



**DEVELOPMENT  
SERVICES  
DEPARTMENT**

# The City of Morgantown

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December 17, 2015

FEOH Realty, LLC  
c/o Jason Donahue  
3280 University Ave. Suite 1  
Morgantown, WV 26505

**RE: V15-77 thru V15-81 / FEOH Realty, LLC / Donahue Drive  
Tax Map 4, Parcels 18.5, 19 & 20**

Dear Mr. Donahue:

This letter is to notify you of the decisions made by the Board of Zoning Appeals concerning the above referenced variance petitions relating to the subject development on Donahue Drive. The decisions are as follows:

**Board of Zoning Appeals, December 16, 2015:**

**V15-77** – Variance petition concerning loading space.

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted variance relief from Article 1365.10(N) as requested with the following condition:
  - a. That, to the satisfaction of the City Fire Marshal, the drive aisle between the building and Maple Drive be designed and constructed to ensure unimpeded access for emergency vehicles with consideration given for loading and drive-thru stacking functions.

**V15-78** – Variance petition as it relates to proximity of a driveway to the intersection of two streets.

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted variance relief from Article 1365.09(B)(2) as requested with the following condition:
  - a. *That all requisite WVDOH access permits/agreements be obtained by the petitioner prior to building permit issuance.*

**V15-79** – Variance petition concerning minimum number of drive-through stacking spaces.

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted variance relief from Article 1365.05 as requested without conditions.

**V15-80** – Variance petition concerning sidewalks on Maple Avenue.

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted variance relief from Article 1353.07(E) as requested without conditions.

**V15-81** – Variance petition concerning minimum building height.

1. Each of the Findings of Fact was found in the positive as stated in Addendum A of this letter.
2. The Board granted variance relief from Article 1353.05(A) as requested without conditions.

These decisions may be appealed to the Circuit Court of Monongalia County within thirty (30) days. Any work done relating to decisions rendered by the Board of Zoning Appeals during this thirty-day period is at the sole financial risk of the petitioner.

The above referenced approvals are set to expire in twelve (12) months unless it can be demonstrated that they have been activated as evidenced by permits, construction, or required licenses. This expiration deadline may be extended to eighteen (18) months upon prior written request of the Board.

Please note that building permits must be issued prior to the commencement of work for which the conditional use and variance approvals were granted herein.

Should you have any questions or require further clarification, please contact the undersigned. We look forward to serving the development's planning and permitting needs.

Respectfully,



Stacy Hollar  
Executive Secretary

## ADDENDUM A

### Approved Findings of Fact

**Case No. V15-77** Loading Space

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This variance request consists only of relief from a loading space and shall not adversely affect the public health, safety, or welfare, or the rights of adjacent property owners or residents. An adequate drive aisle is being proposed along the Maple Drive side of the building such that if a truck is parking, making deliveries, and the coffee shop drive-thru is stacked, a vehicle will still be able to pass.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Deliveries shall take place during off-peak hours. The project is within confines of a constrained site due to property boundaries and topography, thus presenting a challenge for oversized site elements such as a large loading space. In the current grading plan, a 2:1 slope is in both the front and back of the site, limiting the amount of surface area for building footprint, parking spaces, and drive aisles.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It eliminates additional unnecessary construction and potential for future site development issues.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

A dedicated “loading space” will not be placed “in front” of the building, as the City of Morgantown has deemed the front on the Maple Drive side of the building. Not placing a dedicated loading space will eliminate need for unnecessary site grading and construction. Therefore, an oversized drive aisle, proposed for 19’ wide, will be adequate to serve loading and traffic.

**Case No. V15-78**      Location of driveway entrance

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Pedestrian or vehicular traffic will not be impacted. Not enough land exists between State Route 705 and Maple Drive to meet this project requirement.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The lot is situated on two public streets, State Route 705 and Maple Drive. As discussed, this drive will be located on what is now WVDOH owned property and it is the current intent that it will remain WVDOH property. Therefore, private acquisition is not feasible. The site is constrained by boundary and developable grade (as well as existing surface stormwater pond) thus creating a challenging lot shape. Additionally, the building footprint has been located as such to optimally position all other site elements to provide adequate space.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Land disturbance will be minimized on Maple Drive right-of-way. The site, building, and circulation will maintain sightlines to and from both State Route 705 and Maple Drive, and will remain visitable from both as well.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The public road between State Route 705 and Maple Drive will access a driveway that has been sensitively designed and planned to meet industry traffic standards.

**Case No. V15-79**     Stacking Spaces

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

It is not anticipated that pedestrian or vehicular traffic will be impacted.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The site is constrained with by boundary and developable grade (as well as existing surface stormwater pond) thus creating a challenging lot shape. Desired drive stacking/que by City of Morgantown cannot be met once minimum parking counts are provided on site. Stacking is still provided, however less than required; the drive through has been placed at the rear of the building to allow for stacking that does not interfere with general traffic flow of the site. Additionally, the building footprint has been placed as far back and to the corner of the site as possible.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Unnecessary hardship will be eliminated because land disturbance will be limited on the site. The site is constrained by both topography and boundaries, a larger paving surface/parking lot will stretch the limits of grading on the site.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Stacking/que spaces at the bank drive through will still be provided. Due to the prevalence of online banking and technology employed by the bank, it is anticipated that a reduced number of stacking spaces at the bank drive through will be sufficient.

**Case No. V15-80 Sidewalk**

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Pedestrian or vehicular traffic will not be impacted. Neither polluting light nor emissions will affect public health, safety or welfare, or rights of adjacent owners. State Route 705 currently does not have a sidewalk and it is not a pedestrian corridor.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The lot is situated on two public streets, State Route 705 and Maple Drive; the façade has frontage on State Route 705, however is minimal due to the significant grade difference of State Route 705 and the finish floor elevation (FFE) of the building. Additionally, the façade is separated from State Route 705 with a large seeded buffer and parking lot. Therefore, the site layout is not conducive to a sidewalk. At the rear of the site, current grading runs at a steep slope right to the existing curb of Maple Drive, thus making sidewalk construction costly and invasive to the existing slope, requiring a 2-3' tall retaining wall and drainage mechanism. With a new entry West of the site off both Maple and State Route 705, 226 linear feet of sidewalk would need installed. The existing slope of Maple Drive is steep and exceeds current standards for ADA pathways. Additionally, an existing "guy" power pole is situated in the middle of where a required sidewalk would interfere, thus creating need for relocation of such pole.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Constructing sidewalks along the frontage is very problematic. A. The existing slope on our side of the road is 2:1, basically directly from the back of curb. It would require installation of an approximate 2' – 3' tall retaining wall for the vast majority of the sidewalk length along Maple Drive. B. There is an existing "guy" power pole that would be in the way and would need to be relocated. C. The existing slope of Maple Drive is steep and exceeds the current standards for ADA pathways. D. It is understood that sidewalks are not planned for extension to the petitioner's site as part of the Maple Drive improvements occurring from the subject site to the West. Land disturbance will be minimized on the Maple Drive right-of-way. Without a sidewalk, and therefore no retaining wall, will eliminate need for excavation and drainage requirements.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The site building and circulation will maintain sightlines to and from both State Route 705 and Maple Drive, and will remain visitable from both as well. This is a vehicular corridor and the design preserves the site as such.

**Case Nos. V15-81 Minimum Building Height**

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

A smaller structure minimizes views being blocked or violating land or air rights of adjacent owners; a lower structure will be less intrusive to viewsheds of future developed properties by adjacent landowners. The architectural team feels the proposed design is a contextual design given the nearby structures and adjacent topography.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The lot is situated on two public streets, State Route 705 and Maple Drive; the façade has frontage on State Route 705, however is minimal due to the significant grade difference of State Route 705 and the finish floor elevation (FFE) of the building. Additionally, the façade is separated from State Route 705 with a large seeded buffer and parking lot. The site is constrained by boundary and developable grade (as well as existing surface stormwater pond) thus creating a challenging lot shape. A one-story building is being proposed due to these site constraints limiting the amount of parking, therefore a two-story structure meeting the 25' minimum height is not feasible on entire façade. A two-story structure cannot be placed on the site due to minimum parking restrictions and inadequate building area on site and topography. However, the intent of the 25' minimum height is being met at the corners of the façade with the proposed architectural design. The general parapet height remains consistent at 20'-0" along the façade, with signage areas exceeding the height.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The current architectural design preserves the contextual storefront portions that are found at the nearby Suncrest Towne Centre commercial developments.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

Parts of the structure do meet the intent of the 25' minimum building height with the corner highlighted architectural features.