

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

**BZA 22-V-18**

*Owner:* City of Huntington Land Bank

*Petitioner:* Barnett Commons L.P.

Subject Property: 1524 10th Avenue

A petition for a variance from the height limitation in a C-1 Neighborhood Commercial Zone of three (3) stories to build a four (4) story building.

Individual Speaking on Behalf of Petition: Steve Golder, Esq.

Other Interested Parties: Sandra Clements, Cicero Fain, Bill St. Clair, Esq., Sam St. Clair

**ORDER**

On June 2, 2022, Petitioner appeared before the City of Huntington Board of Zoning Appeals by counsel, Steve Golder, to present Petition BZA 22-V-18. Other citizens were permitted to voice their positions as well, per the practice of this Board, and four individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence provided at the June 2, 2022 meeting, the Board finds as follows:

1. Barnett Commons L.P. is the petitioner.
2. City of Huntington Land Bank is the property owner.
3. The property is zoned C-1 Neighborhood Commercial.
4. The proposed structure is 4 stories and 50' tall. Maximum height in a C-1 District is 3 stories/45' tall.
5. The property is 27,275 square feet.
6. The lot has an unusual shape, like a backwards P, and is only 40 feet wide in some locations.
7. Since the last hearing, Petitioner met with the Fairfield community regarding the project.
8. Petitioner made changes to the development plan in light of the community's requests and concerns.
9. The proposed height for this development is 50 feet.
10. The total amount of units proposed is 32.
11. The majority of the living space in this development is intended for senior housing.
12. This property has been vacant for 4 years and on the market for sale for 2 years.
13. All documents provided to this Board, including those provided at the hearing from sworn witnesses and counsel, from staff in anticipation of the hearing, and the approved minutes, are made part of the record.

**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 Neighborhood Commercial district is intended to have uses harmonious to neighboring residential districts. The Board is pleased with the petitioner's efforts to seek out input from the community in reimagining the plans for development and the incorporation of their ideas in the communal spaces and the inclusion of plaques in commemoration of to the Barnett family legacy. The involvement of the community in the redrawing of the development plans has helped preserve the rights of adjacent property owners and the general public so that they are not likely to suffer any adverse effect from the additional story.

The unusual shape of the lot is a special condition that creates limitations in how it can be developed, and, therefore, creates a hardship that is a condition of the land and not created by Petitioner. Additionally, a multi-tenant residential building is reasonable use for this peculiar lot and granting the variance would promote coordinated and practical community development, allowing the intent of the Zoning Ordinance to be observed and substantial justice done. 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-18 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

6-21-22  
Date

Chairperson: *C.W. Dolin* Chair *acting chairperson* Prepared by: *Patricia Usher* Patricia Usher, Zoning Officer

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

**BZA 22-V-19**

*Owner:* City of Huntington Land Bank

*Petitioner:* Barnett Commons L.P.

Subject Property: 1524 10th Avenue

A petition to provide fewer parking spaces than required for multi-family housing. Per the requirements, 51 spaces would be required for the 32 unit development. 32 spaces are proposed.

Individual Speaking on Behalf of Petition: Steve Golder, Esq.

Other Interested Parties: Sandra Clements, Cicero Fain, Bill St. Clair, Esq., Sam St. Clair

**ORDER**

On June 2, 2022, Petitioner appeared before the City of Huntington Board of Zoning Appeals by counsel, Steve Golder, to present Petition BZA 22-V-19. Other citizens were permitted to voice their positions as well, per the practice of this Board, and four individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence provided at the June 2, 2022 meeting, the Board finds as follows:

1. Barnett Commons L.P. is the petitioner.
2. City of Huntington Land Bank is the property owner.
3. The property is zoned C-1 Neighborhood Commercial.
4. Per the requirements in Article 1343, the proposed project is required to provide 51 parking spaces.
5. The petitioner proposes providing 30 parking spaces and 2 handicapped parking spaces at this location to serve 26 elderly units and 6 family units.
6. The property is 27,275 square feet.
7. The lot has an unusual shape, like a backwards P, and is only 40 feet wide in some locations.
8. Additionally, the property is bounded on three sides by public roads or alleys. The remaining side, to the north, is an occupied business.
9. Since the last hearing, Petitioner met with the Fairfield community regarding the project.
10. Petitioner made changes to the development plan in light of the community's requests and concerns.
11. The total amount of units proposed is 32.
12. The majority of the living space in this development is intended for senior housing.
13. A parking ratio of 1:1 is acceptable for this type of development.
14. This property has been vacant for 4 years and on the market for sale for 2 years.
15. All documents provided to this Board, including those provided at the hearing from sworn witnesses and counsel, from staff in anticipation of the hearing, and the approved minutes, are made part of the record.

**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 Neighborhood Commercial district is intended to have uses harmonious to neighboring residential districts. Parking issues, however, are often anything but harmonious. Based upon the expert report, as well as comments from the neighborhood community, the Board is much more comfortable that a parking reduction will not adversely affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents than when the matter last came before this body.

The unusual shape of the lot, together with its location, create a special condition that limits how the lot can be developed; therefore, creating a hardship that is a condition of the land and not created by Petitioner. Having multi-family housing in this location will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

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-19 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

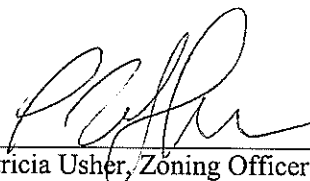
6-27-22

Date

Chairperson:

  
C.W. Dolin, Chair

Prepared by:

  
Patricia Usher, Zoning Officer

*acting chairperson*

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

**BZA 22-V-20**

*Owner:* The John & Ethel Edmonds Family Trust

*Petitioner:* Angela Maynard, as trustee

Subject Property: 372, 372 Rear, and 372 ½ Michigan St

A petition for a variance to continue a non-conforming multi-family use in an R-2 Single-Family Residential district.

Individual Speaking on Behalf of Petition: Angela Maynard

Other Interested Parties: Jeff Maynard, Nathan Butcher, and Beth King

**ORDER**

On June 2, 2022, Ms. Maynard appeared before the City of Huntington Board of Zoning Appeals to provide testimony related to BZA 22-V-20. Other citizens were permitted to voice their positions as well, per the practice of this Board, and three individuals provided testimony.

**FINDINGS OF FACT**

After reviewing all evidence and testimony at the June 2, 2022 meeting, the Board finds as follows:

1. Angela Maynard is the petitioner as trustee for the property owner.
2. Ms Maynard is also the daughter of the former owners.
3. The John & Ethel Edmonds Family Trust is the property owner.
4. The property is zoned R-2 Single Family.
5. The property has three dwelling units: the front house and two units to the rear in a detached second building.
6. The petitioner is requesting a variance to the one year abandonment period in order to continue a non-conforming multi-family residential use.
7. The petitioner is requesting this variance to aid in the sale of the property, since all potential buyer thus far have been interested in operating a multifamily rental.
8. The lot is approximately 5,200 sf. Staff does not believe that granting this variance will adversely affect the public health, safety or welfare, or rights of adjacent property owners or residents.
9. The property has fallen into disrepair.
10. At the date of the hearing, the property is vacant.
11. The front unit was occupied until February 2022.
12. The lower rear unit was occupied until December 2021.
13. The upper rear unit has been vacant for several years.
14. The lot has a driveway from the street that can accommodate two cars.
15. The rear of the property on the alley cannot accommodate off-street parking.
16. Most of the neighboring properties have small lots.
17. The houses in the neighborhood are densely proportioned.
18. Street parking on Michigan Street is available only on one side of the street.
19. The streets of the neighborhood are narrow.

**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 Section 1355(G) provides that, if a nonconforming use of any building or premises is discontinued for one (1) year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned. The Board is sympathetic to the petitioner's desire trying to sell the property that has historically operated as a three-unit multi-family, but may now only operate as a two- -family by right due to the abandonment of the use of the third unit. Even at a two-family, the property remains nonconforming.

We are concerned that granting a variance to restore the use of the nonconforming third units would have an adverse effect on the neighborhood, which already has narrow streets, small lots, and a dense population, particularly without any information regarding the intentions of the proposed buyer.

We also are cognizant that the property is deteriorating and that no rehabilitation will occur until the property sells. However, at this time, with the information available to us, we cannot find a variance to be appropriate. Once the property is in the hands of someone who intends to rehabilitate it and more information regarding the intended use is available, we would be open to revisiting this question, as the new owner would be able to discuss the intentions for future use.

The Board concludes that the approval of the variance would not be appropriate with an owner who does not intend to renovate or maintain 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 **DENIES** petition BZA 22-V-20 for a **Variance**.

ENTERED

6-21-22

Date

Chairperson:

*C.W. Dolin*  
C.W. Dolin, Chair

Prepared by:

*Patricia Usher*  
Patricia Usher, Zoning Officer

*acting chairperson*