



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: V13-22 / Smitty's Kountry Kreme / 1616 Earl Core Road

REQUEST and LOCATION:

Request by William L. Smith Jr. for variance relief from Article 1347.04 as it relates to setbacks at 1616 Earl Core Road.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 32, Parcel 36; B-2, Service Business District

SURROUNDING ZONING:

B-2, Service Business District

BACKGROUND and ANALYSIS:

The petitioner seeks to construct a carport-type accessory structure approximately two feet from the side of property line shared with the adjoining discount tobacco retail establishment. Addendum A of this report illustrates the location of the subject site.

Article 1347.04(B) provides that detached accessory structures in the B-2 District may not be located closer than ten (10) feet to the side or rear property line. As such, the proposed location of the petition's accessory structure requires an eight-foot side setback variance.

Smitty's Kountry Kreme serves a variety of ice-cream and related fare to walk-up patrons with no indoor seating area. The petitioner's stated purpose of the accessory structure is to cover and shade outdoor picnic tables for patrons. The proposed location will not reduce parking and is situated to the rear façade and parking spaces of the adjoining discount tobacco retail establishment.

STAFF RECOMMENDATION:

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends that a two-foot variance be granted without conditions.

Enclosures: Application and accompanying exhibits

Development Services

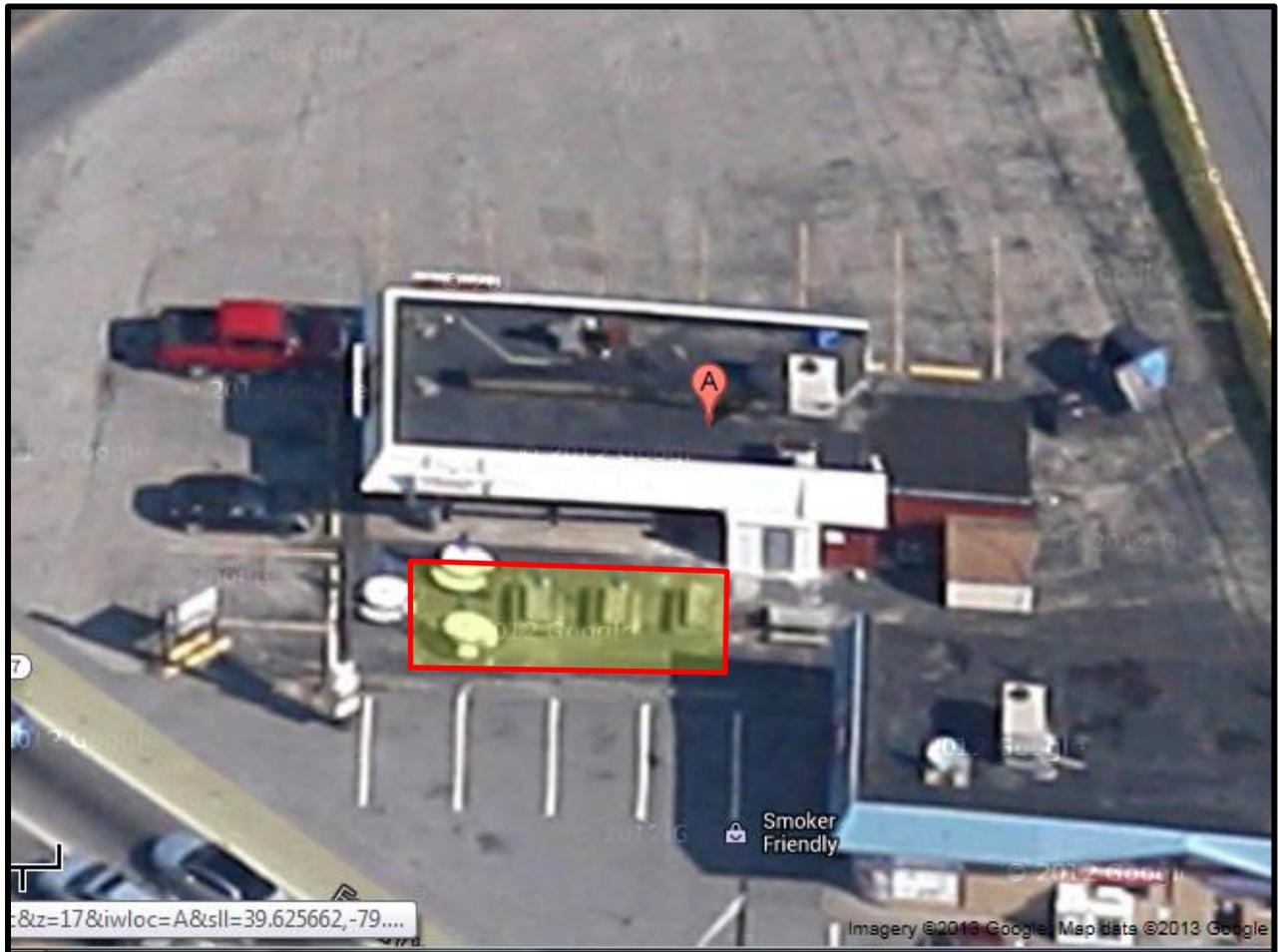
Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT ADDENDUM A
V13-22 / Smitty's Kountry Kreme / 1616 Earl L. Core Road





STAFF REPORT ADDENDUM B

V13-22 / Smitty's Kountry Kreme / 1616 Earl L. Core Road

Staff recommended revisions to petitioner's Findings of Fact (deleted matter struck through; new matter underlined).

Finding of Fact No. 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:

~~The intended use is to provide a more comfortable and inviting environment to the public that we serve. We will also be able to contain children by giving them an area to use sidewalk chalk on the blacktop and wall.~~ Given the location and layout of the subject principal structure, the neighboring principal structure, parking, walk-up windows, and the nonconforming continuous driveway entrance along Earl Core Road and the connecting roadway between Earl Core Road and Sabraton Avenue, it appears that the proposed location is the most suitable on the site to develop an accessory structure for the intended purpose of covering and shading the existing outdoor seating area.

Finding of Fact No. 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:

~~This variance is only necessary to enable us to mount the legs of the carport properly. It will not impose on others use of adjoining property.~~ The adjoining principal structure currently occupied by the discount tobacco retail establishment appears to encroach into the side setback standard.

Finding of Fact No. 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:

~~It will enhance the appearance and use of the property.~~ The proposed location of the accessory structure promotes and protects patron and public welfare; the positioning of which appears to be the most logical and safe location on the site given existing parking, walk-up windows, and the nonconforming continuous driveway entrance along Earl Core Road and the connecting roadway between Earl Core road and Sabraton Avenue.

Finding of Fact No. 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:

No alterations to the existing principal building, use, or site are required; and the proposed accessory building can be moved at a later time; and, the nature of the variance relief cannot contribute to nor mitigate existing traffic congestion.



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V13-22
RECEIVED:	5/13/12
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name:	Smitty's Kountry Kreme % William L. Smith Jr		
Mailing Address:	Street	1338 Sabraton Ave		Phone:	304 241 5778
	City	Morgantown WV	26505	Mobile:	304-216 9315
	State	Zip	Email: smittyskille@yahoo.com		
II. PROPERTY		Street Address:	1616 Earl L Core Rd Mgtn WV 26505		
Owner:	Dyer (William L Smith Jr)		Zoning:	B-2	
Mailing Address:	Street	1616 Earl Core Rd		Tax Map No:	32
	City	Morgantown WV	26505	Parcel No:	36
	State	Zip	Phone:		
III. NARRATIVE		Please describe the nature and extent of your variance request(s).			
<p>I wish to install a free standing carport, (pictures provided) to cover the picnic tables for my patrons. The positioning of the carport will not affect parking and will be used to provide cover from the weather and will be close to the bathroom.</p>					
V. ATTEST					
<p>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.</p>					
<p>William L Smith Jr</p>		<p><i>William L Smith Jr</i></p>		<p>5-9-13</p>	
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent		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.	V13-22
RECEIVED:	5/13/13
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)
- | | | |
|--|---|--|
| <input type="checkbox"/> Residential | <input type="checkbox"/> Single-Family Dwelling | <input type="checkbox"/> Townhouse Dwelling |
| | <input type="checkbox"/> Two-Family Dwelling | <input type="checkbox"/> Multi-Family Dwelling |
| <input type="checkbox"/> Non-Residential or Mixed (please explain) | | |

- Structure Characteristics** (complete only those that apply)
- Total number of buildings: _____ Gross floor area of each building: _____
- Estimated number of employees: _____ No. of dwelling units: _____ No. of bedrooms: _____
- Additional structure-related details: _____

- Additional Information** (as required by Staff):

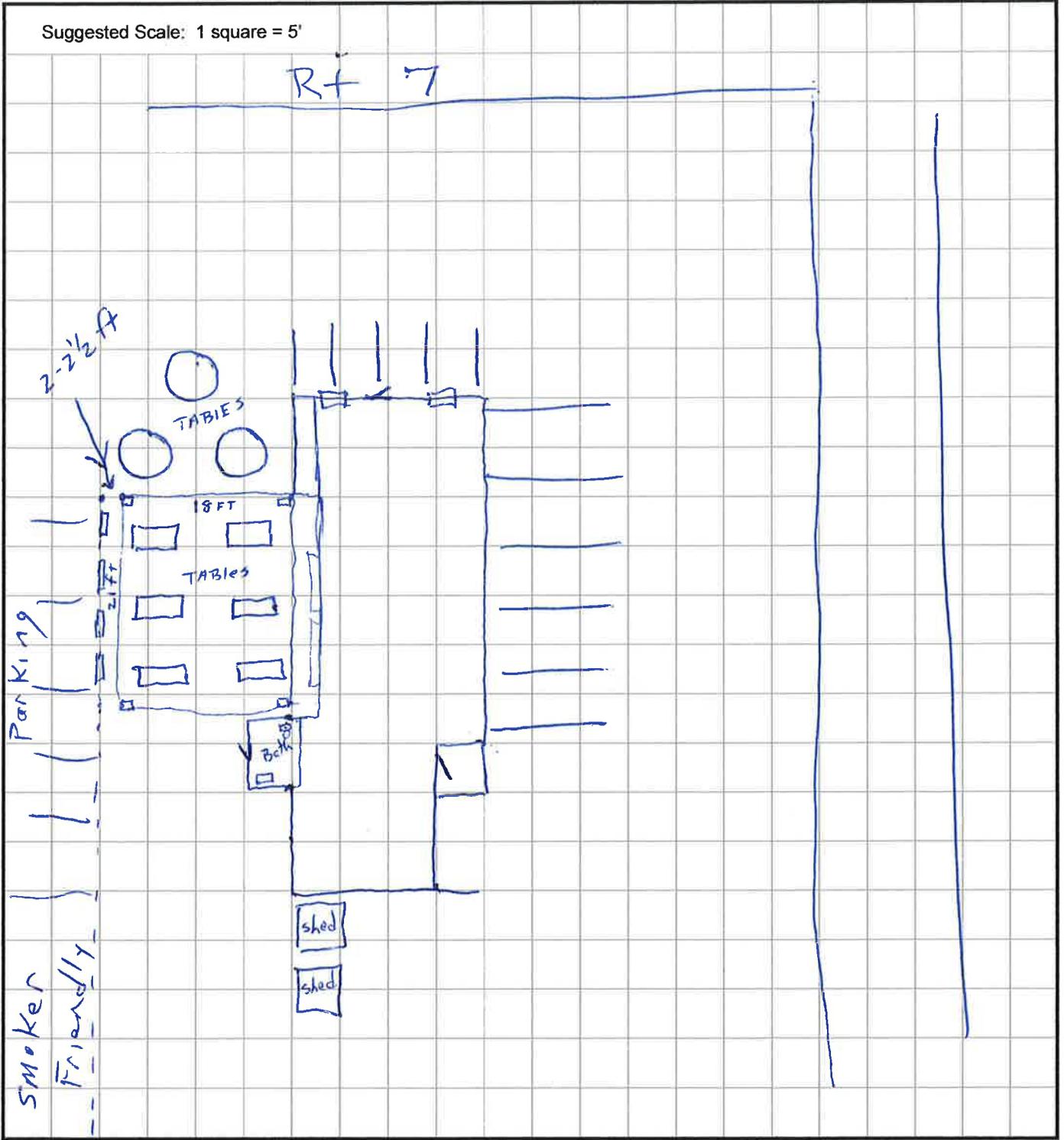
- Site Plan** A scaled site plan may be required to assist the Board in rendering a variance decision. The following features must be represented, as required by Staff.
- Location, shape, exterior dimensions, and number of stories of each building on the site.
 - Standard yard setbacks for the applicable 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.



APPLICATION FOR ZONING VARIANCE

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COMPLETE:	





**APPLICATION FOR
ZONING VARIANCE**

OFFICE USE

CASE NO. V13-22
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:

The intended use is to provide a more comfortable and inviting environment to the public that we serve. We will also be able to contain children by giving them an area to use sidewalk chalk on the black top & wall

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:

This variance is only necessary to enable us to mount the legs of the carport properly. It will not impose on others use of adjoining property.

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:

It will enhance the appearance and use of the property.

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:

No alterations are required and the building can be moved at a later time.

City of Morgantown Application for Building Permit

E
P

Application Date 5/8/13	Type of Work: <input type="checkbox"/> Electrical <input type="checkbox"/> Plumbing <input type="checkbox"/> Demo <input type="checkbox"/> Deck <input type="checkbox"/> Mechanical <input type="checkbox"/> Grading <input type="checkbox"/> Asbestos <input type="checkbox"/> Remodel or Repair <input checked="" type="checkbox"/> Shed <input type="checkbox"/> Other	Is Applicant Owner? (Y/N) yes
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Parcel Type:
 Residential
 Rental/ Commercial
 Industrial

PROPERTY INFORMATION:

Street Address Where Work is being done: 1616 Earl L Core Rd		Morgantown, WV	Zip Code: 26505
Owners First Name: William	Last Name: Smith	Phone: W 304 241 5778 C 304 216 9315	
Owners Address (if different from above address): 1338 Sabrator Ave Morgantown WV 26505			

CONTRACTORS INFORMATION:	Contractors Business Name	City License Number
General Contractor	T-N-T Carports Inc 800-597 3597	2013- WV 036442 Jan 24 2014
Excavation		2013- Lisc 7835
Concrete	(Tommy Bowman) 336 789 3818	2013- Jun 30 14
Carpentry		2013-
Electrical	EXT 3006	2013-
Plumbing	Secretary Debbie 3018	2013-
Sewer		2013-
Mechanical		2013-
Roofing		2013-
Masonry		2013-
Drywall/Lathing		2013-
Demolition		2013-
Other		2013-

SCOPE OF WORK TO BE DONE:

Detailed Description of Work:
Install A-Frame style carport ^W 18 x ^L 21 on right side of building to cover picnic tables. Carport to be anchored to blacktop with proper anchors.

MUST ATTACH DETAILED SITE PLAN
 YES
 NO
 Est. Value of Work \$ 1200.00

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the code official or the code official's authorized representative shall have the authority to enter areas covered by such permit at any reasonable hour to enforce the provisions of the code(s) applicable to this permit.

William Smith
 1338 Sabrator Ave Mrgtn 26505
 W 304 241 5778
 SIGNATURE OF APPLICANT ADDRESS OF APPLICANT PHONE
C 304 216 9315

PRINT NAME: William L Smith Jr

OFFICE USE ONLY:

Map/Parcel	Zoning <i>B-2</i>	Ward <i>4</i>	Flood Plain
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032/034

APPROVALS:

Engineering Department Approval Notes:

Signature of person reviewing: _____

DATE

Planning Department Approval Notes:

Requires variance to encroach into minimum setback. BZA hearing scheduled for 19-JUN-2013.
 CONDITIONAL APPROVAL - APPLICANT ASSUMES SOLE FINANCIAL RISK IF DEVELOPMENT PROCEEDS
 PRIOR TO VARIANCE APPROVAL. FAILURE TO OBTAIN VARIANCE APPROVAL WILL RESULT IN ENFORCEMENT
 ACTION.

Signature of person reviewing: _____

Cam Fletcher

06/03/13

DATE

Code Enforcement Approval Notes:

Signature of person reviewing: _____

DATE

VALIDATION:

Permit Number: <i>C-Carport 2013-00000480</i>	Fee
Other:	Fee
Stop Work Order:	Fee

Application Accepted and Processed By: _____

Total Fee

Approved By: _____

DATE

Signature of Person Picking Up Building Permit: _____

DATE

Print Name of Person Picking up Permit: _____

