



MORGANTOWN BOARD OF ZONING APPEALS

March 19, 2014
6:30 PM
City Council Chambers

Board Members:

Bernie Bossio, Chair
Leanne Cardoso, Vice-Chair
William Blosser
George Papandreas
Jim Shaffer

STAFF REPORT

CASE NO: V14-15 / 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 seeks to utilize the ground sign structure once used by the former *TCBY* establishment. According to the petitioner, the subject sign has been in place for 20+ years. The petitioner recently opened *Smitty's Kountry Kreme* in the Chelsea Square development and would like to use the existing structure because the product lines between the former and new establishments are similar in terms of marketing and clientele. Addendum A of this report illustrates the location of the subject site.

Because the subject sign structure was related to a business that ceased to exist or operate for a continuous period of 90 days, its nonconforming protections have lapsed. Specifically, Article 1373.05 provides the following:

Abandonment. Any sign, including its frame and support structures, related to a use or business that ceases to exist or operate for a continuous period of 90 days shall be considered nonconforming and shall not be reused for sign purposes unless and until it is in full conformity with the provision of this Ordinance, subject to issuance of a new sign permit. This requirement shall apply whether the property owner has been specifically informed of the 90 day laps, or not.

The subject sign structure exceeds the maximum area standard of 32 square feet for post-and-panel type and monument type signs. According to the plans prepared by City Neon, the combined area for the top of the cone and the changeable copy portion is 88.3 square feet, which requires variance relief of 56.3 square feet.

The subject sign structure exceeds the maximum height standard of 6 feet for post-and-panel type and monument type signs. It appears that the height of the sign structure is approximately 24 feet, which requires variance relief of 18 feet.

Development Services

Christopher Fletcher, AICP
Director

Planning Division

389 Spruce Street
Morgantown, WV 26505
304.284.7431



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The petitioner seeks to reestablish the changeable copy portion of the sign once utilized by the *TCBY* establishment (see illustration below). Because changeable copy signs are only permitted on marquee signs for theaters sandwich board signs.



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.

Summary of requisite variance relief as requested:

- To exceed the maximum area standard by 56.3 square feet.
- To exceed the maximum height standard by 18 feet.
- To permit the use of a transparent polycarbonate sign face, which is a prohibited material.
- To permit internal illumination.
- To permit copy on the sign that is not restricted to the name and logo of the subject business establishment.
- To permit changeable copy.

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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

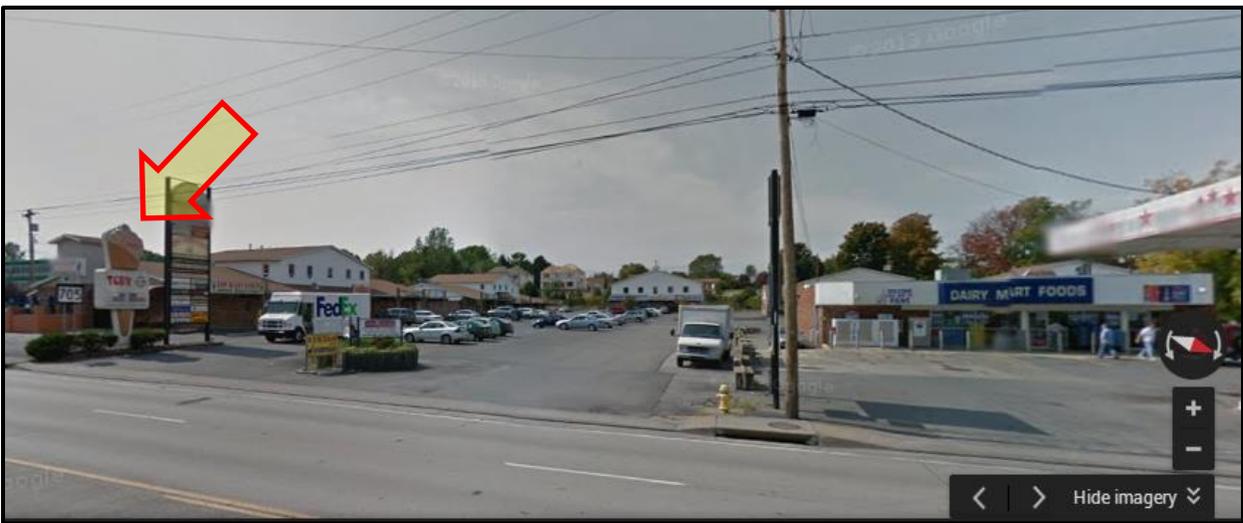
Christopher Fletcher, AICP
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STAFF REPORT ADDENDUM A

V14-15 / Smitty's Kountry Kreme LLC/ 1137 Van Voorhis



STAFF REPORT ADDENDUM B

V14-15 / 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:

The majority of the commercial establishments located within the plaza (Chelsea Square) is are not clearly visible from the street. The subject sign structure appears to have been utilized by a similar eatery establishment for a number of years. Given existing driveway entrance alignments, signage clutter within the immediate area, and traffic volumes and speeds, erecting an effective ground sign that meets that maximum height and maximum area standards at the subject location does not appear practicable or achievable.

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 Renewing of the sign will the use of long standing ground sign should enhance its appearance and bring additional customers to the plaza. The zoning classification for the majority of the Van Voorhis commercial corridor is B-2, where internally illuminated and polycarbonate faced signs are permitted and restrictions to name and logo only is not applicable. There are a number of changeable copy signs within the Van Voorhis, Patteson, and 705 commercial corridors both inside and outside the City's corporate boundaries. Additionally, there appears to be a number of ground signs within the immediate area that exceed the maximum area and maximum height standards.

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:

No harm will be brought and the sign will be put back to its original use.

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 sign has served the same purpose for 20+ years.



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V14-15
RECEIVED:	2/10/14
COMPLETE:	

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

I. APPLICANT		Name: <u>Smitty's Kountry Kreme 2 (Go William Smith)</u>	
Mailing Address:	Street	1137 Van Voorhis Rd Suite 10	Phone: 304 598 2663
	City	Morgantown WV 26505	Mobile: 304 216 9315
	State		Zip
		Email: <u>smitty3kkl1ca@yahoo.com</u>	
II. PROPERTY		Street Address: <u>1137 Van Voorhis Rd Morgantown 26505</u>	
Owner:	<u>Cleve Biller</u>	Zoning:	
Mailing Address:	Street	<u>Flatts Rentals</u>	Tax Map No: <u>6</u>
	City	<u>729 Bakers Ridge Rd</u>	Parcel No: <u>43.1</u>
	State	<u>Morgantown WV</u>	Zip
		Phone:	
III. NARRATIVE		Please describe the nature and extent of your variance request(s).	
<p><u>Would like permission to apply new faces to existing ice cream cone that is on property. The sign was used for 20+ years.</u></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>			
<u>William L Smith Jr</u>		<u>[Signature]</u>	
Type/Print Name of Applicant/Agent	Signature of Applicant/Agent	PAID	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.	V14-15
RECEIVED:	_____
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: _____ 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.



City of Morgantown, West Virginia

APPLICATION FOR ZONING VARIANCE

OFFICE USE

CASE NO.

V14-15

RECEIVED: _____

COMPLETE: _____

Suggested Scale: 1 square = 5'

See attachment



APPLICATION FOR ZONING VARIANCE

OFFICE USE	
CASE NO.	V14-15
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 plaza (Chelsea square) is not clearly visible from the street.

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 renewing of the sign will enhance its appearance and bring additional customers to the plaza.

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:

No harm will be brought and the sign will be put back to its original use.

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 has served the same purpose for 20+ years

V14-15

Approx
5x7
2 sides

7' x 7.6'

2 sides

SMITTY'S

Letter board

Country Krome

DAIRY & FOODS

Highway

Unleaded

Unleaded

JANE JEWELERS

WWW.JANEJEWELERS.COM

1095 Chaplin Hill Road
Morgantown, WV 26501
Phone: 304-599-1854
Fax: 304-599-5852

PO Box 40
Morgantown, WV 26507
304-225-2056

INFORMATION SHOWN IN THIS
DRAWING IS PROPRIETARY AND
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CITY NEON INC. AND
IS NOT TO BE REPRODUCED,
DISCLOSED OR TRANSMITTED
TO OTHERS FOR ANY
PURPOSE NOT AUTHORIZED
BY CITY NEON INC.

CLIENT/PROJECT

Smitty's
Kountry Kreme
Morgantown, WV

CUSTOMER APPROVAL

FILE NAME:

Smittys_Pole_Sign03.plt

DRAWING NO.

SCALE

N/A

DRAWN BY:

Sam

DATE:

3/7/14

SALESMAN

REVISIONS

REV.1:

REV.2:

NEW FLAT PANELS WITH FULL COLOR
DIGITAL PRINTS FOR TOP OF EXISTING
CONE: 88" TALL X 73" WIDE

NEW FLAT PANELS WITH NAME
AND CHANGEABLE COPY BOARD
FOR CENTER SECTION OF EXISTING
CONE: 72" TALL X 88" WIDE



