

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – September 26, 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 September 26, 2017, commencing at 6 p.m.

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

Also present: Nat O. Lester, III, ZBA Counsel; Dustin Burton, P.E., Burns & McDonnell Engineering.

Chairperson Thorpe called the meeting to order at 6 p.m., and introduced the Board Members.

Application of Burns & McDonnell Engineering Company, 9400 Ward Parkway, Kansas City, MO, for two area variances. Applicant is proposing to construct a new restaurant and drive thru, KFC, on an existing site, located at 4665 Lake Road, Brockport, New York. The current use is an Arby's Restaurant, which will be demolished. The proposed new restaurant will have an open space of 25.8 percent, which is an increase from the existing open space of 10.8 percent, and 0 feet for the north perimeter buffer zone, which is currently the same.

Town of Sweden Ordinance §175-40, Regulations applicable in all business districts, (B), Required perimeter buffer zone is 7.5 ft. in width. Town of Sweden Ordinance §175-41, Retail Business District, E, (6), Open area requirement. At least 30 percent of the total lot area shall remain open and unused. The property is owned by 4665 Lake Road, LLC, tax account number 083.02-1-21.

4665 Lake Road

Mr. Burton addressed the Board. He explained that the applicant is proposing to demolish the existing Arby's Restaurant, a 3,000 sq. ft. dilapidated, vacant building, drive thru and parking lot. In its place, construct a new KFC restaurant, approximately 2,200 sq. ft., drive thru, and new parking lot with 19 spaces. The two main entrances will remain the same.

Mr. Burton is requesting two area variances. The first variance is for a 0.0 ft. perimeter buffer zone requirement along the north property line, which is the same as what's existing; 7.5 ft. is required. The existing buffer zone requirement was also encroaching on the south and west property lines. Mr. Burton reviewed the five tests for granting of an area variance.

1. Undesirable change in the neighborhood – the applicant is not making the existing condition worse, but is improving it.
2. An alternative method would not work as that would result in the loss of 12 parking spaces, which would be a huge detriment to the KFC business, and result in not being able to build at that location.
3. The request is not substantial as the setback only pertains to the north side and is being met everywhere else.

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4. There are no adverse, physical or environmental conditions as the applicant is increasing the open space from 10.8 percent to 25.8 percent.
5. The variance is self-created. The applicant is trying to make the best of a small site, a little over a half acre.

The second variance request is for open space, 25.8% instead of 30%.

1. Undesirable change in the neighborhood – the applicant is taking a highly impervious site and making it slightly better. Landscaping will be improved.
2. The only alternative method to increase the open space would be to remove impervious surface by reducing the number of parking spaces. As explained previously, any additional parking spaces lost would be a huge detriment to the operation of the KFC business. Mr. Burton explained that the current KFC's business model is not considered profitable with less than 20 parking spaces. The proposed plan shows 19 parking spaces, however, the applicant considers this a newer market where one less parking space may work; any less would not be profitable.
3. The variance request is not substantial. Open space has been improved by 15 percent.
4. Any adverse, physical or environmental conditions would be less in terms of stormwater as open space has been increased by 15 percent allowing for additional infiltration.
5. The variance request is self-created. The only way to avoid this variance request is to eliminate more impervious surface and additional parking spaces, which would make the project not feasible to construct.

Mr. Burton offered to answer any questions.

Mrs. Thorpe confirmed with Mr. Burton that the northwest corner was encroaching on the neighbor's property by inches. The west side is right against the property line and the south side was encroaching on the 7½ buffer, but not over the property line.

Mrs. Pauline Johnson stated for the record that Burns & McDonnell Engineering Company is authorized to apply for the variances on behalf of the property owner and the business.

Counsel Lester clarified that the parking is not encroaching on the property line. Mr. Burton stated the drawing will be corrected to reflect that all proposed parking is on the lot.

Mr. Kevin Johnson asked for a status of all the poorly kept trees on the west side. Mr. Burton stated unfortunately those trees are on the neighboring lot and out of the applicant's control. Additional landscaping will be added to the KFC site as a buffer against the unsightly trees.

Mrs. Pauline Johnson asked if the north side is just inches to the property line, will that affect construction or the size of parking spaces. Mr. Burton believes there shouldn't be any issues.

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Counsel Lester asked if the proposed parking stalls, along Lake Road, will be in the same location as the existing spaces at Arby's. Mr. Burton confirmed the parking spaces are not being changed.

Mrs. Pauline Johnson asked if the Clerk received any calls or letters regarding this variance request. The Clerk stated no.

Mrs. Pauline Johnson asked what the Planning Board's opinion of this proposed project was relative to SEQR. The Clerk explained the project received a negative declaration. Also, the Planning Board unanimously supports this project for many reasons, i.e., less nonconforming, filling a vacant building.

Mr. Frank Fisher complimented Mr. Burton for a well-prepared presentation.

Chairperson Thorpe asked if there were any further questions. There were none.

Chairperson Thorpe closed the public hearing. The Board has 62 days to make a decision.

Moved by Mrs. Pauline Johnson, seconded by Mr. Kevin Johnson, that having reviewed the application and Short Environmental Assessment Form of Burns & McDonnell Engineering Company, on behalf of 4665 Lake Road, LLC, for area variances of a north perimeter buffer zone setback of 0.0 ft. and open greenspace requirement of 25.8%, to construct a new KFC restaurant located at 4665 Lake Road, Brockport, New York, 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

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Moved by Mrs. Pauline Johnson, seconded by Mr. Kevin Johnson, that the application of Burns & McDonnell Engineering Company, on behalf of 4665 Lake Road, LLC, tax account number 083.02-1-21, for the following two area variances for the property located at 4665 Lake Road, Brockport, New York:

1. Open space of 25.8%.
2. 0.0 ft. perimeter buffer requirement on the north side.

Be approved for the following reasons:

1. There will not be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties by granting the variances.
2. The benefit sought by the applicant cannot be achieved by another method as this is a pre-existing, nonconforming building lot.
3. The requested variance of 25.8% open space is not significant. In fact, the applicant removed one parking space from the original design in order to increase the open space to 25.8%.
4. The requested area variance for a 7.5 ft. perimeter buffer zone on the north side is significant, but since the building lot is pre-existing, nonconforming, the request can only be for the maximum relief.
5. The proposed variance requests will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. In fact, the proposed footprint will be smaller than the existing building, which has been vacant for approximately two years.
6. The alleged difficulty was not self-created as this is a pre-existing, nonconforming building lot.

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

Moved by Mrs. Pauline Johnson, seconded by Mr. Frank Fisher, that the minutes of March 30, 2017, be approved.

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

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Moved by Mrs. Pauline Johnson, seconded by Mr. Frank Fisher, that the minutes of April 27, 2017, be approved.

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

Moved by Mrs. Pauline Johnson, seconded by Mr. Peter Sharpe, that the minutes of May 4, 2017, be approved.

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

The meeting was adjourned by motion at 7 p.m.

Respectfully submitted,
Phyllis Brudz
Zoning Board of Appeals Clerk