

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – October 19, 2006**

A regular 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 Thursday, October 19, 2006, commencing at 7:00 p.m.

Members present: Pauline Johnson, Ken Reid, Peter Sharpe, Mary Ann Thorpe

Absent: Frank Fisher (recused from meeting)

Also present: James Bell, Town Attorney, Kris Schultz, Brian Donovan, Norbert Hausner, Andrew Dries, Don Grentzinger, Jim Hamlin

Chairman Reid called the meeting to order, introduced the Board members and read the notice of public hearing for:

Application of HDL Property Group LLC, 7085 Manilus Center Road, East Syracuse, New York, for seven (7) area variances as stated below to construct a 7,140 sq. ft. commercial building to be located at 1000 Transit Way, Brockport, New York. The property is owned by Daniel C. Hogan, tax account number 084.01-1-1.113.

- Front setback variance from the R.O.W. of Transit Way to the proposed building of 62.5 ft. Per Town of Sweden Ordinance Chapter 175-41, Section E(4)(a), Required setbacks, states the required front setback is seventy-five (75) ft.
- Side setback variance from the west property line to the proposed building of 7.5 ft., and side setback variance from the south property line to the proposed building of 7.5 ft. Per Town of Sweden Ordinance Chapter 175-41, Section E(4)(b), Required setbacks, states the required side setback is twenty-five (25) ft.
- Front setback variance from the R.O.W. of Brockport-Spencerport Road to the proposed edge of pavement of 23 ft., and a front setback variance from the R.O.W. of Transit Way to the proposed edge of pavement of 13 ft. Per Town of Sweden Ordinance Chapter 175-41, Section E, (7), Use of frontal area, states the required setback is 25 ft.
- Building coverage variance of 23%. Per Town of Sweden Ordinance Chapter 175-41, Section E(5), Building coverage: 20%.
- Parking space variance for 28 spaces instead of the required 36 spaces. Per Town of Sweden Ordinance Chapter 175-41, Section E(9)(a), Required parking space, states a minimum of five (5), 10 ft. by 20 ft. parking spaces, shall be provided for each 1,000 sq. ft. of retail floor space.

**1000 Transit Way**

Chairman Reid stated the Board has 62 days to make a decision. The applicant has 30 days to appeal.

Chairman Reid read a letter from ZBA Member Frank Fisher recusing himself from the meeting due to his professional relationship with the owner of the property.

Mr. Kris Shultz addressed the Board. He introduced Mr. Norbert Hauser, architect, and Mr. Brian Donovan, developer. Mr. Schultz showed the Board the initial sketch plan presented informally to the Planning Board. The Planning Board's comments included concern with development along

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Brockport-Spencerport Road, landscaping, green area, and adequate parking space. Also, there were concerns with the access off Rte. 31. While the developer thought it would be great to have this access, after much discussion with the Planning Board and the NYSDOT, the probability of getting a curb cut from NYSDOT was pretty small. The initial plans showed vehicular access all around the entire building.

Mr. Schultz distributed an updated copy of the site plan without the contour lines and not as much information so that it was easier to read. The revised plan took into consideration the Planning Board's comments in order to reduce the variances as much as possible before it was presented to the ZBA.

The building was pushed back to 7.5 ft. from 15 ft. on the west and south side after a meeting with the Fire Marshal and Building Inspector. One of the concerns was if the road is eliminated from the back of the building, is that going to be a safety issue. Based on the meeting discussion, because the lot is small and the building is small from a standpoint of being able to access it if there is a fire, the 15 ft. wasn't necessary for fire trucks to drive around the back of the building. This allowed the building to be pushed back off Rte. 31.

Also, the building was changed from a square building to a rectangular building with a jog off the back, which was two-fold because it allowed the loading area to be hidden from Rte. 31 and it broke up the face of the building as viewed from the south.

There was a lot of consideration given to Jiffy Lube from the standpoint of losing its visibility from Rte. 31, and why it is better to have the proposed building pushed back from the road in order to give Jiffy Lube as much exposure as possible.

Attorney Bell asked how tall is the proposed building, 36 ft.? Mr. Hausner stated at the very top of the peak it may be, but at the bottom of the bar joist it is 13 ft., top of the parapet 16 ft. Jiffy Lube is approximately the same height as the proposed building.

Mr. Schultz stated the plan meets the 30 percent green space requirement. The biggest issue is the lot size. At this point, it is important to look at the building and some of its details in regards to the variances.

Mr. Hauser added that another reason to push the building back is it will help with the sight distance when exiting Transit Way.

Mr. Schultz presented the floor plan showing three proposed tenants. The plan calls for a grade entrance, no loading dock. It is a stone and concrete building with rich blue canvas awnings, no illumination. Ornamental lighting on the front of the building in between windows. Signage for three tenants on the north elevation. There is a tower on the corner of the building. Attorney Bell asked if the tenant partitions were permanent. Mr. Hausner stated the partitions could be changed. Mrs. Johnson asked what was the square footage of each tenant. Tenant A is 3,000 sq. ft, tenant B is 1,511 sq. ft. and tenant C is 2,188 sq. ft. for a total of 6,699 sq. ft.

Mrs. Thorpe asked for confirmation that the driveway shown off Transit Way is the only access. Mr. Schultz stated it was and that it would be used by the public, delivery trucks, and for garbage pick up. These activities will not happen at the same time or day.

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Attorney Bell asked what is the amount of distance between the proposed driveway and Jiffy Lube's driveway? Mr. Schultz stated there is approximately 40 ft. of green area before Jiffy Lube's drive entrance.

Mr. Hauser showed the block color as a stone color and the awning as a very dark blue color.

Mr. Schultz continued with the landscaping plan. He explained that the developer wants the best looking building and landscaping on the street. Mr. Schultz obtained permission from Mr. Fred Perrine, Town Highway Superintendent, to landscape in the R.O. W. on Transit Way. The landscaping/planting will shield headlights from neighbors across the street.

Mrs. Johnson asked who would maintain the trees on Transit Way? Mr. Schultz stated the developer. Mr. Donovan stated he believes if you have the nicest looking building and landscaping, it will always be fully leased.

The Town requires 25 ft. of green area along the frontage. One of the variances is for 23 ft. along Brockport-Spencerport Road. Mrs. Thorpe asked what happens in the future if this road is widened? Mr. Schultz explained that his company is very much involved with future road improvement plans along Brockport-Spencerport Road, and currently, there is enough width to put a center turn lane in without having to widen the south side. Per Mr. Schultz' understanding, the improvements NYSDOT has approved with the Lowe's and Wal-Mart SC projects are far reaching, and there won't be a need for additional road improvements on the south side for many, many years. Mrs. Thorpe stated it should still be a consideration because circumstances change. Mrs. Johnson asked Mr. Schultz to show on the plan where a center turning lane would go. Mr. Schultz explained that DOT likes to go by 12 ft. intervals, and currently, there is 13 ft. between the R.O.W. and the edge of pavement.

Mrs. Johnson also asked where the water line was? Mr. Schultz stated it is on the south side of the road. Discussion took place about curb cuts on Brockport-Spencerport Road and Transit Way.

Mr. Schultz spoke about the five points area variances must pass. In 1992, the statute changed to give the ZBA a better idea of the basis for judging an area variance. Mr. Schultz explained the Board needs to balance the benefit to the applicant with the detriment to the health, safety, welfare of the community.

1. Undesirable change in the neighborhood character

Mr. Schultz presented a drawing which superimposed the building on the site. The drawing showed the setbacks of nearby structures, such as, 75 ft. for Jiffy Lube, Hess' main building, 46 ft., and canopy, 40 ft. Mr. Schultz asked will the proposed building at 62 ft. be a change in the neighborhood? The Planning Board didn't have a problem with Hess approaching the ZBA for a variance. Attorney Bell asked if there have been any studies done in regards to this project and increased traffic flow. Mr. Schultz explained that the Planning Board will address any traffic issues during its review.

Mr. Schultz explained that the south and west sides are by far the biggest variances being requested. The variances are for 7.5 ft. setbacks, but in both cases, what is next to each boundary is what makes the difference. On the west side there is a car lot and on the south side there is Jiffy Lube. Mr. Schultz feels that there will be minimal impact to the car lot, and by breaking up the proposed building with a jog, there isn't one straight wall in front of the Jiffy Lube.

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There were two pavement setback variances, one off of Brockport-Spencerport Road at 23 ft. instead of the required 25 ft. green area, landscaping. The pavement setback off of Transit Way is 13 ft. instead of the required 25 ft., but the developer has permission from the Highway Superintendent to landscape into half of the R.O.W. or 30 ft. of usable space. Mr. Schultz compared this to the Spurr Dealership again where there is no green space.

The zoning code states the building coverage should be a maximum of 20 percent. This building coverage is at 23 percent. Attorney Bell asked what amount of square footage would the building have to be reduced to meet the 20 percent. Mr. Schultz stated approximately 950 sq. ft. Mrs. Thorpe asked why does the building have to be so big for the lot size? Mr. Schultz explained the three percent over is triggering the variance as well as the demand of clients, and the cost of the lot. He added that if the developer were to build a footprint that meets all codes, then the size of the building wouldn't allow for a profit to be made.

Attorney Bell stated the reason the parcel is small is due to when the owner subdivided it 20 years ago for Jiffy Lube. Chairman Reid asked what would be the minimum size of the building to make it economically feasible for the developer. Mr. Schultz asked that question earlier to the developer and this footprint is the breaking point. Mrs. Johnson stated getting back to when this parcel was subdivided 20 years ago; the setback requirements were the same as they are now. For the record, Mr. Hogan knew what the setbacks were when this parcel was subdivided. Mr. Schultz added that this land has been vacant for those 20 years and is only now marketable thanks to the new Wal-Mart SC.

Mr. Schultz commented that a few years back, the previous assessor had a workable solution for parking spaces at Tractor Supply, which was to only use the public retail space, not storage space to figure how many spaces were required. This project's actual public retail space is 4,839 sq. ft., which requires 25 parking spaces. Mr. Donovan stated that retailers don't need as much parking spaces now because customers don't spend as much time in the store. Mr. Sharpe added that from his experience, property owners may switch hands many times. For example, in Greece, there are restaurants where you can't find a parking space and end up having to go somewhere else.

2. Benefit achieved by other means feasible to applicant

Mr. Schultz discussed if the variance requested can be sought by some other feasible method. Can the developer acquire 10 to 15 ft. of land from a neighbor to have more distance from the back property lines. Mr. Schultz stated no because there are established businesses on both sides. Attorney Bell stated wouldn't there be a greater benefit by having a restaurant instead of retail shops? The size of the building is what everything comes back to. If the developer shrunk the building, wouldn't a lot of problems be solved? Mrs. Johnson stated that Tim Hortons is a much smaller building than the proposed building on a similar sized lot that does very well. Mr. Donovan stated he did speak with some small retailers, but they all wanted access off Rte. 31, not Transit Way. An easement through the car dealership isn't the best idea either.

Chairman Reid asked shouldn't the price of the property be lowered due to the detriments the developer is facing? Mr. Donovan explained that if the owner were in need of money, it probably would have happened a long time ago.

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Mr. Schultz explained that this is a small parcel requesting seven variances, which makes it almost impossible to build on unless there is some sort of relief. The developer attempted to reduce as many variances as possible by meeting with the Planning Board, Building Inspector and Fire Marshal before presenting it to the ZBA. Mrs. Thorpe commented that she thinks this building is very attractive, she is impressed with the landscaping, and it would be a wonderful addition to the Town, but to approve seven variances that run with the land seems too much to request; more answers are needed. Mr. Donovan stated he is very committed to spending whatever it takes to have a beautiful building with the best landscaping in order to make this corner more than a vacant lot with a "for sale" sign on it.

3. Request is substantial

The request for the setback off Transit Way, 62.5 ft. instead of 75 ft., 17% change is not really substantial. Chairman Reid stated that could be changed by pushing the building up to the corner. In order to get in off Transit Way, the building needs to be pushed back or it will be impossible.

Mr. Grentzinger asked about the landscaping agreement made with Mr. Perrine, Highway Superintendent. Mr. Schultz clarified that Mr. Perrine was asked if landscaping could be extended out in the R.O.W. Mr. Perrine agreed as long as it is understood if the water line needs to be repaired, the landscaping will be lost. There will be no sidewalk at Transit Way and Rte. 31, but sidewalks will extend from the Wal-Mart SC to Lowe's. The Planning Board could request sidewalks during its review. Mr. Grentzinger asked if there would be fire rated walls between the three tenants? Mr. Donovan stated yes, and that he is trying to make the building so that it can be universally leased out now or 10 to 20 years from now.

Side setbacks are substantial, but there has been reasons given for this. Pavement setbacks from the R.O.W., one is substantial, one is not. Building coverage is 3% or 950 sq. ft., not substantial. The loading area is 20 ft. by 20 ft. Imagine the loading area a little bigger at 30 ft. by 30 ft. and that is what would be lost in order to eliminate the additional three percent building coverage; again not substantial.

Discussion took place with Mr. Hausner trying to eliminate two more variances, the front setback and the building coverage. He feels it can be accomplished.

4. Request will have adverse physical or environmental effects

Mr. Schultz stated that approving these variances will not have a significant negative effect on the environment.

5. Alleged difficulty is self-created

Mr. Schultz added the last point is whether the variance requested is self-created. Attorney Bell stated that is really the essence of the whole application, and very compelling arguments have been made regarding the size of the building, but did the owner of the property create the hardship when it was subdivided years ago creating a useless piece of property.

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Mr. Schultz pointed out that the ZBA Board has the authority to approve the variances with conditions, i.e., granting approval to only this developer instead of having it run with the land. Attorney Bell advised that might not be the case. Chairman Reid stated the Board has to be cautious of setting any precedent.

Mrs. Johnson summarized the meeting. She stated this Board wants to encourage commercial development in the Town, and it appreciates the developer's efforts in presenting this project. Is it possible to show us a drawing with a smaller building with revised setbacks? Mr. Hausner stated Mr. Donovan does not want to make the building smaller. Mr. Sharpe clarified by stating that Mr. Donovan's business plan does not allow the building's square footage to be smaller than proposed because it will not generate enough revenue in rental space to make the property work. Mr. Donovan agreed.

In order to move forward, Mr. Donovan stated that he has been talking with different retailers. His business plan calls for investing over one million dollars into this property with two to three tenants, employ about 20 to 25 people, and have the best looking building and landscaping on the street. The economics won't allow him to shrink the building down to 4,000 or 6,000 sq. ft.

Attorney Bell suggested the meeting be adjourned to another date. Mr. Sharpe clarified that Mrs. Johnson is looking for a plan without variances or close to none at the next meeting. Mrs. Johnson agreed.

Mrs. Johnson asked if there was anyone present in opposition of this project. There was no one.

Mr. Grentzinger stated he was in attendance as a concerned resident having served on the ZBA previously, and having discussed this application with the Building Inspector.

Mr. Schultz asked if there was any other information he could provide to help the Board reach a decision. Mr. Schultz was asked to bring a drawing of a building that would be code compliant in order to actually see how small the building would be. Mr. Schultz agreed.

Moved by Mrs. Johnson, seconded by Mrs. Thorpe to adjourn the public hearing to Wednesday, November 8 at 7 p.m.

Mrs. Johnson – Aye  
Mr. Sharpe – Aye  
Mrs. Thorpe – Aye  
Chairman Reid – Aye

Moved by Mrs. Johnson, seconded by Mrs. Thorpe, to approve the October 5, 2006 minutes.

Mrs. Johnson – Aye  
Mr. Sharpe – Abstain  
Mrs. Thorpe – Aye  
Chairman Reid – Aye

The meeting was adjourned by motion at 8:55 p.m.

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Clerk to Zoning Board of Appeals