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ALTOONA ZONING HEARING BOARD

CHR Corp, d/b/a Rutter's
2295 Susquehanna Trail, Suite C
York, PA 17404
Attention: Attorney David Martineau

RE: Request for Special Exception for two (2) electronic screen signs and a request for a variance for sign height on premises in a C neighborhood business zone, Code 800-63 A, B, and 800-62 C.

The petitioner appeared by and through its representative David Martineau.

From the uncontradicted testimony presented at the hearing of August 8, 2018 and the Board's view of the subject premises, the Board makes the following:

FINDINGS OF FACT

1.

The petitioner has an ownership interest on the subject property.

2.

Requisite notices were made and the property posted.

3.

The subject property is one in which there had previously been a King's Family Restaurant, together with signage, said sign pole and structure still existing thereat.

4.

The lot itself is irregular in shape.



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5.

The lot itself is triangular, making it unique in design and layout, and exposure, particularly, having 2 one-way, 2 lane roadways, on either side of it proceeding in opposite directions, and then connecting at its "point".

6.

The Application for land use development and acquisition papers were filed and obtained within one year of the prior use of the property as Kings, and signage associated therewith.

7.

The use and signage therefor, had not been abandoned for more than a year.

8.

As such, the sign that had well preexisted the present effective Zoning Ordinance is grandfathered in its height and dimensions.

9.

Rutter's proposes a sign at that precise place in that precise height.

10.

Since that sign preexisted the present effective Zoning Ordinance, it is a legitimate preexisting non-conforming use/sign.

11.

As indicated hereinafter, therefore, the change of identification, etc., together with a special exception for the readerboard at the property located therewith, as hereinafter granted would allow the subject request as to the sign being that height at that precise location.

12.

The request for the type of sign is, of course, permitted under the Ordinance should it meet the requirement for the Special Exception.

13.

This is governed by 800-63 A.

14.

As indicated in the testimony, the sign will not impact residents or motorists to any unreasonable extent.

15.

The property itself is obviously surrounded by all non-residential uses, be they credit unions, warehouses, pizza stores/Best Way, doctor offices, automotive repair facilities, and other commercial non-residential uses.

16.

In fact the closest residences are indeed shielded by these other commercial uses from said signage.

17.

Furthermore, the location of the sign is immediately adjacent to and across from commercial and non-residential uses, being in the rear most corner, the most distant from the Fifth Avenue residences.

18.

As above identified, the one sign is preexisting and grandfathered by permission, but will likewise be in such a location that it will be sideways and not directly toward the residential area.

19.

The signs can be regulated as to the brightness all to be regulated and spaced in and as the Board directs controlled by computers, thus enabling it to not be a flashing sign and to comply with the emissions of candle light as set forth in the Ordinance, otherwise permitted in the area.

20.

Compliant with the Ordinance, as to foot candle ambient light, and placed in the angle that they are, a special exception does indeed appear appropriate as hereinafter ruled.

21.

Your petitioner recognizes that one of the immediate adjacent uses is a warehouse which involves a more than occasional tractor trailer crossing Seventh Avenue to gain access to the subject distribution/warehouse business.

22.

Testimony has been presented that the height of such a tractor trailer is some 13 feet.

23.

Evidence was produced showing at 257 feet that the sign therefore may not be visible for traffic in and along Seventh Avenue, if such a tractor trailer is stopped waiting to cross into its facility.

24.

Testimony was produced that there is concern therefore that a negligent operation of a vehicle might thereafter occur in its effort to untimely try to make entry into the petitioner's property.

25.

The business itself, however, is indeed located in a neighborhood business zone.

26.

By definition, such a neighborhood business should be accessible and well-known in and about the neighborhood making such a reliance on signs somewhat unnecessary by the nature of its location and existence.

27.

In addition, the business itself will have identification signs on it, to wit flat wall identification signage.

28.

Furthermore, the business itself will be two (2) stories high, further enlightening drivers as to its whereabouts location, and existence.

29.

Likewise, the consistency of identification by the nature of the construction of the business itself, will provide motorists notice that such a business exists at that location.

30.

The size of the lot, the building, and the very height of the canopies alone, above the gasoline pumps, will further provide adequate notice to such drivers of the location of the subject business.

31.

Finally, considering the height and the uniqueness of the amount of the tractors and trailers that may be utilizing the adjacent street to the business, it is recognized that a twenty (20) foot sign will afford relief of that concern, which is a de-minimis variance that will afford relief, without being much more than the fifteen (15) foot height, otherwise allowable in and to the

business in the subject zone.

From the foregoing testimony, the Board makes the following:

CONCLUSIONS OF LAW

1.

Your petitioner has adequately shown there exist unique circumstances and conditions peculiar to the property and the situation to which it is exposed, under which there is an unnecessary hardship created due to which there is little or no realistic possibility that the property and signage can otherwise be realistically used in strictest conformity with the provisions of the Zoning Ordinance.

2.

A grant of a variance is necessary to enable reasonable use of the signage to be made.

3.

The subject hardship was not created by your petitioner, but rather by the surrounding conditions, and types properties adjacent thereto.

4.

This variance as authorized will not alter the nature or character of the neighborhood, nor will it impair appropriate uses or developments of the properties adjacent thereto.

5.

In particular and, of most importance, the variance as authorized, is a de-minimis variance that will afford relief while not being detrimental to the public health, welfare, or safety.

6.

The subject property, as to the sign at the "point", is a preexisting legitimate non-conforming use.

7.

The change in use is therefore appropriate, being that it is exactly the same height as the use/sign it is to replace.

8.

The said non-conformity had not been abandoned for more than a period of a year.

Furthermore, a special exception is appropriate under the circumstances and conditions hereinafter imposed as with the subject limitations, the sign will not impact residences or motorists, due to the distance, shielding, brightness, and hours, and/or location thereof.

DECISION

WHEREFORE, THIS 28th DAY OF AUGUST, A.D., 2018, THE BOARD GRANTS THE REQUEST OF YOUR PETITIONER IN AND UPON COMPLIANCE WITH THE CONDITIONS HEREINAFTER SET FORTH:

THE SIGNS SHALL BE PLACED AS INDICATED AT THE HEARING SO THAT ONLY THE SIDES OF THE SIGNAGE ITSELF SHALL BE DIRECTED TO THE RESIDENCES;

FURTHERMORE, THE SIGN SHALL COMPLY WITH ANY AND ALL OF THE REQUIREMENTS PERTINENT THERETO OF THE CITY OF ALTOONA, INCLUDING WITHOUT LIMITATION TO IT BEING NO BRIGHTER THAN THE FOOT CANDLE ALLOWANCE THEREIN SET FORTH;

PROVIDED, FURTHER, THE SUBJECT SIGN SHALL NOT DISPLAY ANY OTHER MESSAGES UNLESS IT IS, OF COURSE, DIRECTLY CONNECTED TO OR WITH THE USE AND BUSINESS CONDUCTED BY YOUR PETITIONER THEREAT, THAT IS, THERE SHALL BE NO OFF-SITE ADVERTISING THEREIN CONTAINED;

PROVIDED, FURTHER, SAID SIGN WILL, OF COURSE, NOT CONTAIN ANY FLASHING OR STROBE LIGHTS IN ITS MESSAGES OR DISPLAY;

PROVIDED, FURTHER, THERE SHALL BE NO LESS THAN THIRTY (30) SECONDS BETWEEN CHANGE OF MESSAGES THEREIN CONTAINED, AND;

PROVIDED FINALLY, SAID SIGN REPLACING THE OLD KING SIGN SHALL BE TWENTY-FIVE (25) FEET IN HEIGHT, BUT THE OTHER SIGN SHALL BE NO GREATER THAN TWENTY (20) FEET IN HEIGHT AT THE CORNER OF THE SUBJECT PROPERTY.

ANY PERSON AGGRIEVED BY THE DECISION OF THE ZONING HEARING BOARD MAY APPEAL HEREFROM TO THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE, IN THE MANNER SO PROVIDED BY LAW.

YOUR PETITIONER MUST, OF COURSE, MEET ANY AND ALL OTHER CITY, STATE AND FEDERAL REGULATIONS AND/OR REQUIREMENTS PERTAINING TO THE SUBJECT PROPERTY, WHICH ARE OUTSIDE THE JURISDICTION OF THE ALTOONA ZONING HEARING BOARD.

ANY AND ALL NECESSARY PERMITS INVOLVED MUST BE SECURED WITHIN SIX (6) MONTHS FROM THE DATE OF THIS NOTICE, OR THE AUTHORIZATION SHALL BECOME NULL AND VOID WITHOUT FURTHER ACTION OF THE BOARD.

THE ZONING HEARING BOARD OF THE
CITY OF ALTOONA,

Michael Halloran 8/14/2018
Michael Halloran, Chairman

Richard Andrews 8/28/18
Richard Andrews

Horace McAnuff 8-15-2018
Horace McAnuff

Donna Royer 8-17-2018
Donna Royer

Cory Gehret 8/21/18
Cory Gehret

MAILED TO YOUR PETITIONER: August 29, 2018
Date

- cc: William J. Stokan, Zoning Board Solicitor
- Lee Slusser, Director of Planning
- Marilyn Morgan, Planner II, Zoning Office