

**Town of Erwin  
Zoning Board of Appeals Meeting  
And  
Public Hearing**

**April 23, 2013**

**Present:** Frank Thiel, Ruth Fisher McCarthy, Jay McKendrick, Gerry Yost, Kris West

**Absent:** Susan Fontaine

**Guests:** Kurt Charland, Kayshup Shah, Wayne Kennedy, Rita McCarthy

**Call to Order:**

At 7:00 PM, Chairman Frank Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY 14870. As is their usual practice, the Zoning Board of Appeals will consider applications up until 9:00 PM, and will continue any unfinished business to the next regular scheduled meeting.

**Prior Minutes:**

The minutes of the February 26, 2013 meeting were approved as corrected by unanimous consent.

- 1. Request from Shaashwat, LLC to allow a sign on the rear of the building at 3133 Silverback Lane, where no rear signs are permitted. Variance of §130-81.B.1.j, §130-81.B.14.b Table 130-81-1 is requested. With Public Hearing.**

Notification of this action was sent to 9 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, The Leader, and in the Star Gazette on April 14, 2013.

The sign variance is a Type II action under the State Environmental Quality Review Act. ***No SEQR action is required.***

The property is located in R-S Regional Service District.

The applicant seeks a total of 5 wall signs totaling 56 sq ft where one wall sign totaling 99 sq ft maximum is allowed. The menu board constitutes the one permitted free standing sign.

The applicant stated he was seeking the signs because there is no way for a patron on Silverback Lane to identify where the Taco Bell is. The applicant considers Silverback an arterial road.

The applicant was asked why the wall sign facing Applebee's was necessary, and it was pointed out that the precedent with Five Star Bank was not to have the sign on the side. The applicant was asked why the words "Taco Bell" and the bell logo could not be removed from the side facing Applebee's. The applicant stated that the bell logo would not fit on the front of the building.

Based on the discussion with the Zoning Board, the applicant modified the application to change the side wall sign facing Applebee's to allow just the bell logo and no words.

The Chairman opened the Public Hearing at 7:15 pm.

All persons wishing to be heard, the Chairman closed the hearing at 7:16 pm.

The Zoning Board of Appeals considered whether the benefit to the applicant if the area variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals also considered whether:

(1). The requested variance will not produce an undesirable change in the character of the neighborhood:

The Board unanimously finds that the requested variance will not produce an undesirable change in the character of the neighborhood. A rear sign is consistent with the Five Star Bank and the character of the neighborhood, and Silverback Lane is local road interior to only the shopping mall.

(2). The requested variance will not create a detriment to nearby properties.

The Board finds unanimously that the requested variance will not create a detriment to nearby properties.

(3). There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.

A majority of the Board finds that benefit sought is to identify the business from the external, local road, and that there is no other feasible method available for the Applicant to pursue to achieve this benefit due to the unique character of the shopping mall. One Board member believes the benefit could be achieved if the bell logo on the side wall facing Applebee's were removed.

(4). The requested area variance is not substantial.

The Board unanimously finds that the requested variance is substantial.

(5). The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Board finds unanimously that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district as the applicant has shown that the lighting does not interfere with other properties.

(6). The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance).

The Board unanimously finds that the difficulty was self-created.

RESOLUTION TO APPROVE APPLICATION 2013-04 AS MODIFIED TO ALLOW ONE SIGN IN THE FRONT WITH ONE BELL LOGO ON THE SIDE AND ONE BELL LOGO ON THE REAR AS DEPICTED IN THE "SHAH DEVELOPMENT ELEVATION VIEWS" MAP BY BERGMANN ASSOCIATES DATED MARCH 22, 2013, ON THE CONDITION THAT THIS VARIANCE APPLIES SOLELY TO THE TACO BELL TENANCY OF THE BUILDING.

MOVED BY: FRANK THIEL                      SECONDED BY: JAY MC KENDRICK  
DISPOSITION: 5-0

The Chairman noted that Jerry Yost was resigning from the Zoning Board. The Chairman thanked Mr. Yost for his years of dedicated service and his introspective comments and additions to the Zoning Board's deliberations.

Meeting was adjourned by unanimous consent at 7:30 pm.

Minutes Submitted by Acting Zoning Board Secretary

Rita Y. McCarthy