the overhang is included the number raises to 7 feet.

Mr. Jones mention she from the road to the existing porch there is 11 feet Ms. Klein would like covered.

Ms. Proctor – To cover two cars, one which is on the longer side, she (Ms. Klein) wants a side-by-side?

Mr. Stone confirmed Ms. Klein would like to have a carport to cover two cars, one which is significantly longer.

Ms. Proctor closes window for public discussion.

Mr. Yates questioned if there was permission granted for the front yard pad/driveway. Ms. Shell has no reference of a permit being granted for the construction of the parking pad/driveway.

Ms. Proctor questioned if Mr. Jones can do something for his client as an alternative if the board rejected the petition. Ms. Hernandez disclosed that Ms. Klein would be able to apply for reasonable accommodation with the city.

Ms. Loftus makes a motion to approve the extension to be limited to 9 feet from the home.

Roll Call BZA; Mr. Yates, No; Ms. Loftus, Yes; Ms. Proctor, No.

BZA petition for a variance was rejected with a vote 1 Yes to 2 No. Ms. Proctor noted Mr. Jones must talk to his client and figure out a potential alternative solution. Mr. Yates added for Mr. Jones to discuss with his client if the parking pad in the front yard was permitted to be installed.

**Good and Welfare**

Ms. Shell provided an update with the Planning and Zoning department in terms of hiring and expressed thankfulness for patience during this time of staff transitioning. Additionally, she did imply for now she will be the staff member from the department to speak upon BZA petitions until further notice.

Ms. Proctor expressed her gratitude for the department and offered the opportunity for advice on potential candidates to fill vacancies in the department. She also expressed appreciation for Ms. Hernandez's efforts.

Ms. Proctor adjourns the meeting at 7:25 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-27**

*Property Owner/Petitioner:* Kendall Staggs, 6900 Merritts Creek Rd., Huntington, WV  
*Subject Property:* 630 8<sup>th</sup> Avenue

A petition for a variance to allow a second driveway on the same parcel in an R-1 Residential District.  
The property is located on 2030 Military Rd.

*Individual Speaking on Behalf of Petition:* Kendall Staggs  
*Other Interested Parties:* None

**ORDER**

On September 19, 2023, Mr. Staggs appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 23-V-27. Other citizens were permitted to voice their positions as well, per the practice of this Board, and no individual provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the September 19, 2023 meeting and hearing testimony from Mr. Staggs, the Board finds as follows:

1. Mr. Staggs is the petitioner and property owner.
2. A section of Mr. Staggs' home was damaged by an ice storm prompting him to demolish the afflicted area.
3. It was revealed to the owner after demolition that there was a parking pad underneath the damaged portion of the home.
4. Mr. Staggs installed a 2<sup>nd</sup> driveway illegally as he did not acquire a permit for this construction project.
5. The owner laid the concrete for the driveway to connect to the parking pad.
6. There is an existing driveway on the left side of the front lawn.
7. The original driveway is too narrow to park most automobiles.
8. The elevation change next to the original drive way on one side makes opening vehicle doors difficult.
9. Other houses in the area have either two driveways or U-shaped driveways in the front yard.
10. The house has no alley access to rear or side yards.
11. Military Road has no sidewalks in this area.
12. Most houses in this area have off-street parking.
13. The property is zoned in an R-1 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**

The Zoning Ordinance states “For any principal use that is residential only, there may only be one driveway which much be a single-lane driveway.” City of Huntington Ordinance §1343.08.D.1. It is from this restriction that Petitioner wishes to vary.

Unfortunately, Petitioner installed a second driveway before petitioning this Board. Although Petitioner comes seeking forgiveness instead of permission, we find that permitting a second driveway will not will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents since other properties in the neighborhood either have second driveways or have U-shaped driveways, which have two entrances to the street. The house had an existing driveway that had been installed presumably when the house was built, since it goes to a garage, but, as is common in older homes in our area, the garage and driveway are too small for modern-day vehicles. Additionally, the topography next to the driveway makes its use difficult, at best. We believe these to be the special conditions or attributes from which this variance petition arises and the hardship that the variance will alleviate. Additionally, without sidewalks, pedestrians share Military Road with vehicular traffic. While parking on the street is permitted, providing a useable off-street parking area will benefit both the home owner and the public, allowing the intent of the Zoning Ordinance to be observed and substantial justice done.

While we believe the secondary driveway is appropriate at this location due to the consideration of the impact on the neighboring properties and the narrow and constrained development of the garage and parking area on the other side of the property, we would like to note that the appropriate time to check for approval for a new driveway is in advance for building and reminded all parties to please call the city in advance to ensure conformity with city regulations before construction.

### **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-27 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

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

**BZA 23-V-28**

*Property Owner/Petitioner:* Robert B. Gleason, 416 10<sup>th</sup> St., Huntington, WV  
*Subject Property:* 623 Hal Greer Blvd (also known as 621-625 Hal Greer Blvd.).

A petition for a variance to surpass maximum height requirement for fencing in a front yard in a C-1 Neighborhood Commercial District. The property is located on 623 Hal Greer Blvd.

*Individual Speaking on Behalf of Petition:* Robert B. Gleason  
*Other Interested Parties:* None

**ORDER**

On September 19, 2023, Mr. Gleason appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 23-V-28. Other citizens were permitted to voice their positions as well, per the practice of this Board, and no individual provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the September 19, 2023 meeting and hearing testimony from Mr. Gleason, the Board finds as follows:

1. Mr. Gleason is both the petitioner and owner.
2. Owner would like to install in the front and back of the building a fenced wall with a door for tenants to safely enter and leave the complex.
3. The property is an apartment complex with a history of pedestrians who are not tenants lingering around the premises.
4. Nonpermissive parties are loitering and actively partaking in criminal activity, especially with narcotics.
5. Mr. Gleason offers and suggests tenants to have packages shipped to his jewelry store because of the frequent criminal behavior at the apartment complex.
6. This property is zoned in the C-1 Neighborhood Commercial District.
7. Fencing may not surpass four feet in height in the front yard.
8. The fencing proposed is approximately 8 feet in height and 80 inches wide.

**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**

*“Front yard.* Any fence located in the front yard or required front yard, whichever is greater, shall not exceed four feet in height. *Side and rear yard.* A fence within a side or rear yard shall have a maximum height of eight feet.” City of Huntington Ordinance § 1341.19.C.3.

Fencing of various types is seen throughout the city. But, a concern with this particular fencing proposal is how it will interact with the façade of the building. The fenced wall will be proposed to be 8 feet in height as it will touch the bottom of the second floor of the building. However, the Board considered the petitioners’ concern for safety of their tenants at this location. The BZA believes the proposal Mr. Gleason has brought forth would indeed prevent at least some of this behavior with the addition of both the front and rear fencing addition.

As a result, we believe it is in the best interest for Mr. Gleason and his tenants to have this fencing installed. We would like to note the importance of the aesthetics and suggest other security precautions to be taken if appropriate. Hal Greer Boulevard is in a state of renaissance. We must develop this neighborhood in accordance with the proposed changes along the roadway.

### **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-28 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

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

**BZA 23-V-29**

*Petitioner:* David Jones of General Building Supply, 618 7<sup>th</sup> Ave., Huntington, WV

*Property Owner:* Lorna Klein, 221 Baer St., Huntington, WV

*Subject Property:* 221 Baer St.

A petition for a variance to build a 10' by 18' carport in the front yard in an R-1 Residential District located at 221 Baer Street.

Individual Speaking on Behalf of Petition: David Jones of General Building Supply

Other Interested Parties: David Stone, 207 Baer St., Huntington, WV

**ORDER**

On September 19, 2023, Mr. Jones appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 23-V-29. Other citizens were permitted to voice their positions as well, per the practice of this Board, and Mr. Stone provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the September 19, 2023 meeting and hearing testimony from Mr. Jones, the Board finds as follows:

1. Mr. Jones is the petitioner and Ms. Lorna Klein is the owner.
2. Owner would like to install a carport over her driveway in the front yard.
3. The owner cannot use the existing driveway and garage in the basement due to physical limitations from aging. Owner is a senior citizen.
4. Mr. Stone objected development of carport as he believes it will be a safety concern.
5. Driveway in front yard may have been installed without permits.
6. Ms. Klein's physical limitations due to aging may grant her reasonable accommodation with appropriate documentation.
7. The carport will stretch from the front porch up to 11 feet from the road.
8. The property is zoned R-1 Single-family Residential.

**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

“Parking spaces in the front yard shall only be located within the driveway and the garage apron.” City of Huntington Ordinance §1321.03.

“Carports must be located in the rear yard unless site features such as topography or other barriers prevent access. In the event that a carport cannot be located in the rear yard, it may be located in the side yard.” City of Huntington Ordinance §1315.06.A.1.b.

Per testimony, Ms. Klein is an elderly citizen who physically has trouble accessing the basement garage and utilize the original driveway going downhill from the road. Additionally, inclement weather will create a safety concern for her on both driveways. But, also on consideration her proposed carport would create a safety issue for her and motorists passing her home due to lack of visibility in the front yard. The carport has the potential to block visibility for both parties which may lead to an accident if this structure is installed.

In addition, it is important to note the driveway in the front yard is not in compliance with the city ordinance. Ms. Klein has two driveways and only one is within access to a garage. Consequently, the driveway in the front yard may not be permitted. If there was no permit acquired for the driveway in the front yard then it will be classified as an illegally built structure. Applying for a permit is crucial to upholding the validity of the zoning code and to keeping our city in accordance with the Comprehensive Plan.

Overall, the BZA does not think that this variance meets the criteria for approval to allow this development to occur. The carport will be too great of a danger for residents in the neighborhood. We recommend Mr. Jones to go back to his client for an alternative idea to present to the city to remedy the petitioner’s goals. There is a possibility through reasonable accommodation that Ms. Klein may be able to implement a revised solution to her proposal. If sufficient documentation is supplied and the revision meets appropriate criteria.

### DECISION

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **REJECTS** petition BZA 23-V-29 for a **Variance**.

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 self-storage development.

**Legal Ad****BZA 23-C-30**

*Issue:* A petition for a conditional use to permit a self-storage development in the I-1 Light Industrial/Commercial District. The property is located at Wayne County Tax District 6, Map 5, Parcels 132, 133, 100, and 101.1 and are located within the southwestern 4600 block of Piedmont Road near the intersection with Elm Street and includes 4711 Piedmont Rd.

*Petitioner/Property Owner:* Brian Browning, 5821 E Pea Ridge Rd. #19, Huntington, WV.

**Introduction**

Brian Browning is petitioning a conditional use to permit a self-storage development on the property he owns near the intersection of Piedmont Road and Elm Street. This includes 4711 Piedmont Road.

**Existing Conditions / Background**

The property is owned by Brain Browning. Currently, the lots he wants to develop as a self-storage center are vacant parcels. Additionally, a portion of the property has been recently successfully rezoned to be included in the I-1 Light Industrial/Commercial District.

**Proposed Conditions**

The proposed self-storage development will consist of 175 units and is planned to be built in phases. Once finished, this development will be able to rent storage units individually and will be able to rent space for recreational vehicles, boats and trailers.

**Zoning Ordinance**

Per *Article 1320.04*, in the I-1 district, self-storage units are permitted with a conditional use permit.

**Pictures**

*Rezoned parcels that are now I-1 (previously R-2 Single-family).*



*Vacant lot that was already zoned I-1 (4711 Piedmont Rd).*



*Eastern side of parcels involved in petition.*

**Staff Comments**

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



- Medium density
- Smaller lots with grid streets
- Mainly single family with nodes of commercial activity that are sparse and with conditions.

The area Mr. Browning is wanting to develop in has been envisioned for residential development. However, it is located by a railroad. Throughout the city, a lot of industrial zones are located along railroads. Additionally, when examining Plan2025, it is evident the parcels Mr. Browning owns is located near a designated commercial node. As the I-1 district can be used for some commercial uses, this proposed designation could shift to include Mr. Browning's business.

One thing to note while considering the conditional use for this project is parking. Since this development will take on a phased approach and have vehicles to store it is imperative there is some parking spaces off-street for parking. Section §1343.03 does not require a certain number of parking for vehicles. But, if the plan does include outdoor storage of vehicles and trailers those must be limited to recreational vehicles, boats, and trailers and will not be permitted to occur on street. The application states that the property owner will create gates to allow people to pull into the property and not cause a disturbance on Piedmont. All parking areas must be a paved surface, separated from property lines with a 3 foot landscape buffer. Stormwater requirements will be met on site and lighting as appropriate for the use. Another key consideration for this property would be the side facing the Piedmont Road. Due to the residential zoning and uses on the other side, strong consideration should be given to that street side façade which requires materials

suitably finished for aesthetic purposes (1333.03.B.2) and transparency to be met.

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

1. Brian Browning is the owner and petitioner.
2. The petitioner is requesting a conditional use to build a self-storage development.
3. The property is currently zoned I-1 Light Industrial/Commercial District.
4. The petitioner will be implementing this project in phases. The end result will include 175 storage units.

### **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:** Brian Browning Phone: 419-322-9814

Mailing Address (city, state, zip): 5821 E Pea Ridge Rd #19, Huntington WV 25705

Email: brianbrowning34@gmail.com

**Property Owner (if applicable):** Brian Browning Phone: 419-322-9814

Mailing Address (city, state, zip): 5821 E Pea Ridge Rd #19, Huntington WV 25705

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

see attached

#### **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 1341.15 to allow the following:

Build and rent storage units; Rent U-Haul vehicles and trailers

#### **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 September 19, 2023.

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**, October 17, 2023 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.

Brian Browning  
Signature of Applicant

Brian Browning  
Signature of Property Owner

9-12-23  
Date

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: <u>9/14/23</u>	Project Name:

Attachment to the Conditional Use Permit Application  
Applicant Brian Browning

Phone: 419-322-9814

**Address**

4711 Piedmont Rd, Huntington WV 25704

**Legal Description**

Formerly known as:

50-06-0005-0132-0000

50-06-0005-0133-0000

50-06-0005-0100-0000

50-06-0005-0101-0001



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### Application for Conditionally Permitted Use

#### ATTACHMENT A

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

1. Effect upon the Comprehensive Plan (available online):

The desire is to continue with the growth and development of our city by building and renting storage units. After the city's approval to begin building, the vision is to have 175 units and provide the surrounding residents with safe, secure, presentable storage opportunities.

2. Effect upon public health, safety, and general welfare:

There is no adverse affect to the public health, safety, or general welfare. Furthermore, by having the concrete and paved areas on the property, it improves the quality and safety of the area.

3. Effect upon the use and enjoyment of other property in the immediate vicinity for the purposes already permitted:

The property was previously used by Rahall Transportation to perform maintenance on railroad cars. After the construction storage units, the immediate vicinity will be less impacted by noise than the prior occupant of the property.

4. Effect upon the normal and orderly development and improvement of the surrounding properties for uses already permitted in the district:

By building new storage units, the appearance will be improved over an empty lot and show growth to the local economy.

5. Have adequate provisions for utilities, access roads, drainage, and other facilities been provided for:

We will work closely with the storm drainage department to ensure adequate drainage. Power will be added to the area to provide sufficient lighting to the outside premises. Power will not be provided inside the units. There will also be a small office building on the premises for convenience to customers.

6. Has adequate ingress and egress been designed to minimize traffic congestion on the public street:

Currently, the property has very large gates that allow extra wide loads to enter. The plan is to move these gates even further into the property allowing customers to pull their vehicles and attached trailers onto the property thereby avoiding any disturbance to moving traffic along Piedmont Road.





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### 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 1341**

Brief description of the requirement:

Section 15: Storage limited to recreational vehicles, boats, and trailers. No junk vehicles shall be stored.

How will the requirement be met:

Unauthorized vehicles listed in Articles 1341.15 will not be permitted.

#### **Article 1341**

Brief description of the requirement:

Section 15: Trash, radioactive or highly toxic substances, garbage refuse, explosive or flammable materials, hazardous substances, animal carcasses or skins, or similar items shall not be stored.

How will the requirement be met:

Unauthorized items listed in Article 1341.15 will not be permitted.

#### **Article 1341**

Brief description of the requirement:

Section 15: the interior traffic aisles, required off-street parking areas, loading area, and access ways shall be paved with a hard surface and shall be kept clear of stored items.

How will the requirement be met:

the traffic area will be covered in a hard surface and kept clear of stored items.

#### **Article 1341**

Brief description of the requirement:

Section 15: Maximum building length is 250 feet.

How will the requirement be met:

Each building, when constructed, will not exceed 250 feet in length.

#### **Article 1341**

Brief description of the requirement:

Section 15: The minimum separation between buildings is 20 feet.

How will the requirement be met:

Each building will be constructed such that there is 20 feet between them.

**Section 1341.14 Religious Use**

- A. A primary or secondary school and/or a child or adult day care center are permitted on the same lot as a religious use provided that the requirements for such uses are also met.
- B. One dwelling unit for a religious leader of the place of worship and their family may be accessory to a religious use on the same lot.

**Section 1341.15 Self-Storage Development**

- A. Outdoor storage shall be limited to recreational vehicles, boats and trailers. No "junk vehicles" shall be stored. Outdoor storage areas shall be screened in compliance with Article 1347.
- B. Trash, radioactive or highly toxic substances, garbage, refuse, explosives or flammable materials, hazardous substances, animal carcasses or skins, or similar items shall not be stored.
- C. The interior traffic aisles, required off-street parking areas, loading areas and access ways shall be paved with a hard surface and shall be kept clear of stored items.
- D. Maximum building length - 250 feet.
- E. Minimum separation between buildings - 20 feet.

**Section 1341.16 Swimming Pool - Household**

- A. The swimming pool shall not involve any commercial use.
- B. Enclosure around in-ground pools shall meet the requirements of the Building Code.
- C. Enclosure around above ground pool. Any existing or new above ground pool shall include a secure fence, wall, or other enclosure a minimum of four feet high above the surrounding ground level. Such pools shall be equipped with an access ladder that can be raised and locked in a position so that it is a minimum of four feet above the surrounding ground level or otherwise completely inaccessible to children when the pool is unattended.
- D. Location. A pool and any deck or shelter that is elevated above the average surrounding ground levels shall meet the applicable setback requirement for an accessory building. Patios around pools that are level with the average surrounding ground level are not required to meet setbacks. A pool is not permitted within a required front yard.
- E. Drainage. A proper method shall be provided for drainage of the water from the pool that will not overload or flood any: 1) on-lot septic system or 2) portion of a building or property not owned by the owner of the pool. A pool shall not be located so as to interfere with the operation of a well or on-lot septic system.

**Section 1341.17 Swimming Pool, Non-household**

- A. The water surface shall be setback at least 25 feet from any lot line.
- B. Minimum lot area - two acres.
- C. Any water surface within 100 feet of an existing dwelling shall be separated from the dwelling by evergreen screening in agreement with Article 1347.
- D. The water surface shall be surrounded by a secure, well-maintained fence at least six feet in height.
- E. Drainage. A proper method shall be provided for drainage of the water from the pool that will not overload or flood any: 1) on-lot septic system or 2) portion of a building or property







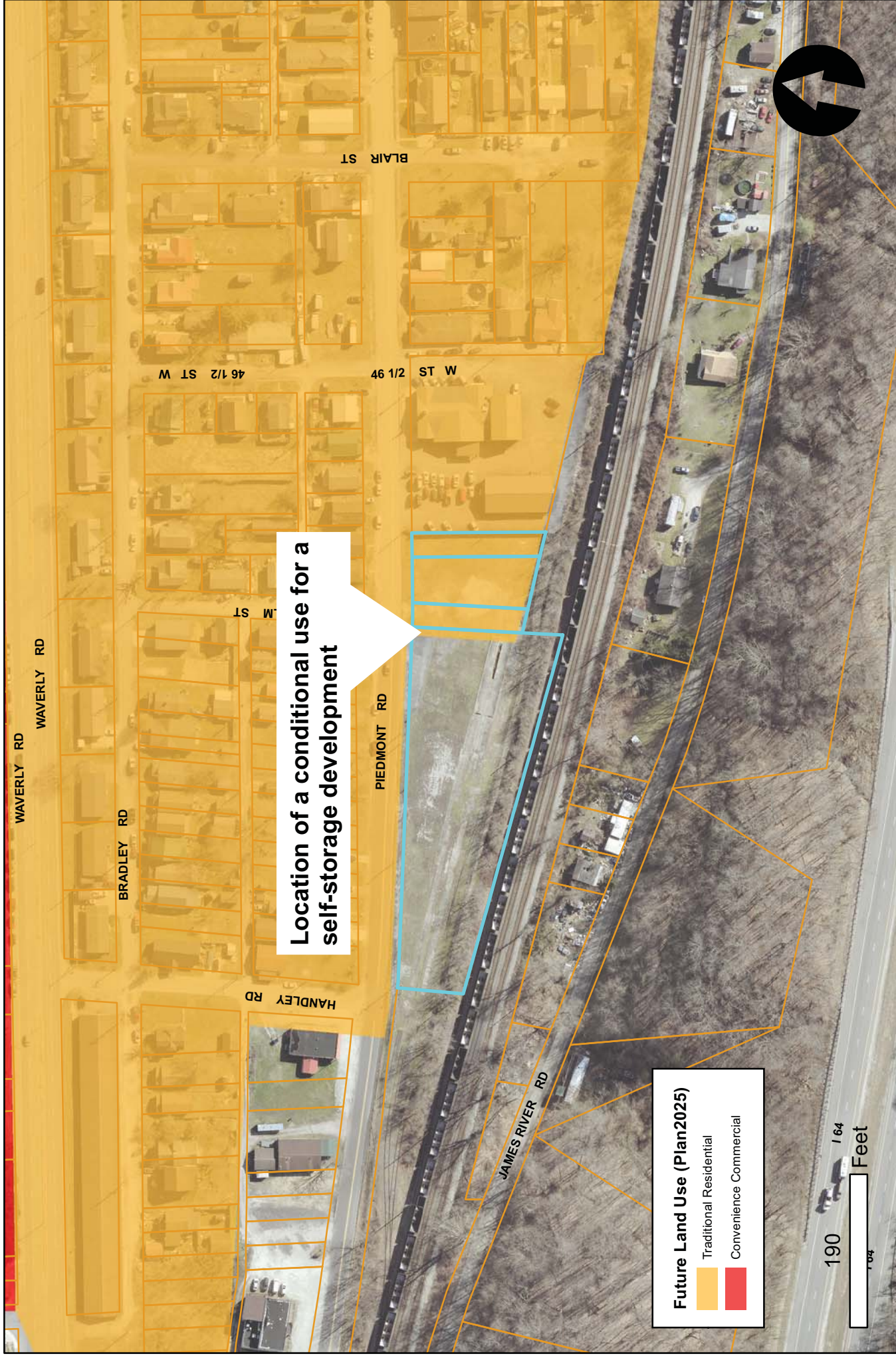


**4711 Piedmont Road**  
**Wayne County Tax District 6, Map 5,**  
**Parcels 132, 133, 100 and 101.1**  
**BZA 23-V-30**

**Location of a conditional use permit for a self-storage in the I-1 Light Industrial/Commercial District.**





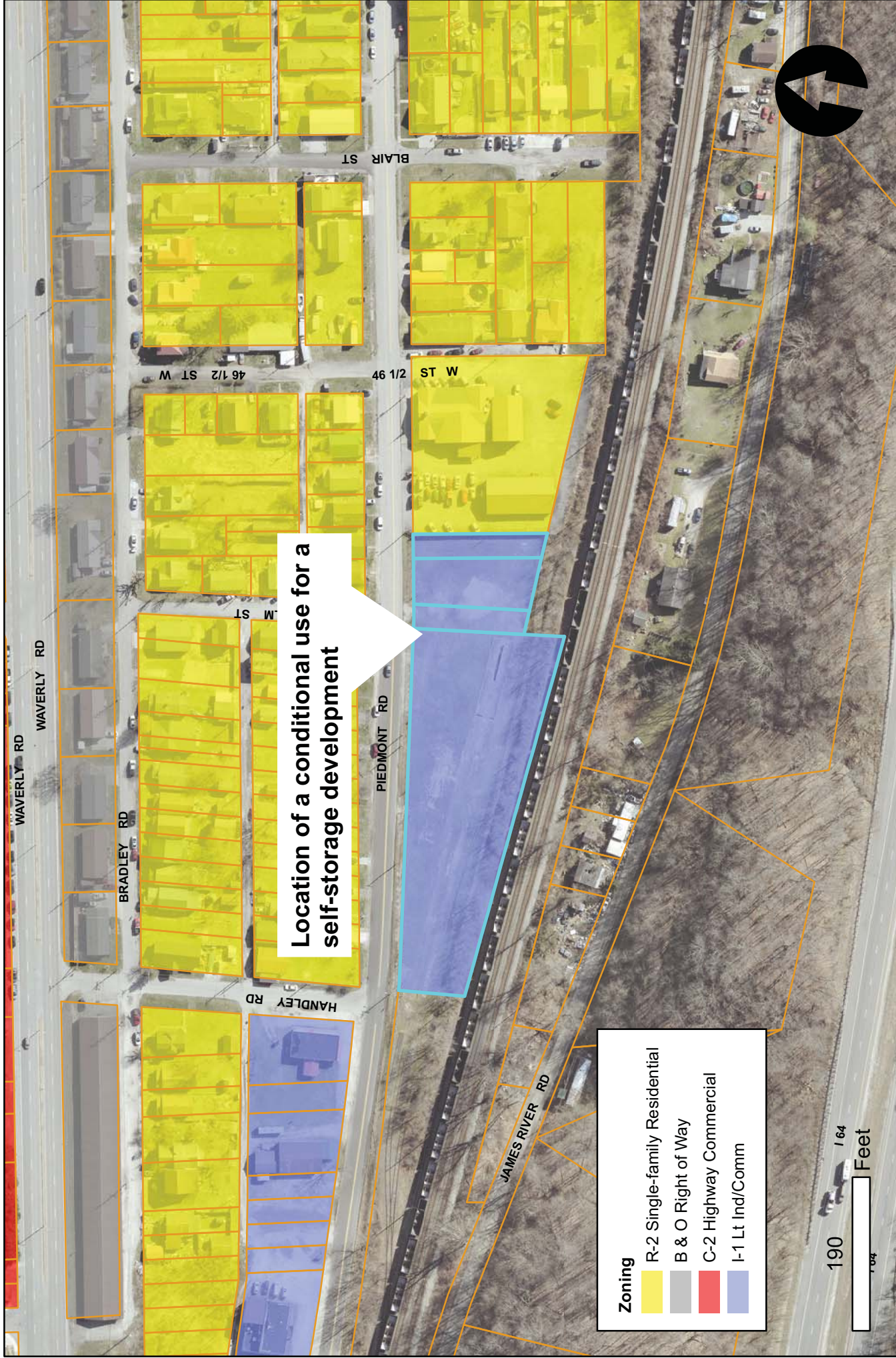


**4711 Piedmont Road**  
**Wayne County Tax District 6, Map 5,**  
**Parcels 132, 133, 100 and 101.1**  
**BZA 23-V-30**

**Location of a conditional use permit for a self-storage in the I-1 Light Industrial/Commercial District.**







**4711 Piedmont Road**  
**Wayne County Tax District 6, Map 5,**  
**Parcels 132, 133, 100 and 101.1**  
**BZA 23-V-30**

**Location of a conditional use permit for a self-storage in the I-1 Light Industrial/Commercial District.**





**Staff Report:** A petition for a variance to the minimal transparency requirement for the front façade of a building.

**Legal Ad****BZA 23-V-31**

*Issue:* A petition for a variance to the minimal transparency requirement for the front façade of a building in the I-1 Light Industrial/Commercial District. The property is located on 1502 Madison Ave. at the northwest intersection of Madison Avenue and 15th Street West.

*Petitioner/Property Owner:* Ashley Stewart, Ashley Claire Stewart Revocable Trust, 17 Washington Ave., Huntington, WV.

**Introduction**

Ashley Stewart is petitioning a variance to the transparency requirement to be able to utilize the building on the property as a bar and limited video lottery (LVL), the location was approved to be a bar and LVL location on June 20<sup>th</sup>, 2023. In review of the proposal for the new location the petitioner plans to remove the garage door and replace with a regular door which reduces the transparency of the front façade to 33% transparency when 50% is required per the I-1 Industrial District.

**Existing Conditions / Background**

The property is owned by Ashley Stewart/ Ashley Claire Stewart Revocable Trust. Presently, the property sets vacant. In the past this property was used for office/warehousing. Additionally, in June 2023, this location was granted conditional uses for a bar and limited video lottery (BZA 23-C-21 & BZA 23-C-22).

**Proposed Conditions**

Ms. Stewart would like replace the garage door with a 48' x 80' foot window and leave the existing door (36' x 80') and adjacent window (18' x 48').

**Zoning Ordinance**

Per *Article 1333.02*, in the I-1 district, the front façade for any building being used for commercial purposes must meet a minimum of 50% transparency.

**Pictures**

*Current front façade of building on 1502 Madison Ave.*



*Looking west of the property.*



*Looking east of the property.*

## **Staff Comments**

Plan2025 designates this area as a Light Industrial District, which is characterized by:

- Medium sized lots
- Allows commercial, light industrial, and residential uses.
- Industrial properties close to residential areas.

§1315.08.E states the front façade is the side of a structure that faces a street's right-of-way. The building is surrounded by commercial and industrial uses. There are some buildings along the street that have limited or no transparency on their front facades. On other buildings their back sides or sidewalls face the street. However, it is important to note this building is located near the focal point of the West Huntington main street district, Central City at 14<sup>th</sup> Street West.

Additionally, §1341.02 declares that bars if no transparency requirement is listed the structure must have at least 20% transparency. These transparency requirements are designed to keep our streetscapes attractive to residents and visitors and to provide safety for all.

## **Summary / Findings of Fact**

1. Ashley Stewart/Ashley Claire Stewart Revocable Trust, is the owner and petitioner.
2. The petitioner is requesting a variance to the transparency requirement to be able to utilize the building on the property as a bar and limited video lottery in the future.
3. The property is currently zoned I-1 Light Industrial/Commercial District.
4. The petitioner will installing a smaller window in place of garage door on the

front façade of the building which will reduce the transparency to 33%.

## **Attachments**

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



## PLANNING & ZONING

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

### Variance of Zoning Regulations Application

**Applicant Name:** Ashley Stewart **Phone:** 304-638-0109  
**Mailing Address (city, state, zip):** 17 Washington Ave  
**Email:** acstewart99@gmail.com  
**Property Owner (if applicable):** \_\_\_\_\_ **Phone:** \_\_\_\_\_  
**Mailing Address (city, state, zip):** \_\_\_\_\_

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

1502 Madison Ave

#### Variance request pursuant to:

Article 1333.02 and/or Figure \_\_\_\_\_ of the City of Huntington Zoning Ordinance.

Description of the variance being requested:

33% Transparency

#### 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 Sept 19 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, \_\_\_\_\_. 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

#### For office use only

Received: 9/19/23 Project Name: \_\_\_\_\_





## PLANNING & ZONING

City of Huntington  
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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:

There will be no negative effects for the adjacent properties and residents

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):

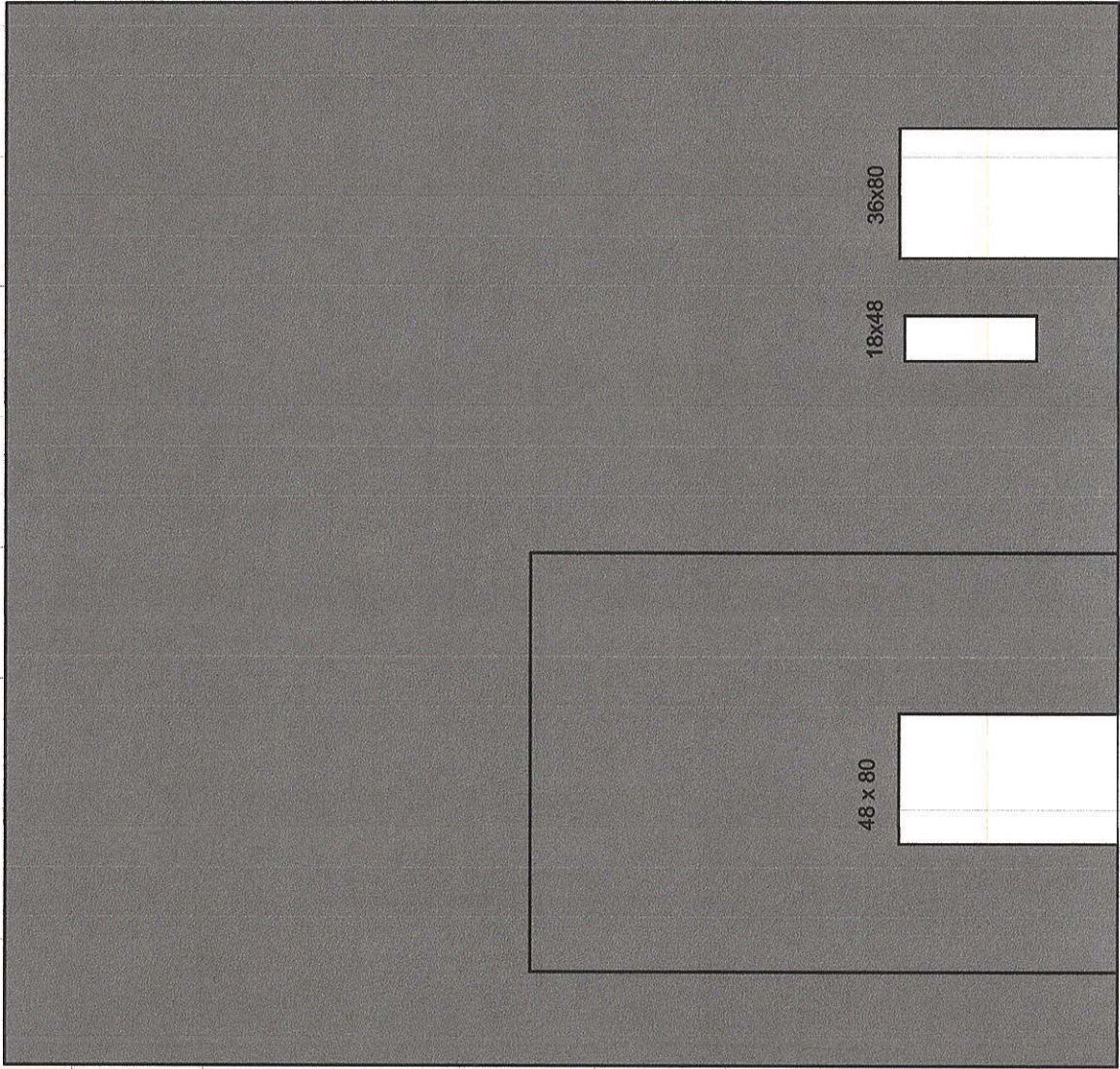
This property has been approved for variances for bar & video lottery

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

An approval will permit the property to be better utilized for a bar and video lottery

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

An approval would observe a second egress on new property making it over the 2090 no transparency requirement in section 13A1.02







**1502 Madison Avenue**  
**Cabell County Tax District 7, Map 41,**  
**Parcel 320**  
**BZA 23-V-31**  
**Location of a variance to the minimal transparency requirement for the front facade of a building in the**  
**I-1 Light Industrial/Commercial District.**





**1502 Madison Avenue**  
**Cabell County Tax District 7, Map 41,**  
**Parcel 320**  
**BZA 23-V-31**  
**Location of a variance to the minimal transparency requirement for the front facade of a building in the**  
**I-1 Light Industrial/Commercial District.**





**1502 Madison Avenue**  
**Cabell County Tax District 7, Map 41,**  
**Parcel 320**  
**BZA 23-V-31**  
**Location of a variance to the minimal transparency requirement for the front facade of a building in the**  
**I-1 Light Industrial/Commercial District.**

**Staff Report:** Two petitions for a conditional use to permit a bar and a limited video lottery: three variances to the distance requirement between two limited video lottery locations, between a church and a limited video lottery location, and between a residential area and a limited video lottery location.

**Legal Ad**

**BZA 23-C-32, BZA 23-C-33, BZA 23-V-34, BZA 23-V-35 & BZA 23-V-36**

*Issue:* Two petitions for a conditional use to permit a bar (BZA 23-C-32) and a limited video lottery (BZA 23-C-33) in the C-2 Highway Commercial District: three variances to the distance requirement between two limited video lottery locations (BZA 23-V-34), between a church and a limited video lottery location (BZA 23-V-35), and between a residential area and a limited video lottery location (BZA 23-V-36). 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 two conditional uses to allow for a bar and limited video lottery location and three variances to be able to open the limited video lottery location 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 redevelop the building on the property into a bar and limited video lottery location.

**Zoning Ordinance**

Per *Article 1320*, bars and limited video lottery 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.

Full regulations for Limited Video Lottery are outlined in attachment *§1341.47*.

These regulations include information about state licensing; distance from schools, religious institutions, public parks, childcare centers, and residentially zoned districts; and compliance for existing facilities with Limited Video Lottery.

This structure is located within:

- Approximately 156 feet from another Limited Video Lottery and Bar location, Liquid Dreamz, the requirement is to be 1000 feet.
- Approximately 280 feet to a church at St. Peter's Episcopal Church when the requirement is 500 feet.



- Approximately 70 feet from a residentially zoned district when the requirement is 250 feet.

- Larger scale commercial and service for the region

## 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

Staff's recommendation is to take this petition in two parts. Because the LVL use requires the sale of alcohol I would recommend reviewing the Conditional Use for the Bar as step one in the public meeting process, and then the limited video lottery conditional use as a secondary part to the petition, if the bar is granted.

In consideration of the bar and the LVL 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 conditional uses for a bar expire within a year of abandonment and conditional uses for LVL expire within six (6) months of abandonment, this is what is triggering the renewal of the conditional uses for the bar and LVL use 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 reduce 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 the structure will need to at minimum come into compliance on the structure 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.

In consideration of the LVL use, it would be my recommendation to consider the variances to the distance requirements in advance of the conditional use. Related but different, all three variances and the conditional use must all be approved to allow the LVL use to be approved to operate.

In consideration of the variances the criteria for the board to consider is of a stricter standard than the criteria for the conditional use. In addition, to note is the volume of variances that are needed for this use to meet the general requirements that new LVL locations are required to meet. As summarized below, the distance requirements are not only needing to be reduced for this location but are drastically reduced compared to what would be permitted:

- Approximately 156 feet from another Limited Video Lottery and Bar location, Liquid Dreamz, the requirement is to be 1000 feet.
- Approximately 280 feet to a church at St. Peter's Episcopal Church when the requirement is 500 feet
- Approximately 70 feet from a residentially zoned district and residential uses when the requirement is 250 feet.

In reviewing the criteria for the determination if a variance to the various distance requirements should be given, the only consideration that is unique to the property that may be considered a slight hardship is that there had been a bar and LVL location operating in the building before, so anecdotally, the property is already set up for this kind of business. Consideration could be given though that there are of course a number of other business models that would be available to the property owner for this location including similarly situated such as a restaurant or retail sales location, which would be permitted by right.

Therefore the two most important factors to consider in determining these variances are the effect upon public health safety or general welfare of adjacent property owners and whether or not the approval would allow for the intent of the Zoning Ordinance requirement can be observed.

In looking at the intent of the zoning ordinance to be met, there is very little that the property owner can do about distance requirements to other uses and in this particular case since these distance requirements are not being met drastically (IE: not just a few feet but substantial reduction) it would be hard to imagine ways to mitigate unintended consequences of these kind of uses adjacent to residences, churches or other businesses that are serving this particular clientele.

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.

- Site Plans
- Application

In summary, staff recommends proceeding with caution, in particular with the understanding of how this business can be approved to operate with three variances for the distance requirements which are drastically reduced, 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 is hard to justify the criteria for approving the variances 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 is requesting a conditional use to open a Limited Video Lottery Location.
5. The petitioner is requesting three variances to reduce the required distances to residential uses, a church and another limited video lottery location.
6. The property is currently zoned C-2 Highway Commercial District.

### **Attachments**

- Aerial map
- Zoning map
- Future Land Use map





## 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@mtc.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:

---

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



## PLANNING & ZONING

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

### Variance of Zoning Regulations Application

Applicant Name: Sherry Kipp Phone: 304-544-9764  
Mailing Address (city, state, zip): 1713 Chestnut St Kenova WV 25530  
Email: Kipp6@mate.edu  
Property Owner (if applicable): Ronnie Myers Phone: 304-710-9921  
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, PTLT2

Variance request pursuant to:

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

Description of the variance being requested:

Need a Variance for proximity because close to a  
church.

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 \_\_\_\_\_ 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, \_\_\_\_\_. 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.

Sherry Kipp  
Signature  
Ronnie Myers

9-12-23  
Date  
9-12-23

For office use only	
Received:	Project Name:

Variance of Zoning Regulations Application

Attachment A - Churches

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

- a. We are aware of the presence of churches in the area and respect the sanctity and serenity associated with such institutions. Our sports bar/lounge with video lottery machines will operate with the utmost consideration for public health, safety, and general welfare. We will adhere to stringent health and safety regulations and implement robust sanitation and security measures to maintain a secure environment for patrons and the community. We are committed to responsible beverage and gaming service to uphold public morals and general welfare. We are open to dialogue with church representatives and local residents to address any concerns and make necessary adjustments to our operations to maintain a harmonious neighborhood environment.

**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)?**

- a. The unique attributes of the property, including its strategic location and layout, are inherent and make it suitable for our establishment. We understand and respect the concerns of local churches and assure them that we will operate our business in a manner that minimizes impact on the surrounding area. The strategic location allows for adequate ingress and egress, addressing concerns related to traffic and accessibility, and ensuring a smooth flow of traffic during our operating hours.

**3.) How would an approval of the variance eliminate an unnecessary hardship and permit a reasonable use of the land?**

- a. Approval of the variance would allow for optimal use of the property's unique attributes, contributing to local economy and community life, while being mindful of the concerns of local churches. We are committed to working closely with church representatives and residents to ensure our establishment operates harmoniously within the community, addressing any arising issues promptly and effectively. Our goal is to be a positive addition to the neighborhood, providing entertainment options while respecting the peace and tranquility of the area, especially during church services. The previous owner used this location for a bar and video lottery machine business before it was sold to the current owner.

**4.) How would an approval of the variance allow for the intent of the zoning ordinance to be observed and substantial justice done?**

- a. We are committed to observing the intent of the zoning ordinance and ensuring our establishment aligns with community values and objectives. We will maintain open lines of communication with churches and neighborhood residents to address concerns and make adjustments as needed, ensuring substantial justice and mutual benefit. Granting the variance would allow for balanced development that respects the interests of the property owner, local churches, and the community, fostering a cooperative and respectful neighborhood environment.





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(304) 696-5540, option 3  
planningdept@huntingtonwv.gov

### Variance of Zoning Regulations Application

Applicant Name: Sherry Kipp Phone: 304-544-9716  
Mailing Address (city, state, zip): 1713 Chestnut St Kenova WV 25830  
Email: Kipp6@mstc.edu  
Property Owner (if applicable): Ronnie Myers Phone: 304-710-9921  
Mailing Address (city, state, zip): \_\_\_\_\_

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

8333 Adams Ave Huntington WV 39, 163, PTLT 10

Variance request pursuant to:

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

Description of the variance being requested:

Need a variance for proximity close to residential properties

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 \_\_\_\_\_ 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, \_\_\_\_\_. 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.

Sherry Kipp  
Signature  
Ronnie Myers

9-12-23  
Date  
9-12-23

For office use only

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

## Variance of Zoning Regulations Application

### Attachment A - Residents

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

- a. We understand the concerns of residents regarding public health, safety, and general welfare. Our sports bar/lounge with video lottery machines will strictly adhere to all health and safety regulations, maintaining a clean and secure environment. We will implement rigorous sanitation and security measures, including surveillance cameras and trained security personnel, to ensure the safety and well-being of our patrons and the community. Our commitment to responsible beverage and gaming service will also mitigate any potential negative impacts on public morals and general welfare. We are open to ongoing dialogue with residents to address any additional concerns and make necessary adjustments to our operations.

**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)?**

- a. The property's unique attributes, including its strategic location and layout, were not created by us but make it ideally suited for our establishment. We acknowledge neighborhood concerns and assure residents that the property's characteristics will allow us to operate our business with minimal impact on the surrounding area. The location allows for adequate ingress and egress, minimizing traffic congestion and ensuring smooth flow, addressing any concerns related to traffic and accessibility.

**3.) How would an approval of the variance eliminate an unnecessary hardship and permit a reasonable use of the land?**

- a. Approval of the variance would allow us to utilize the property's unique attributes optimally, contributing to the local economy and community life, while addressing neighborhood concerns. We will work closely with residents to ensure that our establishment operates harmoniously within the community, addressing any issues that may arise promptly. Our commitment is to be a positive addition to the neighborhood, providing a space for entertainment while respecting the peace and tranquility of the residential area. The previous owner operated a bar and video lottery machine business out of this location before the building was sold to the current owner.

**4.) How would an approval of the variance allow for the intent of the zoning ordinance to be observed and substantial justice done?**

- a. We are committed to observing the intent of the zoning ordinance and ensuring that our establishment is in harmony with the community's values and objectives. Granting the variance would allow for a balanced development that respects the interests of both the property owner and the community. We will maintain open lines of communication with neighborhood residents to address any concerns and make adjustments as needed, ensuring substantial justice and mutual benefit.



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planningdept@huntingtonwv.gov

### Variance of Zoning Regulations Application

**Applicant Name:** Sherry Kipp **Phone:** 304-544-9764  
**Mailing Address (city, state, zip):** 1713 Chestnut St Kenova WV 25530  
**Email:** Kippsh@mtc.edu  
**Property Owner (if applicable):** Ronnie Myers **Phone:** 304-710-9921  
**Mailing Address (city, state, zip):** \_\_\_\_\_

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

#### **Variance request pursuant to:**

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

Description of the variance being requested:

Need a variance for proximity Limited Vicks Lottery  
near by.

#### **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 \_\_\_\_\_ 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, \_\_\_\_\_. 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

Sherry Kipp

Date

9-12-23

#### **For office use only**

Received:

Project Name:

Variance of Zoning Regulations Application

Attachment A – Other Video Lottery Machine Businesses

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

- a. We acknowledge the presence of other video lottery machine businesses in the vicinity and are committed to fostering a cooperative and harmonious business environment. Our sports bar/lounge will operate with the highest standards of public health, safety, and general welfare. We will adhere to all relevant regulations and implement stringent sanitation and security measures to ensure a safe and secure environment for patrons and the community. Our commitment to responsible beverage and gaming service will uphold public morals and general welfare. We are open to dialogue with neighboring businesses to address any concerns and make necessary adjustments to our operations to maintain a harmonious business environment.

**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)?**

- a. The property's unique attributes, including its strategic location and layout, are inherent and make it suitable for our establishment. We respect the concerns of other video lottery businesses and assure them that we will operate our business in a manner that is complementary and not detrimental to the existing business landscape. The strategic location allows for adequate ingress and egress, addressing concerns related to traffic and accessibility, and ensuring a smooth flow of traffic during our operating hours.

**3.) How would an approval of the variance eliminate an unnecessary hardship and permit a reasonable use of the land?**

- a. Approval of the variance would allow for optimal use of the property's unique attributes, contributing to the local economy and community life, while being mindful of the concerns of other video lottery businesses. We are committed to working closely with neighboring businesses to ensure our establishment operates harmoniously within the business community, addressing any arising issues promptly and effectively. Our goal is to be a positive addition to the business landscape, providing diverse entertainment options while respecting the operations of existing businesses. It's worth noting the previous owner operated a bar and video lottery machine business out of this location before selling the property to the current owner.

**4.) How would an approval of the variance allow for the intent of the zoning ordinance to be observed and substantial justice done?**

- a. We are committed to observing the intent of the zoning ordinance and ensuring our establishment aligns with community and business values and objectives. We will maintain open lines of communication with other video lottery businesses and address concerns and make adjustments as needed, ensuring substantial justice and mutual benefit. Granting the variance would allow for balanced development that respects the interests of the property owner, existing businesses, and the community, fostering a cooperative and respectful business environment.



**Staff Report:** A petition for a conditional use to permit a bar to be located in the C-3 Central Business District.

**Legal Ad**

**BZA 23-C-37**

*Issue:* A petition for a conditional use to permit a bar to be located in the C-3 Central Business District. The property is located at 907 4<sup>th</sup> Ave.

*Petitioner:* BAC LLC d/b/a Hank's, 517 9<sup>th</sup> St., Huntington, WV.

*Property Owner:* Premier Properties LLC, 907 4<sup>th</sup> Ave., Huntington, WV.

**Introduction**

BAC LLC d/b/a Hank's is petitioning for a conditional use to move their bar closer to downtown.

**Existing Conditions / Background**

The property is owned by Premier Properties LLC. Presently, the property sets vacant. Historically, this space has been used for retail purposes. Currently, Hank's is located on 4<sup>th</sup> Avenue in the same building as the Redemption Church and has been in that location since 2008 under current ownership and 1994 under the previous ownership.

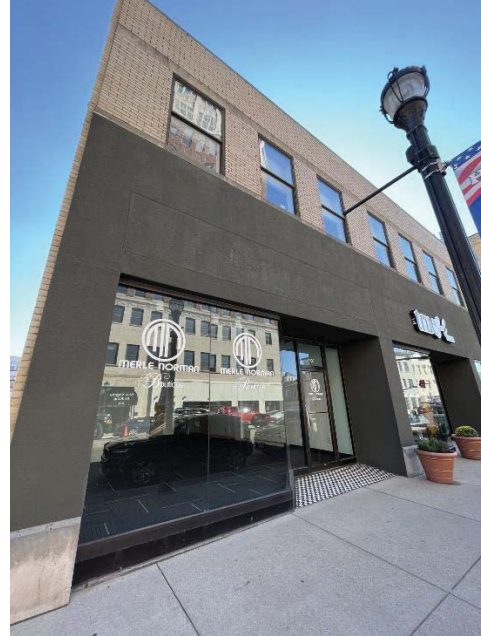
**Proposed Conditions**

The proposed space for the relocated bar would be at 907 4<sup>th</sup> Avenue relocated down to the 900 block of 4<sup>th</sup> adjacent to a retail shop called True Soul Boutiques.

**Zoning Ordinance**

Per 1320.04, in the C-3 district, bars are permitted with a conditional use.

**Pictures**



*Proposed new site of Hank's on 907 4<sup>th</sup> Ave.*



*Back portion of 907 4<sup>th</sup> Ave. This will serve as an area for outdoor seating.*



*Current location of Hank's on 517 9<sup>th</sup> Ave.*

### **Staff Comments**

Plan2025 designates this area as the Old Main Corridor District, which is characterized by:

- Dense development along 4<sup>th</sup> Avenue between downtown and Marshall University
- Cater to downtown and student populations.
- Consist of active storefronts and mixed-use housing

This particular site and is an area that is a focal point for the city. Hank's would like to be closer to the downtown area with the advent of more events happening downtown like 9<sup>th</sup> Street Live and Pullman Square Concert Series, Mountain Health Arena and others. The petitioner believes that Hank's' being a block closer could benefit from the

pedestrian traffic these adjacent places attract.

§1341.02.A states existing bars that are relocating must meet transparency requirements of the district they are located in. The existing building they are going in does have plenty of windows on the front façade of the buildings. This will exceed the transparency minimum requirement of 70% on the ground floor and 25% on upper floors found in §1331.02 of the zoning ordinance. Ensuring Hank's will maintain in the appropriate transparency requirements is crucial for them to operate at this new location.

As stated by the petitioner it is not anticipated that the owner will expand seating onto the city sidewalk in front of their property but if that does become part of the business model in the future, that would require an expansion to their conditional use permit to allow for outdoor drinking.

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

1. Premier Properties LLC is the owner.
2. BAC LLC d/b/a Hank's is the petitioner.
3. The petitioner is requesting a conditional use to permit a bar.
4. The property is currently zoned C-3 Central Business District.
5. The petitioner is proposing to move their business to this new location so they can be closer to downtown.

### **Attachments**

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



Oxley Rich  
Sammons  
— PLLC —

September 26, 2023

Hand Delivery

Brea Shell  
City of Huntington Planning Commission

**Re: Conditional Use Permit BAC, LLC dba Hank's**

Ms. Shell :

Please find enclosed an application for a conditional use permit for the relocation of an existing bar from one location on 4<sup>th</sup> Ave to another location one block away on 4<sup>th</sup> Avenue. I have also enclosed a check. Please let me know if there are any deficiencies in the application so I can immediately address them.

Respectfully,

Daniel T Yon





## 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: BAC, LLC a.b.a. Hank's Phone: 304-522-1134  
Mailing Address (city, state, zip): 917 517 9th St. Huntington, WV 25701  
Email: dyan@oxleylawwv.com  
Property Owner (if applicable): \_\_\_\_\_ Phone: \_\_\_\_\_  
Mailing Address (city, state, zip): \_\_\_\_\_

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

907 4th Ave - BLK 116 PT Lot 1-2-3 Parcel 65-170265

#### 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 1359 to allow the following:

The opening or relocation of a bar in the central business 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) 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, 2-17 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.

Elizabeth Kuehner Owner  
Signature of Applicant

PREMIER PROPERTIES, LLC / SHANE RANGLIFF  
Signature of Property Owner

7/25/2013  
Date

9/25/23  
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

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### Application for Conditionally Permitted Use

#### ATTACHMENT A

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

1. Effect upon the Comprehensive Plan (available online):

*See Ex. A*

2. Effect upon public health, safety, and general welfare:

*Same*

3. Effect upon the use and enjoyment of other property in the immediate vicinity for the purposes already permitted:

*Some*

4. Effect upon the normal and orderly development and improvement of the surrounding properties for uses already permitted in the district:

*Same A*

5. Have adequate provisions for utilities, access roads, drainage, and other facilities been provided for:

*Some*

6. Has adequate ingress and egress been designed to minimize traffic congestion on the public street:

*Some*

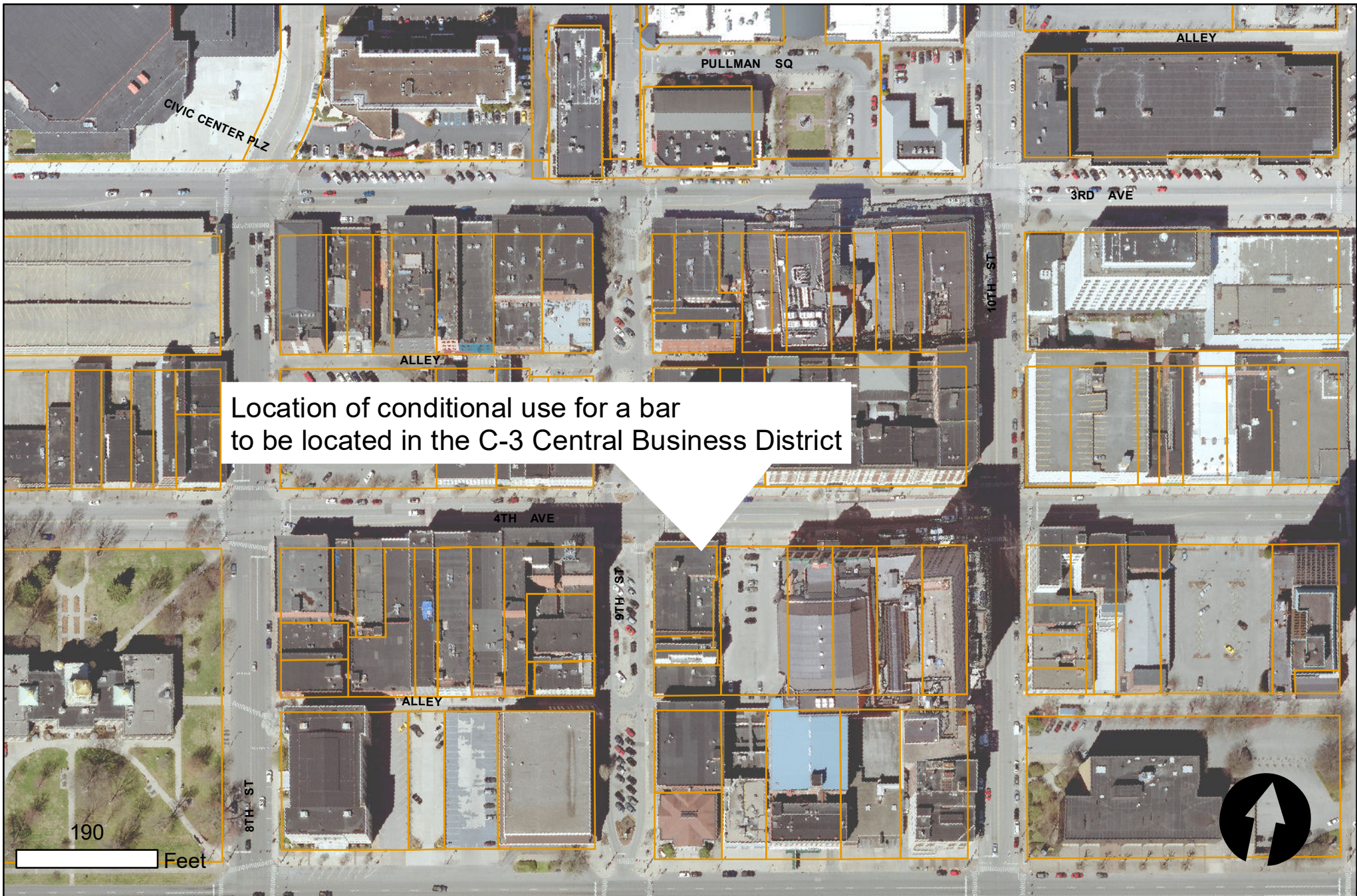
EXHIBIT A TO THE PETITION OF BAC FOR A CONDITIONAL USE PERMIT IN THE CITY OF HUNTINGTON,  
WEST VIRGINIA

BAC, LLC operates Hank's bar located at 1019 4<sup>th</sup> Ave. in the City of Huntington. It's sole owner, Elizabeth "BA" Carney, has owned and operated Hank's since 2008 but the bar dates back almost thirty years to 1994 when it was established by Frank "Hank" Vass. It has been at the same location and operated lawfully and peacefully during its entire existence.

The migration of bars and restaurants to the 9<sup>th</sup> street area of 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Avenues has caused Ms. Carney to long consider the relocation of her establishment. Recent progressive decisions by the City allowing sidewalk seating, patios, consumption of alcohol on public streets in that area and the success of 9<sup>th</sup> Street live and other live music events were the final determining factor for her to seek a location in the locale.

Therefore, Ms. Carney seeks a conditional use permit to allow her to relocate her establishment to an area that is growing and becoming a night spot for music and dining in the City. This relocation will have no effect on the comprehensive plan and in fact is consistent therewith. Moreover, it will have no negative impact on the health, safety, and welfare of the community. Hank's has a unblemished record with the ABCA and virtually no negative interactions with law enforcement. The proposed establishment is not appreciably larger than the existing tavern and parking is available on the street and on a private lot next door. It will also have an outdoor patio in the rear of the proposed location. It is not anticipated that the establishment will have seating in the front, sidewalk area at this time.

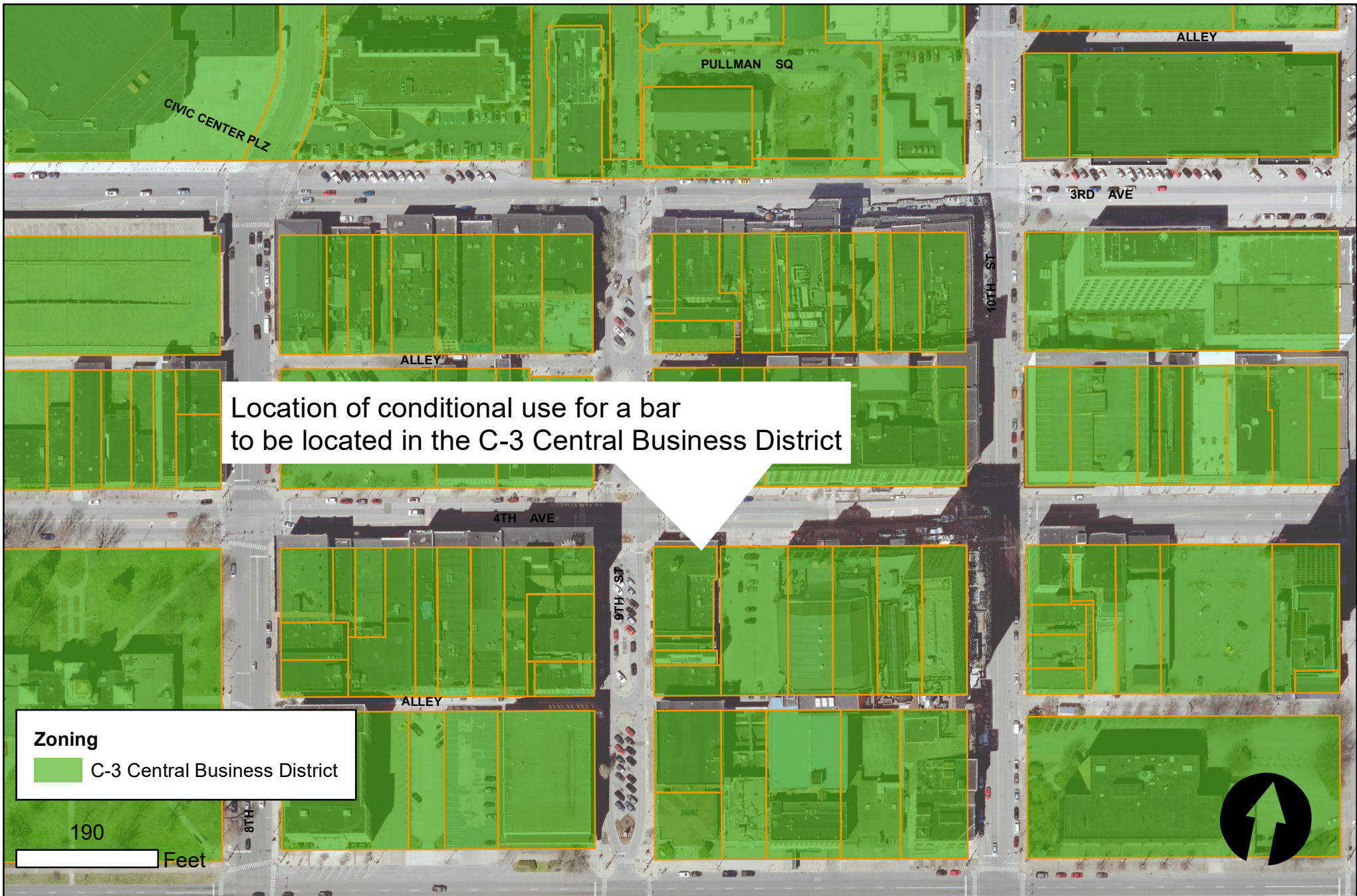




**907 4th Avenue**  
**Cabell County Tax District 5, Map 17,**  
**Parcel 265**  
**BZA 23-C-37**  
**Conditional use for a bar in the C-3 Central Business District**



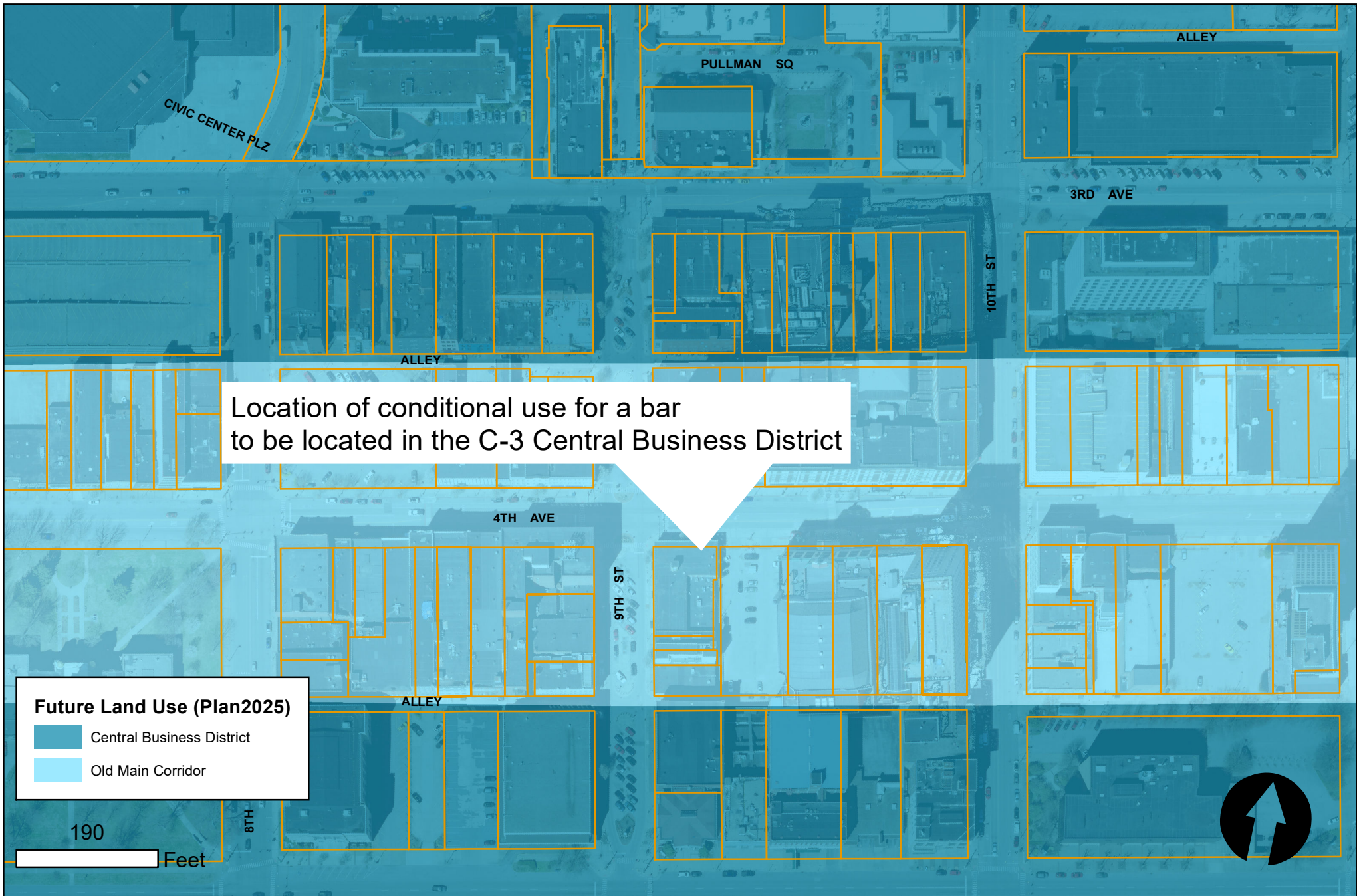




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