



MORGANTOWN BOARD OF ZONING APPEALS

June 19, 2013
6:30 PM
City Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
George Papandreas
Jim Shaffer
Tom Shamberger

STAFF REPORT

CASE NO: V13-11 / Nada Clue, LLC / 1305 Saratoga Avenue

REQUEST and LOCATION:

Request by James Yost, on behalf of NADACLUE, LLC (d/b/a/ "Saratoga Hot Spot, II"), for variance relief from Article 1369.10(K) as it relates to off-premise signs.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 8, Parcel 12; B-2, Service Business District

SURROUNDING ZONING:

B-2, Service Business District

BACKGROUND and ANALYSIS:

In response to a complaint and a follow-up inspection, Staff sent a certified letter to the owner and the tenant of the subject property and the individuals listed on the West Virginia Secretary of State's website as organizers/members of NADACLUE, LLC concerning an illegally erected off-premise sign advertising "Saratoga Hot Spot." The subject establishment is located at 268 Wildwood Street, Star City. Addendum A of this report illustrates the location of the off-premise sign as well as the location of the "Saratoga Hot Spot" establishment.

Article 1369.10(K) provides that off-premise signs are not permitted within the City of Morgantown. Because the petitioner is seeking variance relief to allow the off-premise sign, prosecution of the violation has been deferred pending the Board's decision.

The petitioner argues that the subject off-premise sign is justified based on the following summarized reasons:

- The location of "Saratoga Hot Spot" and its proximity to and visibility from Monongahela Boulevard is such that off-premise signage is necessary for patron wayfinding.
- There is one other non-conforming off-premise sign advertising the hotel located in Star City and another non-conforming changeable copy sign on the subject site.
- The illegal off-premise sign was in place purportedly for a year before the City initiated enforcement action.
- The Board approved an off-premise sandwich board for *Classic Cutz* located at 219 Wall Street on 15-Aug-2012 under Case No. V12-25.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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Staff submits the following correlating facts and observations:

- Staff recognizes that the businesses along Saratoga Avenue in Star City may be challenged by their location in relation to limited vehicular exposure along Monongahela Boulevard. However, this challenge is arguably a symptom of historical development patterns along Saratoga Avenue outside and beyond the land use and development jurisdiction of the City of Morgantown.

Facilitating the proliferation of sign clutter at one of Morgantown's busiest gateways will detract from the built environment of both the Morgantown and Star City communities.

An alternate wayfinding solution in this instance may be advanced by the neighboring businesses in Star City. Specifically, affected business could approach Star City municipal leadership to discuss the merits and opportunities of working with Morgantown to pursue and permit an attractive and contributing multi-tenant ground sign. This approach may better serve a broader purpose, benefit a larger constituency, and create a sense of place and value.

- Staff has no working knowledge of the history or circumstances of the neighboring hotel development in Star City and the related non-conforming off-premise sign in Morgantown. What is relevant and presently applicable is the fact that the City enacted a strict legislative stance concerning off-premise signage in the 2006 Zoning Ordinance amendment. The petitioner's argument that "two wrongs make a right" is a fallacy of relevance. Further, the Board has upheld the Code's prohibition of off-premise signage; notably in its 25-July-2012 partial denial of Case No. V12-22 relating to the off-premise ground sign requested for the *Goodwill* store in Sabraton.
- The Planning Division, with the assistance of the Morgantown Public Works Department, has participated in the abatement of illegal "Saratoga Hot Spot" off-premise signs placed in the public right-of-way and within the general vicinity of the subject site. On several occasions since the enactment of the off-premise sign prohibition in 2006, the Public Works Department removed illegal "Saratoga Hot Spot" off-premise signs. The present off-premise sign was not removed by the City because it does not appear to be located within the public right-of-way.

A use or structure, in this case a sign, developed in violation of the City's Planning and Zoning Code remains a violation and cannot achieve a status or enjoy the protections of a grandfathered use or structure regardless of the period during which the violation was left un-prosecuted.

- The petitioner's argument that the subject "Saratoga Hot Spot" sign is similar to the Board's approval of the *Classic Cutz* sandwich board sign is a fallacy of association. A sandwich board sign is, by definition, not a permanently attached structure. Further, no comparative context is shared between the two noted off-premise signs.

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The granting of the subject variance undermines the fundamental purposes of the City's sign regulations and the legislative intent to prohibit off-premise signs.

Poorly designed and unattractive visual clutter, particularly within community gateways and along arterial corridors, neglects and diminishes the pleasing, cleaner, more orderly look and quality of the City, its built environment, and desirable streetscapes.

Haphazard, poorly located, confusing, and overstated off-premise signage makes navigation and wayfinding more difficult thereby deteriorating traffic safety. Too many signs can distract drivers from the primary task of driving safely. Excessive visual information generally increases driver response times. Additionally, the over provision of signs can reduce the likelihood of drivers taking notice of them.

Urban design strategies that create a positive sense of place and value are founded on creating, preserving, and protecting a pleasing repetition of design elements with some novelty and variations on a theme. Careless, disorganized, and prohibited off-premise signage and resultant visual chaos do not foster an authentic positive experience for new or frequent motoring passersby. Negatively viewed vistas and streetscapes adversely affect the quality, character, and attractiveness of nearby public and private property, neighborhoods, and businesses.

STAFF RECOMMENDATION:

Staff normally does not offer a recommendation for sign variance petitions. However Staff recommends, in this instance, that Case No. V13-11 be denied based on the findings and conclusions stated in Addendum B of this report.

Enclosures: 12-Feb-2013 certified letter notifying parties of violation
Application and accompanying exhibits

Development Services

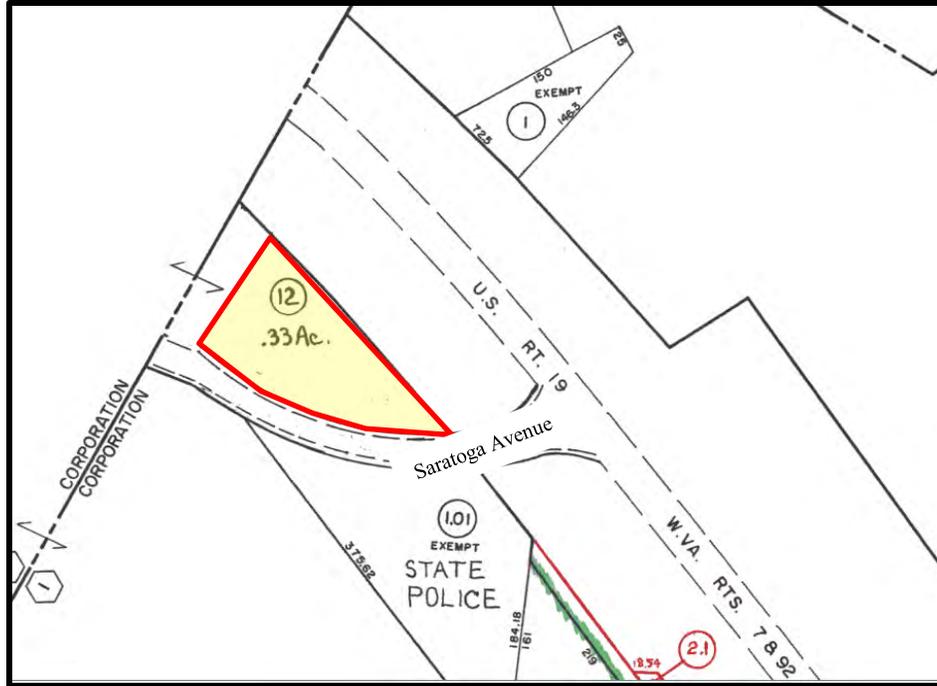
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STAFF REPORT ADDENDUM A
V13-11 / Nada Clue, LLC / 1305 Saratoga Avenue





STAFF REPORT ADDENDUM B

V13-11 / Nada Clue, LLC / 1305 Saratoga Avenue

Staff recommended Findings of Fact and Conclusions of Law.

Finding of Fact No. 1 – There are NOT exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The petitioner's circumstances of being in close proximity to and easily accessible from the arterial corridor of Monongahela Boulevard yet not visible to motoring passersby is not exceptional or extraordinary as other businesses along or near Saratoga Avenue in Star City experience the same or nearly identical conditions as the petitioner including Blaine Turner Advertising, Casey's ATA Academy, The Hair Garage, etc.

Finding of Fact No. 2 – The variance is NOT necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The existence of one non-conforming off-premise sign for the neighboring hotel that has been in existence for a number of years does not constitute a substantial property right within the subject Morgantown corporate vicinity nor is off-premise signage possessed by many properties within the subject Morgantown corporate vicinity. Further, the petitioner currently enjoys an illuminated off-premise sign at the intersection of Canfield Street and Monongahela Boulevard in Star City illustrated below (photos taken 06-Jun-2013).



Finding of Fact No. 3 – The granting of this variance WILL be harmful to the public welfare and WILL harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Unattractive visual clutter resulting from the petitioner's off-premise sign located within the Morgantown / Star City gateway undermines the legislative purpose of Article 1369 by neglecting and diminishing the pleasing, orderly look, and quality of the City, its built environment, and the streetscape of the Monongahela Boulevard arterial corridor. Careless, disorganized, and prohibited off-premise signage and resultant visual chaos do not foster an authentic positive experience for new or frequent motoring passersby. Negatively viewed vistas and streetscapes adversely affect the quality, character, and attractiveness of nearby public and private property, neighborhoods, and businesses.

Finding of Fact No. 4 – The granting of this variance WILL alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Facilitating the proliferation of off-premise sign clutter by granting the variance at the subject site will detract from the quality and character of the vicinity and its land uses both inside and outside of Morgantown; will impede recognition of the Morgantown Express Lube establishment and diminish its locational market value, which is within the City of Morgantown; and, may adversely impact traffic safety by promoting the distraction of drivers from haphazard, nonconforming, off-premise signage.



**DEVELOPMENT
SERVICES
DEPARTMENT**

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7431 TDD (304) 284-7512
www.morgantownwv.gov

VIA CERTIFIED MAIL

February 12, 2013

Mr. Robert Bennett
Morgantown Express Lube
426 Drummond Street
Morgantown, WV 26505

RE: Illegal Off-Premise Signs – Saratoga Hot Spot

Dear Mr. Bennett,

This Office received a complaint that an off-premise post-and-panel sign has been erected near the intersection of Saratoga Avenue and Monongahela Boulevard advertising the "Saratoga Hot Spot" establishment. The subject site is specifically described as Parcel 12 of Tax Map 8; 1350 Saratoga Avenue; Morgantown Express Lube.

On February 11, 2013, this Office observed the off-premise sign at the subject site as illustrated in Addendum A of this letter.

The recipients of this certified letter, who are identified in Addendum A of this letter, are hereby notified that:

1. The subject off-premise sign is in violation of Morgantown's Planning and Zoning Code, Article 1369.10(K), which prohibits off-premise signs within the City of Morgantown.
2. The subject sign must be removed within ten (10) days of receipt of this letter.
3. This Office will visit the subject site again on Monday, March 4, 2013 to determine if the subject violation has been mitigated.
4. Failure to remove the subject illegal sign accordingly will result in the initiation of enforcement action including the issuance of citations.
5. Any person, firm or corporation violating any of the provisions of Morgantown Planning and Zoning Code shall for each violation, upon conviction thereof, pay a penalty of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), with costs recoverable before the Judge of the Municipal Court; and upon default of payment of the penalty and costs the person or persons convicted may be committed to the City or County Jail for not exceeding thirty (30) days. Each day that a violation is permitted to exist shall constitute a separate offense.

Please feel free to contact the undersigned should you have any questions or require further clarification concerning this notice and/or the subject violation. Protecting and preserving the City of Morgantown's quality life is a community objective and obligation.

Thank you in advance for your consideration and prompt action.

Respectfully,

Christopher M. Fletcher, AICP
Director of Development Services

ADDENDUM A

Certified letter sent to: Mr. Vance Montaz, NADACLUE, LLC
Ms. Nada Maric Kisner, NADACLUE, LLC
Ms. Sandra Sue Wotring, NADACLUE, LLC
Mr. Robert Bennett, Morgantown Express Lube
Mr. Albert Claudio, Jr., Aldom, LLC





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February 12, 2013

Mr. Robert Bennett
Morgantown Express Lube
1350 Saratoga Avenue
Morgantown, WV 26505

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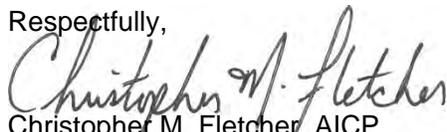
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Mr. Albert Claudio, Jr., Aldom, LLC





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VIA CERTIFIED MAIL

February 12, 2013

Mr. Vance Montaz Hazelton
NADACLUE, LLC (dba Saratoga Hot Spot II)
241 Wildwood Street
Star City, WV 26505

RE: Illegal Off-Premise Signs – Saratoga Hot Spot

Dear Mr. Hazelton,

This Office received a complaint that an off-premise post-and-panel sign has been erected near the intersection of Saratoga Avenue and Monongahela Boulevard advertising the "Saratoga Hot Spot" establishment. The subject site is specifically described as Parcel 12 of Tax Map 8; 1350 Saratoga Avenue; Morgantown Express Lube.

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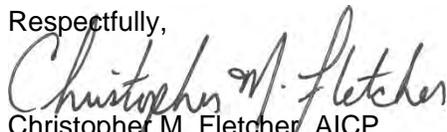
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Ms. Sandra Sue Wotring, NADACLUE, LLC
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Mr. Albert Claudio, Jr., Aldom, LLC





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VIA CERTIFIED MAIL

February 12, 2013

Ms. Nada Maric Kisner
NADACLUE, LLC (dba Saratoga Hot Spot II)
118 Village Crest Drive
Morgantown, WV 26508

RE: Illegal Off-Premise Signs – Saratoga Hot Spot

Dear Ms. Kisner,

This Office received a complaint that an off-premise post-and-panel sign has been erected near the intersection of Saratoga Avenue and Monongahela Boulevard advertising the "Saratoga Hot Spot" establishment. The subject site is specifically described as Parcel 12 of Tax Map 8; 1350 Saratoga Avenue; Morgantown Express Lube.

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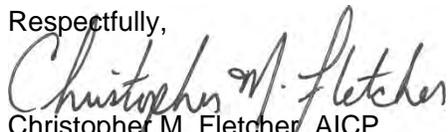
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Ms. Nada Maric Kisner, NADACLUE, LLC
Ms. Sandra Sue Wotring, NADACLUE, LLC
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VIA CERTIFIED MAIL

February 12, 2013

Ms. Sandra Sue Wotring
NADACLUE, LLC (dba Saratoga Hot Spot II)
PO Box 982
Dellslow, WV 26531

RE: Illegal Off-Premise Signs – Saratoga Hot Spot

Dear Ms. Wotring ,

This Office received a complaint that an off-premise post-and-panel sign has been erected near the intersection of Saratoga Avenue and Monongahela Boulevard advertising the "Saratoga Hot Spot" establishment. The subject site is specifically described as Parcel 12 of Tax Map 8; 1350 Saratoga Avenue; Morgantown Express Lube.

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February 12, 2013

Mr. Albert Claudio, Jr.
Aldom, LLC
3129 N. Greystone Drive
Morgantown, WV 26508

RE: Illegal Off-Premise Signs – Saratoga Hot Spot

Dear Mr. Claudio, Jr. ,

This Office received a complaint that an off-premise post-and-panel sign has been erected near the intersection of Saratoga Avenue and Monongahela Boulevard advertising the "Saratoga Hot Spot" establishment. The subject site is specifically described as Parcel 12 of Tax Map 8; 1350 Saratoga Avenue; Morgantown Express Lube.

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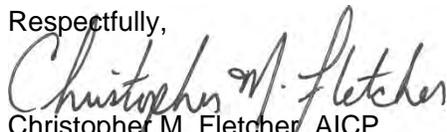
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ADDENDUM A

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Ms. Nada Maric Kisner, NADACLUE, LLC
Ms. Sandra Sue Wotring, NADACLUE, LLC
Mr. Robert Bennett, Morgantown Express Lube
Mr. Albert Claudio, Jr., Aldom, LLC





City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	0113-11
RECEIVED:	4/5/13
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name:	Nada Clue, LLC	
Mailing Address:	Street	241 Wildwood Street	Phone:	304-288-3494
	City	Star City WV	Mobile:	304-599-2801
	State		Zip	
			Email:	James26508@aol.com

II. PROPERTY		Street Address:	268 Wildwood Street
Owner:		Zoning:	N/A
Mailing Address:	Street	Tax Map No:	8
	City	Parcel No:	12
	State	Zip	Phone:

III. NARRATIVE	Please describe the nature and extent of your variance request(s).
Variance From Article 1369, signs as it relates to off premise signs.	

V. ATTEST			
I hereby certify that I am the owner of record of the named property, or that this application is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. The granting of a variance does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction. I certify that the information submitted herein and attached hereto is true and accurate and understand that if found otherwise may result in the denial of this request or subsequent revocation of any and all related approvals. The undersigned has the power to authorize and does hereby authorize City of Morgantown representatives on official business to enter the subject property as necessary to process the application and enforce related approvals and conditions. I hereby authorize the Planning Department to erect a notification sign on the subject property approximately 15 days prior to the BZA hearing. I further agree to maintain said signage and hereby accept responsibility in case of destruction or removal.			
JAMES K. GOST		APR 05 2013 14:44:33	4/3/13
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	Date	Date

You or a representative **MUST** be present at the scheduled hearing to present the request and answer questions. Failure to appear at the hearing will result in your request being tabled.



APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V13-11
RECEIVED:	4/5/13
COMPLETE:	

VI. SUPPLEMENTAL INFORMATION

Depending on the type of variance request and the scale and scope of the development proposal, supplemental information may be needed to assist the Board of Zoning Appeals in rendering a variance decision. Staff will check the appropriate boxes below that must be addressed.

Land Use Characteristics (complete only those that apply)

- Residential Single-Family Dwelling Townhouse Dwelling
- Two-Family Dwelling Multi-Family Dwelling
- Non-Residential or Mixed (please explain)

Structure Characteristics (complete only those that apply)

Total number of buildings: 0 Gross floor area of each building: 0

Estimated number of employees: 0 No. of dwelling units: 0 No. of bedrooms: 0

Additional structure-related details:

Additional Information (as required by Staff):

Site Plan A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.

- Location, shape, exterior dimensions, and number of stories of each building on the site.
- Standard yard setbacks for the applicable zoning district
- Location, grade, and dimensions of paved surfaces, and all abutting streets
- Existing and proposed contours, at an interval of at least two (2) feet
- Complete traffic circulation plan showing dimensions, entrance/exit drives, planters, and similar improvements
- Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screen required

For simple variance requests (as determined by Staff), please use the graph area on the following page to illustrate applicable features listed above.



City of Morgantown, West Virginia

**APPLICATION FOR
ZONING VARIANCE**

OFFICE USE	
CASE NO.	V13-11
RECEIVED:	
COMPLETE:	

VII. FINDINGS OF FACT

The Board of Zoning Appeals may grant a variance request only if each of the following "Findings of Fact" criteria is determined to be in the positive. Applicants must give their own responses to the following criteria statements.

1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

FINDINGS OF FACT Nada Clue, LLC | Off-Premise Sign

Variance relief from the Planning and Zoning Code, Article 1369, Signs as it relates to off-premise signs.

1. There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Although the business is located within the corporate city limits of Star City, the location for the proposed off-premise sign is within the boundaries of the City of Morgantown. A similar sign promoting the business was present at the automotive repair facility at 1305 Saratoga Avenue for approximately one year before receiving notification of noncompliance from the City. As evident from submitted photography, there are other pre-existing off-premise signage located on this realty for services also located beyond the city limits of Morgantown.

The business in question is located approximately 660 feet from the off-premise sign, beyond city limits, in an area that is not visible to traffic along Monongahela Boulevard, a state route and major corridor between destination points on the West Virginia University campuses, University Town Center and I-79. Signage is critical to alert travelers of local amenities in order to increase the tax base, even if it is an adjacent municipality.

Urban planner, Kevin A. Lynch, borrowed the term for his 1960 book *Image of the City*, where he defined wayfinding as “a consistent use and organization of definite sensory cues from the external environment”. In other words, wayfinding provides an economic benefit to business owners by visually organizing a space to make it easier for potential investors to interpret.

Patrons unfamiliar with the Greater Morgantown area, perhaps in town for a game at the Coliseum, Mountaineer Stadium and athletic fields, or other events at the Creative Arts Center, will better understand what the area has to offer increasing the likelihood that they will spend more time and money at local business, thereby promoting economic growth and investment both in and outside the corporate boundaries of Morgantown.

2. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There are a few businesses and multi-family developments on Saratoga Avenue, just outside of city limits that apparently feel the effects of not having a presence on a highly traveled corridor. As evident by the attached photographs and related Google Earth attachments, there appear to be other businesses trying to overcome the economic disadvantage by erecting off-premise signage. These include Hotel Morgantown and The Wharf restaurant.

According to the Planning and Zoning Code, Article 1373.05 (B) (3) states, “...Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, shall be permitted, provided that repainting shall not include a change of copy or color.” Article 1373.05 (B) (4) goes on to say that “...No change of copy shall be permitted (except on a changeable copy sign) without bringing the sign into full conformance with this Ordinance.” Therefore, two (2) years ago when the hotel went from Quality Inn to Hotel Morgantown, the sign should have been removed, thus bringing it into conformance.

By not permitting off-premise signage, even conditionally, deprives the business owner the preservation and enjoyment of a substantial property right, thus justifying a variance. The business' location is unique, creating a circumstance that generally does not apply to other businesses and must be creatively overcome by the owner.

The Board, while remotely different, approved an off premise sandwich board sign in August 2012.

3. The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Other property owners in the immediate vicinity of the business share concerns similar to those of the owner. A conversation with a manager of Hotel Morgantown, 1400 Saratoga Avenue, revealed that guests frequently complain of the hotel's seemingly hidden location, and the difficulty encountered trying to locate the facility. The manager explained that when the structure was initially completed, there were only a few trees along the hillside and the building was easily visible to all passersby. Due to the growth of foliage in recent years the building is now blocked from view to those travelling along the Monongahela Boulevard corridor. Hotel Morgantown has an off-premise sign located on the same automotive repair facility property.

At this time, there appears to be a number of off-premise and non-conforming signs at the automotive repair facility location, which advertises other businesses along Saratoga Avenue which suffer the same hardship.

4. The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed was in existence for approximately one-year before City Officials notified the property owner of its nonconforming status. The sign was initially taken down by an unknown party but replaced to indicate to the Board of its location. The owner simply wishes have a privilege bestowed to other business that are not easily visible or found.

In granting this variance, land-use characteristics will actually be preserved. As a property right within the Town of Star City, a business owner may erect a pylon sign up to thirty-five (35) feet (more with a variance). In this case, the client's preference is to avoid air clutter and respect the nearby single family residential dwellings.

The Board, while remotely different, approved an off premise sandwich board sign in August 2012.

The automotive repair facility is this only privately owned parcel along Saratoga Avenue located within the City of Morgantown, currently within the B-2 zoning district.

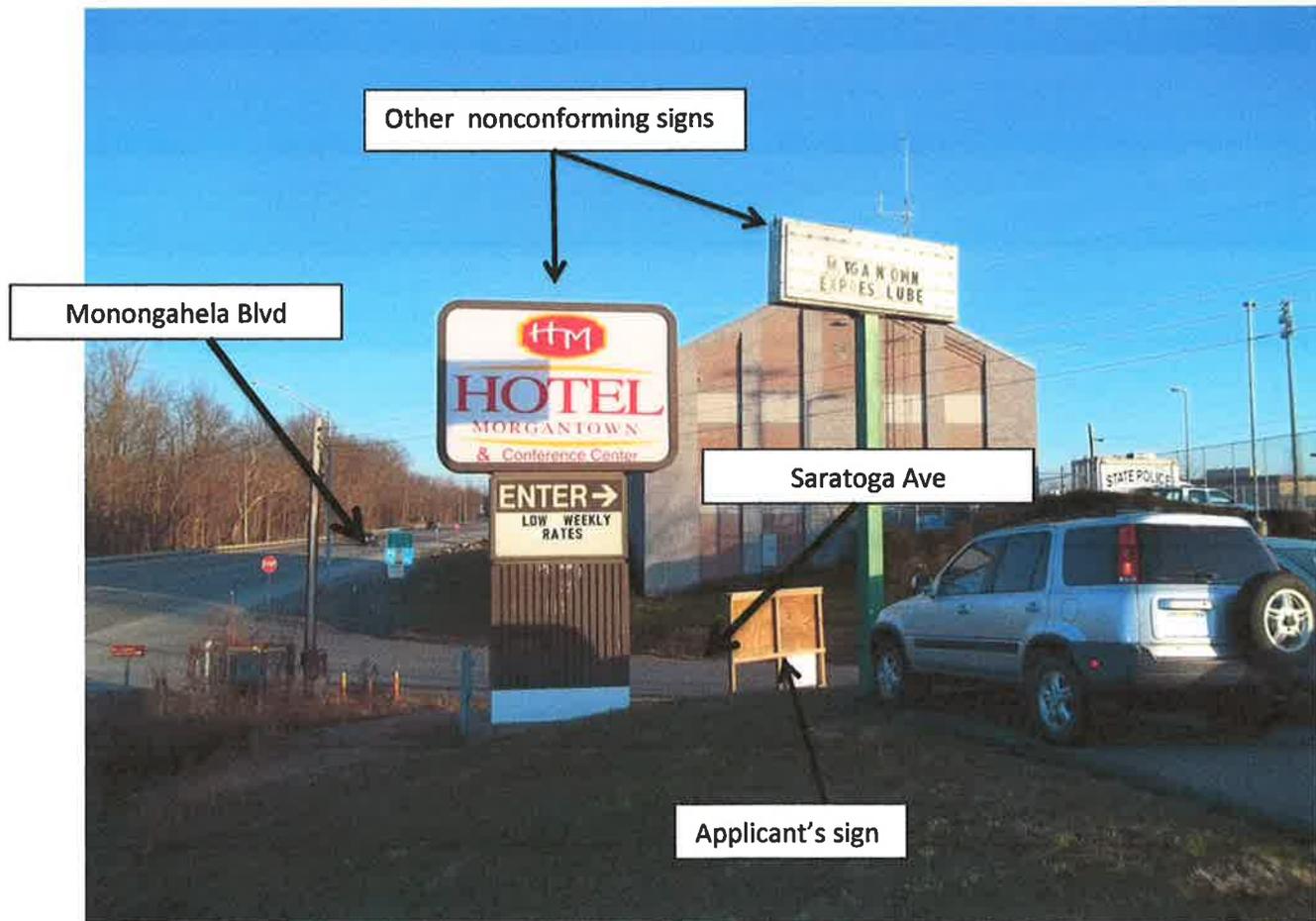
Nada Clue, LLC | Off-Premise Sign

Google Earth Attachment





Nada Clue, LLC | Off-Premise Sign





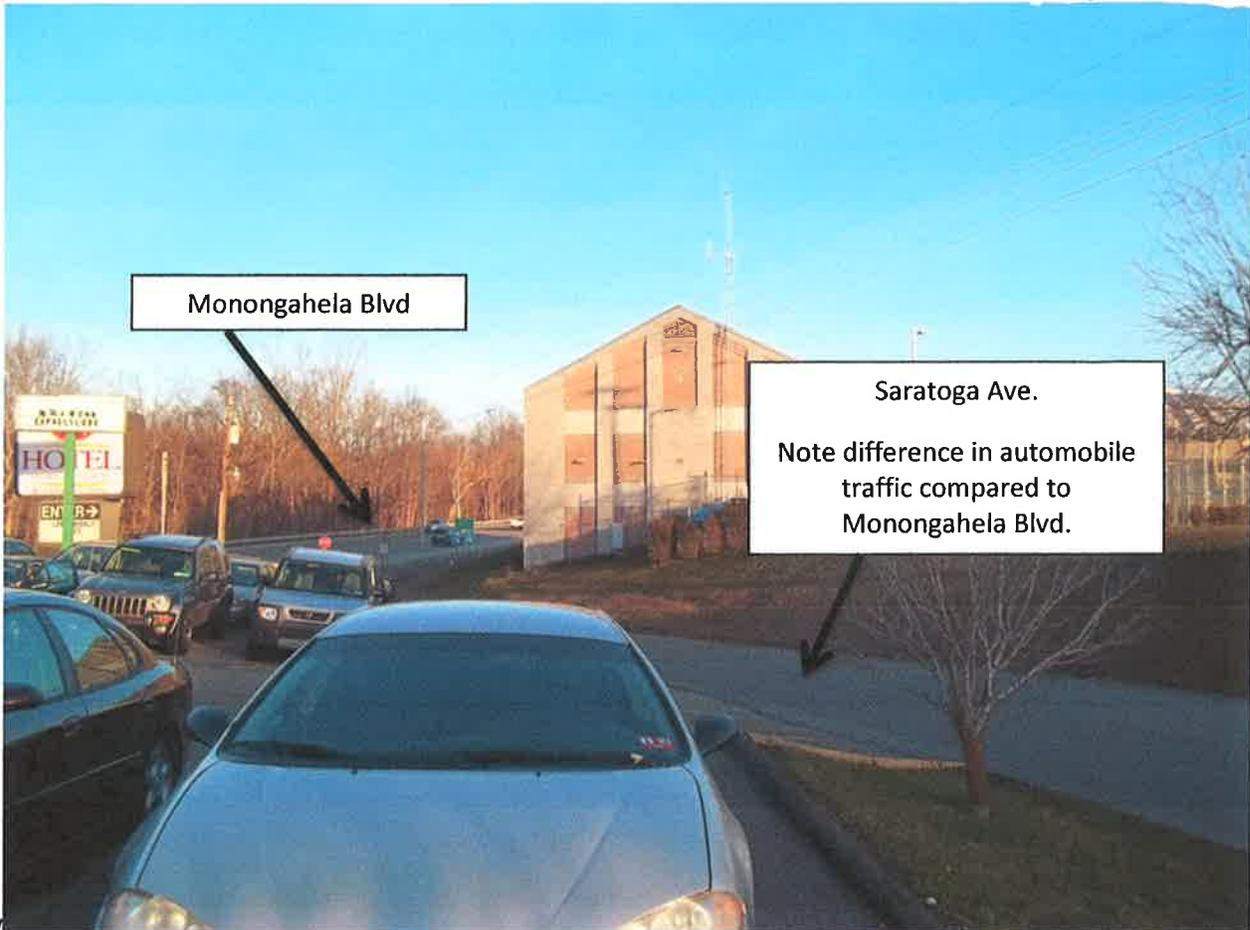
Applicant's off-premise sign.

Believing this site was within the limits of Star City, the applicant had the sign in place for more than a year before receiving notification from the City of Morgantown for issues regarding noncompliance.



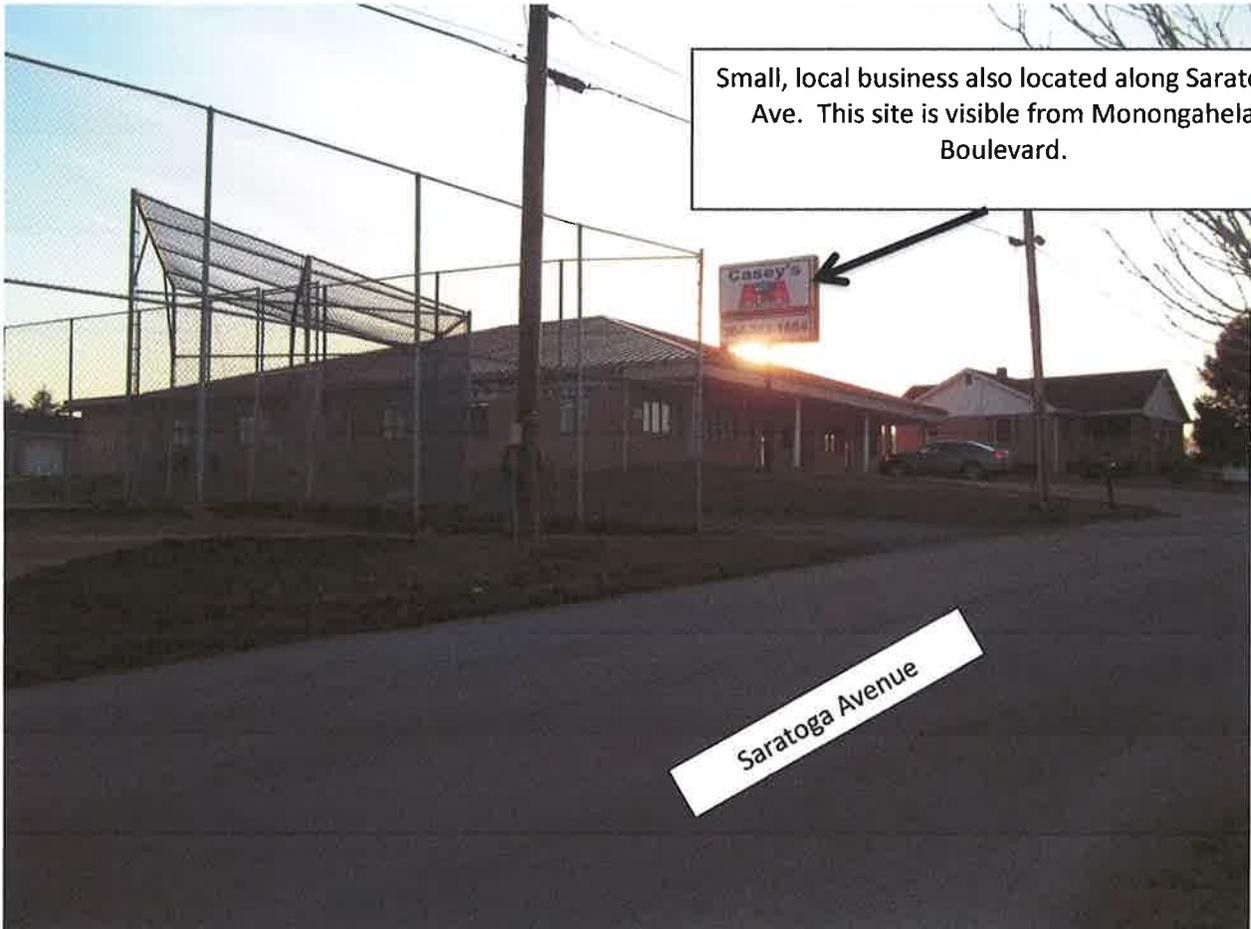
Similar off-premise sign for the Hotel Morgantown, located at 1400 Saratoga Ave.

The Hotel Morgantown replaced the Quality Inn at the same location approximately two-years ago. As the property changed management, the Quality Inn off-premise sign was changed, but never removed.



Monongahela Blvd

Saratoga Ave.
Note difference in automobile traffic compared to Monongahela Blvd.



Small, local business also located along Saratoga Ave. This site is visible from Monongahela Boulevard.

Saratoga Avenue

