

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – November 20, 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 20, 2006, commencing at 7:00 p.m.

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

Also present: Brian Donovan, Donald Grentzinger

Absent: Frank Fisher (recused from meeting)

1000 Transit Way

Chairman Reid stated he is reconvening the November 15 meeting and that the public hearing is still open. Chairman Reid added that the Board has asked from the applicant an updated drawing showing a 6,200 sq. ft. building, input from the Town Engineer, and written approval from the Highway Superintendent authorizing landscaping in the R.O.W.

Mr. Kris Schultz addressed the Board and distributed the updated drawing. Chairman Reid asked if the public had any other input. There was none. Chairman Reid read the letters from the Highway Superintendent and Town Engineer.

Chairman Reid closed the public hearing. This Board now has 62 days to make a decision.

Mr. Schultz reviewed the Town Engineer's comments:

1. Mr. Schultz agreed that if growth continues around Wal-Mart, there might be a need to add turning lanes and widen portions of Transit Way in the future. The additional landscaping in the R.O.W. is not significant and would not prevent widening of the road or interfere in anyway.
2. There is nothing in the easements that restrict the opportunity to landscape.
3. Low volume retail – tenants do change and new tenants would need to be aware of what limitations there are as far as parking or other restrictions already in place.
4. Concern regarding setting a precedent. The variance request is specific to this application, and no way does this application open the door for everyone else to come in, especially for side/rear setbacks that have a car dealership and a Jiffy Lube business as neighbors. Each application should be reviewed separately.
5. The internal traffic layout would need to be reworked. Mr. Schultz would be happy to address those parking space issues. Mrs. Johnson had concerns with the north and the east parking spaces. Mr. Schultz agreed to address those issues with the Planning Board. Mrs. Johnson confirmed that the parking space requirement was based on public retail space not the whole building. Mr. Schultz stated that was correct.

Attorney Bell arrived - 7:15 p.m.

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Per Mrs. Thorpe's request, Mr. Schultz reviewed the variances the applicant is requesting per the 6,200 sq. ft. building. He stated there would be the 63.5 ft. front setback, instead of 75 ft., off Transit Way, the side/rear setbacks of 12 ft., instead of 25 ft., and the 14 ft. green space, instead of 25 ft., off Transit Way.

Mr. Schultz stated any widening of the Transit Way pavement could be done within the R.O.W.

Mrs. Thorpe stated this Board previously addressed all of the Town Engineer's concerns.

Mrs. Johnson asked Attorney Bell when this Board grants variances, is it limited to the type of conditions it can request, i.e., the type of building, what it looks like, or what it's constructed of. Attorney Bell stated that this Board should be concerned with the building's size, and it cannot approve a variance with the condition that a specific type of business operate at that location.

The Clerk clarified that the way the building is presented or its architectural style couldn't be a condition of the approval. Attorney Bell stated that is more suited for the Planning Board or Building Department's review.

Chairman Reid asked if there were any more questions and there were none.

Mr. Schultz explained that there is another option, a code compliant building, which was discussed at the last meeting as a fast food restaurant. In talking to the Town, it was not a preferred choice of business for this location. Mr. Schultz showed Attorney Bell the code compliant building drawing. The drawing was discussed.

Although the Chairman had already closed the public hearing, a motion was made by Mrs. Thorpe and seconded by Mrs. Johnson, to close the public hearing.

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

Mrs. Thorpe commented that she has gone back and forth several times with her decision, and really appreciates all the drawings the applicant has supplied to the Board. Mrs. Thorpe added that even after reviewing the 6,200 sq. ft. building drawing, she doesn't feel it is in the best interest of the Town to approve it.

Chairman Reid commented that he agrees with the Town Engineer's comment that this Board would be setting a precedent by approving this application; there isn't anything unique about it. Plus, when this lot was created, the existing zoning codes were in place.

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Mrs. Thorpe stated as far as setting a precedent, each application should be decided upon its own merit. The fear of setting a precedent doesn't worry her as much as the long term effect on the area.

Mr. Sharpe stated, the question is does this Board feel that comfortable with the proposed drawing so much so that it would be willing to forego an opportunity for a code compliant building, i.e., fast food restaurant, to be approved. This Board has the opportunity in front of it to approve an attractive, nicely landscaped building that would fit well in our Town. Mr. Sharpe went on record that he didn't like the 12 ft. side/rear setbacks, but something will be built at that location, like it or not, that the Town can't stop.

Mrs. Johnson reminded the Board of the ZBA's Balancing test, "Board of Appeals shall balance benefit to applicant with detriment to health, safety and welfare of the community."

Mrs. Johnson added that although the ZBA appreciates the developer's efforts to improve the Town of Sweden, the ZBA does not have the power or the authority to regulate the type of commercial business within the building or to determine the architectural design of the building, as confirmed by Attorney Bell.

Mr. Schultz added while it is true that this Board isn't responsible for an architectural or landscaping review, there's no reason why the information can't be shared with the Planning Board.

Attorney Bell went over the criteria for area variances found in § 175-9, B, (1) a through e that must be proved, and his advice was not to be concerned with what the building will look like.

Chairman Reid asked if there were anyother comments? There were none.

Moved by Mrs. Johnson, seconded by Mrs. Thorpe, that the application of HDL Property Group LLC for the three (3) area variances listed below to construct a 6,200 sq. ft. building at 1000 Transit Way, Brockport, New York, be **denied** for the following reasons:

1. Request for a front setback variance from the R.O.W. of Transit Way to the proposed building of 63.5 ft. instead of the required setback of 75 ft.
2. Request for a side/rear building setback variance of 12 ft. instead of the required setback of 25 ft.
3. Request for a front setback variance from the R.O.W. of Transit Way to the proposed edge of pavement of 14 ft. instead of the required setback of 25 ft.
 - a. The benefit sought by the applicant can be achieved by another method by making the building smaller, in compliance with Town zoning codes.
 - b. The area variances requested are substantial.
 - c. The proposed variances will have an adverse impact on the environmental conditions of the neighborhood, as currently evidenced by insufficient green space.
 - d. The alleged difficulty was self created as this lot was subdivided in 1989, when the current setback and area requirements of the Town's zoning code were already in place.

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Discussion:

The Clerk asked if a SEQRA motion should be made? Mrs. Johnson stated this application would not be an unlisted action as described in the above motion. Attorney Bell commented that a SEQRA motion is not necessary because the application has been denied, but to be technically correct, a motion could be made.

Moved by Mrs. Thorpe, seconded by Mrs. Johnson, that having reviewed HDL's Property Group LLC application for three (3) area variances at 1000 Transit Way to construct a 6,200 sq. ft. building will have a significant impact on the environment as previously referenced above.

*Mrs. Johnson - Aye
Mr. Sharpe - Nay
Mrs. Thorpe – Aye
Chairman Reid –Aye*

*Mrs. Johnson - Aye
Mr. Sharpe - Nay
Mrs. Thorpe – Aye
Chairman Reid –Aye*

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

Clerk to Zoning Board of Appeals