



# MORGANTOWN BOARD OF ZONING APPEALS

February 17, 2016  
6:30 PM  
City Council Chambers

## **Board Members:**

Leanne Cardoso, Chair  
Bill Burton, Vice-Chair  
Linda Herbst  
Jim Shaffer  
George Papandreas

## **COMBINED STAFF REPORT**

**CASE NOS:** V16-06 and V16-08 / Grate Enterprise, Inc. / 258 Retail Circle

### **REQUEST and LOCATION:**

Requests by William F. Gatian, on behalf of Grate Enterprise, Inc., for approvals of two (2) variance petitions relating to property at 258 Retail Circle.

### **TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax Map 64, Parcel 4; B-5, Shopping Center District

### **SURROUNDING ZONING:**

B-5, Shopping Center District

### **BACKGROUND and ANALYSIS:**

The petitioner has developed a *Denny's* restaurant at 258 Retail Circle. Addendum A of this report illustrates the location of the subject site.

During Certificate of Occupancy inspections, the following two (2) noncompliance issues were identified.

#### **V16-06 – Terminal Landscape Islands**

Article 1367.08(D)(2) provides that, "All rows of parking spaces, when a lot contains 20 or more parking stalls, shall provide a terminal island with concrete curbs and at least 130 square feet of area to protect parked vehicles, provide visibility, confine moving traffic to aisles and driveways, and provide space for landscaping."

During building permit application plans review, the City Engineer required modeling of the site to confirm access and maneuvering of emergency response vehicles. Modeling illustrated that all required terminal landscape islands could be constructed without obstructing access.

However, three (3) of the required terminal landscape islands illustrated on the approved site plan were not constructed (see graphic below identifying islands not developed). The petitioner was advised corrective action was required by either constructing the remaining islands or seeking variance relief from the Board.

## **Planning Department**

Christopher Fletcher, AICP  
Planning Director  
389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

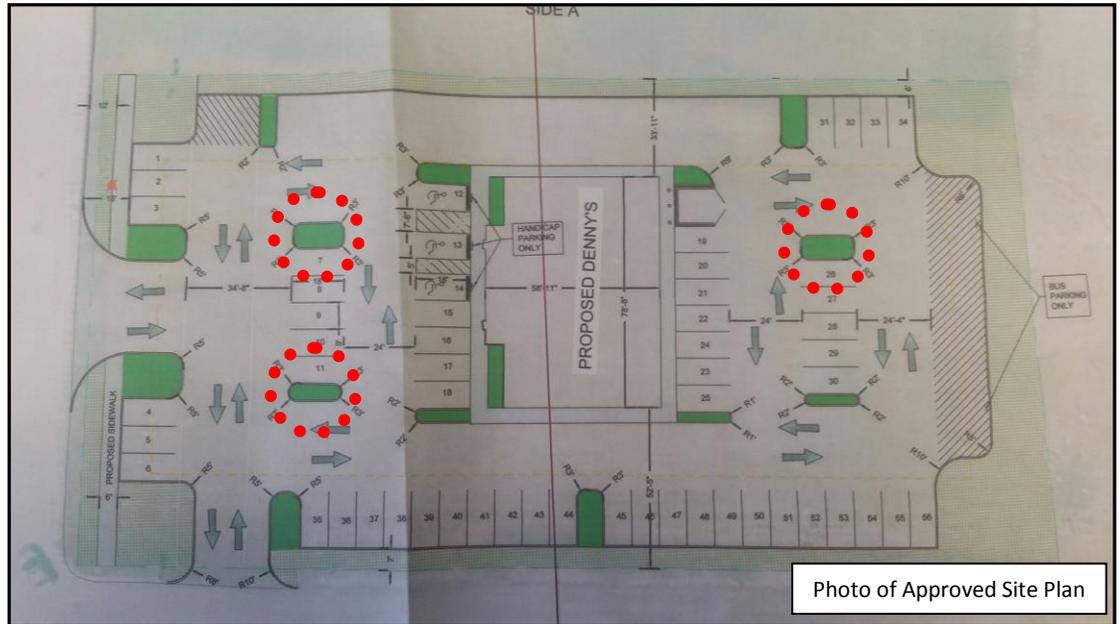


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The petitioner notes in the variance application that survey stakes were erected on three (3) occasions outlining the locations of the subject terminal landscape islands. According to the petitioner, construction delivery trucks were unable to maneuver around the outlined islands. Additionally, the Morgantown Fire Department encroached into the areas where the landscape islands were to be constructed. As such, the petitioner seeks variance relief from constructing three (3) islands.

V16-08 – Maximum Parking

Article 1365.04(l) provides that, “In all non-residential districts the maximum number of [parking] spaces provided shall not exceed 115 percent of the minimum parking requirement, except for research and development centers, where there shall be no maximum.”

Twenty (20) parking spaces were developed in excess of the minimum parking requirement. Three (3) of these spaces, which were located where the three (3) terminal landscape islands discussed above were to be developed, have been removed to ensure access and maneuvering for emergency response vehicles.

The petitioner attempted to remove the remaining seventeen (17) spaces by using black paint to cover lines creating said parking spaces. Because this did not deter parking in these areas, Staff advised the petitioner to seek variance relief.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for the two (2) variance petitions addressed herein. However, each respective variance petition must be considered and acted upon by the Board separately.

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### **STAFF RECOMMENDATION:**

It is the duty of the Board of Zoning Appeals to 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. If the Board disagrees with the petitioner's "Findings of Fact" and determines the proposed request does not meet the standard criteria for a variance, then the Board must state findings of fact and conclusions of law on which it bases its decision to deny the subject variance petition. [See WV State Code 8A-8-11(e) and 8A-7-11(b)].

Again, each respective variance petition must be considered and acted upon by the Board separately.

Addendum B of this report provides Staff recommended revisions to the petitioner's "Findings of Fact" responses and serve only to remove narrative that is clearly inapplicable. Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's responses (deleted matter struck through; new matter underlined).

Staff recommends relief be granted for both variance petitions as requested without conditions.

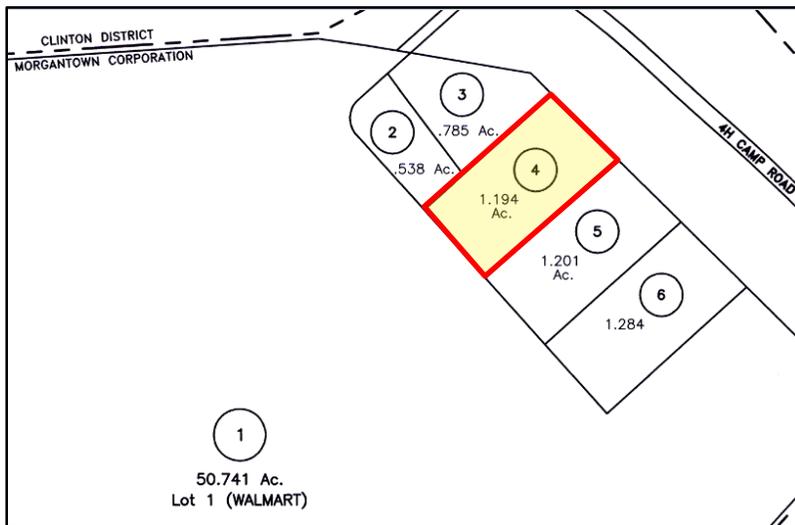
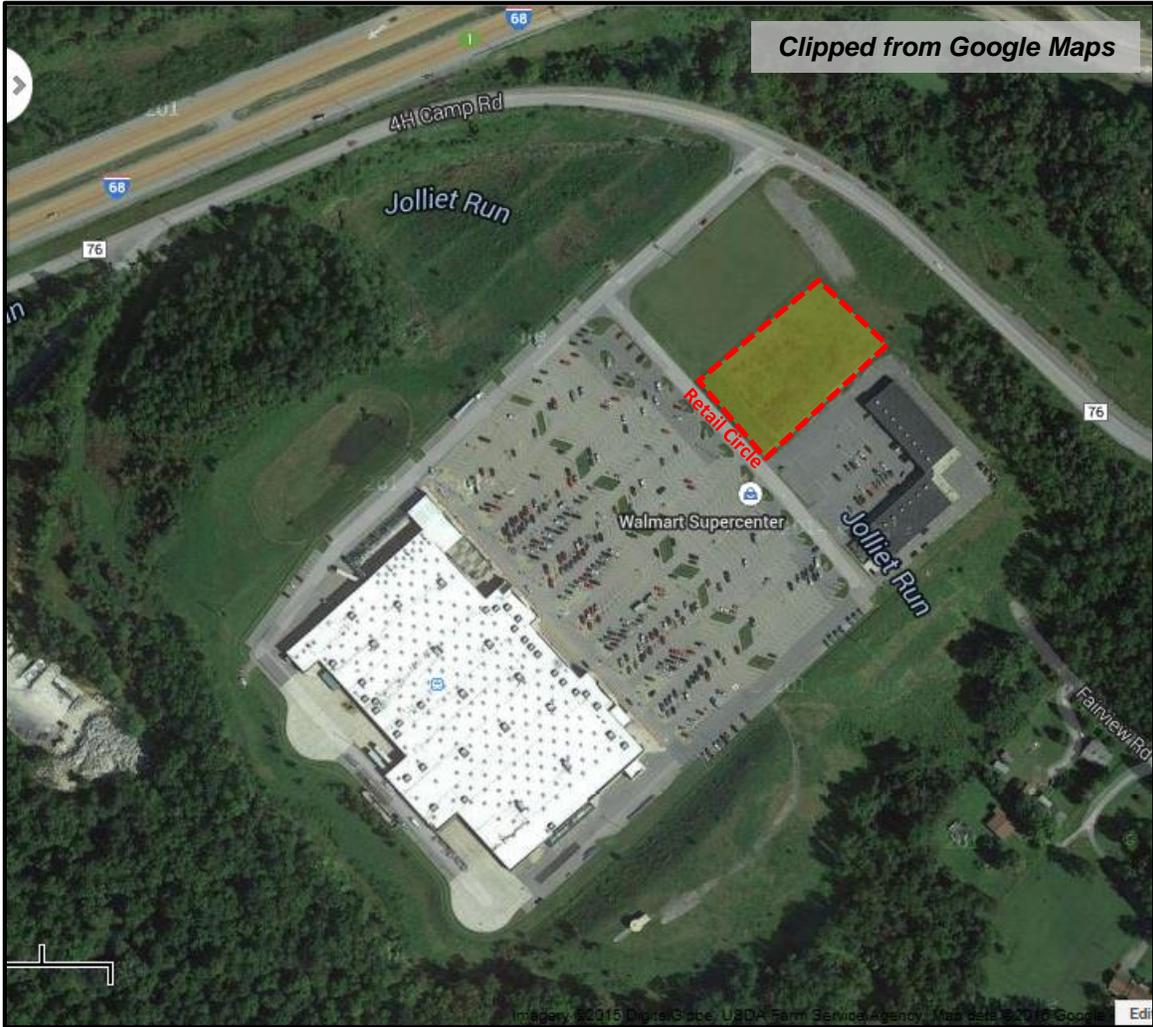
Attachments: Applications

### **Planning Department**

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389 Spruce Street  
Morgantown, WV 26505  
304.284.7431

# STAFF REPORT ADDENDUM A

V16-06 & V16-08 / Denny's Corporation / 258 Retail Circle



## STAFF REPORT ADDENDUM B

### V16-06 & V16-08 / Denny's Corporation / 258 Retail Circle

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Staff recommended revisions to the petitioner's Findings of Fact responses provided herein serve only to remove narrative that is clearly inapplicable. Staff recommended revisions should not be considered or construed as supporting or opposing the merits of the petitioner's responses (deleted matter struck through; new matter underlined).

**Case No. V16-06** Terminal landscape islands.

**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:

The removal of the terminal islands ~~will only increase the speed of service from~~ should enhance maneuvering of first responders by easing access routes through ~~our~~ the subject parking lot. This does not adversely affect the public health, safety or welfare of anyone.

**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:

Cheat Road Engineering did run AutoTURN modeling for the appropriate fire and garbage truck apparatus in ~~our~~ the approved site plan. In reality, however, the geometry and radius needs of the Morgantown Fire Department were not able to be met with the proposed island locations.

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

The maneuverability through the parking lot for first responders is critical to ensure the most efficient speed of service in the event of an accident/emergency.

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

The safety and wellbeing of everyone on ~~our~~ the property is ~~our primary concern~~ should prevail.

**Case No. V16-08** Maximum number of parking 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:

Additional parking spaces available in ~~our~~ the lot to ~~our~~ customers will prevent and/or alleviate ~~our~~ customers using adjacent business parking lots while patronizing ~~our business~~ the Denny's restaurant, rather than the adjacent business parking lot ~~they parking~~.

**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:

~~Our~~ According to the petitioner, the initial flow of business has been greater than anticipated and ~~our~~ the lot has overflowed into the property of the adjoining shopping plaza ~~on our left~~.

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

Grate Enterprise has the paved area to facilitate additional parking, ~~but that area is being underutilized. The area is not striped for parking, therefore our patrons and employees do not park on the area being under-utilized.~~

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

~~Our~~ Employees as well as ~~our~~ patrons will park on ~~our~~ property avoiding spillover parking on to adjacent property. ~~Our~~ Spillover parking onto ~~our~~ the neighbor's parking lot could potentially confuse potential customers of those businesses that might perceive those businesses as being full or having wait times that may turn those possible customers away to find other locations that don't have wait times.



City of Morgantown, West Virginia

APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V16-06
RECEIVED:	1/5/16

(PLEASE TYPE OR PRINT IN BLACK INK)

Fee: \$75

<b>I. APPLICANT</b>		Name: Grate Enterprise Inc.	
Mailing Address:	258 Retail Circle		Phone: 304-284-8888
	Street	Morgantown, WV 26508	Mobile:
	City	State	Zip
		Email: 247365diner@gmail.com	
<b>II. PROPERTY</b>		Street Address: 258 Retail Circle, Morgantown, WV 26508	
Owner:	Grate Enterprise Inc.		Zoning: B-5
Mailing Address:	258 Retail Circle		Tax Map No: 64
	Street	Morgantown, WV 26508	Parcel No: 4
	City	State	Zip
		Phone: 304-284-8888	
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).	
<p>Grate Enterprise Inc. is requesting relief from three (3) terminal landscape islands that were illustrated on the approved site plan. Two of the islands are located between our row of handicapped parking and the front entrance to the property, on each side of the row of parking stalls. One is located in the rear of the building and is described as, in front of the dumpster enclosure. These islands were surveyed and staked three (3) separate times. The trucks delivering stone were not able to maneuver around the stakes; the trucks delivering concrete for our curbs on the outer edge of the parking lot were not able to maneuver and lastly the trucks delivering asphalt were not able to maneuver around these stakes either. We painted lines in place of the islands and the Morgantown Fire Department drove their truck over the lines where the islands were supposed to be constructed. Grate Enterprise Inc. feels its property would be safer for our employees and customers in the event of an accident/emergency if first responders had easier pathways driving through our parking lot. The lines have been removed to avoid confusion for customers so they don't think it is a parking stall.</p>			
<b>V. ATTEST</b>			
<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 Development Services 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>			
William F. Gatian III		<i>William F. Gatian III</i>	01/05/2016
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 VARIANCE PETITION

OFFICE USE	
CASE NO.	Ville-06
RECEIVED:	05 JAN 16

## 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



**APPLICATION FOR  
VARIANCE PETITION**

OFFICE USE	
CASE NO.	V11e-06
RECEIVED:	05 JAN 16

<b>VII. FINDINGS OF FACT</b>	<b>COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.</b>
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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. The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:**

The removal of the terminal islands will only increase the speed of service from first responders by easing access routes through our parking lot.

This does not adversely affect the public health, safety or welfare of anyone.

**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:**

Cheat Road Engineering did run AutoTURN modeling for the appropriate fire and garbage truck apparatus in our approved plan. In reality however, the geometry and radius needs of the Morgantown Fire Department were not able to be met with the proposed island locations.



City of Morgantown, West Virginia

**APPLICATION FOR  
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OFFICE USE	
CASE NO.	V16-00
RECEIVED:	05 JAN 16

VII. FINDINGS OF FACT	COMPLETE THE FOLLOWING STATEMENTS IN THIRD PERSON.
<p><b>3. The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:</b></p> <p>The manuevarability through the parking lot for first responders is critical to ensure the most efficient speed of service in the event of an accident/emergency.</p>	
<p><b>4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:</b></p> <p>The safety and well being of everyone on our property is our primary concern.</p>	



City of Morgantown, West Virginia

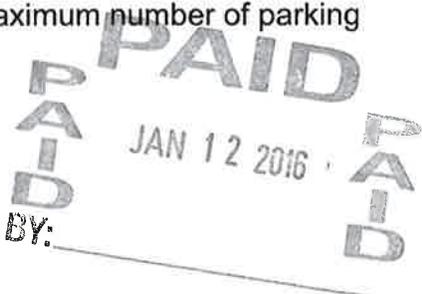
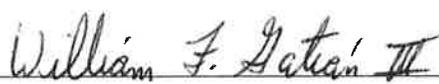
APPLICATION FOR VARIANCE PETITION

OFFICE USE	
CASE NO.	V116-08
RECEIVED:	

(PLEASE TYPE OR PRINT IN BLACK INK)

VISA

Fee: \$75

<b>I. APPLICANT</b>		Name:	Grate Enterprise Inc.	
Mailing Address:	258 Retail Circle		Phone:	304-284-8888
	Street	Morgantown, WV 26508	Mobile:	
	City	State	Zip	Email: 247365diner@gmail.com
<b>II. PROPERTY</b>		Street Address:	258 Retail Circle, Morgantown, WV 26508	
Owner:	Grate Enterprise Inc.		Zoning:	B-5
Mailing Address:	258 Retail Circle		Tax Map No:	64
	Street	Morgantown, WV 26508	Parcel No:	4
	City	State	Zip	Phone: 304-284-8888
<b>III. NARRATIVE</b>		Please describe the nature and extent of your variance request(s).		
Grate Enterprise Inc. is requesting variance relief from the maximum number of parking spaces.				
				
<b>V. ATTEST</b>				
<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 Development Services 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>				
William F. Gatian III				01/12/2016
Type/Print Name of Applicant/Agent		Signature of Applicant/Agent		Date

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City of Morgantown, West Virginia

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OFFICE USE	
CASE NO.	V16-08
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VI. SUPPLEMENTAL INFORMATION

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- 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)
 

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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.
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  - 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



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**APPLICATION FOR  
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**VII. FINDINGS OF FACT**

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Our employees as well our patrons will park on our property avoiding spillover parking on to adjacent property. Our spillover parking onto our neighbors parking lot could potentially confuse potential customers of those businesses that might perceive those businesses as being full or having wait times that may turn those possible customers away to find other locations that don't have wait times.