

## **Zoning Board of Appeals**

TOWN OF BRUNSWICK  
336 Town Office Road  
Troy, New York 12180

### **MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD JANUARY 28, 2019**

PRESENT were MARTIN STEINBACH, CHAIRMAN, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and PATRICIA CURRAN.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairman Steinbach welcomed new Zoning Board of Appeals Member Patricia Curran to the Board, and stated that he looked forward to working with her.

The draft minutes of the December 17, 2018 meeting were reviewed. Upon motion of Member Steinbach, seconded by Member Shover, the minutes of the December 17, 2018 meeting were unanimously approved without amendment (Member Curran abstaining, not present at December 17, 2018 meeting).

The first item of business on the agenda was the sign variance application submitted by Hospitality Syracuse, Inc. with respect to proposed signage on the Taco Bell site located in the Price Chopper Plaza at 720 Hoosick Road. In attendance on behalf of the applicants were Tim Freitag and Robert Osterhoudt of Bohler Engineering, Steven Powers of Nigro Companies (plaza owner and landlord), and Mike McCracken of Hospitality Syracuse, Inc. The applicant seeks sign variances for total number of signs, a free-standing monument sign, and total square footage of signage. Chairman Steinbach noted that the public hearing on this variance application had been held at the December 17, 2018 meeting and closed, subject to the applicant's consent to extend the time if necessary for deliberation prior to final decision. Chairman Steinbach inquired whether there was any new information or modification to the sign variance application. Tim Freitag stated

that the applicant had submitted alternative designs for the free-standing sign, and had also submitted a report on the economic need for signage for drive-by fast food restaurants. Mr. Freitag also confirmed the adjustment to the sign table on one of the map submittals that was discussed at the December 17 meeting, confirming that a total of 178.11 square feet of signage is being proposed. Chairman Steinbach requested that Mr. Freitag describe the alternative free-standing signs. Mr. Freitag stated that the original proposed monument sign was 9 feet in height, and that an alternative design has been proposed which rotates the sign in a manner that provides for a height of 6 feet, 6 inches, and only added one square foot total to the proposed sign. Mr. Freitag stated the original proposed monument sign was 32 square feet, and the alternative monument sign with a height of 6 feet, 6 inches totals 33 square feet. Mr. Freitag also reviewed a proposal for a pylon sign option, and presented the Zoning Board with pictures of pylon signs at nearby restaurants, including the Subway, Ted's Fish Fry, McDonald's, Burger King, and Dunkin Donuts located on the Hoosick Road corridor. Mr. Freitag stated that the report submitted for the Board's review shows that fast food customers are largely made up of impulse buyers, and that the fast food restaurant is not a destination stop, and therefore visibility of the fast food restaurant is critical. Mr. Freitag stated that the report shows a 5–12% increase in revenue as a result of signage in the fast food industry, and that the market is very competitive, and that signage is necessary for the Taco Bell to compete on the Hoosick Road corridor. Mr. Freitag stated that without adequate signage, potential customers will not have enough time to pull into the Brunswick Plaza safely after seeing the Taco Bell building, but would rather simply continue on and go to a fast food competitor. Mr. Freitag stated that the requested signage would allow the Taco Bell to stay in competition. Member Clemente asked whether the proposed pylon sign would be in the same location as the proposed monument sign. Mr. Freitag confirmed the same location. Chairman Steinbach reviewed procedure with the Board, and asked whether the Board wanted to deliberate

on all requested sign variances collectively or deal with each requested sign variance individually. The Zoning Board determined in this case to address each sign variance request individually. Attorney Gilchrist stated that the Board must consider this application under SEQRA, and that no final determination on the sign variance requests could be made until the Board completed its SEQRA review. The Board understood this procedural requirement, but wanted to proceed to deliberate on the variance requests, knowing that a SEQRA determination must be completed prior to any final decision on the requested variances. Attorney Gilchrist also confirmed with new Zoning Board Member Curran that she had been provided with all of the application materials on this application, and had an adequate amount of time to review these materials. Member Curran confirmed that she had been provided copies with all of the application materials, and did review all of the application materials and was ready to participate in the deliberation on the application. The Zoning Board members initially wanted to address the request for total number of signs on the site. Attorney Gilchrist confirmed that under the Brunswick Zoning Law, a total of two signs are permitted for a commercial site, including one wall sign and one monument sign. Attorney Gilchrist stated that in this case, however, a free-standing monument sign is not allowed since the Taco Bell restaurant is part of the Price Chopper Plaza, which already has its own monument sign for the plaza tenants. Attorney Gilchrist confirmed that the applicant is seeking approval for a total of eight signs in connection with the Taco Bell restaurant. Attorney Gilchrist reviewed the standards for consideration of this sign variance. As to whether the total number of signs for the Taco Bell would create an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Clemente did note that half of the proposed signs are for safety purposes, including directional signage for drivers and pedestrians, and that it is important from a public safety perspective to have these signs, and would be inclined to grant a variance for total number of signs for safety purposes. Chairman Steinbach agreed, stating that safety and

directional signage was not like traditional advertising signage, and while a total of eight signs is considerable, he felt that this location was already very commercial in character, and felt that including the vehicle and pedestrian safety signage should be considered in relation to the total number of signs. Member Shover concurred, stating that the signs were needed particularly for vehicle and pedestrian safety. Attorney Gilchrist confirmed on the record that the total number of eight requested signs includes five signs on the building, one free-standing monument sign, one menu board, and one directional sign. Mr. Golden confirmed this information, and the record shows that only one directional sign is included in the variance request, and the remaining signs are all for advertising purposes. It is also confirmed on the record that the total number of signs requested does include the one proposed free-standing monument sign. Member Schmidt stated he was uncomfortable with the requested variance for total number of signs if it includes the monument sign. Following further discussion, the Zoning Board determined to move to the variance request for the one free-standing monument sign, where the Brunswick Zoning Law does not allow any free-standing sign for the Taco Bell site. The Zoning Board members confirmed that the request for the free-standing monument sign must be the initial consideration, as it impacted the request for the total number of signs and total square footage of signage in this application, and turned to deliberation on the request for the free-standing monument sign, which is not allowed for the Taco Bell site under the Brunswick Zoning Law. As to whether the requested monument sign would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt noted that the Taco Bell is part of the Price Chopper Plaza, and is not on its own separate commercial parcel, and therefore the pictures of the other restaurants on the Hoosick Road corridor were not comparable; that the Price Chopper Plaza owner stated that there were up to ten businesses in the plaza that also did not have signage on the plaza monument sign, and if the Zoning Board were to approve the free-standing monument

sign for Taco Bell, it would also have to approve free-standing signs for the other plaza tenants that do not have signs on the current plaza monument sign, and that this would create too many signs at the Price Chopper Plaza. Mr. Osterhoudt stated that the Taco Bell should be viewed differently than the other plaza tenants, since the Taco Bell was on a separate pad site. Attorney Gilchrist stated that the Taco Bell was not located on a separate parcel, and the Zoning Board should consider the Taco Bell as any other tenant in the Price Chopper Plaza, except for the fact that the Taco Bell location does have direct visibility from Hoosick Road, whereas other tenants within the Price Chopper Plaza buildings are located further off the Hoosick Road corridor. Member Schmidt concurred, stating that the Taco Bell already had good visibility on the Hoosick Road corridor. Mr. Osterhoudt stated that the main difference was the other tenants were within the large plaza building, whereas the Taco Bell was in its separate stand-alone building. Chairman Steinbach noted that while this is a heavy commercial zoning district, there are existing residences located across the street, and that these residences should be taken into consideration when considering the total number of signs on the Hoosick Road corridor. As to whether a feasible alternative is available to the applicant, Member Schmidt felt that there was a feasible alternative, including the option of putting the Taco Bell on the existing monument sign; and even if the plaza owner wanted to reserve a space for an "in line tenant" of the plaza, the applicant should consider adding the Taco Bell signage on that part of the existing plaza monument sign located parallel to Hoosick Road, even if a "v-shaped" extension were put on the existing monument sign to gain greater visibility; Member Schmidt felt that using the existing monument sign for the plaza was a feasible alternative to adding an additional free-standing monument sign only for Taco Bell. Mr. McCracken stated that he was new to the Hospitality Syracuse company, and that he did have concern regarding the site since the building elevation for the Taco Bell restaurant is about four feet below the Hoosick Road grade, and that any building signage may get swallowed up by the

existing monument sign for the entire Price Chopper Plaza, and that this factor should be considered by the Zoning Board. As to whether the variance seeking the additional monument sign was substantial, all members concurred that the variance would be substantial since the Brunswick Zoning Law does not allow any free-standing monument sign for the Taco Bell site, and that adding a monument sign would be a substantial variance. Member Shover stated that the Taco Bell should be considered similar to any store located in the plaza, and that the plaza already had a monument sign for its tenants. The Zoning Board members did generally concur that the addition of a single monument sign would not create any adverse impact to the environmental or physical conditions in the neighborhood. The Zoning Board members did concur that the need for the variance for a free-standing sign is self-created. Member Schmidt stated that the issue of the store footprint being four feet below grade from the Hoosick Road grade is self-created, as additional site work could have been completed to raise the building or create a different orientation for the building from the Hoosick Road corridor. Mr. Freitag stated that there were site limitations, given the existing grade of the entrance roadway and sidewalk system to the Price Chopper Plaza in relation to the grade needed for the drive-thru window for the Taco Bell, and to make the entire site plan work from a traffic flow and grade perspective, the final building elevation for the Taco Bell was required. The Zoning Board members did want to proceed with a determination on the variance request for the free-standing monument sign. Attorney Gilchrist confirmed for the record that the required public hearing for this variance had been completed at the December 17, 2018 meeting; that the application had been referred to the Rensselaer County Department of Planning under the New York General Municipal Law, and that a recommendation had been received from the County that the proposal does not conflict with any County plans; and that the applicant had filed an Environmental Assessment Form under SEQRA; and Attorney Gilchrist reviewed the standards for the determination of environmental significance under

SEQRA. Chairman Steinbach stated that he did not see any potential for significant adverse environmental impact on any of the proposed variance requests for signage, and Member Schmidt and Member Clemente agreed based on the record before the Board. Member Clemente then made a motion to adopt a negative declaration under SEQRA for this variance application (including all requested variances), which motion was seconded by Chairman Steinbach. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board members then proceeded to consider a determination of the variance request to allow the free-standing monument sign. Member Schmidt intended to make a motion to deny the variance request. Attorney Gilchrist stated that the Board should consider discussing its consideration of this requested variance for the free-standing monument sign, and based on that discussion, allow Attorney Gilchrist to prepare a proposed written decision on this specific variance request for review by the Zoning Board at its next meeting. The Zoning Board concurred in this approach, and Member Schmidt noted that he withdrew any motion that he had been seeking to make. The Zoning Board members then discussed the requested variance for the free-standing monument sign, determining that the variance request was substantial, that a feasible alternative is available, that the need for the variance is self-created, that a free-standing monument sign is not allowed at all under the Brunswick Zoning Law, that the Price Chopper Plaza already had a monument sign for its tenants, that the pictures of other restaurants on the Hoosick Road corridor were not comparable as each of these other restaurants are located on their own separate commercial parcels and not part of a retail plaza, that approval of the variance would open the door for the other plaza tenants to apply for their own monument sign along the Hoosick Road corridor as there is not adequate space on the existing monument sign for the Brunswick Plaza, and that Taco Bell could use the single remaining space on the existing plaza monument sign or consider an alternative to expand the existing monument sign. Following this discussion by the Zoning Board members, the

applicant, through Mr. Freitag, stated to the Board that it is formally withdrawing its application for the variance to allow a free-standing monument sign, and requested that the Zoning Board consider only the variance requests for total number of signs and total square footage of signage. Mr. Freitag stated that the applicant had considered the Zoning Board members' deliberation, and that the applicant is seeking to voluntarily withdraw the application for the free-standing monument sign with the understanding that it may re-file that request for variance to allow a free-standing sign in the future, approximately one year after store operation, in the event the store found it an economic necessity to have the additional free-standing monument sign. Attorney Gilchrist stated that the applicant is within its right to voluntarily withdraw its application from consideration, without prejudice to re-filing in the future, and that the Zoning Board could proceed to deliberate on the two remaining sign variance requests as amended due to the withdrawal of the free-standing monument sign request. The Zoning Board confirmed that the request for the total number of signs for the Taco Bell site is now reduced to seven signs, and the square footage of commercial signage for the Taco Bell site is now reduced to 114.11 square feet. The Zoning Board members further concurred that the Board would consider the two remaining variance requests together, including total number of signs and total square footage of signs. Attorney Gilchrist again reviewed the standards for review of the requested sign variances. As to whether the remaining requested variances would result in an undesirable change in the character of the area or create a detriment to nearby properties, Chairman Steinbach felt that the remaining proposed signage was in keeping with the commercial character of the area, and would not result in an undesirable change or negative impact on surrounding properties. All members concurred. Based on prior deliberations on this application, and the record before it, the Zoning Board members also concurred that a feasible alternative was not available with regard to the remaining sign variance requests, and that the currently-proposed signage was consistent with commercial businesses on

the Hoosick Road corridor. As to whether the requested variances are substantial, Attorney Gilchrist noted for the record that the Building Department had considered the Taco Bell bell logo and the words “Taco Bell” underneath the bell logo to be two separate signs, and that this factor should be considered by the Zoning Board members in the request for total number of signs. Chairman Steinbach felt that the proposed signage was appropriate for the site, that the total number of signs should be considered in relation to the bell logo and words being considered separate signage, and that the total square footage was not excessive for this particular site. All Zoning Board members concurred. The Zoning Board members also concurred that the proposed signage would not result in any adverse impact on the environmental or physical conditions in the neighborhood, noting that the Board had adopted a SEQRA negative declaration. As to whether the need for the variances is self-created, Member Clemente stated that it was self-created, but that the applicant had worked with the Town in terms of amending its application and also proceeding with its application with the bell logo and the “Taco Bell” words being considered separate signage, and felt that while this factor regarding a self-created need was relevant it was not determinative in this case. All Zoning Board members concurred in that opinion. Attorney Gilchrist again confirmed for the record that the required public hearing on the two remaining variance applications for total number of signs and total square footage of signs had been held at the December 17, 2018 meeting; that the Rensselaer County Planning Department recommendation required under the New York General Municipal Law had been received, noting that the proposal did not conflict with County plans; that a SEQRA negative declaration had been adopted by the Zoning Board on this action; that the applicant has voluntarily withdrawn its variance application to provide for a free-standing monument sign at this location without prejudice to re-filing at some point in the future; and that the remaining amended variance requests include seven total signs for the Taco Bell site and a total of 114.11 square feet of commercial

signage. Based on its deliberations and the record before it, the Zoning Board proceeded to consider a determination on the remaining variance requests. Member Schmidt made a motion to approve the variance requests for total number of signs and total square footage of signs, which motion was seconded by Chairman Steinbach, subject to the condition that the applicant continue to work with the Brunswick Building Department on all required sign permits. All members concurred with the condition. The motion was unanimously approved, and sign variances were granted to allow for a total of seven signs and a total of 114.11 square footage of commercial signs for the Taco Bell site at the Price Chopper Plaza.

There were no new items of business to discuss.

The Zoning Board noted that the next regular date for the Zoning Board meeting is February 18, which is a Federal holiday, and determined to schedule a special meeting for February to be held on February 25, 2019 at 6:00pm. That special meeting date will be noticed, and the Building Department will continue to advise the Zoning Board members in the event any new applications are filed prior to the February 25, 2019 special meeting date.

The index for the January 28, 2019 meeting is as follows:

1. Hospitality Syracuse, Inc. - Sign variances - Granted with respect to total number of signs (seven signs) and total square footage (114.11 square feet), with variance request to allow a free-standing monument sign withdrawn by the applicant.

There are currently no agenda items for the February 25, 2019 meeting.