

## MINUTES OF THE ELIZABETHTOWN BOROUGH ZONING HEARING BOARD

January 5, 2015

The Elizabethtown Borough Zoning Hearing Board held a public meeting on Monday, January 5, 2015 at 7:00 P.M. at the Elizabethtown Borough Office, 600 South Hanover Street, Elizabethtown, PA. The meeting was attended by a quorum of the members of the Zoning Hearing Board. At the commencement of the meeting, the Board conducted its reorganization for 2015, with Rick Jones being elected as Chairman, and Vaughn Nissley as Vice Chairman.

The following matter was heard and oral decision rendered or other action taken:

### **I. Application of Damon Suglia**

1. The Board heard a request from Damon Suglia for a Special Exception and Variance with regard to the Property located at 30 N. Market Street, Elizabethtown Borough. The property is currently operated by Mr. Suglia as "Rita's Italian Ice" franchise, and includes the retail structure, parking and sign. The Applicant proposes to add a drive through service while maintaining the existing walk-up service, and to add an electronic message sign to the existing sign pole, thereby increasing the size of the existing sign by approximately 8 square feet. In order to facilitate the proposed use of the Property, the Applicant sought the following relief from the Zoning Ordinance:
  - §902.3 and §1408, Special Exception to permit "Drive-Through Services"; and
  - Chapter 27, Table of Sign Requirements, to add 8 square feet to existing sign to accommodate an Electronic Message Sign.

The Property is located in the CBD Central Business District Zoning District.

At the time of the Hearing on January 5, 2014 the following individuals appeared and requested party status, and were granted party status by the Zoning Hearing Board:

1. David and Donna Peifer  
31 N. Poplar Street  
Elizabethtown, PA
2. Todd and Amy McFarlane  
20 N. Peach Alley  
Elizabethtown, PA

Confirmation of posting and publication of Notice of the Hearing in conformity with the requirements of the MPC and the Elizabethtown Borough Zoning Ordinance was placed on the

record at the Hearing on August 4, 2014, with the proof of advertising and posting marked collectively as Board Exhibit “1.” The prior Decision of the Zoning Hearing Board with regard to the current use of the property, dated October 16, 2000, was marked as Board Exhibit “2”.

The Applicant introduced the following Exhibits as part of the testimony presented to the Board: Applicant’s Exhibit 1 (Drive Through Site Plan); Applicant’s Exhibit 2 (Photographs of Property, including North Market Street and Winnemore Alley); Applicant’s Exhibit 3 (Example Existing Drive Through Rita’s locations in Palmyra and Union Deposit); and Applicant’s Exhibit 4 (Depiction of current sign and proposed Electronic Message Sign).

Testimony was presented on behalf of the Applicant by the Applicant, Brian Cooley of D.C. Gohn Engineers, and Terry Burkhart from Superior Signs, as follows:

- A. The Subject Property is located at 30 N. Market Street, Elizabethtown Borough, and is located in the CBD Zoning District.
- B. Mr. Suglia purchased the existing Rita’s franchise at the site on or about December of 2013, and has operated the business since that time. Mr. Suglia testified that he is a “hands on” owner, and is actively involved in the community. He has improved the property, and has received positive feedback from the community.
- C. The business currently includes a “walk up” service window for pedestrian customers. This window receives significant pedestrian traffic during nice weather, but not during inclement weather. Other Rita’s owners in the area have told the Applicant that a drive through window increases business anywhere between 30% to 50%.
- D. The proposed drive through window would operate each day that the Rita’s franchise is open. The franchise operates seven days a week, from on or about February through November each year. Hours of operation during the Spring season are from 12 p.m. to 9 p.m., and during the Summer season from 12 p.m. to 10 p.m.
- E. The Applicant does not believe the drive through window would have any negative impact on the community or on the neighborhood. In addition, the proposed electronic message sign would be used to announce not only Rita’s sale items, but also community events.
- F. Brian Cooley testified that the proposed drive through window would be designed in accordance with the Plans as depicted on Applicant’s Exhibit 1. This would include a maximum cueing of 6 to 7 vehicles in the drive through line, railroad ties with anchors to delineate the drive through lane, concrete wheel stops, and a 3 foot high vinyl fence to extend from the existing building to bollards, for separate pedestrian areas from the drive through lane.

- G. Mr. Cooley also introduced photographs of the Property (Applicant's Exhibit 2), and Photographs of other existing Rita's locations with drive through windows (Applicant's Exhibit 3).
- H. Mr. Cooley acknowledged that the turning radius and sight distance to N. Market Street for vehicular traffic exiting the Property had not been studied or analyzed. In addition to the drive through window, a 15' parking lot light would be added to the property.
- I. Terry Burkhardt testified that the proposed electronic message sign will increase the size of the current sign from 24.0 square feet to 30.94 square feet. The bottom of the sign will be at least 8.5' above the nearby pedestrian sidewalk. The sign will be double sided, and will present the same electronic message on each side; the sign is capable of some animation. Mr. Burkhardt presented Applicant's Exhibit 4, which depicted the existing and proposed sign, as well as photographs of other similar electronic message signs.
- J. The Applicant noted that the Planning Commission had recommended approval of both the Special Exception and the Variance, subject to the erection of a speed table or raised crosswalk in the drive through lane to accommodate pedestrian safety, and a raised curb along the pedestrian path, or pinning down of the railroad ties. The Applicant incorporated these changes in its proposal, as depicted on Applicant's Exhibit 1, with the exception of a raised curb (the Applicant opted to pin the railroad ties instead).
- K. Mr. Rodney Horton, Elizabethtown Borough Planning and Zoning Director, testified that the Borough did not take an official position either in support of, or in opposition to, the zoning relief requested by the Applicant.
- L. None of the Parties to the proceeding presented any testimony; however, during questioning of the Applicant and the Applicant's witnesses, each of the Parties raised concerns regarding the impact on parking, traffic congestion, and vehicular ingress and egress to and from the property.

Following the close of testimony, the Board deliberated in Executive Session. Following the Executive Session, the meeting was reconvened, and a Motion was made to approve the Variance requested by the Applicant, to allow an increase in the size of the existing sign from 24 square feet to 30.94 square feet, to accommodate the proposed electronic messaging sign, subject to the following conditions:

- A. The sign shall be designed in accordance with Applicant's Exhibit 4, and in accordance with the testimony presented by the applicant, with regard to size, location and elevation; and

- B. The electronic messaging sign shall operate only during the actual hours of operation of the Rita's franchise.
- C. The Applicant shall comply with all of other requirements and standard conditions imposed by the Zoning Hearing Board in its written Decision, to be issued within forty-five (45) days of the date of the close of the Hearing.

The Motion was unanimously approved by the Zoning Hearing Board.

A Motion was made to deny the Special Exception request for the addition of a Drive-Through Window to the existing facility. The Board cited significant concerns regarding the vehicular ingress and egress to and from the property on Winnemore Alley and N. Market Street, as well as the adequacy of the proposed design to provide for sufficient pedestrian safety.

The Motion to deny the Special Exception was unanimously approved by the Zoning Hearing Board.

At the conclusion of the Hearing, the meeting was adjourned.

Respectfully submitted,

Rodney L. Horton, MPA  
Elizabethtown Borough  
Planning and Zoning Director