

**TOWN OF SWEDEN  
Planning Board Minutes  
December 8, 2008**

A regular meeting of the Town of Sweden Planning Board was held on Monday, December 8, 2008, at the Town Offices, 18 State Street, Brockport, New York, commencing at 7:00 p.m.

Members present: Richard Dollard, David Hale, William Hertweck, Craig McAllister, Matthew Minor, Arnold Monno, David Strabel (arrived late)

Also present: James Oberst, MRB, Ken Reid, ZBA, Betsy Brugg, Esq., Scott Francis

The meeting was called to order at 7:00 p.m. by Chairman McAllister.

Correspondence passed to members for review.

Moved by Mr. Minor, seconded by Mr. Monno, that the minutes of November 10, 2008 be approved.

Ayes – 6

**McDonald's Restaurant. 6500 Bkpt-Spen Rd. 083.08-8-21**

Attorney Betsy Brugg addressed the Board and introduced Scott Francis from McDonald's. She explained that they previously went before the Planning Board on October 27 for feedback regarding their ZBA submission. The Planning Board reviewed the ZBA application at a second meeting on November 10. Mr. Francis took into consideration the review comments from the Planning Board, and worked hard to produce a revised plan with a 10 ft. front setback instead of 24 ft., as well as reducing the other variances. Mr. Francis showed the inside operation of the building to help the Board understand how difficult it is to make changes. The restrooms alone take up one-sixth of the building due to being ADA compliant. Attorney Brugg added that because the majority of the business is drive-thru, the operation has to be just right, in a specific order to work, and can't easily be changed around.

Attorney Brugg showed what the inside of a new, modern McDonald's would look like. It's intended to be more of a "coffee house" feeling, warm and cozy, where customers can stay awhile. College students may want to bring their laptops and use the WiFi capability.

Mr. Monno asked for clarification regarding the reason for tonight's meeting. Attorney Brugg stated the ZBA asked for feedback from the Planning Board regarding the reduced variances. She explained that the first one is the front setback variance, which went from 24.6 ft. to 10 ft., and will not block the visibility of neighboring properties. The rear perimeter buffers have been improved upon. It was discovered, after the ZBA meeting, that there is a 20 ft. Town sanitary sewer easement that runs along the rear of the property preventing McDonald's from constructing in that area. The sewer easement is McDonald's limiting line. There's no longer a variance needed by the masonry enclosure, and the 1.1 ft. variance at the corner of the Forever Wild area is now 1.4 ft. The greenspace is now 27.4 ft. from 27.3 ft. The revised building size is 3,897 sq. ft. instead of 3,868 sq. ft., and is more a square shape than a rectangle. The operators prefer this revised plan because it no longer has a side dining room so they are able to see all their customers.

Attorney Brugg added that a letter of support was submitted from the property owner to the north and west.

Mr. Monno asked what are the hours of the business? Mr. Francis stated it's still a 24-hour operation.

**TOWN OF SWEDEN**  
**Planning Board Minutes**  
**December 8, 2008**

Attorney Brugg and Mr. Francis commented that the property owner to the east was concerned about visibility with the original 24.6 ft. variance request, but is fine with the revised setback variance of 10 ft.

Mr. Dollard asked what's the current front setback for the existing building? Mr. Francis stated right around 75 ft. After further discussion, it was determined the existing front setback is 85 ft. The proposed building will end up 10 ft. less than the required 75 ft. Mr. Dollard added that the Board's concern is that the building is getting closer to the highway, and what if the highway has to be widened.

Mr. Minor asked why couldn't the building be pushed back farther? Attorney Brugg stated the reasons are that the double-lane drive-thru has to be squeezed into the site and the Town sanitary sewer easement limits that. Mr. Francis explained that McDonald's has various kinds of corporate standards that have to be met. Mr. Minor stated those standards aren't higher than Sweden's. Attorney Brugg explained the timing system of how the drive-thru works, which is very dependent on the layout of the operation. Mr. Francis added that if the building is backed up, a 53 ft. delivery truck or fire truck will not be able to get around the site.

Mr. Hale stated it is a self-created hardship. Mr. Francis agreed, but the choices are to go look for another piece of property or redevelop the existing site. The operators want to stay on the same property, but in order to move forward, the variances are needed to reinvest.

Mr. Oberst asked if the parking requirement was met at 33 spaces? Mr. Francis stated yes. Mr. Oberst's concern is that the first two parking spaces are backing out right into the proposed entrance/ingress. Mr. Francis stated his engineers didn't see a problem with that. Mr. Oberst stated he is, also, an engineer, and for safety reasons, he has a concern with it.

Mr. Minor asked why is everything dependent upon the drive-thru? Mr. Francis stated because it is 70% of McDonald's business, and is needed to make the business grow. Mr. Minor reiterated, who is the higher authority, the Town of Sweden or McDonald's. Attorney Brugg explained that the applicant is trying to comply with all applicable standards, and feels all legal standards have been met for the variances, but ultimately, it is the Town's decision whether to find a way to work together or tell McDonald's to find another site. The building is 38 years old, and will outlive its expectancy. Its contract will not be rewritten in four years, and, quite possibly, be left vacant.

Mr. Minor stated the reason this Board strongly suggested the front setback be 75 ft., and not 65 ft., was to avoid setting a precedent. Attorney Brugg understood, but what the operator is starting with is an existing piece of property with an existing store. So, the question is whether the operator can make McDonald's operation still continue to work on the site or not. The reality is the operator is stuck with a piece of property that has certain location limitations, curb cut limitations, and proximity to other uses. The operator is not fortunate enough to have the luxury of starting from scratch. The approach is to try and work together to get the best project for McDonald's and the Town. If the Town can't give a little to help, then it just isn't going to work because the operators are not going to want to invest \$2,000,000.

Chairman McAllister commented that the McDonald's lot becomes much more attractive than any other lot that's in the area, and will be the only lot over there with greenspace. This application will come closest to meeting the Town's current standards than any lot on that side.

**TOWN OF SWEDEN**  
**Planning Board Minutes**  
**December 8, 2008**

Mr. Monno asked what would be an ideal piece of property for McDonald's? Attorney Brugg stated a lot of factors go into choosing a piece of property. Mr. Monno's concern is the parking and how difficult it will be to back out during peak times. Attorney Brugg stated Mr. Francis has built many of these types of layouts, and they work fine. Mr. Francis stated he's designed 18 new McDonald's and has had no accidents happen on the sites. Mr. Monno reiterated what is the applicant's ideal piece of property. Mr. Francis stated angled parking is ideal because it promotes one-way flow of traffic. Chairman McAllister asked if the first two parking spaces are needed for the site? Mr. Francis stated he needs them unless a variance could be granted. Chairman McAllister was only asking if the two spaces were needed for this building in order to work with the applicant. Mr. Francis apologized and stated he needs the two spaces to meet the Town's code. Mr. Francis stated that negotiations are taking place between McDonald's and Mr. Hage to permit the rear access.

Mr. Dollard stated if you're negotiating for land along the back, then you'll have more room to move the bubble back. Mr. Francis stated no because of the sewer easement. Chairman McAllister stated the negotiation is for permission to have the rear access into Mr. Hage's property.

Mr. Oberst stated the only thing the sewer easement impacts is the building. Mr. Francis stated the drive-thru is also impacted because McDonald's won't put any part of their business over the sewer easement. The bypass lane will be asphalt over the sewer easement, which can be dug up, if necessary, and still keeps the business operating.

Attorney Brugg reiterated that this is an old building on an existing site. The operators lease the land, want to rebuild it and invest in their business. The relief the operators are requesting is relatively small. The 10 ft. variance is not going to impact anybody. All the neighbors are supportive of it. Not only has McDonald's squeezed as much greenspace as possible out of the site, they have significantly improved upon the existing conditions, including greenspace at the front of the property, which isn't required per Town Code. Chairman McAllister corrected Attorney Brugg that the current code does call for 25 ft. of greenspace at the front of the property. Attorney Brugg reiterated while the building is pushing forward a little bit, McDonald's is using a landscape architect, and will do everything possible to mitigate any potential impacts from moving the building forward. There won't be parking in the front anymore; it will be green. The bypass lane is an excellent safety feature so that the vehicles can come around. There are a lot of good things from this plan.

Mr. Oberst asked is it fair to say that in granting this variance, it will establish a new front setback along Rte. 31 for any new construction. Attorney Brugg didn't think so. Mr. Oberst stated the Town would have a tough argument for any development to the west. Attorney Brugg commented that variances have no precedential effect. Every variance application must be considered on its very own merit. Every applicant must meet the standards set forth in the Town law in the granting of an individual variance. She added that there is no saying just because a variance was granted to Joe; one should be given to this applicant. Mr. Oberst stated it certainly gives another applicant an argument though.

Mr. Minor stated if McDonald's only needed one lane for the drive-thru, there wouldn't be a need for any variances. Attorney Brugg stated the law clearly states a municipality cannot require an applicant to change the nature of their business operation.

Mr. Hale asked the Board how should this be handled procedurally. Chairman McAllister stated through the minutes, the ZBA would get the feedback they requested.

**TOWN OF SWEDEN  
Planning Board Minutes  
December 8, 2008**

Mr. Ken Reid explained when the original plan was submitted, it wasn't changed until the Planning Board requested the front setback variance be lessened, and then McDonald's reduced it. Mr. Reid asked why couldn't additional land be purchased from Mr. Hage to reduce the front setback to what is required? Mr. Francis stated McDonald's would not put its drive-thru or any part of the business over the sanitary easement. McDonald's would put their bypass lane over the easement.

Attorney Brugg stated it's clear the Board would like to see the required front setback met. Mr. Francis has done everything possible to mitigate the variance. She added that if the Board isn't satisfied with this plan, McDonald's doesn't have anything else to pull from. Also, while Mr. Francis represents McDonald's, it is the two local operators who will be investing their money into the business.

Chairman McAllister asked the Board, by a show of hands, who was satisfied with the changes that have been made and would make a positive recommendation to the ZBA, and then, for those members who were not satisfied.

Chairman McAllister – Aye  
Mr. Hertweck – Aye  
Mr. Monno – Aye  
Mr. Dollard – Nay  
Mr. Hale – Nay  
Mr. Minor – Nay

Mr. Reid asked if the Board had any suggestions for the ZBA to consider. Chairman McAllister stated that he believes it would be unfortunate if the plan wasn't approved and the site became abandoned. The applicant would then apply to the Planning Board to develop somewhere else; and thus, turn another site into a parking lot.

Attorney Brugg explained that the ZBA is bound by the criteria of the Town law so it does require every application be evaluated. While there is a concern for when the next person requests a variance, every piece of property is unique and every use is unique. The McDonald's property is very unique in size, parameter, dimensions, area developed around the property, and the nature of McDonald's business today requires a double-lane drive-thru.

Mr. Dollard asked, when Mr. Francis mentioned he wasn't in corporate compliance, does that mean he needs approval from corporate for this plan. Mr. Francis stated within certain limits he can approve changes, and these proposed changes are within those limits. Mr. Dollard then asked Mr. Francis that; therefore, he is making all representation within the scope of his authority. Mr. Francis replied yes.

Attorney Brugg and Mr. Francis thanked the Board for having them back to the Planning Board.

The meeting was adjourned by motion at 8:00 p.m.

Mr. Strabel arrived, shortly thereafter, and had the opportunity to express his concerns to Attorney Brugg and Mr. Francis. He believes that the applicant's reasons for not eliminating the 10 ft. front setback variance are not valid, and another option should be considered. Mr. Strabel would have voted against the revised plan.

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**Planning Board Secretary**