

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 4, 2008

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, December 4, 2008, commencing at 7:00 p.m.

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

Absent: Mary Ann Thorpe

Also present: James Bell, Town Attorney, Lou Buono, Domenick Buono, Betsy Brugg, Esq., George Hage, Scott Francis, David Gray, Jim Hamlin

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

Application of McDonald's USA, LLC, 1000 Omega Drive, Pittsburgh, PA 15205, for four (4) area variances as stated below. The existing McDonald's Restaurant, located at 6500 Brockport-Spencerport Road, Brockport, New York, will be demolished, and the entire site will be redeveloped with a new ±3,868 sq. ft. building and related site improvements. The property is owned by McDonald's Corporation, Lake Creek Properties LLC, Rochester, New York, tax account number 083.08-8-21.

- The proposed front setback from the R.O.W. of Brockport-Spencerport Road to the proposed building is 50.6 ft. Per Town of Sweden Ordinance Chapter 175-41, Section E (4)(a), Required setbacks, states the required front setback is 75 ft.
- The proposed perimeter **rear** buffer zone is 1.1 ft. Per Town of Sweden Ordinance Chapter 175-40, Section B, Required perimeter buffer zone is 7.5 ft. in width.
- The proposed perimeter **side** buffer zone is 1.1 ft. Per Town of Sweden Ordinance Chapter 175-40, Section B, Required perimeter buffer zone is 7.5 ft. in width.
- The proposed open space is 27.3%. Per Town of Sweden Ordinance Chapter 175-41, Section E (6), Open area requirement is 30%.

6500 Brockport-Spencerport Road

Attorney Betsy Brugg, Fix Spindelman, Brovitz & Goldman, addressed the Board. She introduced Scott Francis, McDonalds USA, Lou and Dom Buono, operators of the McDonald's Restaurant on Rte. 31.

Attorney Brugg explained that they had previously taken the project informally before the Planning Board for comments. One of the comments from the Planning Board was whether or not other alternatives had been looked at to reduce the variances. Mr. Francis stated this revised submission was his twelfth version. The Planning Board's comments from the first meeting were favorable. However, when they reviewed the application again, at a second meeting, they seemed comfortable with the first three variances, but had concerns with the front setback variance. In response to the comments from the second meeting, Attorney Brugg forwarded an updated version of the plan to the Clerk via email.

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This updated version showed the front setback variance had been reduced from 24.6 ft. to 10 ft.; the building was pushed back quite a bit. The reason that was possible is because Mr. Francis looked at every possible building design, and found one that could fit on the site, accommodate the required drive-thru, and achieve the function that the operators needed.

Attorney Brugg gave an overview of the existing site and what was proposed and why the variance was desperately needed to make the project work. Updated plans were distributed to the Board.

She explained that the revised plan now shows a 20 ft. Town sanitary sewer easement along the north side of the property, as well as a drainage easement. This would make purchasing additional land to the north a physical impossibility. All of the site improvements have been moved out of the sewer easement. There are two parking spaces beyond the dumpster which will be for employees.

The building is located on the north side of Rte. 31 on just under an acre of land. It's not a perfect rectangle. The proposed building is approximately the same size as the existing one, except that the proposed building is significantly upgraded into a modern, McDonald's Restaurant of the future. The existing McDonald's is 30 plus years old. Currently, there is 13.8% greenspace and 27.4% is being proposed. Still a variance request, but a huge improvement from what is there and from what any other business has along Rte. 31. Another visual improvement is that the signage will come into conformance with the removal of the golden arches. The new McDonald's has a "coffee house" feel. Meetings can be conducted at the new building. WiFi is available for your laptop. The pavement is designed for a much safer, pedestrian-friendly layout. There will still be a one-way traffic pattern entering the site up to the double-lane drive-thru, which is a very fundamental part of McDonald's operation. The bulk of McDonald's business is drive-thru. The goal is to get a customer through in one and a half minutes. The layout of the back of the building is crucial to the functioning of the drive-thru. Attorney Brugg explained the drive-thru operation to the Board by which customers enter and can split into two different ordering windows, and then through computer technology, proceed one after the other to a pay window onto the pickup window. Farther north of the double-lane drive-thru is a bypass lane. A rear cross access is proposed at the north of the site to offer customers another exit to leave the site and ease traffic concerns.

Attorney Brugg stated there are a lot of safety benefits to the revised plan in terms of traffic and pedestrians. The applicant is prepared to add greenspace to the perimeter where there is currently none. Also, additional landscape at the front where there is pavement. A landscape architect will be used. The 10 ft. front setback variance will not block the site of any of the neighboring businesses and has been reduced significantly from the original application. The benefits of the redevelopment of this site outweigh any detriments.

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The perimeter buffer variance at the northwest corner is now 1.4 ft. The Town has a 20 ft. sanitary sewer easement along the north side of the property and the applicant would be restricted from building there. Mr. Hage, owner of the property to the north, submitted a letter to the Board in favor of this project. This variance will have no impact at all.

Mr. Francis stated that both the site and building is ADA certified compliant. Entering the building from the parking lot is much safer than it is now. Attorney Brugg stated that the applicant has worked very hard after several attempts to make this plan work for not only McDonald's, but also the community. The ZBA can be proud of approving this project.

Other changes to the revised drawing are that the building is 3,897 sq. ft., not 3,868 sq. ft. The main reason for going with the revised building design is to minimize the front setback variance and for safety reasons. There is only a front dining area so customers can be more readily watched. The bathrooms are ADA compliant and very large as a result. Signage and parking code has been met.

Attorney Brugg explained the following variance criteria:

- Benefit to the applicant in granting the variance against the detriment to the community.

The benefit is to everyone. The applicant benefits because they can redevelop the site. This is the last attempt to redevelop the site because there is nothing else to propose to make this project work. The variances have been minimized as much as possible. The applicant is restricted by the physical constraints of the site; it's either what exists or something new. What is proposed is an upgrade as far as a safety, visual, greenspace and pedestrian-safety standpoint. If the cross access to the north is completed, it will be a huge benefit to the people who live north of the site. The applicant doesn't have the ability to do the double-lane drive-thru on the existing site and it is a fundamental part of the business.

- Undesirable change in the neighborhood character or to nearby properties.

This application isn't detrimental to anyone. The building has been pushed back as far as possible. It's not going to block visibility to any of the adjacent properties. It's not a significant difference from the businesses that are on the street. If anything, it will improve the character of the neighborhood and might inspire some of the other businesses to improve their sites. The addition of the greenspace in the front is going to enhance the neighborhood by eliminating some of the pavement.

- Whether benefit can be achieved by other means feasible to applicant.

Every possible alternative has been pursued. The site is restricted by the need to have two access points due to the type of business and the physical parameters. Every effort has been made to comply with code to the maximum extent and these minimum variances are necessary. At least a dozen various site plans have been reviewed.

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- Whether the request is substantial.
In terms of the amount, impact and nature, it has been demonstrated they are not substantial. No one is going to be hurt by the granting of these variances in any way.
- Whether the request will have adverse physical or environmental effects.
The addition to the greenspace and landscaping is going to be a huge improvement to the physicality. Also, if improvements are made to the traffic conditions, that will be a significant improvement.
- Whether alleged difficulty is self-created.
The applicant believes the variances are not self-created, but are a direct result of physical constraints that the applicant has to deal with, i.e., the size of the parcel, the existence of a Town sewer easement, a drainage easement.

Mr. Fisher asked if the applicant had any historical data regarding the volume of sales in terms of a one-lane drive-thru versus the new two-lane drive-thru, which is a fundamental part of the business. The applicant stated that 70 percent of their business is drive-thru and a single-lane drive-thru can't handle this amount of business today, or the business of the future. To handle the amount of demand in Brockport, McDonald's needs to go to a double-lane drive-thru. With a double-lane drive-thru, McDonald's will be able to handle 130 to 160 cars per hour. A single-lane drive-thru has a maximum of 80 to 90 cars per/hour. The existing McDonald's is at that capacity now so it is the demand of the customer that's driving the request for a double-lane drive-thru.

Mrs. Johnson asked what is the rate at the existing McDonald's. Mr. Francis stated the existing McDonald's is not producing at the rate expected, which is a time of one minute and a half for the drive-thru. He added that with a new building and the double-lane drive-thru, McDonald's would be at 120 to 140 cars per hour at peak capacity. Mrs. Johnson asked what are peak hours? Mr. Buono stated 11 a.m. – 1 p.m. and 5 p.m. – 7 p.m.

Mrs. Johnson asked for clarification on how the drive-thru works. Mr. Francis stated it works via an interval camera system. Between the internal employees, if it is noticed that cars are jockeying, they can hold off a customer's order to slow things down. It's part of employee training. Mr. Francis stated there are two places to order, one window to pay and one window to pick up. Plus, with this new layout, there's room for one car to wait between the windows. The main purpose for this layout is to control all of the traffic onsite, at peak hours, so that there is no back up on Rte. 31.

Mrs. Johnson asked how big is the current building? Mr. Francis stated 3,444 sq. ft. The new building is slightly bigger, but it has the freezer/cooler inside the building.

Mr. Fisher stated with the single-lane drive-thru, there will be more traffic and people will pull in and park to avoid the drive-thru. Mr. Francis stated the reason for the double-lane drive-thru is not only for safety, but to invest in the business so it can grow. The question was asked if there were any new McDonald's with single-lane drive-thru's being constructed? Mr. Francis stated no, but then corrected himself to say it depends on

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volume, i.e., Albion, New York, where a new single-lane drive-thru McDonald's was built. Sales volume at that McDonald's isn't even close to Brockport's.

Mrs. Johnson asked if there was anyway to push the building farther north. Mr. Francis stated no, he was at his absolute limit. He's actually illegal with the corporate standards for the functionality of the double-lane drive-thru. Mrs. Johnson asked what do you mean by illegal? Mr. Francis explained there are certain regulations in designing a site, i.e., if the site is designed too tight, the double-lane drive-thru doesn't work. Mr. Francis stated he has to attend drive-thru classes twice a year in order to design the double-lane drive-thru correctly. Plus, if he were to move the double-lane drive-thru back, which is considered part of his business, he would be in violation of the Town's easement. Mr. Francis stated he couldn't put part of his business over an easement.

Mr. Reid introduced the Town Attorney, James Bell. The Board asked what are the restrictions for the sewer and drainage easement. Mr. Francis stated he has documentation that a sewer easement was granted in 1962 to the Town. Mrs. Johnson confirmed that the bypass lane would be over the easement. Mr. Francis agreed and stated that the bypass lane is asphalt, which is permitted.

Mrs. Johnson questioned whether or not the applicant could buy land from Mr. George Hage to eliminate the side and rear buffer zone variance. Attorney Brugg stated that was not a viable option because it does not remove the sewer easement issue. It would eliminate a variance that is not a detriment to anyone, and one that the Planning Board is fine with. Plus, it would be a huge expense to the applicant.

Attorney Brugg added that she appreciates this Board's charge in trying to get the minimum variance as necessary, but a lot of work has been done by the applicant to minimize the variances as much as possible, and to prevent any negative consequences or detriments from any variances approved. She added that the applicant has demonstrated that the variances are appropriate and satisfy the legal requirements.

Mr. Sharpe asked at what point on the timeline did the front setback change to 10 feet? Attorney Brugg stated the original plan submitted was reviewed by the Planning Board and then reviewed again at a second meeting with comments to try and minimize the front setback. Mr. Francis added that the front setback went from 24.6 to 10 feet, which is at his limit and a huge minimization. The complexity of the operation made this minimization very difficult.

A resident asked what was the purpose of the front driveway. Mr. Francis stated it allows customers a cross access or if there is a need to go back to the drive-thru. It gives the customer a chance to do so without going back out on Rte. 31.

Mrs. Johnson brought up the rear cross access owned by Mr. Hage. Mr. Francis added that the Planning Board was highly supportive of having the access. Mr. Hage wants to cooperate with the Town.

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Attorney Bell asked if McDonald's has certain building plans that they have to conform with. Mr. Francis stated there are three buildings he can choose from.

Mr. Francis went over the different models he could choose from. Attorney Bell asked if there were any exceptions to those buildings that go outside the parameters. Mr. Francis stated today there aren't any exceptions. Attorney Brugg explained how the whole interior functioning depends on the layout of the restaurant. In this case, they are going with a front dining room, which is better suited for a college town because it is harder to monitor a side dining room. The layout of the internal building was presented to the Board to show the complexity of it.

Mrs. Johnson asked Mr. David Gray, owner of the Firestone next to McDonald's, if he had any comments. Mr. Gray asked what the frontage is for the McDonald's. Mr. Francis stated 200 ft. Firestone is a little less at 150 ft. and 180 ft. for Bruegger's. Mr. Gray's concern before the change in front setback to 10 ft., was a visibility issue, especially with the busy traffic on Rte. 31.

Attorney Bell asked about the proposed curb cut that will go over the sewer easement. The attorneys for the two property owners are in discussion to obtain an easement for McDonald's. Mr. Hage asked what was the reason why McDonald's wanted to have a cross access. Mr. Francis stated the main purpose is for inter connection of traffic without having to go out on the main thoroughfare. Most municipalities are strong components of that. It encourages traffic to go from business to business.

Mrs. Johnson asked Mr. Buono how long does he estimate that customers have to wait in the single-lane drive-thru. Mr. Buono stated two to three minutes during peak hours; it should take one minute and half. Attorney Brugg reiterated that this is a \$2,000,000 dollar investment by the owner. Mrs. Johnson stated, for the record, she appreciates the owner wanting to redevelop the existing site and not leave an abandoned storefront.

Chairman Reid asked if there were any more questions from the public? There were none. Chairman Reid closed the public hearing.

Attorney Bell asked if McDonald's wants to break ground on March 1, what is the latest possible date to get approvals. Mr. Francis went over all of his requirements in order to get a building permit. The Clerk explained the process for an amended site plan approval, which would take from two to three months. Attorney Bell asked where the application fell in the SEQRA process. Attorney Brugg stated this project would be an unlisted action and doesn't fall into a Type I action.

The Board asked if the Planning Board has commented on the revised plan with the reduced front setback. The Clerk explained that the Planning Board received an email copy, and to date had no comments. Mrs. Johnson would like to hear from the Planning Board. She added she is stuck on the need for a double-lane drive-thru and bypass lane. Mr. Francis explained it keeps all traffic internally on the site and not on the main thoroughfare.

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Mrs. Johnson stated her position is not to make a decision until she receives feedback from the Planning Board.

Attorney Brugg stated at the end of the day, McDonald's tried to give the best plan possible for all and still function as a McDonald's.

Mrs. Johnson asked if the owners can't have a double-lane drive-thru, would they close their business? Mr. Francis stated the business would stay as it is today until corporate can't support it anymore and the business would close.

Mrs. Johnson referred to the corner side/rear buffer zone variance and how an effort hasn't even been made to buy additional land to eliminate the variance. Attorney Brugg stated there is a reason why variances exist and this is a very good case. The benefit to the applicant against the detriment to the health, safety and welfare of the community should be asked. She added what possible detriment to the community could there possibly be in granting this variance. There is none. It is not feasible because of the amount of work and effort that would be required by McDonald's due to it being on leased land. The project would not be done due to the amount of time and money it would take to accomplish this.

Attorney Bell stated this is a self-imposed hardship. Attorney Brugg explained that every variance is somewhat self-imposed, but what the applicant is dealing with is existing parameters. From her experience with other zoning boards, an applicant has never been required to purchase additional property. Mrs. Johnson was just asking if it was considered?

Mr. Francis stated the Planning Board told him that the corner property is Forever Wild, and that the sanitary sewer goes along the rear of the property.

The Clerk suggested showing the revised plan with the reduced front setback to the Planning Board for comments at the December 8 meeting. The Zoning Board was in agreement.

Moved by Mrs. Johnson, seconded by Mr. Fisher, to adjourn the meeting to Wednesday, December 10 at 7 p.m.

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

Clerk to Zoning Board of Appeals