

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 10, 2008

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, December 10, 2008, commencing at 7 p.m.

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

Absent: Mary Ann Thorpe

Also present: Betsy Brugg, Esq., Scott Francis, Randy Bebout, Domenick and Renee Buono

6500 Brockport-Spencerport Road

Chairman Reid reconvened the public hearing of December 4, 2008.

Mrs. Johnson explained that the Board received the Planning Board's comments from the Monday, December 8 meeting. The Planning Board shared the same concerns as the ZBA.

Attorney Brugg introduced Mr. Randy Bebout, FRA Engineering, who was in attendance to answer questions regarding the site plan.

Attorney Brugg recapped the events to present. She explained that she had updated the letter of intent to include all changes to date. Attorney Brugg also introduced the operators of the McDonald's, Mr. and Mrs. Domenick Buono. She explained how Mr. Buono raised his family over 30 years ago in walking distance of the McDonald's to run this business. He's the one who is putting everything on the line to make this investment. In reality, it's a locally owned business, even though it is nationally owned. A letter was submitted to the Board from Mr. Buono explaining his current situation and goals. After the last ZBA meeting on December 4, Mr. Francis did get together with the owner of the property to the north to see if he could purchase a portion of his property to eliminate one of the variances, but an agreement could not be reached.

Mrs. Johnson asked Mr. Francis if Mr. Hage was willing to sell the property. Mr. Francis stated yes, but a price could not be agreed upon. The rear cross access is being discussed separately between both attorneys.

Attorney Brugg summarized that the applicant is still asking for a 10 ft. front setback variance, 1.4 ft. perimeter variance in the northeast corner of the site, and a greenspace variance, which has increased to 27.4 ft. The applicant wouldn't be asking for these variances if there were some other way to redevelop the site. This is an existing business operation. Hopefully, Mr. Randy Bebout can answer any questions as to why the building can't be moved back any farther.

Mr. Randy Bebout distributed updated site plans showing the truck turning movement on the site. Also addressed, was the Town Engineer's concern with the first few parking spaces. The angle of the parking spaces was rotated from 60 to 75. This allowed for a

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 10, 2008

longer throat on the driveway while crunching the spaces back. Mr. Bebout explained from FRA's experience, not just with McDonald's, it's not wise to build over an easement for numerous reasons. More importantly, is the building can't be moved back any farther based on the truck turning pattern.

The Clerk confirmed that the Fire Marshal reviewed the plans and didn't have any concerns. Mr. Francis stated the 53 ft. delivery truck is comparable to the largest fire truck.

Mr. Sharpe asked for clarification as to why the current McDonald's could not operate with a single-lane drive-thru? Attorney Brugg replied that essentially the goal is to use what exists and upgrade it. The operators would like to continue operating their McDonald's. The new modern McDonald's is basically a drive-thru restaurant with a nice "coffee house" interior. Without the double-lane drive-thru, the site is not viable for redevelopment as a McDonald's. The double-lane drive-thru reduces the congestion and stacking that happens near the entrance point.

Mr. Sharpe stated the "new look" McDonald's can have either a single-lane or double-lane drive-thru. Mr. Francis stated that is correct, but for this particular site; the capacity is too much for a single-lane drive-thru. Mr. Buono confirmed that with the capacity of his current drive-thru business, the kitchen couldn't handle it. Also, Mr. Buono stated he is counting on his investment of a double-lane drive-thru to generate more business.

Mr. Sharpe clarified that the bypass lane is the only part of the business, not any part of the building, that would be on the sewer easement. Mr. Francis agreed. McDonald's considers the drive-thru lanes part of the building. The building cannot be moved back 10 ft. because the outer drive-thru lane would be over the sewer easement. Mr. Sharpe confirmed that in order to move this building back 10 ft., McDonald's would have to acquire more land, which negotiations for this have not gone well. Plus, there is still the sewer easement. Mr. Francis stated the bypass lane can be asphalt, but the drive-thru lanes are concrete, which is why they can't be put over a sewer easement.

Discussion took place whether or not the land to the north is Forever Wild. Mr. Sharpe visited the site and stated it is a third to a half paved.

Mr. Sharpe stated a real concern is the possibility of Rte. 31 being widened. Mr. Bebout stated that at the most it would be a 10 ft. taking, less or more. Attorney Brugg stated previous conversations with the Planning Board and this Board regarding the road widening have had to do with the "what ifs," and that's not a real consideration at this time because there are no plans for road widening. Mr. Sharpe stated then why can't the drive-thru be built over the sewer easement, which would, also, be a "what if," not knowing if or when it will have to be dug up. Attorney Brugg explained that the bypass lane is not the same as the drive-thru lane because the drive-thru lane is concrete with a vehicle detector system built in. There are components inside.

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 10, 2008

Mrs. Johnson explained that this Board has to consider the “what-ifs” because the variance runs with the land. Attorney Brugg stated the variance could be limited to the McDonald’s site. Mr. Sharpe explained that this Town has grown by leaps and bounds especially to the west. While each site is individual and unique, granting a 10 ft. front setback variance would most likely be brought up with future applicants to the west. Attorney Brugg stated, for the record, that is not a valid consideration that another applicant might come in and ask for the same thing.

Mr. Sharpe stated that this Board makes a decision in the best interest of the Town of Sweden, and if this Board believes approving the front setback variance is against the direction the Town is going, then it is the Board’s decision and concern. Attorney Brugg explained that this Board shouldn’t be concerned that if it grants a variance, it’s obligated to grant a similar variance for another applicant. Mr. Sharpe disagreed.

Mr. Bebout stated this variance request is a hardship. Mr. Sharpe stated it is self-created because this building does not need to be built. Mr. Bebout added it’s a hardship based on the property and layout that exists today.

Attorney Brugg responded that even if a hardship is self-created, it does not preclude the granting of a variance. Also, to some extent, every variance is self-created because no one has to develop his or her land. This isn’t a virgin piece of land. These business owners started a business over 30 years ago, not knowing that it would become a drive-thru business due to the busy lives of the customers. The business operators would like to continue their business and stay in the Town and redevelop their site. They have to start with the location they have. The applicant is trying to achieve a design the Town will be proud of, but also function as a modern day McDonald’s.

The adjacent property owners are fine with the redevelopment and are not concerned that the new building is in any way going to interfere with their business or property. Mr. Sharpe stated that the 10 ft. variance isn’t a concern like the 24.6 ft. variance request. Mr. Bebout stated he believed that it’s a benefit to the Town that McDonald’s stays and redevelops the site instead of leaving an empty building. Mr. Sharpe agreed and added that this is a great location, one that McDonald’s isn’t going to want to leave.

Attorney Brugg reiterated that the variance request is small when you look at the benefit to the applicant against the detriment to the community. Mrs. Johnson asked for clarification as to what is the benefit, i.e., the ability to get 30 more cars in an hour by having a double-lane drive-thru. Attorney Brugg stated the benefit is that Mr. Buono is going to be able to operate an efficient and functional business that can grow and survive for another 30 years. Mr. Francis stated that 30 more cars an hour is a significant increase in business.

Mrs. Johnson asked for clarification regarding the business not being rewritten. Mr. Francis explained that Mr. Buono is a franchisee and there is a contract with McDonalds. When it’s time for the contract to be rewritten, the facility has to meet certain standards. If those standards can’t be met, the contract won’t be rewritten and the building will be closed. Mr. Buono’s contract will expire in three years. Mr. Buono added that in order for

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 10, 2008

him to invest \$2,000,000, he would not be able to recoup his investment with a single-lane drive-thru because he could not accommodate all the business that would use the drive-thru. Plus, the building/kitchen is out of date.

Attorney Brugg explained that while a variance has been requested for the front setback of the building, every effort has been made to minimize any impact of that by enhancing the landscape. Also, the huge golden arches are being removed so that the site conforms to the signage code. She showed a drawing of the inside operation of the new McDonald's to show how intricate and complex it is and that it is needed today.

Mr. Bebout added the external freezers and trash containers are now in the building, which is another aesthetical improvement. Plus, when the rear cross access goes through, the site will have a much safer effect on traffic, which is a benefit to both the applicant and the community.

Mrs. Johnson clarified that the existing building has an 85 ft. front setback, and the proposed building will have a 65 ft. front setback, resulting in a 10 ft. variance request.

Mr. Bebout stated that the increased greenspace is a huge benefit and endorsed by the County in regards to storm water runoff. Plus, the building and roof are made of green materials.

Mrs. Johnson stated she is not prepared to vote because she has not received any answers regarding the validity of both the easement and Forever Wild area. She added she is more inclined to grant a variance for the rear buffer zone requirement because the drive-thru is concrete with electrical components hidden. Also, it has only been said by the applicant that an agreement could not be reached with the property owner to the north. Plus, she is not sold that the double-lane drive-thru is required for McDonald's to continue their business.

Chairman Reid explained there's no proof if the Forever Wild area is just that. He noticed during a site visit, part of that area has pavement. Mr. Francis added that Mr. Hage is also concerned with selling any of that area because if he decides to develop that land in the future, he may need it for his own greenspace requirement. Mr. Fisher added that piece of property is a non-issue because McDonald's won't put their drive-thru lanes over a sewer easement.

Mr. Fisher asked what does McDonald's corporation tell the operator of a McDonald's restaurant who can't get the requested variances approved for a particular model? Mr. Francis stated this model building is the smallest available, and that there are no custom buildings to choose from. Mr. Bebout added that he has done close to 20 new buildings and none of them have been customized.

Mrs. Johnson stated that her issue is not with the building or its appearance, but with the double-lane drive-thru. For the record, Wal-Mart is not your typical building and changes were made to accommodate the Town's requests.

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 10, 2008

Mr. Francis stated that Wal-Mart is a huge corporation. Mr. Buono is a local operator who is investing his millions of dollars to keep doing business in this community. Attorney Brugg added that our lifestyle is no longer going to McDonald's to sit and eat, but the majority of the time using a drive-thru for time and convenience sake.

Moved by Mr. Fisher, seconded by Mr. Sharpe, that having reviewed McDonald's application for the four (4) variances is an unlisted action which will not have a significant effect on the environment.

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

Moved by Mr. Fisher, seconded by Mr. Sharpe, to approve the application of McDonald's USA, LLC, Pittsburgh, Pennsylvania, for the four (4) area variances to redevelop the existing McDonald's Restaurant, 6500 Brockport-Spencerport Road, Brockport, New York, tax account number 083.08-8-21, for the following reasons:

1. An undesirable change in the character of the neighborhood or to nearby properties will not be produced.
2. The benefit sought cannot be achieved by other means feasible to the applicant other than the four (4) area variances, and that the applicant has explained the reasons for wishing to redevelop the existing site and what is involved.
3. The proposed four (4) area variances requested are not substantial.
4. The proposed four (4) area variances will not have an adverse effect on the physical or environmental conditions of the neighborhood.
5. No one appeared at either meeting who was against the granting of the four (4) area variances.

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

Mr. Sharpe commented that he felt he got the answers he needed to make a decision, although, it wasn't an easy one.

Chairman Reid commented that he felt the Board turned over every rock possible. Although, he is not happy with the 10 ft. front setback variance request, he is convinced everything was done by the applicant to comply with the current code.

Mr. Fisher agreed with the above comments.

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 10, 2008

Moved by Mrs. Johnson, seconded by Mr. Reid, to approve the February 21, 2008 minutes.

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

The meeting was adjourned by motion at 8:30 p.m.

Clerk to Zoning Board of Appeals