

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – April 28, 2016**

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 April 28, 2016, commencing at 7 p.m.

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

Also present: Nat O. Lester, III, ZBA Counsel, Thomas and Richard Schmitt, Bernice Lachman.

Chairperson Thorpe called the meeting to order at 7 p.m.

Application of Thomas Schmitt, 7215 Beaver Meadow Road, Bergen, New York, and Richard Schmitt, 7493 Coward Road, Byron, New York, for three area variances. Applicants are seeking approval for a pre-existing, nonconforming dwelling and pole barn located at 1385 West Sweden Road, Brockport, New York. The front setback for the dwelling is 34.4 ft. and 49.7 ft. for the pole barn. Also, applicants propose to construct a deck, 10 ft. by 15 ft. on the south side of the house resulting in a 48 ft. front setback. *Town of Sweden Ordinance §175-36, Section D, (1), (c) (1), states the required front setback is 75 ft.* The property is owned by Thomas M. and Richard J. Schmitt, tax account number 112.02-1-9.

**1385 West Sweden Road.**

Mr. Thomas Schmitt addressed the Board. He explained that the pole barn was built in 1988. The Clerk added that the pole barn was issued a permit with the approved front setback of 49.7 ft., which was measured from the centerline and not the property line. The property includes the barn and a house built in the 1800s, which was beyond repair. The house was demolished and a new house built in the same footprint area.

Mrs. Johnson asked if it was the same footprint area, was the existing foundation used. Mr. Schmitt stated no, the existing foundation was not usable due to how old the house was. The Building Department permitted building in the same footprint area with the same pre-existing, nonconforming front setback, but 10 ft. from the side property line where before the original house was built over the side property line.

Mrs. Johnson confirmed with the Clerk that it was the Building Department that approved the permit. The Clerk added that the whole project was taken into consideration. The poor condition and pre-existing, nonconforming location of the existing house, and that it was on the neighbor's property. The decision to let the applicant rebuild in the same footprint area was an improvement for the neighborhood. A deck was proposed instead of the two sets of stairs to make the house look more appealing and safer. It seemed more practical to have one set of stairs instead of two. In addition, the front setback for the proposed deck is behind the pre-existing, nonconforming front setback of the house, not making the condition any worse.

The Board discussed the three variances and application information, as well as the pictures that were submitted.

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – April 28, 2016**

Mrs. Johnson asked to be shown the location of the new septic system and location of the well. How far does the septic system have to be from the house? Attorney Lester commented that the septic system has to be one hundred feet from the well, but not sure from the house. Schultz Associates designed the septic system and MCDOH approved it.

Mr. Thomas Schmitt added that the existing septic system had only one line and the tank would need to be replaced. The neighbor indicated that there was sewage at the top of the system when it was occupied.

Attorney Lester stated in order for the Building Department to issue a permit, it was requested the house be relocated 10 ft. from the side property line so that it would not be on the neighbor's property any longer, and be brought into conformance relative to the required side setback. Additionally, the applicant would have to apply for an area variance for the front setback of the house and barn.

Bernice Lachman, 1413 West Sweden Road – Ms. Lachman stated she is the co-owner of the house next door to the south. She has worked with the White Bed & Breakfast and the Historical Society. Her house was built in the 1850s and was a blacksmith shop. The original house at 1385 West Sweden Road was either a post office or grocery store. She explained the survey done shows slanted lines and her barn located just over the neighbor's property. It doesn't surprise her that the original house was located over the lot line. When Ms. Lachman moved into her house in 1995, the barn was already constructed.

Ms. Lachman explained that the original house was condemned prior to the Schmitts purchasing it due to a terrible rainstorm that caused so much flooding in the basement, creating an electrical issue. She added that the proposed deck will add to the aesthetics of the new house. It makes sense to have the deck facing the pole barn where there is the most land. Plus, there is no room on the other side of the house. The neighbors are very pleased with the work that has been done and that it is an improvement to the community.

Ms. Lachman commented that there was a discrepancy regarding the back ten feet of the property as to who owned it; the original owner of the house or the owner of the farmland to the east. The ten feet was unclaimed, and finally, given to the original owner of the house.

Chairperson Thorpe asked if there were any other questions, comments or concerns. There were none.

Chairperson Thorpe closed the public hearing by motion. The Board has 62 days to make its decision.

Moved by Mrs. Johnson, seconded by Mr. Sharpe, that the minutes of April 14, 2016, be approved as amended.

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – April 28, 2016**

*Mr. Sharpe voted Aye to approve the variance.*

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

Moved by Mr. Fisher, seconded by Mrs. Pauline Johnson, that having reviewed the application and Short Environmental Assessment Form of Thomas and Richard Schmitt for three area variances for a pre-existing, nonconforming dwelling, pole barn, and proposed deck with front setbacks less than the required 75 ft. will not have a significant adverse impact on the environment, which constitutes a negative declaration.

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

Moved by Mr. Fisher, seconded by Mrs. Pauline Johnson, that the application of Thomas Schmitt, 7215 Beaver Meadow Road, Bergen, New York, and Richard Schmitt, 7493 Coward Road, Byron, New York, for three area variances for a pre-existing, nonconforming dwelling, barn, and proposed deck each with a front setback less than the required 75 ft., located at 1385 West Sweden Road, Brockport, New York, **be approved** for the following reasons:

1. An undesirable change will not be produced in the character of the neighborhood and will not be a detriment to nearby properties, but will actually improve said property and the neighborhood.
2. The benefit cannot be achieved by another reasonable method other than the area variances because the dwelling was pre-existing, nonconforming. The dwelling is located on a small lot and could not be relocated to obtain proper setbacks.
3. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
4. The alleged difficulty was not self-created because the existing house is pre-existing, nonconforming.
5. No one appeared against the proposed variances; in fact, one neighbor spoke in favor of the variances.

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

The meeting was adjourned at 7:40 p.m.

Respectfully submitted,  
Phyllis Brudz  
Clerk to Zoning Board of Appeals