



MORGANTOWN BOARD OF ZONING APPEALS

December 18, 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: V13-65 / Smitty's Kountry Kreme, LLC / 1137 Van Voorhis Road

REQUEST and LOCATION:

Request by William Smith, on behalf of Smitty's Kountry Kreme, LLC, for variance relief from Article 1369 as it relates to signage at 1137 Van Voorhis Road.

TAX MAP NUMBER(s) and ZONING DESCRIPTION:

Tax Map 6, Parcel 43.1; B-1, Neighborhood Business District

SURROUNDING ZONING:

North, East, and West: B-1, Neighborhood Business District

South: B-2, Service Business District.

BACKGROUND and ANALYSIS:

The petitioner has erected a wall sign at the new *Smitty's Kountry Kreme* location in Chelsea Square off Van Voorhis Road. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(l)(1) provides that the maximum area for wall signs in the B-1 District is determined by multiplying the storefront width in feet by 0.4. The width of the petitioner's storefront is 28 feet, which provides a maximum wall area standard of 11.2 square feet.

Article 1369.08(B) provides that signs in the B-1 District must comply with the following:

- Sign faces must be opaque.
- Signs may not be internally illuminated except for neon signs.
- Signs must be made of wood; sculpted "sign foam"; ornamental metals such as bronze, brass, copper, etc.; painted aluminum panels, stone or masonry (with concrete blocks being covered with stucco).

Article 1369.08(C) provides that signs in the B-1 District are restricted to the name and logo of the business establishment and may not contain any additional copy.

According to an 11 OCT 2013 email from Ms. Jenn Water of *Menus Plus Graphics by Kim*, the subject sign is 29" H x 20' W for a total sign area of 48 square feet.

Requisite variance relief for the erected sign includes:

- To exceed the maximum wall sign area standard by 36.8 square feet;
- To permit the use of a transparent polycarbonate sign face, which is a prohibited material;

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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- To permit internal illumination; and,
- To permit copy on the sign that is not restricted to the name and logo of the subject business 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 applicant.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

No recommendation is submitted by Staff concerning whether or not variance relief should be granted nor are conditions recommended.

Development Services

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Director

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STAFF REPORT ADDENDUM A

V13-65 / Smitty's Kountry Kreme LLC/ 1137 Van Voorhis



STAFF REPORT ADDENDUM B

V13-65 / Smitty's Kountry Kreme / 1137 Van Voorhis 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:

~~There are no special conditions that apply. Smitty's is requesting the use of the same type of signage that is presently being used by the other businesses in Chelsea Square. It appears that the petitioner's business establishment is located within a commercial development where the predominant commercial messaging pattern is nonconforming within the B-1 District. As such, the proposed size and internal illumination may be necessary to communicate the location of Smitty's Kountry Kreme in a manner that appears to be relatively consistent with existing commercial messaging styles within Chelsea Square.~~

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:

~~The variance would allow Smitty's to draw plaza visitors attention to our facility and entice them to visit us. There appears to be a number of signs that exceed the B-1 District maximum wall sign area standard and internal illumination prohibition within the Chelsea Square development. Additionally, the Board granted variance relief from the maximum wall sign area standard for the Kenyan Café establishment located in Chelsea Square on May 20, 2009 under Case No. V09-15.~~

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:

~~Approving this variance will benefit the properties appearance and use and increase the traffic to our ice kreme shop. This will possibly benefit the other shops business level with more customer traffic. The petitioner's proposed signage appears to be consistent with surrounding walls signage in terms of area and internal illumination, which do not appear to present harm to the public welfare or improvement within the vicinity or B-1 District within which the petitioner's property is situated.~~

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:

~~The granting of this variance will aide Smitty's in attracting customers and their families to enjoy Morgantown's best ice kreme shop. The character of the petitioner's proposed signage appears to be consistent with surrounding walls signage in terms of area and internal illumination, which do not appear to diminish the market value of the adjoining commercial establishments or the surrounding neighborhood. The nature of the variance requested cannot contribute to or mitigate existing traffic congestion on Van Voorhis Road.~~



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V13-65
RECEIVED:	11/28/13
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

William L Smith Jr

Fee: \$75

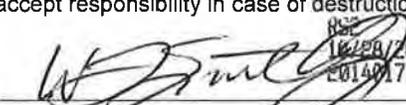
I. APPLICANT		Name:	Smithy's Kountry Kreme, LLC		
Mailing Address:	Street	1137 Van Voorhis Rd suite 10		Phone:	304 598 2663
	City	Morgantown WV	26505	Mobile:	304 216 9315
	State		Zip	Email:	smithysKKllc@yahoo.com
II. PROPERTY		Street Address:	1137 Van Voorhis Rd Suite 10		
Owner:	Cleeve Biller		Zoning:	B-1	
Mailing Address:	Street	Tenant: William L. Smith Jr		Tax Map No:	
	City		State	Parcel No:	
	Zip		Phone:		

III. NARRATIVE Please describe the nature and extent of your variance request(s).

I respectfully request permission to use a backlit sign like the other business owners in Chelsea Square. This would enhance my business and would not be out of line with the signage that is presently being used.

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.

William L Smith Jr 

11/28/2013 16:08:02
201401737 CRYSTAL SITE PLAN 10/10-13

Type/Print Name of Applicant/Agent Signature of Applicant/Agent PAID 75.00 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 voided.



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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: _____ 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.



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Suggested Scale: 1 square = 5'

*see attached
copy*



City of Morgantown, West Virginia

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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:

SUBMITTED VIA EMAIL
[Signature]

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:



The sign illustration above was cropped and spliced together by Staff from three (3) separate images that, according to the petitioner, generally comprise the three (3) panels of the entire sign structure. Dimensions of the sign, according to the petitioner's sign contractor, are 29" H x 20' W for a total sign area of 48 square feet.

Zimbra

shollar@cityofmorgantown.org

Re: Variance Application

From : Mr. Smitty <smittyskllc@yahoo.com>

Fri, Dec 06, 2013 02:40 PM

Subject : Re: Variance Application**To** : Stacy Hollar <shollar@cityofmorgantown.org>**Reply To** : Mr. Smitty <smittyskllc@yahoo.com>

1. There are no special conditions that apply to . Smitty's is requesting the use of the same type of signage that is presently being used by the other businesses in Chelsea Square.
2. The variance would allow Smitty's to draw plaza visitors attention to our facility and entice them to visit us.
3. Approving this variance will benefit the properties appearance and use and increase the traffic to our ice kreme shop. This will possibly benefit the other shops business level with more customer traffic.
4. The granting of this variance will aide Smitty's in attracting customers and their families to enjoy Morgantown's best ice kreme shop.

On Friday, December 6, 2013 2:10 PM, Stacy Hollar <shollar@cityofmorgantown.org> wrote:
Mr. Smith,

Per our conversation, please respond with answers to Findings of Facts on Page 4 of the attached application.

Thank you!

Stacy Hollar

Executive Secretary
Development Services Department
389 Spruce Street
Morgantown, WV 26505
304-284-7431
shollar@cityofmorgantown.org
