

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – January 19, 2017**

A meeting of the Zoning Board of Appeals of the Town of Sweden was held at the Town Offices, 18 State Street, Brockport, New York on January 19, 2017, commencing at 6 p.m.

Members present: Frank Fisher, Kevin Johnson, Pauline Johnson, Peter Sharpe.

Absent: Mary Ann Thorpe

Also present: Nat O. Lester, III, ZBA Counsel, Michael Montalto, Costich, Tony Gianni.

Acting Chairperson Pauline Johnson called the meeting to order at 6 p.m.

Application of Harold Schertz, SRI LLC, 232 Madison Avenue, Suite 608, New York, New York, for two area variances for Lot 1, and three for Lot 2, resulting from the proposed subdivision of the Sweden Plaza into two lots, located at 4828 Lake Road, Brockport, New York. The two area variances for Lot 1 are for the perimeter buffer zone of 0.0 ft. (required 7.5 ft.) and for the open greenspace requirement of 22.9% (required 30%). The three area variances for Lot 2 are the side setback of 0.01 feet (required 25 ft.), the front greenspace of 0.0 ft. (required 25 ft.), and for the perimeter buffer zone of 0.0 ft. (required 7.5 ft.) Town of Sweden Ordinance §175-40, Regulations applicable in all business districts, B, states, "In addition to vehicular loading and parking requirements, each individual unattached principal building site shall have a perimeter buffer zone of 7 ½ feet in width." Town of Sweden Ordinance §175-41, (6) Open area requirement, states, "At least 30% of the total lot area shall remain open and unused. Town of Sweden Ordinance §175-41, E, (4) Required setbacks, (b) Side: 25 ft. Town of Sweden Ordinance §175-41, E, (7) Use of frontal area, states, "Employee and customer parking is permitted on all except a strip of land 25 feet in depth adjacent to the public highway boundary, which strip of land shall remain vacant, unused and clear for visibility, to be curbed, fenced or otherwise rendered impassable to vehicles and set aside for lawn or landscaped." The property is owned by Sweden Plaza Associates, SRI LLC, tax account number 084.01-1-2.21.

Acting Chairperson Pauline Johnson introduced the Board Members and ZBA Counsel.

4828 Lake Road

Mr. Montalto addressed the Board. He explained that the "old" Wal-Mart building is under contract for purchase with Runnings store. A subdivision is required to create the two lots, Runnings and remaining plaza stores. The lot lines match the original lease lines created years ago for the Wal-Mart plaza. This is strictly a paper subdivision, which will continue to operate under reciprocal easement agreements for parking, utilities, etc.

As a paper subdivision, a line is drawn for financial purposes and a construction loan is approved without encumbering either party.

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Acting Chairperson Pauline Johnson confirmed with Mr. Montalto that it is the financial institution that is requiring the subdivision. Mr. Montalto agreed. He added there is no physical change to the property. The lot line, which runs through the center of the property, creates the proposed variances for side setback for the plaza building, and 7½ ft. perimeter buffer for both lots. The 25 ft. front setback is provided, but only for Lot 1. Lot 2 doesn't have the required front setback because it is located in the back of Lot 1. The open space variance is pre-existing, nonconforming as the property didn't meet it before. However, the lease lines allow for the plaza to be compliant, but not Runnings due to all the parking. It is interesting to note that the original lease lines provide sufficient parking for each lot.

Relative to the burden of proof standards, Mr. Montalto offered the following:

- Because there is no physical change to the plaza associated with the subdivision, the burden of proofs are straightforward as far as no physical change to the neighborhood and no change in values.
- It is self-created as the plaza owner is under contract with Runnings; however, the benefit to the community outweighs the benefit to the applicant.

Acting Chairperson Pauline Johnson asked for clarification of the greenspace, which is roughly 26% now; pre-existing, non conforming. Lot 1 is approximately 22% and Lot 2 30.1%. The 26% is a weighted balance. It was asked if a variance was granted when the building was built. Counsel Lester wasn't aware of a variance being granted. He added that there is no change to the open greenspace as it is the same as it was when built. Counsel Lester is not sure when the 30% requirement was created.

Acting Chairperson Pauline Johnson asked if Mr. Gianni had any questions. Mr. Gianni replied no, he just wanted to see what was going on. The Clerk added no one else had inquired about the variances.

Acting Chairperson Pauline Johnson asked if there were any other questions, comments or concerns. There were none.

As a final note, Acting Chairperson Pauline Johnson clarified that while the Planning Board Minutes, dated December 12, 2016, state the Board has no objection to the three area variances, it has been confirmed with the Planning Board Chairman that there are no objections to the five area variances. Mr. Montalto explained the 7 ½ perimeter buffer variance applies to both lots and the open greenspace variance was discovered after the December 12 meeting.

Acting Chairperson Pauline Johnson asked, out of curiosity, what the front façade of a Runnings store looks like. Mr. Sharpe has visited the Canandaigua store and stated it is red and tan and usually a remodeled "old" Wal-Mart, warehouse-type building.

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Counsel Lester asked if the driving lane to Transit Way will remain an open ingress/egress. Mr. Montalto stated yes, it is addressed in the reciprocal easement agreement. He added that any modifications to the site after subdivision approval will result in Runnings making an application for amended site plan approval. It has been made very clear by Runnings that the store will not open until subdivision approval has been granted and transfer of ownership takes place from the plaza owner to Runnings.

Acting Chairperson Pauline Johnson closed the public hearing. The Board has 62 days to make a decision. The Clerk will contact you.

Counsel Lester recommended the Board set a reconvene date in case a decision is not made tonight. The Board agreed, and set February 2, 2017, at 6 p.m. as the reconvene date.

Moved by Mr. Peter Sharpe, seconded by Mr. Kevin Johnson, that the minutes of December 19, 2016, be approved.

Frank Fisher – Aye
Kevin Johnson – Aye
Pauline Johnson – Aye
Peter Sharpe – Aye
Mary Ann Thorpe – Absent

APPLICANT: Sweden Plaza Associates, SRI LLC

Location: 4828 Lake Road,

Tax Map #: 084.01-1-2.21

Zoning District: Business District

- Request:
1. An area variance to Lot 1 for the perimeter buffer zone of 0.0 feet instead of the 7.5 feet minimum required.
 2. An area variance to Lot 1 for the open greenspace requirement of 22.9 % instead of the 30% required.
 3. A side setback variance to Lot 2 of 0.01 feet instead of the required 25 feet.
 4. An area variance to Lot 2 for the front greenspace of 0.0 feet Instead of the 25 feet required.
 5. An area variance to Lot 2 for the perimeter buffer zone of 0.0 feet instead of the 7.5 feet minimum required.

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Mr. Frank Fisher offered the following resolution and moved for its adoption:

WHEREAS, this application came before the Town of Sweden Board of Zoning Appeals (the “Board of Zoning Appeals”) relative to the property at 4828 Lake Road, as outlined above; and

WHEREAS, having considered carefully all relevant documentary, testimonial and other evidence submitted, the Board of Zoning Appeals makes the following findings:

1. Upon review of the application, the Board of Zoning Appeals determined that the application is subject to the State Environmental Quality Review Act (New York State Environmental Conservation Law, Article 8) and its implementing regulations (6 NYCCR Part 617, the “SEQRA Regulations”) (collectively, “SEQRA”), and that the application constitutes an Unlisted action under SEQRA.
2. The Board of Zoning Appeals has considered the Proposal at a public meeting (the “Meeting”) in the Sweden Town Hall, 18 State Street, at which time all persons and organizations in interest were heard.
3. Documentary, testimonial, and other evidence were presented at the Meeting relative to the Proposal for the Board of Zoning Appeals’ consideration.
4. The Board of Zoning Appeals carefully has considered an Environmental Assessment Form and supplementary information prepared by the Applicant and the Applicant’s representatives, including but not limited to supplemental maps, drawings, descriptions, analyses, reports, and reviews (collectively, the “Environmental Analysis”).
5. The Board of Zoning Appeals carefully has considered additional information and comments that resulted from telephone conversations, meetings, or written correspondence from or with the Applicant and the Applicant’s representatives.
6. The Board of Zoning Appeals carefully has considered information, recommendations, and comments that resulted from telephone conversations, meetings, or written correspondence from or with various involved and interested agencies, including the Town’s own staff.
7. The Board of Zoning Appeals carefully has considered information, recommendations, and comments that resulted from telephone conversations, meetings, or written correspondence from or with nearby property owners, and all other comments submitted to the Board of Zoning Appeals as of this date.
8. The Environmental Analysis examined the relevant issues associated with the Proposal.
9. The Board of Zoning Appeals has completed Parts 2 and 3 of the EAF, and has carefully considered the information contained therein.

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10. The Board of Zoning Appeals has met the procedural and substantive requirements of SEQRA.
11. The Board of Zoning Appeals has carefully considered each and every criterion for determining the potential significance of the Proposal upon the environment, as set forth in SEQRA.
12. The Board of Zoning Appeals has carefully considered (that is, has taken the required “hard look” at) the Proposal and the relevant environmental impacts, facts, and conclusions disclosed in the Environmental Analysis.
13. The Board of Zoning Appeals concurs with the information and conclusions contained in the Environmental Analysis.
14. The Board of Zoning Appeals has made a careful, independent review of the Proposal and the Board of Zoning Appeals’ determination is rational and supported by substantial evidence, as set forth herein.
15. To the maximum extent practicable, the project as originally designed or as voluntarily modified by the Applicant will minimize or avoid potential adverse environmental impacts that were identified in the environmental review process, as practicable.

NOW, THEREFORE, be it RESOLVED that, pursuant to SEQRA, based on the aforementioned information, documentation, testimony, and findings, and after examining the relevant issues, the Board of Zoning Appeals’ own initial concerns, and all relevant issues raised and recommendations offered by involved and interested agencies and the Town’s own staff, the Board of Zoning Appeals determines that the Proposal will not have a significant adverse impact on the environment, which constitutes a negative declaration.

SECONDED BY Mr. Kevin Johnson, and duly put to a vote, which resulted as follows:

VOTE: Peter Sharpe - Aye

Frank Fisher - Aye

Kevin Johnson - Aye

Mary Ann Thorpe - Absent

Acting Chairperson Pauline Johnson - Aye

MOTION CARRIED

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Moved by Mr. Frank Fisher, seconded by Mr. Peter Sharpe, that the application of Harold Schertz, SRI LLC, 232 Madison Avenue, Suite 608, New York, New York, for the following five area variances for the property located at 4828 Lake Road, Brockport, New York:

1. Lot 1 - perimeter buffer zone of 0.0 ft.;
2. Lot 1 - open greenspace of 22.9%;
3. Lot 2 - side setback of 0.01 feet;
4. Lot 2 - front greenspace of 0.0 ft; and
5. Lot 2 - perimeter buffer zone of 0.0 ft.

Be approved for the following reasons:

1. No one appeared against the application.
2. There will not be an undesirable change produced in the character of the neighborhood as no changes from the existing conditions will be created.
3. The benefit sought by the applicant cannot be achieved by another method as the resubdivision of the lands, as required by the financial institution cannot be achieved by an alternative method.
4. The requested variances will not have an adverse effect on the physical conditions of the neighborhood, as no changes from the existing conditions will be created.

Frank Fisher – Aye
Kevin Johnson – Aye
Pauline Johnson – Aye
Peter Sharpe – Aye
Mary Ann Thorpe – Absent

Respectfully submitted,
Phyllis Brudz
Zoning Board of Appeals Clerk