



## Agenda

Huntington Board of Zoning Appeals  
Tuesday, September 20, 2022 - 5:30pm

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1. Call to Order
2. Roll Call
3. Approval of the August 16, 2022 Minutes
4. Approval of the August Orders
  - BZA 22-V-31
  - BZA 22-V-32
  - BZA 22-C-33
  - BZA 22-V-34
  - BZA 22-V-35
  - BZA 22-C-36
  - BZA 22-V-37
  - BZA 22-V-38

5. Old Business

**BZA 22-V-39**

A petition for a variance to the requirement that parking occur in the rear or side yard of a residence to install parking in the front yard of a residence in a C-1 District. The property is located at 525 6<sup>th</sup> Ave.

**BZA 22-V-40**

A petition for a variance to access a parking area from 6<sup>th</sup> Avenue on a property with alley access. The property is located at 525 6<sup>th</sup> Ave.

*Petitioner/Property Owner:* Eddie and Laura Napier, 525 6<sup>th</sup> Avenue. Huntington, WV

6. New Petitions

**BZA 22-V-41**

A petition for a variance to the requirement that the main entrance for non-residential uses must be on the front façade in a C-3 Central Business District, in order to locate the main entrance on the side instead of the 3<sup>rd</sup> Avenue. The property is located at 1513 3<sup>rd</sup> Avenue f/k/a 1509-11-13 3<sup>rd</sup> Avenue.

*Petitioner/Property Owner:* Third Avenue Investments, Clint Artrip, organizer, 1 Albemarle Lane, Barboursville, WV

7. Announcements/Discussion
8. Adjournment

**Minutes**  
**City of Huntington Board of Zoning Appeals**  
**August 16, 2022**

A meeting of the City of Huntington Board of Zoning Appeals was held on August 16, 2022 at 5:30 p.m. in the City Hall Council Chambers. *Mr. Dolin* called the meeting to order.

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

Members Absent: Howard Anderson, Dan Earl

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

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

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

**BZA 22-C-33**

A petition for a conditional use for an Indoor Commercial Recreation Facility in a C-1 Neighborhood Commercial District. The property is located south of Madison Avenue on Cheshire Way at the intersection with Park Avenue.

**BZA 22-V-32**

A petition for a variance to use a non-natural building material not specified by code in a C-1 Neighborhood Commercial District to construct an air-supported dome. The property is located south of Madison Avenue on Cheshire Way at the intersection with Park Avenue.

**BZA 22-V-34**

A petition for a variance to the height limitation of 45' in a C-1 Neighborhood Commercial District to construct a 67' tall air-supported dome. The property is located south of Madison Avenue on Cheshire Way at the intersection with Park Avenue.

*Petitioner:* C&I Design, Inc./Brian Richter, 101 Southeast Parkway Court, Suite 120, Franklin, TN

*Property Owner:* Expression Church, P.O. 7773 Huntington, WV

Brian Richter, 101 SE Parkway Ct., presented the petition, stating that Expression Church is proposing to build a 65,000 sq. ft. indoor commercial recreational facility accessible to church members and those in the community.

Ms. Lockman presented the Staff Report.

*Mr. Dolin* – This structure will be open to the public?

Yes, for anyone who coordinates with the church.

Mr. Richter requested to address comments in the Staff Report and began by illustrating the irregular shape of the property and the setbacks of the proposed structure at various locations around the property. He also pointed out that a baseball field is already close to the residential development and insisted the proposed use would have a similar impact. In addressing the

generator, he told the Board it will be gas fired and described the noise levels it would generate, mentioning a diesel generator would be louder. With regards to energy use, he asserted that the air handlers used are no different than those used in a standard office building. He concluded by declaring the use would have a positive economic impact on the city as travel families for tournaments will stay in the area, and relating the possible impact to his experience in other areas with tournaments. He told the Board the church is will to do an economic impact study if needed.

*Ms. Proctor*– What are the operating hours? How many days a week will the facility be open? What type of sports will the facility host? How would the local community access the facility?

Mr. Richter assumed the hours would be 8 or 10 AM to 8 or 10 PM, but the hours may be different during tournament times. He believes the facility would be open 6 to 7 days a week. The courts in the facility can support basketball, volleyball, pickle ball, and batting cages.

Pastor Kevin West, 9 Riverwalk Dr., Ona, informed the Board that tournaments would occur during weekends and open to the general public 9 AM to 8 PM during the week, depending on time of year, with 7 to 8 people employed. Pastor West assured the Board there is ample parking in the area; in addition to the church parking and the lot being proposed, there is shared parking among the DHHR facility and the residential community. Pastor West believes the traveling tournaments will bring lots of people from all over to the city. He then went into great detail as to how the facility will operate when there are no tournaments occurring.

*Ms. Proctor* – Have you considered the impact this structure will have on the community in regards to infrastructure, such as stormwater and sewer. Have engineers been involved in the development of the plans?

Mr. Richter assured the Board that sewer systems, water, gas lines, and electric have all been thought of. He told the Board that they have meet with several departments in the city for a preliminary plan meeting to discuss requirements and codes, including stormwater requirements. They are working through all codes to ensure a good development that will not over-tax city infrastructure.

*Mr. Dolin* closed the public hearing and the Board reviewed the Criteria for Consideration.

*Ms. Proctor* expressed concern that this project is “putting the shiny castle before the town”, pointing out that the teams for the soccer tournaments that come to the city all stay in Barboursville and not Huntington. Additionally, the sports center is near the interstate, and with such access, it would be easy to skip over the city during tournaments. She believes the city has some growth to go through for this to be beneficial.

*Ms. Canup* made a motion to **approve** BZA 22-C-33; *Ms. Houck* seconded the motion.

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

BZA petition for a **Conditional Use** was **APPROVED** with a vote of 4 Yes to 0 No.

*Ms. Canup* – Why height is needed?

Mr. Richter explained the engineering of the dome must take into account weight loads, in particular snow loads, and must consider the height and width needed. He confessed that a conventionally built structure could meet the requirement, but the air supported dome needs extra height in center only, the parameter is a max of 15 ft.

*Ms. Canup* expressed concerns about key words during her research of air supported domes, such as temporary and cost effective. She explained that the website for the dome company involved in this project mentions accelerated depreciation of the structure and tax benefits. She does not see depreciating assets as a benefit to the community.

Mr. Richter contended that churches struggle financially and use assets as means to reach out to community in a cost effective way. He stressed the project could cost 3 to 4 times more with conventional building materials. He proclaimed that the church does not consider the facility as temporary.

*Ms. Proctor* – What will the building look like? Is there a loading dock size entries? What kind of lighting is planned?

Mr. Richter illustrated the exterior design of the proposed building, which was designed with the zoning codes in mind in order to meet transparency and other façade requirements; the entry building will be conventionally built and used for offices, concessions, locker rooms, and restrooms; an airlock will be provide for entry when needed; and there will be LED lighting inside dome, and the exterior lighting will meet codes, with a goal of 0 footcandles at property line.

*Ms. Canup* – Where will the generator be located?

Mr. Richter used the site plan submitted for the Staff Report to show the Board where the generator will be located.

*Mr. Dolin* – Can you speak to the durability of dome?

Mr. Richter proclaimed the dome material capable of safely withstanding a tear until repairs can be made. The material is designed to withstand wind loads and other building code load requirements, with a warranty of 20 to 25 years, comparable to the life of a rubber roof, but at a 1/3 of the cost to reroof.

*Ms. Houck* – Are there any domes like it close by?

Steven McDunnum, 11880 Dorset Rd., St. Louis, MI, representative for Arizon, told the Board the closes of their structure is located in Virginia, some are located in Columbus, and mentioned there is excitement in West Virginia for these type of structures.

*Ms. Canup* – What is the potential for collapse?

Mr. McDunnum claimed that not one of Arizon structures have collapsed, and evidenced the company's 100 year history as an HVAC, siting collapses due to negligence on the part of the owner.

*Ms. Canup* – What is the price difference for a conventional structure and the construction time?

Mr. Richter told the Board that this structure will cost \$100 to \$120 per square foot and a conventional building would cost roughly \$300 per square foot, depending on the availability of materials; and construction would be a difference of 6 to 8 months.

*Ms. Proctor* – Will there be landscaping?

Mr. Richter assured the Board there will be landscaping, and the landscaping will hide any exterior equipment.

*Ms. Canup* – Is there a gutter system to ensure water will not dump onto neighbors?

Mr. Richter reminded the Board that they are working with stormwater and further explained the plans for runoff will be equal to or less than pre development runoff.

Ms. Lockman presented the Staff Report.

Mr. Richter discussed the potential for redevelopment and the benefits of this type of structure.

*Mr. Dolin* closed the public hearing and the Board reviewed the Criteria for Consideration.

*Ms. Proctor* does not see a hardship as definition by staff, but believes it would be better to approve the project than let property remain vacant.

*Ms. Canup* is persuaded by the comments made about redevelopment, and does not believe financial hardship is a special condition. She also has the impression that a variance does not have to meet all the criteria for consideration.

*Mr. Dolin* has the impression that building materials are changing.

*Ms. Canup* made a motion to **conditionally approve** BZA 22-V-32 with the condition that the generator is not located on the east side of the property; *Ms. Houck* seconded the motion.

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

BZA petition for a **Variance** was **CONDITIONALLY APPROVED** with a vote of 4 Yes to 0 No.

The Board reviewed the Criteria for Consideration regarding the height variance.

*Ms. Canup* made a motion to **approve** BZA 22-V-34; *Ms. Proctor* seconded the motion.

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

BZA petition for a **Variance** was **APPROVED** with a vote of 4 Yes to 0 No.

### **BZA 22-V-31**

A petition for a variance to use a non-natural building material not specified by code in an I-1 Light Industrial District to construct an air-supported dome. The property is located at 115-117 Cheshire Way.

*Petitioner:* C&I Design, Inc./Brian Richter, 101 Southeast Parkway Court, Suite 120, Franklin, TN

*Property Owner:* ECH WV Inc. P.O. 7773 Huntington, WV

*Ms. Proctor* – Will the dome be white?

Mr. Richter described the dome as natural colors, tan and white.

Ms. Lockman presented the Staff Report.

*Mr. Dolin* – Tell us how the dome is being designed with the church.

Mr. Richter illustrated the dome as connecting to the church through a carport, and the first flood façade materials will match between buildings.

*M. Proctor* expressed concerns about the ability of the dome to withstand strong winds and asked what would happen if torn in act of god, and how this could impact the neighbors or church. She also asked about wiring used for the building.

Mr. Richter described the materials as lighter than conventional materials and would be less likely to cause damage if thrown about than conventional materials; additionally, the wires would stay connected to the foundation.

*Mr. Dolin* closed the public hearing and the Board reviewed the Criteria for Consideration.

*Ms. Canup* pointed to the differences in this petition and the last, being that the sports center serves a greater purpose, and this proposal is for an existing congregation. She does not believe the inconsistency in materials meets the intent of the Zoning Ordinance. She is not comfortable approving a dome that would not be attached to existing structure or consistent with the existing building's form. She felt there was more thought in placement of the sports dome and would prefer to see a brick and mortar structure for the church expansion.

*Ms. Proctor* requested clarification on how the dome would be connected to the existing church.

Mr. Richter illustrated how the carport connects the dome and the church and showed images using the submitted site plan included in the Staff Report.

Pastor West explained that conventional materials are more expensive and would necessitate a later start date, going into detail for the reason for the expansion and doing both projects at same time.

*Ms. Proctor* expressed her agreements with *Ms. Canup's* comments and understands the reasons given by the architect and the church.

The Board completed their review of the Criteria for Consideration.

*Ms. Proctor* made a motion to **approve** BZA 22-V-31; *Ms. Canup* seconded the motion.

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

BZA petition for a **Variance** was **DENIED** with a vote of 2 Yes to 2 No.

*Mr. Dolin* reiterated his comment that building materials are changing, *Ms. Proctor* reminded him it is the responsibility of Staff and the Planning Commission to discuss code changes.

### **BZA 22-C-36**

A petition for a Conditional Use Permit to open a retail location/auction house over 6,000 square feet. The property is located at 1951 5<sup>th</sup> Avenue West. The proposed project would be approximately 8,880 square feet.

*Petitioner:* Gary Bowen/Bowen Auctions, 620 21<sup>st</sup> St. Kenova, WV

*Property Owner:* Gary Yazell, 807 Big Bend Rd. Barboursville, WV

Gary Bowen, 1720 Poplar St, Kenova, presented the petition, explaining that Mr. Yazell has a building he would like to use for his auction business, and gave a history of his time as an auctioneer, magician, and entertainer.

*Ms. Proctor* – What will be the hours of operation? What is the size of your current location?

Mr. Bowen claimed the hour to be Friday and Saturday nights for 6 PM to 12 PM. His current location is 6,000 square feet and seats roughly 100 people at maximum capacity.

*Ms. Houck* –What is your average attendance for an event? Is this new building the same size?

Mr. Bowen described his average attendance as 40 to 110 people, and the new building as roughly the same size as only slightly bigger; however, most of the building is not useable for anything other than storage.

*M. Dolin* – Where will visitors be parking?

Mr. Bowen told the Board that they have an agreement with the church next door and there is street parking. He described the neighborhood as only having one house for several blocks. He expressed confusion as to how this area was changed to residential as the area is commercial.

*Mr. Dolin* – What do you auction? Do you keep items on location?

Mr. Bowen exclaimed that he auctions everything, from jewelry, to boats and car. He utilizes a big screen to show off large items for auction. He does not keep large items on-site.

He told the Board that he has discussed with staff purchasing homes in area and turn them into parking lots, and has spoken to residents that are willing to sell their homes to him. He used on of the maps provided in the Staff Report to show the Board which properties he is considering buying.

*Ms. Proctor* – Will there be signage on the building? Could you clarify your expansion proposal? What types of security and lighting will be utilized?

Mr. Bowen detailed his plans to utilize signage and light to “light up the building like circus.” *Ms. Proctor* instructed him to speak with staff prior to erecting any signage.

Mr. Bowen pointed out that other property owners in the area have been knocking down houses and making parking. *Ms. Lockman* clarified the difference in the zoning of the properties and how the lot being referenced went through the correct processes to be approved.

Mr. Bowen claimed that the building has been used for storage for many years and things have been fine. He is currently using the building as storage and has been broken into already, so he will be putting in more security and lighting.

*Ms. Lockman* presented the Staff Report.

Gary Yazell, 807 Big Bend Rd., owner of the building, gave a history of the building, how he was approached by Mr. Bowen about buying the building, and described building layout.

Jerry Daniel 2014 Jefferson Ave., present on behave of himself and other neighbors, is concerned about there being enough parking even with church agreement, and is unhappy about Mr. Bowen’s talks of buying up properties and creating more parking. He believes there should be proper parking for the business without demolishing people’s homes for parking.

*Mr. Dolin* closed the public hearing.

*Ms. Proctor* believes this would be a good use of the building and asked for clarity on hours of operation and the comments made about parking and.

Mr. Bowen reiterated the weekend times with a hope to expand hours; however, will not hold auctions on Sundays or when the church has an event.

*Ms. Lockman* explained that it would not be possible to knock down any of the houses and build a parking lot as this is not a use allowed in a residential zone. She explained that there is C-1

zoning across the street where an off-site parking lot is a conditional use. She reiterated that Mr. Bowen would not be permitted to knock down houses for parking, but detailed a process that could create a change in zoning that could permit parking.

Mr. Bowen questioned the Board as to what he would do if the church folds and he loses access to parking? *Ms. Canup* explained that his inquiry is not part of the BZA purview. Mr. Bowen expressed his concern on spending money on a building with an uncertain future. *Ms. Lockman* attempted to assure the petitioner that, should church fold, there is a process through a rezoning with planning commission that could allow for an expansion. She explained that the length of the process for rezoning is why the Conditional Use process was chosen, so Mr. Bowen could get into the building sooner. For purpose of tonight's meeting, the area is residential and does not allow for an expansion in the immediate future.

*Ms. Proctor* reminded Mr. Bowen about the enthusiasm expressed about potential for the property. She is sympathetic to the current conditions, but informed him that investments are risks, and the future is not something we can know. She concluded by reminding him that a path forward has been detailed for him and encouraged him to discuss those options with staff later.

The Board reviewed the Criteria for Consideration.

*Ms. Houck* made a motion to **approve** BZA 22-V-36; *Ms. Proctor* seconded the motion.

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

BZA petition for a **Variance** was **APPROVED** with a vote of 4 Yes to 0 No.

### **BZA 22-V-37**

A petition for a variance to use a prohibited façade material in the C-3 Central Business District in order to install metal sheeting on a building facade. The property is located at 741 6<sup>th</sup> Avenue.

*Petitioner/Property Owner*: Patrick Guthrie, 745 7<sup>th</sup> Ave. Huntington, WV

Patrick Guthrie, 745 7<sup>th</sup> Ave., presented the petition, telling the Board of the proposed façade improvements to the music venue, The Loud aka V Club, which has been around since 1979 and in his family since 2006.

*Ms. Proctor* – What is the color of the metal? Where will it be located? Is the paint tag resistant?

Mr. Guthrie described the color as grey; on metal with be on the 8<sup>th</sup> St. and 6<sup>th</sup> Ave. façade, and will only cover roughly 25%; anti-graffiti coating is on the mural, but with metal, tagging is easier to remove. He told the Board the building has been the same since 70's and has never had a problem with tagging before.

*Ms. Lockman* presented the Staff Report.

*Mr. Dolin* closed the public hearing and the Board reviewed the Criteria for Consideration.

*Ms. Canup* made a motion to **approve** BZA 22-V-37; *Ms. Houck* seconded the motion.

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

BZA petition for a **Variance** was **APPROVED** with a vote of 4 Yes to 0 No.

**BZA 22-V-35**

A petition for a variance to the requirements for residential driveways to install a 2<sup>nd</sup> driveway entrance on a residential property. The property is located at 12 South Woodview Drive, also known as Lots 47C, 48C, and 49C Pleasant Valley Estates.

**BZA 22-V-38**

A petition for a variance to the requirement that garages must be located in the rear or side yard to build a garage in a front yard. The property is located at 12 South Woodview Drive, also known as Lots 47C, 48C, and 49C Pleasant Valley Estates.

*Petitioner/Property Owner:* Jonas and Beth McNearney, 123 Belford Ave. Huntington, WV

Jonas McNearney, 123 Belford Ave, presented the petition, stating that the request for a second driveway entrance is due to steep incline of South Woodview Dr. and believes the second entry point would ease the entry and exit of the property.

*Ms. Dolin* – Has the HOA approved the change?

Mr. McNearney explained that the HOA has approved both changes.

Ms. Lokman presented the Staff Report for both petitions.

*Mr. Dolin* closed the public hearing and the Board reviewed the Criteria for Consideration for both petitions.

*Ms. Canup* made a motion to **approve** BZA 22-V-35; *Ms. Proctor* seconded the motion.

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

BZA petition for a **Variance** was **APPROVED** with a vote of 4 Yes to 0 No.

*Ms. Proctor* made a motion to **approve** BZA 22-V-38; *Ms. Canup* seconded the motion.

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

BZA petition for a **Variance** was **APPROVED** with a vote of 4 Yes to 0 No.

**BZA 22-V-39**

A petition for a variance to the requirement that parking occur in the rear or side yard of a residence to install parking in the front yard of a residence in a C-1 District. The property is located at 525 6<sup>th</sup> Ave.

**BZA 22-V-40**

A petition for a variance to access a parking area from 6<sup>th</sup> Avenue on a property with alley access. The property is located at 525 6<sup>th</sup> Ave.

*Petitioner/Property Owner:* Eddie and Laura Napier, 525 6<sup>th</sup> Avenue, Huntington, WV

Eddie and Laura Napier, 525 6<sup>th</sup> Ave., presented the petition, Mrs. Napier told the Board they bought the lot next door and, due to each of their disabilities, they wanted to have a driveway for safety and to ease the amount of parking on the street. She claimed that the alley is not safe and they cannot use the alley as an access point due to the weight of the gate. She explained the contractor got the permit and they assumed everything was okay, and was not told, until after everything was done, that the driveway was

incorrect. She provided the Board with a petition, signed by neighbors, agreeing to the driveway and parking pad.

*Ms. Houck* – Who is your contractor? Have you considered installing an opener on the back gate?

Mr. Napier claimed the contractor to be a company called Start2Finish and they have not yet considered an automated back gate. He defended the construction by asserting the curb and sidewalk were already in disrepair prior to beginning construction.

Ms. Lockman presented the Staff Report.

*Ms. Proctor*– Can you speak to the regulations for curb cuts? This driveway would take away parking on street, correct?

Ms. Lockman, hesitant to speaking on the regulations of other department, explained that work cannot be done in the public right-of-way without permission from the Public Works department; briefly described her knowledge of Public Works and DOH standards for guidance for depth and distance of driveways and sidewalks that experience vehicular traffic. She confirmed that, yes, the driveway entrance on 6<sup>th</sup> Ave would take away parking on the street.

Mr. Napier spoke of other properties that have access from 6<sup>th</sup> Ave. and exclaimed that sidewalks in other areas are not 6 inches. Ms. Shell explained sidewalks that experience vehicular traffic need to be that thick not all sidewalks.

Mrs. Napier passed around pictures of other driveways with access from 6<sup>th</sup> Ave. and the sidewalk in front of their house prior to their construction. Those have been included for the record. Mrs. Napier asked if there is a Public Works meeting they were to go to for their request?

*Ms. Proctor* advised the petitioners to consult with the contractor about the work that does not meet code.

Ms. Lockman reminded the Board that the issues before them are the entrance from 6<sup>th</sup> Ave. and front yard parking.

*Ms. Proctor* attempted to clarify the order of what needs to happen next with the curb cut and parking pad with the petitioners and encouraged them to look into installing an automated opener on the alley gate? *Ms. Proctor* wondered if the 6<sup>th</sup> Ave. access were closed could the parking occur in the front. Ms. Lockman explained that it is for the Board to decide if parking may occur in the front yard.

Mr. Napier reiterated the number of curb cuts on 6<sup>th</sup> Ave. *Ms. Canup* explained the other driveways are not at issue, but the process that got us here; other properties do not matter. Ms. Napery asked whether the city would be replacing the sidewalk if they have to remove it. Ms. Hernandez asked if the approved the initial plans to remove the sidewalk, explaining that the city does not normally allow others to replace sidewalks without permission. Ms. Shell detailed the process one would go through to receive approval from Public Works for such a project.

The Board recommended that the petitioners contact their contractor and discuss fixing the issues, then return to the Board with any variances they may need; and reiterated their advice that the back gate be automated.

*Ms. Proctor* made a motion to **move to the next meeting** BZA 22-V-39 and BZA 22-V-40; *Ms. Houck* seconded the motion.

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

BZA petitions for **Variances** were **MOVED TO THE NEXT MEETING** with a vote of 4 Yes to 0 No. The next meeting will be held on September 20, 2022.

The meeting concluded at 8:49 p.m.

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

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

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

**BZA 22-V-31**

*Owner:* ECH WV Inc. P.O. 7773 Huntington, WV

*Petitioner:* C&I Design, Inc./Brian Richter, 101 Southeast Parkway Court, Suite 120, Franklin, TN

Subject Property: 115-117 Cheshire Way

A petition for a variance to use a non-natural building material not specified by code in an I-1 Light Industrial District to construct an air-supported dome.

Individual Speaking on Behalf of Petition: Bryan Richter

Other Interested Parties: Pastor Kevin West

**ORDER**

On August 16, 2022, Mr. Richter appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-V-31. Other citizens were permitted to voice their positions as well, per the practice of this Board, and one (1) individual provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. Richter, the Board finds as follows:

1. C&I Design, Inc./Bryan Richter is the petitioner.
2. Expression Church (ECH WV) is the property owner.
3. The property is zoned I-1 Light Industrial District.
4. The petitioner is requesting a variance from building material requirements to construct an addition using an air supported dome made of fabric.
5. *Article 1333.03(B)(2)* does not list the material of the proposed dome as preferred or prohibited.
6. The property where the expansion would occur is made up of two parcels (District 7 Map 55 Parcel 351) and (District 7 Map 66 Parcel 162).
7. With both parcels, the property is approximately 325,437 sq. ft. or 7.471 acres.
8. The proposed new structure would be attached to the existing church via a carport.
9. The existing building is constructed of traditional materials.
10. The fabric would be tan and white.

**STANDARD OF REVIEW**

When hearing a **Variance**, the Board must consider:

1. The requested Variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;
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 and permit a reasonable use of the land; and
4. That the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

**CONCLUSIONS OF LAW**

The Board concludes that the standard for approval of a variance is not satisfied. The petition does not arise from special conditions created by the property, and there is no unnecessary hardship to be relieved. The Board believes the variance would alter the land use characteristics of the district and adversely affect the neighboring property owners and residents as it is not consistent with the materials used for the main sanctuary building which the dome would be attached to via a covered car port. Therefore, the approval of the variance is not appropriate.

**DECISION**

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **DENIES** petition BZA 22-V-31 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.

ENTERED

\_\_\_\_\_  
Date

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

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

**BZA 22-V-32**

*Owner:* Expression Church, P.O. 7773 Huntington, WV

*Petitioner:* C&I Design, Inc./Brian Richter, 101 Southeast Parkway Court, Suite 120, Franklin, TN

Subject Property: South of Madison Avenue on Cheshire Way at the intersection with Park Avenue

A petition for a variance to use a non-natural building material not specified by code in a C-1 Neighborhood Commercial District to construct an air-supported dome.

Individual Speaking on Behalf of Petition: Bryan Richter

Other Interested Parties: Pastor Kevin West, Steven McDonald

**ORDER**

On August 16, 2022, Mr. Richter appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-V-32. Other citizens were permitted to voice their positions as well, per the practice of this Board, and two (2) individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. Richter, the Board finds as follows:

1. C&I Design, Inc./Bryan Richter is the petitioner.
2. Expression Church is the property owner.
3. The petitioner is requesting a variance to building materials permitted in a C-1 Neighborhood Commercial District to build a 62,498 sq. ft. air supported dome.
4. The proposed dome would be made of an air-supported fabric membrane.
5. The fabric membrane would have an expected life of 20-25 years.
6. Construction using the fabric membrane dome would be completed approximately 6 to 8 months sooner than traditional construction, largely due to supply chain issues caused by the pandemic.
7. The façade of the proposed building would be stone.
8. The property is zoned C-1 Neighborhood Commercial, as are properties to the southeast.
9. Properties to the north are zoned R-2 Single Family Residential, and properties to the southwest are zoned I-1 Light Industrial District.
10. The property is approximately 4.4 acres (191,664 sq. ft.).

**STANDARD OF REVIEW**

When hearing a **Variance**, the Board must consider:

1. The requested Variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;

- 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 and permit a reasonable use of the land; and
- 4. That the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

**CONCLUSIONS OF LAW**

We acknowledge the petition does not arise from special conditions created by the property itself, but the pandemic is a special condition with which the petitioner must contend. Therefore, due to the increasing cost and supply of building materials caused by the pandemic, it would be a hardship for the petitioner to build a more traditional building. Also, the types of materials used for building are beginning to change. An air inflated dome is a reasonable construction material in the C-1 District in this location, and permitting it would allow a reasonable use of the land. However, in order to prevent the generator from disturbing the adjacent property owners and residents, we insist the approval be conditioned on the generator being place anywhere but the east side of the property.

**DECISION**

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **CONDITIONALLY APPROVES** petition BZA 22-V-32 for a **Variance** with the condition that the generators not be located on the eastern side of the property close to the residential development. Any changes that deviate from what has been approved and does not meet the zoning regulation must come back before the BZA for approval.

ENTERED

\_\_\_\_\_ Date

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

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

**BZA 22-C-33**

*Property Owner:* Expression Church, P.O. 7773 Huntington, WV

*Petitioner:* C&I Design, Inc./Bryan Richter, 101 Southeast Parkway Court, Suite 120, Franklin, TN

Subject Property: South of Madison Avenue on Cheshire Way at the intersection with Park Avenue

A petition for a conditional use for an Indoor Commercial Recreation Facility in a C-1 Neighborhood Commercial District.

Individual Speaking on Behalf of Petition: Bryan Richter

Other Interested Parties: Pastor Kevin West

**ORDER**

On August 16, 2022, Bryan Richter appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-C-33. Other citizens were permitted to voice their positions as well, per the practice of this Board, and one individual provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. Richter, the Board finds as follows:

1. C&I Design, Inc./Bryan Richter is the petitioner.
2. Expression Church is the property owner.
3. The petitioner is requesting a conditional use permit to build a 62,498 sq. ft. indoor commercial recreation facility.
4. The property is zoned C-1 Neighborhood Commercial, as are properties to the southeast.
5. Properties to the north are zoned R-2 Single Family Residential, and properties to the southwest are zoned I-1 Light Industrial District.
6. The property is approximately 4.4 acres (191,664 sq. ft.).
7. The property is in close proximity to a baseball field.
8. The petitioner intends to use the facility for travel ball tournaments that would be open to people from different regions, but would also be open to the public during the week.
9. The facility is expected to be open 6-7 days a week for 12-14 hours a day.
10. The property is also located directly adjacent to an apartment complex.
11. The facility would use gas-fired air handlers that would run 24-hours per day due to the nature of the proposed construction.

**STANDARD OF REVIEW**

When considering a **Conditional Use Permit**, the Board must consider:

1. The effect upon the Comprehensive Plan;
2. Public health, safety, morals, and general welfare;
3. Potential injury to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted;

4. The effect upon the normal and orderly development and improvement of surrounding properties for uses already permitted in the district;
5. Adequate provisions for utilities, access roads, drainage, and other necessary facilities; and
6. Adequate ingress and egress so designed to minimize traffic congestion in the public street.

### CONCLUSIONS OF LAW

An Indoor Commercial Recreational Facility is a Conditional Use in a C-1 Neighborhood Commercial District. CITY OF HUNTINGTON ORDINANCE § 1320.04. Conditional use permits “are intended to provide flexibility in the siting of uses that may have adverse effects on neighboring properties under some circumstances but which may be harmonious with the neighborhood in other cases.” 2 Am. Law. Zoning § 14:1 (5th ed.). “The process allows local land use officials to consider aspects of proposed special uses such as their size, location, and design, as well as concerns from the public, before deciding whether the use would be appropriate and consistent with the intent of the zoning regulations.” 2 Am. Law. Zoning § 14:1 (5th ed.). “When granted, a “conditional use permits certain uses which the ordinance authorizes under stated conditions.” *Harding v. Bd. of Zoning Appeals of City of Morgantown, Syl. Pt. 1*, 219 S.E.2d 324, 325 (W.Va. 1975)

The Board is convinced by the testimony from the architect that adequate utilities, drainage, and ingress and egress of the property are being taken into consideration and will be designed in such a way as to not overtax the city’s existing infrastructure. Additionally, the Board is satisfied with the plans presented for parking that the use will not negatively affect traffic on the street. The Board is aware that the city has a considerable amount of growth ahead but believes the use will be an economic driver for the area and has the potential to encourage the development and improvement of surrounding properties.

### DECISION

**THEREFORE**, based on the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 22-C-33 for a Conditional Use Permit for an Indoor Commercial Recreational Facility.

ENTERED

\_\_\_\_\_

Date

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

C.W. Dolin, Chair

Patricia Usher, Zoning Officer

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

**BZA 22-V-34**

*Owner:* Expression Church, P.O. 7773 Huntington, WV

*Petitioner:* C&I Design, Inc./Brian Richter, 101 Southeast Parkway Court, Suite 120, Franklin, TN

Subject Property: South of Madison Avenue on Cheshire Way at the intersection with Park Avenue

A petition for a variance to the height limitation of 45' in a C-1 Neighborhood Commercial District to construct a 67' tall air-supported dome.

Individual Speaking on Behalf of Petition: Bryan Richter

Other Interested Parties: None

**ORDER**

On August 16, 2022, Mr. Richter appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-V-34. Other citizens were permitted to voice their positions as well, per the practice of this Board, and no individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. Richter, the Board finds as follows:

1. C&I Design, Inc./Bryan Richter is the petitioner.
2. Expression Church is the property owner.
3. The petitioner is requesting a variance to the 45' maximum height in a C-1 Neighborhood Commercial District, as the proposed dome's maximum height is 67'. This request is directly related to the petitioner's previous request for a variance to building materials permitted in a C-1 Neighborhood Commercial District to build a 62,498 sq. ft. air supported dome.
4. The additional height is needed to account for snow loads and maintain an intact structure.
5. The additional height would only be in the center of the structure, not wall-to-wall.
6. The property is zoned C-1 Neighborhood Commercial, as are properties to the southeast.
7. Properties to the north are zoned R-2 Single Family Residential, and properties to the southwest are zoned I-1 Light Industrial District.
8. The property is approximately 4.4 acres (191,664 sq. ft.).

**STANDARD OF REVIEW**

When hearing a **Variance**, the Board must consider:

1. The requested Variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;
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 and permit a reasonable use of the land; and
- 4. That the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

**CONCLUSIONS OF LAW**

The Board understands this petition also does not arise from special conditions created by the property, but with the approval of BZA 22-V-32 to allow for an air supported dome, the extra height is necessary for the dome to be capable of bearing loads, such as snow, safely. We are more at ease with an approval of this variance as the dome would only reach the 67 ft. height in the center, the perimeter of the building being a maximum of 15 ft. in height; therefore, the additional height would not negatively affect the rights of the adjacent property owners or residents by impairing the supply of light and air to them. Therefore, the approval of the variance is appropriate.

**DECISION**

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 22-V-34 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.

ENTERED

\_\_\_\_\_  
Date

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

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

**BZA 22-V-35**

*Petitioner/Property Owner:* Jonas and Beth McNearney, 123 Belford Ave. Huntington, WV

*Subject Property:* 12 South Woodview Drive, also known as Lots 47C, 48C, and 49C Pleasant Valley Estates

A petition for a variance to the requirements for residential driveways to install a 2<sup>nd</sup> driveway entrance on a residential property.

*Individual Speaking on Behalf of Petition:* Jonas McNearney

*Other Interested Parties:* None

**ORDER**

On August 16, 2022, Mr. McNearney appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-V-35. Other citizens were permitted to voice their positions as well, per the practice of this Board, and no individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. McNearney, the Board finds as follows:

1. Jonas and Beth McNearney are the property owners and petitioners.
2. The property is zoned R-1 Single Family Residential District.
3. The petitioner is requesting to install and second driveway entrance.
4. The house is new construction.
5. The property is located on a ridge with a sloping lot.
6. The property is located within a subdivision that has a home owner's association.
7. The lot is approximately 185,850 sf.

**STANDARD OF REVIEW**

When hearing a **Variance**, the Board must consider:

1. The requested Variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;
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 and permit a reasonable use of the land; and
4. That the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

**CONCLUSIONS OF LAW**

City of Huntington Ordinance §1343.08(D)(1) states “for any principal use that is residential only, there may only be one driveway, which must be a single-lane driveway.” However, due to the natural steep incline of the land, the petition does arise from special conditions created by the property; therefore, adding a second driveway entrance would grant the petitioner safe ingress and egress from the property and relieve an unnecessary hardship. The Board is assured by the petitioner’s testimony that the Home Owners Association has been contacted and agrees to the plans being proposed, thus the rights of adjacent property owners will not be impacted negatively. Therefore, the approval of the variance is appropriate.

**DECISION**

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 22-V-35 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.

ENTERED

\_\_\_\_\_  
Date

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

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

**BZA 22-C-36**

*Property Owner:* Gary Yazell, 807 Big Bend Rd. Barboursville, WV

*Petitioner:* Gary Bowen/Bowen Auctions, 620 21<sup>st</sup> St. Kenova, WV

*Subject Property:* 1951 5<sup>th</sup> Avenue West

A petition for a Conditional Use Permit to open a retail location/auction house over 6,000 square feet.

*Individual Speaking on Behalf of Petition:* Gary Bowen

*Other Interested Parties:* Gary Yazell, Jerry Daniels

**ORDER**

On August 16, 2022, Mr. Bowen appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-C-36. Other citizens were permitted to voice their positions as well, per the practice of this Board, and two (2) individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. Bowen, the Board finds as follows:

1. Gary Bowen/Bowen's Auctions is the petitioner.
2. Gary Yazell is the property owner.
3. The petitioner is requesting a conditional use permit to operate a Retail Sales and Services Location/Auction House in a building that is over 6,000 sq. ft. The building is approximately 8,880 sq. ft.
4. The property is zoned R-2, as are the properties to the south, east, and west.
5. Properties to the north are zoned C-1 and R-5.
6. This structure is defined as a legal nonconforming commercial structure as per *Article 1355.K*.
7. The lot is approximately 11,100 sq. ft.
8. In 2014 until approximately 2017, the building was used as a bus garage.
9. The business would be open mostly only on weekends.
10. Despite the large size, Petitioner expects from 40 to 110 people in attendance for events.
11. Petitioner has an agreement with a neighboring church to share parking.
12. Although the building has ample storage space, large items will not be kept on site.

**STANDARD OF REVIEW**

When considering a **Conditional Use Permit**, the Board must consider:

1. The effect upon the Comprehensive Plan;
2. Public health, safety, morals, and general welfare;

3. Potential injury to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted;
4. The effect upon the normal and orderly development and improvement of surrounding properties for uses already permitted in the district;
5. Adequate provisions for utilities, access roads, drainage, and other necessary facilities; and
6. Adequate ingress and egress so designed to minimize traffic congestion in the public street.

### CONCLUSIONS OF LAW

A Retail Sales and Service business over 6,000 Sq. Ft. is a Conditional Use in a C-1 Neighborhood Commercial District. CITY OF HUNTINGTON ORDINANCE § 1320.04. Conditional use permits “are intended to provide flexibility in the siting of uses that may have adverse effects on neighboring properties under some circumstances but which may be harmonious with the neighborhood in other cases.” 2 Am. Law. Zoning § 14:1 (5th ed.). “The process allows local land use officials to consider aspects of proposed special uses such as their size, location, and design, as well as concerns from the public, before deciding whether the use would be appropriate and consistent with the intent of the zoning regulations.” 2 Am. Law. Zoning § 14:1 (5th ed.). “When granted, a “conditional use permits certain uses which the ordinance authorizes under stated conditions.” *Harding v. Bd. of Zoning Appeals of City of Morgantown, Syl. Pt. 1*, 219 S.E.2d 324, 325 (W.Va. 1975)

The Board was concerned about adequate parking, but is satisfied with the agreement from the neighboring church, and the proposed days and hours for auction operations, that adequate parking will be provided and the use will not have a negative impact on traffic on the street. The petitioner indicated concerns regarding the future of his business and the property if the church were to be sold and the parking agreement lost; a member of the public express concern about the petitioner’s proposal to buy up houses in the area and turn them into parking lots. The Board is assured by the details given by staff that, should the use of the church lot be revoked, the petitioner has several options as a path forward that would provide for parking and promote the orderly development and improvement of surrounding properties. The Board believes that a retail/auction house would be a good use for the property and would create little potential injury to the use and enjoyment of other properties with permitted uses in the immediate vicinity.

### DECISION

**THEREFORE**, based on the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 22-C-36 for a Conditional Use Permit for a Retail Sales and Service exceeding 6,000 sq. ft.

ENTERED

\_\_\_\_\_

Date

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

C.W. Dolin, Chair Patricia Usher, Zoning Officer



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

**BZA 22-V-37**

*Petitioner/Property Owner:* Patrick Guthrie/Huntington Property Holdings, 745 7th Ave. Huntington, WV

Subject Property: 741 6th Avenue

A petition for a variance to use a prohibited façade material in the C-3 Central Business District in order to install metal sheeting on a building facade.

Individual Speaking on Behalf of Petition: Patrick Guthrie  
Other Interested Parties: None

**ORDER**

On August 16, 2022, Mr. Guthrie appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-V-37. Other citizens were permitted to voice their positions as well, per the practice of this Board, and no individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. Guthrie, the Board finds as follows:

1. Patrick Guthrie is the property owner and petitioner.
2. The property is zoned C-3 Central Business District.
3. The business is a night club that features live music.
4. The petitioner is requesting to utilize metal sheeting as a first floor façade material, but would not cover the entire area with the metal sheeting.
5. Graffiti is easier to remove from metal sheeting than from most other exterior materials.
- 6.
7. The lot is approximately 8,100 sf.

**STANDARD OF REVIEW**

When hearing a **Variance**, the Board must consider:

1. The requested Variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;
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 and permit a reasonable use of the land; and
4. That the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

**CONCLUSIONS OF LAW**

, Metal sheeting is a prohibited material for the first floor façade. City of Huntington Ordinance §1331.03(E)(4)(f). Given the type of business and hours of operation typically associated with a night club and its location, we believe the risk of graffiti may be a real concern. The desire to use of metal sheeting is reasonable, given such risk since it is an easier-to-maintain product. The Board agrees that the use of the metal sheeting will complement the overall aesthetic in conjunction with all other façade changes and will not have a negative impact on the surrounding area or property owners. Therefore, the approval of the variance is appropriate.

**DECISION**

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 22-V-37 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.

ENTERED

\_\_\_\_\_   
 Date

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

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

**BZA 22-V-38**

*Petitioner/Property Owner:* Jonas and Beth McNearney, 123 Belford Ave. Huntington, WV

*Subject Property:* 12 South Woodview Drive, also known as Lots 47C, 48C, and 49C Pleasant Valley Estates

A petition for a variance to the requirement that garages must be located in the rear or side yard to build a garage in a front yard.

*Individual Speaking on Behalf of Petition:* Jonas McNearney

*Other Interested Parties:* None

**ORDER**

On August 16, 2022, Mr. McNearney appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-V-28. Other citizens were permitted to voice their positions as well, per the practice of this Board, and no individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence at the August 16, 2022 meeting and hearing testimony from Mr. McNearney, the Board finds as follows:

1. Jonas and Beth McNearney are the property owners and petitioners.
2. The property is zoned R-1 Single Family Residential District.
3. The petitioner is requesting to install and second driveway entrance.
4. Per *Article 1343.08(D)(1)*, “for any principal use that is residential only, there may only be one driveway, which must be a single-lane driveway.”
5. The petitioner is requesting to build a garage in the required front yard.
6. The house is new construction.
7. The property is located on a ridge with a sloping lot.
8. The property is located within a subdivision that has a home owner’s association.
- 9.
10. The lot is approximately 185,850 sf.

**STANDARD OF REVIEW**

When hearing a **Variance**, the Board must consider:

1. The requested Variance will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents;
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 and permit a reasonable use of the land; and

- 4. That the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

**CONCLUSIONS OF LAW**

Per City of Huntington Ordinance § 1315.06(A)(1)(a), "... In the event that a garage cannot be located in the rear yard, it may be located in the side yard." Due to the natural steep incline of the land, the petition does arise from special conditions created by the property; therefore, locating the garage would grant the petitioner a more usable layout of the property and relieve an unnecessary hardship on the owner . The Board is assured by the petitioner’s testimony that the Home Owners Association has been contacted and agrees to the plans being proposed, thus the rights of adjacent property owners will not be impacted negatively neither will the supply of light and air to adjacent properties will not be impaired. Therefore, the approval of the variance is appropriate.

**DECISION**

**WHEREFORE**, based upon the findings of fact from the full testimony heard at the hearing and all other documentary evidence presented, the Board **APPROVES** petition BZA 22-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.

ENTERED

\_\_\_\_\_   
 Date

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

**Staff Report:** A petition for a variance to C-3 entrance location requirements.

## Legal Ad

### BZA 22-V-41

*Issue:* A petition for a variance to the requirement that the main entrance for non-residential uses must be on the front façade in a C-3 Central Business District, in order to locate the main entrance on the side instead of the 3<sup>rd</sup> Avenue. The property is located at 1513 3<sup>rd</sup> Avenue f/k/a 1509-11-13 3<sup>rd</sup> Avenue.

*Petitioner/Property Owner:* Third Avenue Investments, Clint Artrip, organizer, 1 Albemarle Lane, Barboursville, WV

## Introduction

The petitioner is requesting a variance to have the main entrance for a non-residential use on the side façade, rather than the front façade as required in the C-3 Central Business District. The property is located at 1513 3<sup>rd</sup> Ave.

## Existing Conditions / Background

This property was once The Lounge, a bar providing limited video lottery. The petitioner submitted plans for the redevelopment of the structure, adding an addition where previously a brick apartment had been demolished, which were reviewed and approved by all departments, and a building permit issued in October of 2021.

The approved plans did not show the 3<sup>rd</sup> Avenue entrance being removed; however, since that time, the front entrance has been closed off. The requirements for the C-3 Central Business district require the main entrance be located on the front façade

which is defined as the street right of way facing facade for a structure. In July 2022, the Board of Zoning Appeals approved a variance to locate the sign on the side of the building facing the parking lot.

## Proposed Conditions

The petitioner is proposing to have the primary entrance to the building off of the parking lot, instead of replacing the door on the 3<sup>rd</sup> Street side of the building.

## Zoning Ordinance

Per *Table 1331.02*, the main entrance location for non-residential uses must be on the front façade.

## Pictures



*Previous business at 1509-1511 3<sup>rd</sup> Avenue: The Lounge was renovated and added on to. The brick apartment building was demolished. (Photo courtesy of the Cabell County Assessor's office).*



*Existing Conditions: Main entrance facing the parking lot.*



*Existing Conditions: New building façade with door removed on 3<sup>rd</sup> Avenue.*

### **Staff Comments**

Plan 2025 designates this area as part of the Downtown Transition District. This area is a transition zone between neighborhood and downtown core with medium to high density development.

The removal of the 3<sup>rd</sup> Avenue entrance violates the zoning code and was not in the approved plans for the building permit that was issued, thus violating the conditions of the building permit.

Planning and Zoning staff coordinated with the Building Inspector and the Fire Marshal to determine if additional regulations were violated when the 3<sup>rd</sup> Avenue entrance was removed. The removal did not violate building code, however, it did violate the fire code. The Fire Marshal determined that fire code requirements could be met by installing an exterior door on the western side of building, if the Board of Zoning Appeals granted the variance.

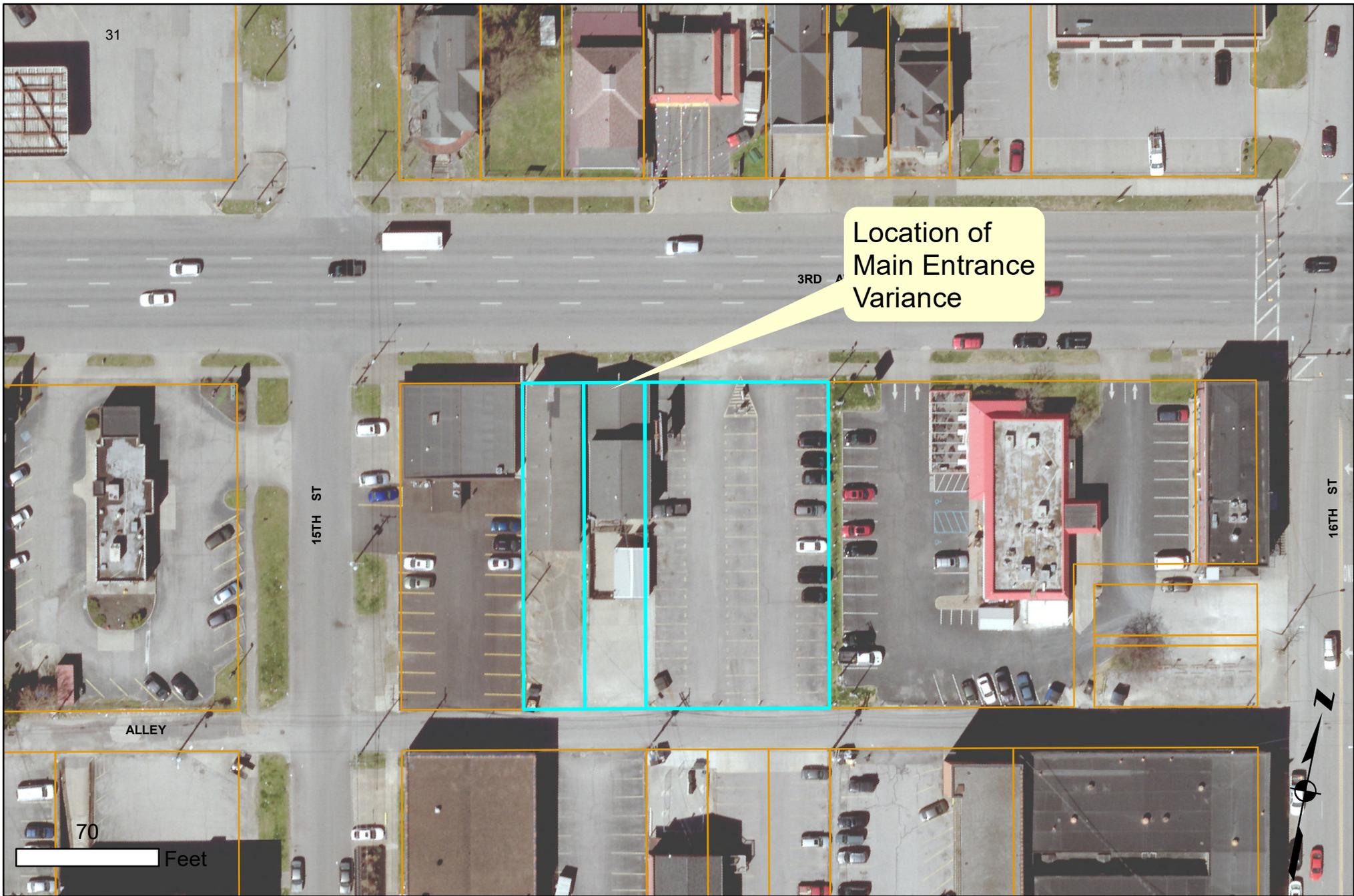
### **Summary / Findings of Fact**

1. Clint Artrip is the petitioner.
2. Third Avenue Investments, LLC, is the property owner.

3. The property is zoned C-3 Central Business District.
4. The petitioner is requesting to have the main entrance to the restaurant face the parking lot, rather than the front façade facing 3<sup>rd</sup> Avenue.
5. Per *Table 1331.02*, the main entrance location for non-residential uses must be on the front façade.
6. The petitioner covered the existing entrance on the front façade during the remodel, against what was shown in the permitted plans.
7. The lot is approximately 24,000 sf.

### **Attachments**

- Aerial Map
- Zoning Map
- Future Land Use Map
- C-3 Central Business District Regulations



**BZA 22-V-41**

**Variance to Allow a Businesses to locate the Main Entrance on the side Façade in a C-3 Central Business District**

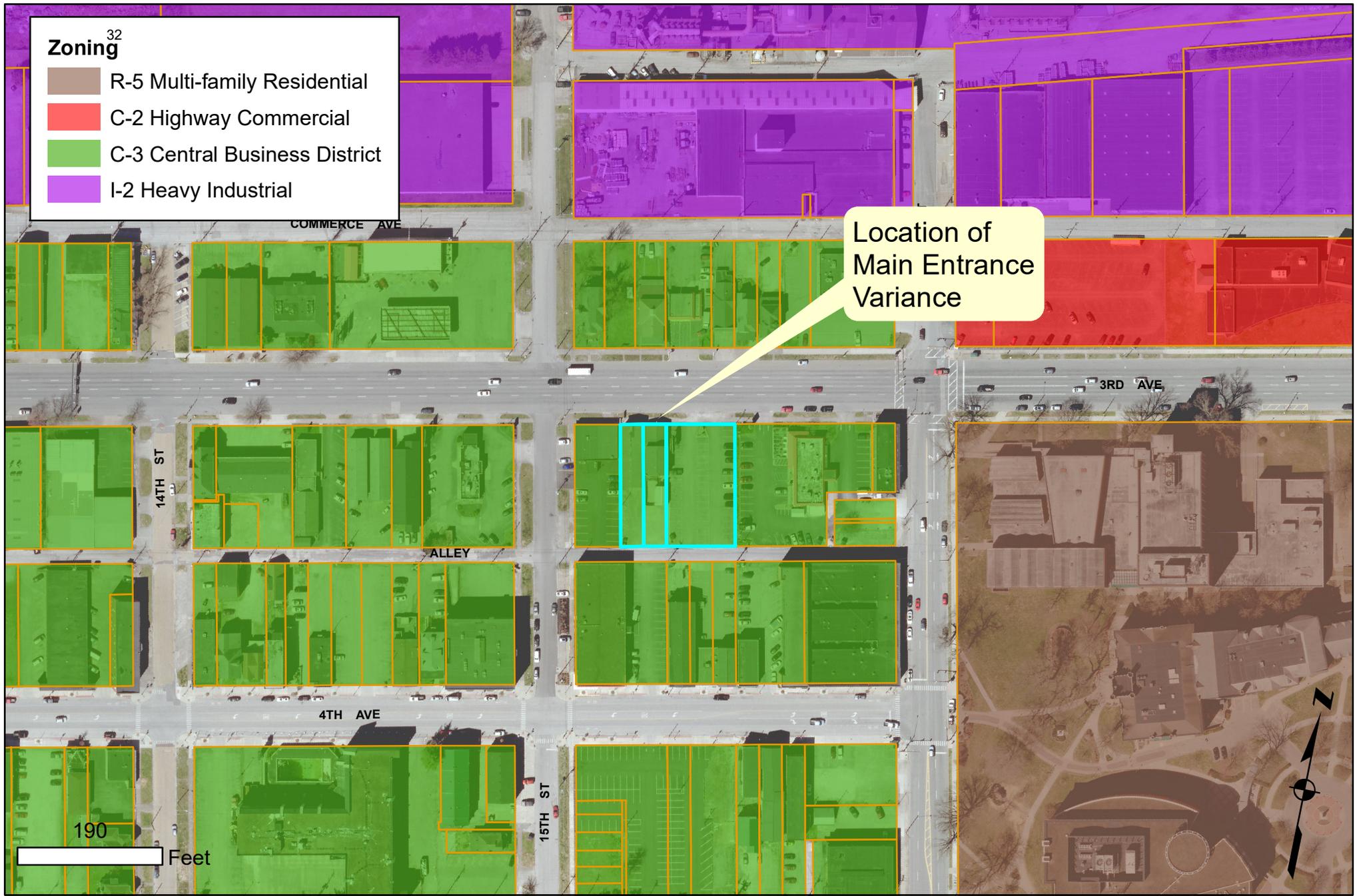
**1513 3th Ave**



<sup>32</sup>  
**Zoning**

-  R-5 Multi-family Residential
-  C-2 Highway Commercial
-  C-3 Central Business District
-  I-2 Heavy Industrial

Location of  
Main Entrance  
Variance



**BZA 22-V-41**

**Variance to Allow a Businesses to locate the Main Entrance on the side Façade in a C-3 Central Business District**

**1513 3th Ave**



33  
**Future Land Use (Plan2025)**

- Heavy Industrial
- Downtown Transition
- Old Main Corridor
- University

Location of  
Main Entrance  
Variance

COMMERCE AVE

3RD AVE

14TH ST

ALLEY

4TH AVE

15TH ST

190 Feet

**BZA 22-V-41**

**Variance to Allow a Businesses to locate the Main Entrance on the side Façade in a C-3 Central Business District**

**1513 3th Ave**





# 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: Clint Artrip Phone: 304-962-3633

Mailing Address (city, state, zip): 1 Albemarle Lane, Barboursville WV 25504

Email: clint@calamitygrill.com

Property Owner (if applicable): Clint Artrip Phone: 304-962-3633

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

1513 -3rd Avenue, Huntington WV 25701 ~~BZA~~ BLK 167 Lots 3 to 7

Map/Parcel 18 0177 0000 0000

Variance request pursuant to:

Article 1325.02 and/or Figure \_\_\_\_\_ of the City of Huntington Zoning Ordinance.

Description of the variance being requested:

Removal of door facing 3rd Avenue with new door on west side of building

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

Access to building from parking lot would be easier for customers, handicap parking will be available in parking lot so handicapped guests won't have to go to 3rd Avenue side of building. An entrance on 3rd Ave. would affect the flow of customers in the building. Property across the street on 3rd Ave is not aesthetically pleasing. Fire Marshall requires door on west side to meet codes

**(Attach additional pages if necessary)** Main Entrance is currently on parking lot side

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.

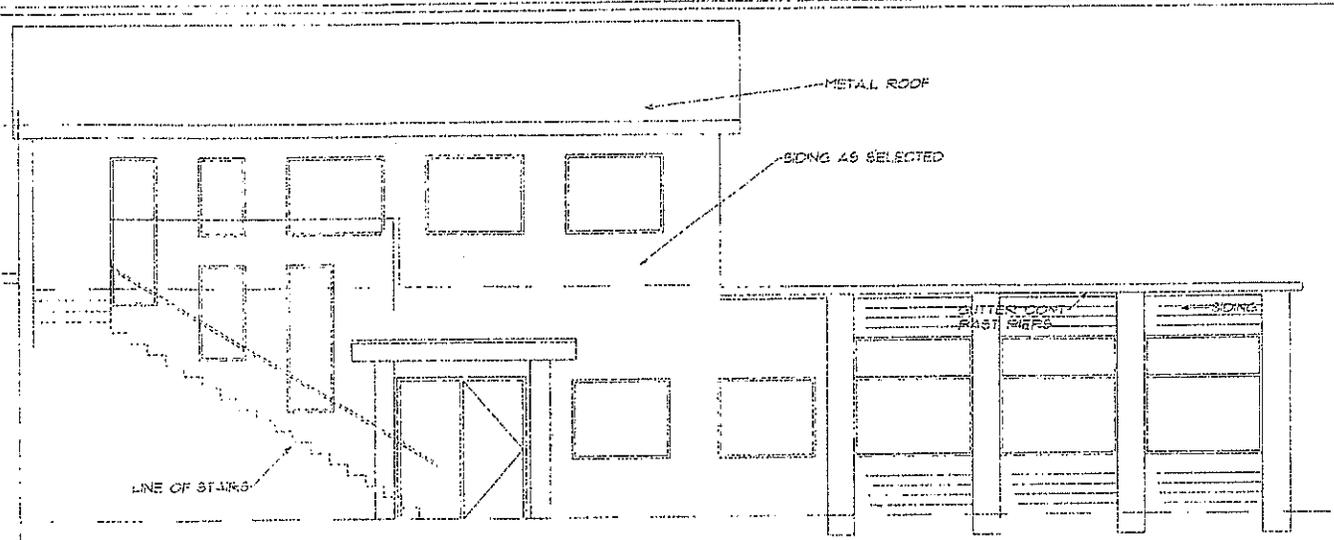
I/We, the undersigned, am/are aware that a public hearing by the Board of Zoning Appeals will be held on Tuesday, \_\_\_\_\_ . It is my responsibility to attend (or send a representative) to the above meeting to present plans and to answer any questions regarding the request for a Variance. All meetings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

Signature

Date

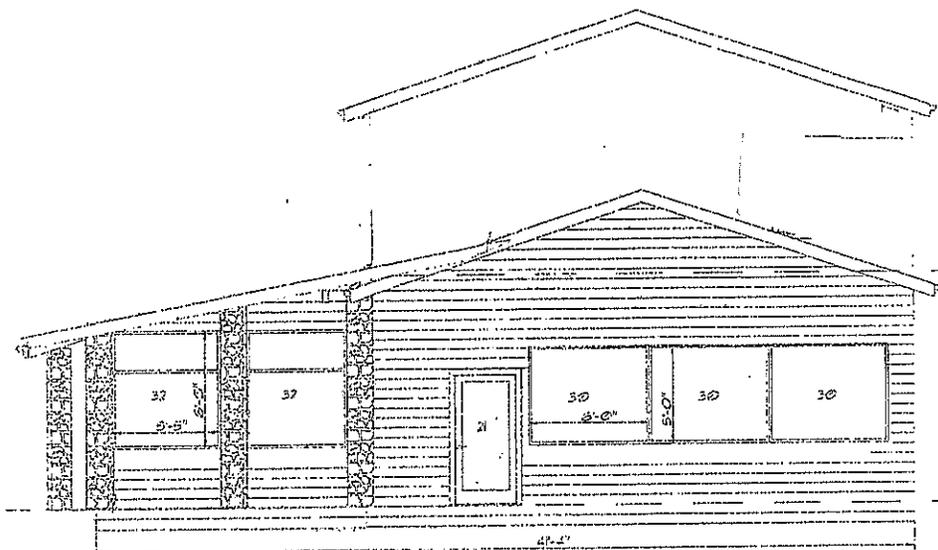
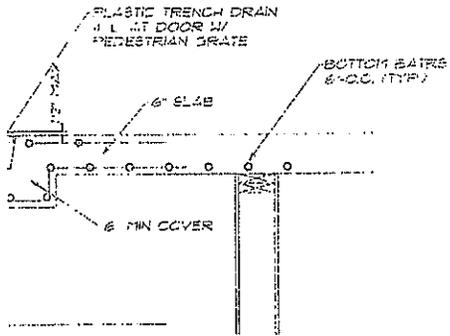
8/1/22

For office use only	
Received:	Project Name:
<u>8/5/2022</u>	<u>BZA 22-1-41</u>



EAST ELEVATION

0 4'-0"



NORTH ELEVATION

0 4'-0"

413 X 6 + 248 X 11 = 174 SQ FT REOD  
ITS PROVIDED - REVISED 7/1/21

A-7