

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – November 15, 2006

A reconvened public hearing of the Zoning Board of Appeals of the Town of Sweden was held at the Town Offices, 18 State Street, Brockport, New York on Wednesday, November 15, 2006, commencing at 7:00 p.m.

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

Also present: Brian Donovan, Jim Hamlin

Absent: Frank Fisher (recused from meeting)

1000 Transit Way

Chairman Reid stated he is reconvening the November 8 meeting and that the public hearing is still open.

Mr. Kris Schultz addressed the Board. At the last meeting, there were some changes that came up and more time was needed to work those out. In addition, Mr. Schultz had a discussion with Supervisor Lester, which resulted in Mr. Schultz offering to stake out the footprint to give Supervisor Lester and others a better understanding of how the building would actually be laid out on the property.

Mr. Schultz worked on plans that showed potential reductions in variances, and also, a plan that showed a code compliant building. The first change was to immediately drop one of the variances by pulling back the parking lot by two feet off Brockport-Spencerport Road. This would reduce the size of the building slightly. The green space requirement would then go from 23 ft. to 25 ft., required.

Mrs. Johnson asked how much does the building decrease in size by eliminating the two feet? Mr. Schultz stated 140 sq. ft. Mr. Norbert Hausner could not be here tonight, but provided new color renderings. The Board reviewed the drawings.

Mr. Schultz explained that the true intent of the developer is to have the best-looking building on the road with the best landscaping, an asset to the community. Mr. Schultz sited other businesses that have not done this, i.e., Tractor Supply, AutoZone.

Mrs. Thorpe stated that while this is a beautiful building, it is not this Board's concern, but more for the Planning Board to review. Mr. Schultz agreed; it just helps to understand the developer's intent.

Mrs. Thorpe asked Mr. Schultz to show us on the existing plan the proposed changes that were made.

Mr. Schultz stated by pulling back the parking lot by two feet, variance #4 would be eliminated. As far as the parking variance request, if we used the Tractor Supply formula for parking, which was to use the public retail space for the five spaces per thousand, then the parking variance would be eliminated.

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Mrs. Johnson stated if the building was reduced by 1,000 sq. ft., then the parking would be close, 28 versus 31 spaces, required. Mr. Schultz stated the variances for the rear setbacks would still be needed, and the building coverage would be at 20%, required.

Mrs. Johnson summarized the variances that would be eliminated if the building was reduced by 1,000 sq. ft.:

- 28 parking spaces instead of 31, required
- 20% building coverage, required, instead of 23%
- 25 ft. green space off Transit Way, required, instead of 23 ft., if the parking lot is pushed back 2 ft.

The remaining variances would be the two rear setbacks, the front setback at 62.5 ft. instead of 75 ft., and the green space at 13 ft. instead of 25 ft. off Transit Way. Mr. Schultz added that permission to landscape the R.O.W. would help with the appearance that the required green space off Transit Way is met.

Mrs. Johnson asked the developer if he would consider two tenants instead of three? Mr. Donovan explained that the larger tenant would be a mattress store, which is very low density, low impact to traffic. The others may be a hair salon, cell phone store, or game room, which are all low density, low impact to traffic. Mrs. Johnson asked again if the developer could choose two of those tenants? Mr. Donovan stated no because each tenant requires a certain square footage, and with only two tenants, it wouldn't be economically feasible.

Mrs. Johnson asked then why are standalone's like, Tim Hortons and/or Bruegger's Bagels so successful? Mr. Donovan stated that a huge amount of traffic has to be generated and parking usage limited. Mrs. Johnson added that she doesn't understand why the developer can't work with a building with two tenants that's almost code compliant. If the building were reduced by 1,000 sq. ft., three variances would be eliminated. Mr. Donovan stated the perfect building that is code compliant would be 4,200 sq. ft. Mr. Schultz presented a drawing of a code compliant building. Discussion followed.

Mr. Schultz stated that there was a plan to build Bruegger's and Abbott's in one building (approximately 4,000 sq. ft.), but when the numbers/costs were figured out, it was too expensive. Mr. Donovan stated that there isn't that much of a difference from a cost standpoint to build a 4,000 sq. ft. or 7,000 sq. ft. building. He added that to construct this proposed building, it would cost about a million dollars.

Mrs. Johnson explained that the variance runs with the land and there are no guarantees that those specific tenants will stay. Mr. Schultz added that if the mattress store should relocate, the new tenant is going to be one that requires similar parking needs.

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Mrs. Thorpe asked is it possible for the building to be reduced between the proposed 7,100 sq. ft. and the code compliant, 4,200 sq. ft. building? The developer stated the 7,100 sq. ft. building makes the best sense number wise, however, he could make a 6,200 sq. ft. building work if approved, and the tenants agree on the reduced square footage. Mr. Schultz presented a drawing showing a fast food restaurant that potentially would meet code requirements, but is that what the Town would like to see at this site. Mr. Sharpe stated with no signal light at Transit Way, a fast food restaurant would have a huge impact on traffic. The developer would rather go in the direction of a 6,200 sq. ft. building rather than a fast food restaurant.

Chairman Reid asked what would a 6,200 sq. ft. building do for the rear setbacks. Mr. Schultz estimated that each rear setback would go from 7.5 ft to 12 or 14 ft. Mrs. Johnson asked Mr. Schultz to try and show the Board what a 6, 200 sq. ft. building would look like using the present plan. Mr. Schultz figured that the two rear setbacks would be approximately 14.5 ft., and there would still be the 62.5 ft. front setback variance off Transit Way. Mr. Schultz added that landscaping in the R.O.W. would help the green space requirement off Transit Way, and that he has received permission from the Highway Superintendent to do this.

Mrs. Johnson confirmed that the Fire Marshal doesn't have a concern with the rear setbacks. Mr. Schultz agreed.

Mr. Sharpe asked the developer if a 6,200 sq. ft. building would generate enough revenue? Mr. Donovan stated he believes that it will.

Mrs. Johnson asked Mr. Schultz to bring back a drawing of a 6,200 sq. ft. building and have a copy sent to the Town Engineer to look at. Also, provide in writing from the Town Highway Superintendent a letter granting permission to do landscaping in the R.O.W. off Transit Way.

Chairman Reid commented that he feels like the applicant asked for a lot of variances to begin with knowing that he could settle for less. Also, while the Board is negotiating with the applicant, is the Board setting precedent that the next applicant will refer to. Chairman Reid stated he feels the best plan was the one with the approximate 4,000 sq. ft. building with no variances, but the applicant has stated he can't make that work in part due to the cost of the land. Mr. Donovan disagreed that even if he bought the land for next to nothing, the cost to construct this building, including all approval fees, would still be around \$100 to \$120 a foot. This project would not support enough revenue with a 4,200 sq. ft. building. Chairman Reid stated that with the cost of construction today that lot is too small. The owner of the land, at the time of subdivision, is responsible for creating the current size of the lot.

Mr. Schultz stated that the lot will be developed at some point, and this application before the Board provides a building that will fit in well with the Town and would be well accepted.

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Chairman Reid stated the developer has a very nice building, but it should be on a larger lot. The main point is that the decision made by the ZBA runs with the land, and that in the future, the building, landscaping and owner may change.

Mr. Schultz commented that as far as setting a precedent, other applicants couldn't ask for the same variances unless all conditions were the same. Each application is different.

Mrs. Thorpe stated that with approval of this project, precedent would be set for many Boards to come.

Mr. Donovan stated he really wants to make this project work; he likes the site and the architect's work. He could legally build a 4,200 sq. ft. building, but he doesn't want to settle for a fast food restaurant.

Chairman Reid stated the options of the Board tonight are to continue this meeting at another date to review the revised drawing with a 6,200 sq. ft. building and other requested input, or the Board can close the public hearing and start discussion in order to make a decision on a 6,200 sq. ft. building.

Mrs. Johnson asked the developer how he felt about changing the rear setbacks from 15 ft. to 20 ft., which would result in a 4,900 sq. ft. building. Mr. Donovan stated a 4,900 sq. ft. building wouldn't work; he can't do it. Mrs. Johnson suggested that maybe a straw poll should be taken.

Mrs. Johnson asked Chairman Reid if he would entertain looking at a reduced building size of 6,200 sq. ft. Chairman Reid stated yes.

Mr. Sharpe commented that Chairman Reid made a good point regarding the expense of the property, however, does this Board have an opportunity in front of it to approve a building that would fit very nicely in our Town. Mr. Sharpe does not want to see a fast food restaurant. Mr. Sharpe would also like to see the updated drawing.

Mrs. Thorpe added she is not comfortable with approving a 6,200 sq. ft. building with the proposed variances. She doesn't want to set a precedent. The property will sell, if not this time, then in the future. Mrs. Thorpe doesn't feel that another developer will come before the Board with as nice of a building as this one. It is up to the Town to see that a nicely designed building goes in there. Mr. Schultz stated that if a project comes before the Planning Board, meets code, and is zoned properly; it would be approved and built.

Mr. Sharpe added that was his point earlier, and that this Board has some control now as to what type of building will go in there. Mrs. Johnson stated that there is a point of negotiation, and it is not always cut and dry.

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Mrs. Thorpe confirmed that the five criteria this Board should look at are those listed under area variance. Mrs. Johnson stated that is correct except that financial hardship falls under a use variance, which shouldn't influence our decision, but it does. Mr. Sharpe added because it's a self-created hardship. When the owner carved out a parcel of land for the Oil Spout, this small lot was created.

Mrs. Thorpe and Mr. Sharpe agreed to look at the revised drawing with a 6,200 sq. ft. building. Mr. Sharpe feels that a precedent wouldn't be set because each situation is unique. Mrs. Johnson asked Mr. Schultz to bring to the next meeting a drawing showing a 6,200 sq. ft. building.

Moved by Mrs. Johnson, seconded by Mrs. Thorpe, to continue the public hearing on Monday, November 20 at 7 p.m.

Ayes – 4

Clerk to Zoning Board of Appeals