



Tuck O'Brien  
City Planning Director, Planning Division

**November 16, 2018**

Kurt Overmyer (applicant) Director of Development and Construction Guggenheim Retail Real Estate Partners Inc 3000 Internet Blvd, Suite #570 Frisco, TX 75034	Banyan North LLC (owner) 13 Kinnard Street Cambridge, MA 02139	David Fenstermacher, PE (agent) VHB 2 Bedford Farms Drive, Suite #200 Bedford, NH 03110
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Project Name: **Conversion of Sala Thai to Taco Bell with drive-through**  
 Project ID: #2016-007  
 Address: 1363 Washington Avenue, Portland CBL: 401 A002001  
 Applicant: Guggenheim Retail Real Estate Partners, Inc.

**NOTIFICATION OF NON COMPLIANCE WITH SITE PLAN APPROVAL**

Dear Mr Overmyer:

I am writing with respect to the above Planning Board (conditional) approval dated May 13, 2016 and to request compliance with the conditions of that approval. The approval included the following conditions related to the concern about the safety of the access for the new drive-through (copy of the approval letter is attached):

- i. That applicant shall conduct a detailed *Crash Monitoring Study* at the drive access with Washington Avenue (to be conducted in accordance with a methodology agreed with the City's Traffic Engineering Reviewer and particularly focusing on crashes caused by Taco Bell vehicles entering or exiting the site) for the 12 months following the opening of the drive through to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the *Crash Monitoring Study*, including the identification of all crashes and any other problems observed in the 12 month period, shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the *Study* is conducted. The applicant will obtain the crash data from local sources including the Portland Police Department. If the *Study* indicates that the full turn access has contributed to a significant increase in crashes along Washington Avenue involving site vehicles (as determined by the City based on the cause of the crashes and on the City Traffic Engineer's recommendations), the applicant shall modify the access to be right-out and right-in only; and
- ii. That the applicant shall pursue the creation of a 2-way road connection to the "Rite Aid" driveway to the north in order to encourage Taco Bell customers to use the access from Allen Avenue and reduce potential conflicts in Washington Avenue. The applicant shall preserve space for this connection in the current site plan and agree to construct it in the future if the Rite Aid site is redeveloped or at a time period when the site is being reviewed by the City. If this connection is achieved and permanent (ie open to Taco Bell vehicles) within the first 12 months following the opening of the drive through to the public (ie during the monitoring period), the applicant shall not be responsible for submitting the final report associated with the *Crash Monitoring Study* nor the associated potential restrictions as outlined in Condition 1 above;

These conditions were included pursuant to Section 14-526 (a) of Chapter 14 of the City's Code of Ordinances and because the City's Traffic Engineering reviewer was concerned that the drive through use would create safety issues along this stretch of Washington Avenue, which is a high crash location. They were agreed during the review as a substitute for the City's earlier requirement that turn restrictions be designed into the final layout, and the agreement was based on assurances from the applicant at the time.

The new Taco Bell opened in May 2017. Since then the City has been in correspondence with the applicant (Guggenheim Retail Real Estate Partners Inc) regarding compliance with the above quoted conditions of approval. The current position is as follows:

- Although the 2-way connection to the abutting Rite Aid driveway is the City's preferred solution to the access issue, the applicant/owner has declined to pursue or implement this option to meet condition ii; therefore condition i applies.
- In accordance with the condition i of the approval, the City received from the agent/applicant a *Crash Monitoring Study* that confirms that the full turn access for Taco Bell has unreasonably contributed to crashes along Washington Avenue.

Therefore, based on the *Crash Monitoring Study* and in accordance with the conditional site plan approval, the City has concluded that the full turn access must be modified to restrict the access, so it is right in and right out only, in order to mitigate the safety problem that has been created by the full turn access. The required modification comprises the construction of a 2 foot wide median in Washington Avenue, topped by flexible bollards, that would restrict the left turn vehicle movements to and from the Taco Bell site. The condition specifies that the applicant shall make such a modification.

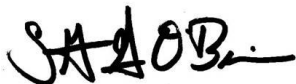
We request that you prepare the plan for the median within one month of the date of this letter, and arrange for obtaining street opening permits and complete construction within 5 months of the date of this letter. Please note that in the short term the City will be erecting sign(s) in the right-of-way indicating that the left turn out of Taco Bell is prohibited.

If we have not received the median modification plan within one month of the date of this letter, and a street opening permit within 4 months of date of this letter, the City will utilize the remaining \$8677.90 of defect guarantee escrow account to install the required median.

Please note that the failure to comply with the noted conditions of approval related to the safety of the Taco Bell access would constitute a land use violation subject to fines under 30-A M.R.S. § 4452 and Section 1-15 of the Portland City Code of up to \$2,500 for each violation. Each day that a violation continues is considered a separate violation. Additionally, please be advised that violation of the City's ordinances is grounds for denial of a business license under Chapter 15 of the City's Code.

If you have any questions, please do not hesitate to contact me, or Jean Fraser at 207 874 8728.

Very truly yours,



Stuart G. O'Brien  
City Planning Director  
City of Portland

Attachment: Planning board Approval letter dated May 13, 2016

cc: Taco Bell Franchisee, 1363 Washington Avenue, Portland, ME 04103  
City Associate Corporation Counsel