

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – November 29, 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 Wednesday, November 29, 2006, commencing at 7:00 p.m.

Members present: Frank Fisher, Pauline Johnson, Kenneth Reid

Absent: Mary Ann Thorpe, Peter Sharpe

Also present: Christopher Wilcox, Timothy Clark, Joseph Romano, William and Carolyn Johnson, Carol Maddalena, Jim Hamlin

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

Application of Timothy Clark, 7179 N. Bergen Road, Bergen, New York, to change the current commercial use variance at 5384 Brockport-Spencerport Road, Brockport, New York, from an antique and collectible business to both real estate and law offices. 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

Chairman Reid introduced the Board. The Board has 62 days from the close of the public hearing to make a decision and the applicant has 30 days for an appeal.

Mr. Wilcox spoke on behalf of Mr. Clark, the applicant, who is interested in purchasing the property.

Mr. Wilcox gave a brief history of the property. He stated that back in the day, it was used as a bar and restaurant at certain times. It served as a fruit stand. In the 1980's, it was used for an antique collectible and furniture restoration business. In the 1990's, the same use continued. In the late 1990's to the 2000's, it was used as an herb and sundry store. From then on, it has been used to sell collectibles by Brenda Ross, the current owner. The surrounding use is residential, farmland and Northampton Park. Brockport-Spencerport Road (Rte. 31) travels through the south end of the property in question. Mr. Wilcox has been told that approximately 36,000 vehicles travel on Rte. 31 daily. One half mile to the west is the intersection of Sweden Walker Road and Rte. 31, where there is a former farm market, and on the southwest and northwest corners are two used vehicle lots. To the east of the property are residential homes, farmland, a tool sharpening business and North Hampton Park. Mr. Wilcox restated that Mr. Clark's intention is to use the property to create a workplace for himself as a ReMax Real Estate Agency, and to allow Joanne Best, Esq., to move her law office to this location. There would be room for one secretary, a paralegal and one other attorney. Mr. Clark has two agents that work for him mostly from their homes. At one time, there would be six people working in the building.

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The aesthetics of the building from the outside will remain the same. However, the building will need a new roof and the parking lot paved immediately. Proposed additional work includes: landscape the property, side and paint the two sheds on the northeast of the property, and fix and paint the signposts and return signs to their former location.

Mr. Wilcox stated he went out Saturday and last night with Mr. Clark to talk to the neighbors in an attempt to ask them their thoughts on the proposed change of business. There are affidavits from the neighbors in favor of the application, which have not been notarized, but Mr. Wilcox will attest that he saw them sign. The affidavits are from residents mostly from the east side of the property. Mr. Wilcox mentioned the names of the residents contacted, which included Mark Heitz, 5377 Brockport-Spencerport Road, Paul McCormick, 5451 Brockport-Spencerport Road, Elaine Bader, 5440 Brockport-Spencerport Road, and Yon P. Rypkema, 5459 Brockport-Spencerport Road. Mr. Wilcox tried to contact those residents within 500 ft. of the property, but not everyone was at home.

In closing, Mr. Wilcox restated that the application before the Board is to change the current form of zoning to allow the two businesses to legally operate at and occupy 5384 Brockport-Spencerport Road.

Joseph Romano, 5370 Brockport-Spencerport Road - Mr. Romano asked if the property was going to be changed to commercial. Mr. Wilcox explained that the property isn't zoned commercial, but has a special use variance for a commercial business. He also wanted to know what would happen to his house. Chairman Reid stated it would stay residential. Then he stated how is he suppose to sell his house next to a commercial business, nobody will want it. Also, there's a lot of acreage, is there a chance it will be subdivided in the future for more businesses. Mr. Clark stated that the parcel is only 6/10ths of an acre, and the remaining lands are owned by Mr. Frank Bader. Mr. Romano stated there's already enough traffic on the road.

Chairman Reid asked the applicant if he had any documentation of financial hardship. Mr. Clark stated he has none except that he pays the rent. Mrs. Johnson stated that actually it would be the current owner that would have to prove financial hardship. Chairman Reid stated but Mr. Clark is the applicant. Mrs. Johnson asked if the owner of the property was present. Mr. Wilcox stated no she was not.

William Johnson, 4775 Sweden Walker Road - Mr. Johnson is the previous owner. He stated the type of use and design of the structure proposed is perfect for this area. If you visit the house, you would see that this isn't a typical layout of a home. The point is that it was a bar/restaurant in the past and that it has always had a commercial use in a residential-zoned area. It's a special use variance and its intent was to have the property remain as a low impact business to the neighborhood. When the antique collectible business was in operation, there was much more traffic than the proposed businesses will have. At one point, the Johnsons did consider coming before this Board to ask for a rezoning of the property to make it available for other business types because an antique collectible shop isn't a strong business. Mr. Johnson agrees with what the applicant is proposing, and he thinks the impact to the neighborhood will be a minimum. Plus, the

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property will be revitalized with the proposed changes. He added it is true that Rte. 31 is a difficult road, however, what the applicant is proposing makes sense.

Mr. Clark stated he had the property for sale for quite awhile when Mr. Johnson was selling it, and he showed it to about 30 people. There was always something wrong, either the traffic or the road. Mr. Johnson added that when he had the property for sale, there were offers if it could be a kitchen/bathroom remodeling showroom, professional group of psychologists, or a dog grooming shop. Chairman Reid asked what was Mr. Johnson's business. Mr. Johnson stated Sweet Herbs and Sundry because the gardens were full of herbs, but antiques is what was sold. Mr. Johnson and his wife lived there for a short time while remodeling their home. Mr. Johnson suggested it might behoove the Board to go on a tour of the home to see that its not laid out as a typical home might be.

Mrs. Johnson asked the applicant to identify the letters of support with the parcels on the county tax map. Mr. Wilcox identified the parcels of the surrounding neighbors.

Mr. Wilcox asked if there were any more questions?

Mr. Butler, Building Inspector, clarified the applicant's request. He stated that the property is residential and the applicant is not asking it to be rezoned. The request is for a use variance other than the specific variance granted previously for an antique collectible business. The existing use variance runs with the property as long as it doesn't change. Once the use changes, then the variance approval becomes null and void. The applicant is requesting to change that use variance to a real estate and law office; not rezone the property.

Mr. Romano asked if what he had heard was true when Ms. Auer, prior owner, passed away, which was that her son-in-law told him that the Town Board stated he couldn't put a bar/restaurant on that property again. Mr. Butler stated that would be true because there would have to be a change in zoning or new use variance.

Mr. Butler asked what was the total square footage of the building? Mr. Clark stated 1,428 sq. ft. located on .638 acres. Chairman Reid asked how many rooms are in the home? Mr. Wilcox stated the layout is very open with two large rooms, two smaller rooms on the side, one bathroom and a sink and stove in the kitchen. Mr. Wilcox stated it has never been used as a house. It is well built and in good condition.

Mrs. Johnson asked for the record, how many people are for the project and how many are opposed? Mr. Wilcox stated he doesn't know how many are opposed, but there are four affidavits in favor of the project. Mrs. Johnson asked the Clerk if there were any phone calls or visitors for or against this project. The Clerk stated no.

Carol Maddalena, 5360 Brockport-Spencerport Road – She lives two doors east of the property in question. Ms. Maddalena explained that this is her home and it has been hard to survive living on this road. She has a personal loss because of the roadway so when a project comes in that will add more traffic near her home it gets upsetting. She's hoping

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that Brockport will try and control businesses by keeping them closer to the commercial district versus moving into rural areas. To pull in her driveway is a complete terror.

Mr. Clark asked if Ms. Maddalena would rather see a family move in there because it has to be occupied by someone? Ms. Maddalena stated just keep it the way it is now. Mr. Clark added that if your selling items at the property, the chances for more people coming are greater than what would be for a real estate or attorney's office for which the majority of customers are offsite.

Mr. Wilcox asked if Mr. Romano was opposed to this application. He stated yes because of all the traffic problems over the years. Ms. Maddalena stated until you've lived out there for one week, you don't understand the traffic terror.

Mrs. Johnson asked Mr. Clark if he had a contract for the sale of the property with Mrs. Ross, and is it contingent on the ZBA's approval? Mr. Clark stated yes, but didn't have a copy of the contract with him. Mrs. Johnson explained that the variance application should really come from the property owner. Mr. Wilcox represents both Mrs. Ross and Mr. Clark. The variance goes with the property and Mrs. Ross is the current property owner.

Mr. Johnson commented that the Board should look historically at the use of the property. It hasn't been used as a residential property for years. The road does bring a lot of hardship and he understands their concerns. The design of the property is perfect for what the applicants are proposing then it would be to remain an antique collectible shop. The parking lot has enough room for 10 to 15 cars at one time. Ms. Maddalena stated that Mr. Johnson doesn't even live around this property so he shouldn't have a say in it.

Discussion followed as to whether financial hardship was addressed. Mr. Clark explained that the property was for sale for so long that it had to be auctioned off, and now it has been back up for sale for quite awhile with no offers. Mr. Wilcox also pointed out the fact that the road certainly has not helped the situation, the bridge on Washington Street has been raised for years now, no expansion has been started on 531, and the fact that his client sells trinkets that are not high quality antiques. It really is a glorified garage sale and he feels that people won't take the chance to stop on that road to pick up a "five and dime" item. As Mr. Clark stated he has attempted to sell the building for a long time now.

Mrs. Johnson asked if there were any other questions. There were none.

Chairman Reid closed the public hearing. He thanked the applicants for their presentation and thanked the residents for coming to voice their opinion.

Moved by Mrs. Johnson, seconded by Mr. Fisher, to enter into Executive Session.

Aye – Mr. Fisher
Aye – Mrs. Johnson
Aye – Chairman Reid

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Moved by Mrs. Johnson, seconded by Mr. Fisher, to end the Executive Session.

Aye – Mr. Fisher
Aye – Mrs. Johnson
Aye – Chairman Reid

Moved by Mr. Fisher, seconded by Mrs. Johnson, to **approve** the application of Timothy Clark, 7179 N. Bergen Road, Bergen, New York, for a use variance to conduct both a real estate and law office at 5384 Brockport-Spencerport Road, Brockport, New York, for the following reasons:

1. The alleged hardship to the property is unique based on the existing street and lot configuration.
2. The requested use variance will not alter the essential character of the neighborhood.
3. The alleged hardship has not been self-created.

Aye – Mr. Fisher
Nay – Mrs. Johnson
Nay – Chairman Reid

The meeting was adjourned by motion at 8:45 p.m.

Clerk to Zoning Board of Appeals