

TOWN OF 
Brownsburg

BOARD OF ZONING APPEALS
Minutes

**Brownsburg Town Hall
61 North Green Street
Brownsburg, Indiana 46112**

Monday, January 14, 2019

The Brownsburg Board of Zoning Appeals convened at 7:00 PM with a moment of silence and the Pledge of Allegiance. David Emery opened the meeting, and a roll call was taken.

Members Present: Brett Scowden, Claire Rutledge-Sakha, David Emery and Mike Neal

Members Absent: None

Also Present: Todd Barker, AICP - Director of Development Services, Joe James, AICP- Senior Planner, David Wilson, AICP- Planner II, Scott Krapf- Legal Counsel and Heather Wetzel- Administrative Assistant

A. CALL TO ORDER AND DETERMINATION OF QUORUM

B. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

C. ELECTION OF OFFICERS

1. 2019 President – (Presided by the 2018 President)

Motion: Claire Rutledge-Sakha made a motion to **NOMINATE AND ELECT** David Emery President, seconded by Brett Scowden, motion carried 4 In Favor/0 Opposed/0 Abstained.

2. 2019 Vice-President – (Presided by the 2019 President)

Motion: David Emery made a motion to **NOMINATE AND ELECT** Claire Rutledge-Sakha Vice President, seconded by Mike Neal, motion carried 4 In Favor/0 Opposed/0 Abstained.

3. 2019 Recording Secretary

Motion: Brett Scowden made a motion to **NOMINATE AND APPOINT** Heather Wetzel Recording Secretary seconded by David Emery, motion carried 4 In Favor/0 Opposed/0 Abstained.

D. CONSIDERATION OF PREVIOUS MEETING(S) MINUTES

1. December 10, 2018- Regular Meeting

Motion: Claire Rutledge-Sakha made a motion to **APPROVE** the December 10, 2018 minutes, seconded by Brett Scowden, motion carried 4 In Favor/0 Opposed/0 Abstained.

Mike Neal noted that he was voting in favor however he was not present for that meeting.

E. APPROVAL OF FINDINGS OF FACT

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|----------------------------|------------------------------|--|
| 1. <u>*BZSE-10-18-1678</u> | <u>318 E. Northfield Dr.</u> | <u>"Automobile Oriented Business (Type 2)"</u> |
| 2. <u>*BZDV-11-18-1685</u> | <u>1570 Northfield Dr.</u> | <u>Side Yard Setback</u> |
| 3. <u>*BZDV-11-18-1686</u> | <u>1570 Northfield Dr.</u> | <u>Rear Yard Setback</u> |
| 4. <u>*BZDV-11-18-1687</u> | <u>1225 N. Green St.</u> | <u>Fence Location</u> |
| 5. <u>*BZDV-11-18-1688</u> | <u>3720 Hornaday Rd.</u> | <u>Ground Sign</u> |

***Motion:** Brett Scowden made a motion to **APPROVE** the Findings of Fact for BZSE-10-18-1678, BZDV-11-18-1685, BZDV-11-18-1686, BZDV-11-18-1687 and BZDV-11-18-1688 seconded by Claire Rutledge-Sakha, motion carried 4 In Favor/0 Opposed/0 Abstained.

A. HEARING OF REQUESTS FOR CONTINUANCES

1. None

F. CONTINUED PUBLIC HEARINGS

1. None

G. OLD BUSINESS

1. BZDV-09-18-1672 The Arbuckle Projecting Sign Height

A request for a Development Standards Variance from Art. 5, Sec. 5.73(B)(2) "Urban Commercial Sign Standards," to increase the maximum height above ground for projecting signs within the Urban Commercial (UC) District.

Parcel No. 32-07-11-395-016.000-016

Represented by Brandon Bogan, Flaherty & Collins

ADVERTISED PUBLIC HEARING

Brandon Bogan from Flaherty & Collins appeared before the Board with an overhead presentation regarding their sign height variance. He went over the updated Findings of Fact, a precedent study, the proposed signage and the sign location reasoning. Mr. Bogan reviewed the Findings reading the following:

- 1) The approval of the Development Standards Variance will not be injurious to the public health, safety, morals, and general welfare of the community.
 - a. The proposed signage height will be a positive contribution to the community in that it reinforces the aesthetic attribute of the building and provides appropriate wayfinding.
- 2) The use and value of the area adjacent to the subject property included in the Development Standards Variance will not be affected in a substantially adverse manner.
 - a. The proposed signage will enhance urban and downtown feel that is proposed for N. Green Street. The signage is a component to the success of the development and a successful development will actually enhance the value of neighboring properties.
- 3) The strict application of the terms of the ordinance will result in practical difficulties in the use of the property.
 - a. The strict application will result in an aesthetically displeasing result which affects overall success of development.
 - b. The strict application will cause confusion between building signage and retail signage which will affect retail viability.
 - c. The strict application will result in diminished wayfinding ability which affects leasing of units.

He showed the difference between the developments building marquee signage versus the retail signage and stated the standards were focused on retail signage. The marquee signage

was meant to draw attention and bring people there. He showed a precedent study with the Depot project in Fishers noting the retail signage band and then the Depot marquee sign which resulted in a bit of hierarchy. He believed that was what was wanted within this development. He discussed the aesthetics of proper sign placement. The Depot development was similar to The Arbuckle. The marquee sign was placed centrally in the column. Mr. Bogan showed the Union Green positioning as well as the proposed Arbuckle signage.

He showed the location of the previously suggested height and showed the conflict with the lower retail signage. At that height the Arbuckle projecting sign was out of proportion compared to the overall height of the corner architectural tower element, it would not be centered along the prominent material and the proximity of the Arbuckle projecting sign to the retail tenant signage created confusion.

The proposed signage would create a strong differentiation between the marquee and retail signage. The Arbuckle projecting sign was now in proportion to the corner architectural tower element, was centered along the brick material, acted as a marquee sign and created a sense of hierarchy.

Mr. Bogan showed the East retail elevation facing Green Street where the Athletico signage was. The sign met the ordinance elements. He showed the Arbuckle projecting signage location and how the retail signage was below the marquee sign.

He said that this was a public-private partnership and they wanted to make it as successful as possible; that was the key reasoning for the sign location.

Joe James had a presentation for the Board as well to show the history of the request and how they got there. November 1, 2018 they had a Special Meeting and the issues raised were:

- What were the practical difficulties created by the UDO?
- Could the height be lowered to be more in line with the height approved for the Union Green projecting sign?

The case was continued to the November 14, 2018 regular meeting. The Applicant did provide a new Detailed Statement of Reasons and the sign height was lowered to 43 ft. The issues raised at that meeting were:

- Was the height appropriate and compatible with other signs in the area and potential tenant signs on the building?
- The practical difficulty, financial hardship and use of the property based on a strict application of the UDO were still in question.
- What would happen to the existing sign brackets?

Mr. James reviewed the original proposal with the new proposal with different elevation views noting that the Arbuckle projecting sign was now in proportion to the corner architectural tower element, the sign was centered along the brick material, and the sign acted as a marquee sign and created a sense of hierarchy. Mr. James also showed pictures of the Union Green building across the street and their approved marquee sign.

Mr. James summarized by stating that the Applicant had submitted an updated Detailed Statement of Reasons. He noted that Staff was working on an UDO amendment to the Urban Commercial sign standards. The Amendment would allow a "Building Identification Projecting Sign" to identify the building/development separate from a "tenant" sign. Staff was hoping to have the 1st draft to the Plan Commission in January with a Public Hearing held in February. The Amendment would then go before Town Council and the third and final reading would be

the 2nd meeting in March or the 1st meeting in April.

The UDO Amendment would allow for Building Identification Projecting Sign for Multiple-tenant & Multiple-story Buildings if the following is met:

- Sign must be integral part of building and compatible with architecture
- 1 sign per building – no external illumination
- Maximum height would be no taller than 90% of the building height
- Height measured from grade to the roofline or eaves
- Minimum Height – 2 story building – 12'; 3 or more stories – 20'
- Maximum Projection – 5' or within 2' of curb
- Maximum Size – 28 sq. ft. – equal to existing size

It was Staff's opinion that the Applicant had satisfied the requirements for approval of the variance.

ADVERTISED PUBLIC HEARING OPENED

David Weyant, 7721 Shagbark Court-

Mr. Weyant noted that there had been three sign variance requests granted for the downtown redevelopment projects. He felt that lacking in the review was how they got to where they were. As he recalled, when the UDO was developed in 2011, major retailers and businesses suggested items like that were included. He did not have sympathy for the Town as a whole that they found themselves in that position. He had no reservations for what the Applicant was seeking and fully supported their reasoning. He felt the Town could go back and widen the amendment scope to ensure that all changes from the redevelopment were encompassed. Mr. Weyant suggested looking at the number of signage requests.

Brett Scowden said he served on the Advisory Plan Commission when the UDO was developed and there were business people involved with the signage aspect. Rick Bolt, who was involved in the downtown redevelopment, was very involved. Some of the sign dimensions came from suggestions he had made during the public hearings.

Mr. Scowden said that in November Mr. Bogan had testified that tenant had begun build outs. Mr. Bogan replied there was still a large retail space vacant. Atheltico was present and then the large open vacant space. Mr. Scowden asked if they had leased any more apartments since November and Mr. Bogan said yes. Mr. Scowden said then the building was still being used as it was intended with commercial and residential. Mr. Scowden said in November he had asked:

“What evidence was there that there would be a significant financial hardship by following the requirements of the zoning ordinance. Mr. Bogan said that the key of what they were trying to achieve was to make known the name of the facility and draw people in, in terms of the residential component and that there was a balance between the retail and residential areas. There was always a careful balance of retail signage and overall building signage. When people came into Brownsburg that they knew this was “The Arbuckle” and how to come into the facility. Mr. Horn added that it would be more difficult if the retail tenants did not have a building identification or parking structure identification. It would be more difficult for tenants without that hierarchy with the building identification sign. It was important for them to have their customers know where, not only just their own spaces, but where the building was and where the public parking was.”

Mr. Scowden asked to see the slide with the new sign proposal and said the building was already marked with parking signage and the building had "Arbuckle" signage at the top. He said it could also be seen from the stop light at 56th Street and N. Green Street. He asked again where the hardship was in following the zoning ordinance, as they continued to add tenants. The statutes did not talk about aesthetics; it must have to do with a practical difficulty in using the property. Mr. Scowden still did not see any difficulty. He noted the Applicant's new updated Detailed Statement of Reasons where they implied that it would be aesthetically unpleasing, would cause confusion between building signage and retail signage and would result in diminished wayfinding ability which affects leasing of units. He said it was very clear that was "The Arbuckle." He said they just saw where parking was and where The Arbuckle was. Mr. Bogan answered that the key piece of what they were trying to do was creating signage along Green Street that would bring people from Downtown as well as from the highway. The signage seen there was not lit. They still believed that marquee signage was appropriate on Green Street to capture patrons coming from the west. He also believed that aesthetics did drive value in overall development.

Claire Rutledge-Sakha said that the Applicant had presented multiple times and the Board had repeated concerns. The proposal had to fit Brownsburg and would be about what works there. She had concerns that every time the Board expressed concerns that it was not understood. There had to be a very compelling reason to approve a zoning appeal of that nature. She did not see how it was compatible with what was already approved and what the zoning was.

David Emery said assuming the Advisory Plan Commission and the Town Council approved the proposed rule, the BZA would not be seeing this case. Mr. Barker said that he believed what the Applicant had proposed would fall within the proposed amendments. Mr. Emery said the Board had approved other sign height variances and that the other redevelopment buildings had similar signage. Mr. Barker confirmed they were similar. Mr. Emery said the other buildings had the signage they wanted and Mr. Barker said the projecting signs for building identification and were not tenant specific. Mr. Emery asked if the only real issue was because the building was 4-story. Mr. Barker said that the way the ordinance viewed projecting signs, because of height limitations, was in line with a building with a 1st floor retailer. It did not contemplate a projecting sign for identification of the building. The Arbuckle sign as a wall sign, as a building sign, was an option. Mr. Barker said they could they do the same on the east side where they were proposing the projecting sign. He said it was the type of sign above the retail space in that location that was not contemplated as part of the ordinance. Mr. Scowden followed up and asked if the wall building identifier signs could be back lit and learned they could. Mr. Barker confirmed that there were other options other than the projecting sign and Mr. Barker said yes, for the east side.

Mr. Emery asked if they already had signs downtown basically similar to what the Applicant was requesting, why the Board would not approve this. Mr. Scowden said there was no practical difficulty in the use of the property with the one sign. There were other options they and other Applicants could use instead of projecting signs.

Mike Neal said he had a different perspective as he had served on the Johnson County Convention, Visitor and Tourism Commission and one thing they did was study feasibility on mixed-use buildings like this and projecting signs (or blade signs). Having traveled across the nation, he felt this was kind of the thing now as they were seeing in Fishers, Carmel, Greenwood and now Brownsburg. He agreed Brownsburg was not Fishers but they were doing very similar things. He felt the Zoning Ordinance needed to be updated because the Town was going to see more and more of that as they developed and redeveloped. He said in a few months the issue would be taken up by the Plan Commission and Council and would change

anyway and the Board needed to continue forward thinking. He agreed with the petitioner that the signage needed to be seen from multiple directions, that lowering the sign would be in conflict with other signage, and would result in confusing, busy and not focused signage.

Seeing a potential issue, legal counsel Scott Krapf reminded the Board that it would take three members to complete a motion. If the Board felt they would need additional information they needed to be mindful of the public hearing.

David Wilson said from a Staff perspective, the only cases since the zoning ordinance was adopted in 2012 that had addressed sign blades had been past three cases. The zoning ordinance was updated in 2012 and not the UDO. For the record the UDO was adopted in 2015. Mr. Weyant thanked Mr. Wilson for the correction and clarification and said that the greater concern was if they were going to open the UDO for Advisory Plan Commission review that they look across all exceptions and appeals; if there was a common theme or commonalities, those should be incorporated as well. Mr. Emery said that that process was built in with the yearly review. Mr. Weyant felt the UDO Amendment seemed timelier and wanted to make sure all issues were covered.

Mr. Scowden asked the Board what practical difficulty they saw. Mr. Emery said that as more buildings were developed or as someone was searching for The Arbuckle and were driving north and south they would not be able to see the building properly or identify where to go. The second difficulty was that when you were competing for space in the retail industry people needed people to know where you were. The sheer fact that the Applicant would be one of the only buildings in the new development that did not have a projecting sign could have negative business impacts.

Mr. Neal said that wayfinding in and out of Town was incredibly important and they were providing a service to Brownsburg and those not from Brownsburg. By not having proper signage, people would not patronize the business. Mr. Scowden answered that a few months ago the Board had heard testimony that more people used GPS than used signs. Mr. Emery asked about the people who did not use GPS.

Ms. Rutledge-Sakha agreed that it had to be easy to see and that other buildings had similar signs. But they were talking about quite a difference in height and how it affected the area as a whole. That was where her struggle was and she did not know if that was the right way to go.

Mr. Emery said if there was already a standard for blade signs, why not approve the request. He felt there was precedence set with the approval of the previous requests for the new buildings downtown. Ms. Rutledge-Sakha agreed but felt it could not just be applied as it was not the same case; they could not apply the same answer just because the request was slightly similar.

Mr. Scowden felt just because the sign option was available that it meant they had to use it; different options were available.

Mr. Neal asked what else was different from the other signs and Ms. Rutledge-Sakha said the height was the biggest and there were not a ton of difference but it did make a difference when looking at the overall area. Mr. Barker noted that the other signs had differing heights.

Mr. Neal said it was not that different from what was already there and what else would come. If all the Applicant had to do was wait it out, why prolonging their wait? He did not see why they should not approve the request.

Mr. Scowden said as the building was already open, they were already leasing and had leased even more since the last meeting, and a commercial tenant was open, how could they say there

was a practical use in the use of the property? Mr. Emery asked if the building was fully built out or fully leased. Mr. Bogan said they were not. Mr. Scowden said the use was for rental apartments. There was a discussion among the Board regarding leasing. Mr. Emery asked if they would have a higher leasing rate with a blade sign. Mr. Scowden asked the same and noted the Depot was 98% full in 14 months.

Mr. Emery said he would entertain a motion to continue the case as any vote would be split. Mr. Krapf said if they did recess and continue, it would be appropriate to give staff or the Applicant direction as to what information needed to be provided. Mr. Emery said they needed the 5th Board member which would they have next month. Mr. Krapf said if they recessed and continued it would preserve the Applicant's public notice. Mr. Emery said he did want additional information and asked the Applicant to come back with a correlation on projecting signs and rental rates. Mr. Bogan said he would do his best to find additional data. Mr. Scowden asked for the number rented over the first 14 months of the Depot versus what had been rented so far for The Arbuckle.

Motion: David Emery made a motion to **RECESS AND CONTINUE** BZDV-09-18-1672, seconded by Mike Neal, motion carried 4 In Favor/0 Opposed/0 Abstained.

ADVERTISED PUBLIC HEARING OPENED, RECESSED AND CONTINUED TO FEBRUARY 11, 2018 AT 7 P.M.

Mike Neal noted the Applicant had been here multiple times and that was not how the process should work; that is why people were frustrated with government. He wanted to apologize for that and hoped that next month the case would be done.

H. NEW BUSINESS

1. None

I. REPORTS FROM OFFICERS, COMMITTEES, AND STAFF

1. None

J. COMMUNICATIONS & BILLS

1. Board of Zoning Appeals Training

Mr. Barker said they hoped to have Citizen Planner training in February. Full day Nitty Gritty training is offered annually to BZA and Plan Commission members. This shorter, more condensed, training would be held for each board and the public as well. He asked members to check their February calendars and Staff would reach out later to establish the training date.

K. ADJOURNMENT

Motion: Brett Scowden made a motion to **ADJOURN**, motion carried 4 In Favor/0 Opposed/0 Abstained. 7:57 P.M.



David Emery, President

ATTEST: 

Heather Wetzel, Administrative Assistant