

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – November 18, 2010**

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, November 18, 2010, commencing at 7 p.m.

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

Also present: Richard Olson, Esq., Christopher Wilcox, Esq., Steve and Brenda Ross, Tim Clark

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

Application of Brenda Ross, 2879 Clarkson Parma TL Road, Brockport, New York, to change the existing commercial use variance for 5384 Brockport-Spencerport Road, Brockport, New York, from an antique and collectible business to a law office. The property is located in a residential-zoned area, and requires application be made for a use variance per *Town of Sweden Ordinance Chapter 175-36, Section C, Uses prohibited. (1) business, commercial, industrial or manufacturing enterprises*. The property is owned by Brenda Ross, tax account number 085.01-2-26.

5384 Brockport-Spencerport Road

Richard Olson, Esq. addressed the Board. He represents Ms. Brenda Ross and Attorney Christopher Wilcox. Attorney Olson distributed an exhibit package to the Board.

Attorney Olson explained this is an application for the revision of the use variance of 1977 for selling antiques and gifts. Over the years, some people have been successful at doing this, but things have changed.

Attorney Olson discussed the following criteria for granting of a use variance per Town law.

1. For each and every use permitted under the zoning regulations per the particular district where it's located that the applicant can't realize a reasonable return supported by competent financial evidence.
 - Attorney Olson stated the property is in a R1-2 zoning, which includes one-family dwellings, churches, schools and customary agricultural operations. This is a very small, odd-shaped parcel, which wouldn't be practical for any of the above except a residence. Exhibit H (attached), Financial Analysis, shows the rate of return on this property. To realize the rate of return, he used the assessed value of \$88,000 and the purchase price five years ago, not including closing costs. Ms. Ross has had some luck renting the property at \$500 per/month or \$6,000, assuming 100% occupancy and 100% payment. Photographs were reviewed. Discussion followed. It was determined after all costs taken out, there was a negative rate of return. With the utilities paid by the tenant, there is a 1.34% rate of return, which isn't reasonable because it's too low. Ms. Ross explained that she's used the property with the existing use variance of a gift/antique shop by renting at \$500 per/month. Attorney Olson explained that Ms. Ross has tried to sell the property with Mr. Tim Clark as the realtor. Mr. Clark explained the difficulty in selling the property is due to the traffic. Mr. Clark explained that he had applied to change the use variance himself for a real-estate and attorney's office about four years ago, but that didn't go over

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well due to the discussion of the traffic, the fatal accident that took place on Rte. 31 in front of the property, and the helicopter (medivac) landings.

Mr. Fisher asked the applicant what the selling price was for the property. Mr. Wilcox thought it was around \$120,000. Attorney Olson stated it was actually \$100,000.

2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood.
 - The house is 15 ft. off the R.O.W., which is not like any other property on the street.
 - Looking at the County tax map, there are no parcels with a similar shape, configuration.
 - There is a blacktop parking area due to the existing use variance, Exhibit B. If this were to be used as a residence, then the parking lot would have to go which would raise the cost of the property. There are no interested parties in using the property as its primary use, a residence.

3. Requested variance will not alter essential character of the neighborhood.
 - This is primarily a one-family neighborhood, the property has historically been used on and off as a gift shop.
 - The law office will be far less intense than a gift shop in terms of traffic in and out.
 - The law office will include Attorney Wilcox, perhaps another attorney and one or two assistants. The square footage of the house is approximately 1,425.
 - The house is accessible without any ramps or big steps, pretty level.
 - This zoning allows one-family with a customary home occupation. A law office would be less occupied because a home occupation includes all family members plus one additional employee.
 - As a law office, there really wouldn't be any noticeable changes other than the place would look better.

4. Alleged hardship has not been self-created.
 - It has been created by the economy and the traffic on the road.
 - Ms. Ross has not created it. As the owner of the property, she has had good intentions with trying to rent it as an antique/gift shop with mixed results including a negative return.

Attorney Olson recommends that based on the above, the proposed use variance should be granted.

Chairman Reid asked Attorney Wilcox if he has any issues with the traffic. Attorney Wilcox stated he doesn't have any concerns.

Mrs. Johnson asked if any neighbors were concerned. The Clerk did not receive any comments.

Mrs. Johnson asked if Attorney Wilcox plans to live there. Attorney Olson stated it's not possible for him to live there as a judge in the Town of Clarkson unless he wants to resign.

Chairman Reid closed the public hearing.

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Moved by Mr. Fisher, seconded by Mr. Sharpe, that having reviewed the application of Brenda Ross to change the existing commercial use variance for 5384 Brockport-Spencerport Road, Brockport, New York, from an antique and collectible business to a law office is an unlisted action that will not have a significant impact on the environment.

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

Moved by Mr. Fisher, seconded by Mrs. Johnson, that the application of Brenda Ross, 2879 Clarkson Parma TL Road, Brockport, New York, to change the existing commercial use variance for 5384 Brockport-Spencerport Road, Brockport, New York, from an antique and collectible business to a law office be **approved** for the following reasons:

1. The present owner cannot realize a reasonable rate of return on the property as zoned per Exhibit H (attached).
2. The alleged hardship of the property is unique, as it does not pertain to the rest of the neighborhood based on the shape of the property, volume of traffic, and it is not suitable for other uses permitted under R1-2 zoning.
3. The proposed use variance will not alter the character of the neighborhood as a low traffic, law office with two to four employees
4. The alleged hardship is not self-created.
5. No one appeared against the proposed variance.

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

Moved by Mrs. Thorpe, seconded by Mrs. Johnson, to approve the minutes of the October 7, 2010 meeting as corrected.

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

The meeting was adjourned by motion at 7:30 p.m.

Clerk to Zoning Board of Appeals