

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – February 1, 2007

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, February 1, 2007, commencing at 7:00 p.m.

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

Absent: Frank Fisher (recused from meeting)

Also present: Jim Butler, Building Inspector, Kris Schultz, Brian Donovan, Daniel Hogan, Harold Mundy

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

Application of HDL Property Group LLC, 7085 Manilus Center Road, East Syracuse, New York, for two (2) area variances to construct a 5,610 sq. ft. commercial building at 1000 Transit Way, Brockport, New York, with a side setback from the west property line to the proposed building of nine (9) ft., and a side setback from the south property line to the proposed building of twenty (20) ft. Town of Sweden Ordinance Chapter 175-41, Section E(4)(b), Required setbacks, states the required side setback is twenty-five (25) ft. The property is owned by Daniel C. Hogan, tax account number 084.01-1-1.113.

1000 Transit Way

Chairman Reid stated the Board has 62 days to make a decision. The applicant has 30 days to appeal.

Mr. Kris Schultz addressed the Board. Updated aerial drawings were distributed. Mr. Schultz thanked the Board for working with the applicant in addressing all concerns. The updated plans show two variances for side setbacks. The west side variance closest to the automobile parking is now 9 ft., and the south side variance closest to Jiffy Lube is 20 ft. The original plan called for seven variances, including one for a front setback off Transit Way. The current layout has eliminated all but two. Also, the building coverage is way under 20%.

Mrs. Johnson questioned the 9.5 ft. measurement on the south side. Mr. Schultz explained that the 9.5 feet is to the edge of the pavement, and the 20 ft. measurement indicates the distance to the building. This application also meets the required number of parking spaces of 28.

Mr. Schultz reviewed the following points:

1. **Undesirable change in the character of the neighborhood**

With the updated plan, there is a minimal impact on the character of the neighborhood. Transit Way is not being crowded. The car lot is being crowded, but there is no existing building space or pedestrian access that would be impacted. To the south, there is a good distance from blacktop to blacktop, and the placement of the building is far enough in so there is no crowding.

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2. Benefit achieved by other means feasible to applicant
The building size has been reduced. Additional lands to the west cannot be purchased because the lands are associated with a dealership estate trust, whereby the land lease cannot be changed for a long time.
3. Request is substantial
The 20 ft. setback is not too bad. The 9 ft. setback is larger, but placing the building back and pulling it away from the intersection is a better choice. There is actually more potential setback distance off Transit Way to facilitate green space adjacent to Transit Way and a standard parking lot.
4. Request will have adverse physical or environmental effects
From an environmental standpoint, there are undue impacts on storm water drainage, utilities, sight distance, and the character of the neighborhood. This is not the case at all.
5. Alleged difficulty is self-created
It is hard to have a zoning request that isn't self-created. It is important to note that this lot was subdivided before the project was created.

Mr. Schultz reminded the Board that the Statute states it is important to weigh the benefit to the applicant versus the health, safety, and welfare of the neighborhood. Mr. Schultz stated he would be happy to answer any questions.

Mrs. Johnson asked what is the distance for the turn radius. Mr. Schultz and Mr. Butler agreed it was 24 ft. The parking lot spaces are all 10 ft. x 20 ft.

Mrs. Johnson asked if Mr. Oberst had reviewed the submitted plan before the Board. The Clerk stated the changes made were based on Mr. Oberst's review and comments. Mrs. Johnson stated that the "right in" driveway was eliminated. The 25 ft. green space is included. Mr. Schultz stated landscaping is not a problem anymore. The handicap parking space is also okay. Mrs. Johnson was concerned about the two spaces in the corner when backing up. Mr. Schultz explained because the building is pushed back there is more room, plus the parking space in front of Rte. 31 allows the vehicle to back away when exiting. In summary, all of Mr. Oberst's comments have been addressed.

Mr. Sharpe asked how many years the real estate trust for the dealership is in effect? Mr. Donovan stated he thought it was 10 years before they could do anything. Mr. Sharpe's concern is what if the dealership were to change, would there be a problem. Knowing the owners of the dealership, Mr. Sharpe doesn't think that will ever be a concern because it's a perfect location for a dealership, no matter who owns it.

Mr. Hogan wanted to address the Board regarding the self-created issue of this variance. He explained that he purchased this land in partnership with Mr. Ike Duryea (Zayre's). The Planning Board mandated that there had to be a reliever road coming from Zayre's to Rte. 31, otherwise the plaza wouldn't be approved on Rte. 19. Initially, the road was drawn along the back of Mulkins property. Mr. Hogan presented an original sketch to the Board. The Town requested a change in the road to accommodate development in the future, and to change the angle the new road came

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in at. Mr. Dan Hogan, Mr. Wayne Zyra and Mr. Craig McAllister held several workshops. The plans went from elderly apartments to a combination of residential and commercial. The lot frontage on Transit Way went from 120 ft. to 200 ft. to 240 ft. depending on where the road would come out from Zayre's plaza.

Finally, it was agreed to put the road in at 400 ft. from the back of Mulkin's property to the north. This would make sure the road would come out perpendicular instead of at an angle. At this time, the Highlands was beginning and the Wigtil farm was purchased where the new Wal-Mart SC is now located. Mr. McAllister's master plan was to make sure one could travel from the Highlands to the back of the Wigtil farm to Transit Way and end up on Rte. 19. The master plan, which Mr. Hogan presented, had all the above considerations. Mr. Hogan's point is that the parcel was not self-created, but developed through a coordinated effort by the Town, the Planning Board, and himself, by which the best design was chosen for the approximately 200 acres of land. It wasn't until after the Oil Spout bought the land that this project's lines were defined and the original drawing created showing a 5,600 sq. ft. building.

Chairman Reid attended the January 22 Planning Board meeting to get input regarding this project, and he stated the Board was not in favor of it. Mr. Hogan and Mrs. Johnson had met previously with Mr. McAllister and others, and they did not get that same impression. Mrs. Johnson asked what reasons did the Planning Board give? Chairman Reid stated the 9 ft. setback, and concerns regarding the refuge in the back, and whether or not a truck could easily maneuver in and out. He added that Mr. Oberst didn't endorse the 9 ft., but would rather see that instead of losing green space off Transit Way. Mr. Hogan stated the 11 ft. for the truck is more than enough room. Chairman Reid would rather see a parking space variance instead of a 9 ft. setback. Plus, he's concerned about setting a precedent. Mr. Hogan stated it is hard to set a precedent when every lot is different. Mrs. Johnson asked if the ZBA should ask for written comments from the Planning Board seeing that different viewpoints were received.

Mr. Schultz stated eliminating parking spaces would be a problem in the future. Chairman Reid stated he asked Mr. Oberst about the 9 ft. setback and he said there could be drainage and/or construction issues. It was mentioned that the Planning Board is use to reviewing site plans, and the most recent submitted plan would leave the Board with a lot of questions.

Mr. Sharpe stated that the plan before the ZBA is what matters and what this Board thinks of the variances requested, not the opinions of other Boards. Also, the Planning Board looks at the plans differently than does the ZBA.

Mrs. Johnson asked Mr. Butler for his opinion because he also attended the Planning Board meeting. Mr. Butler explained that various comments were made, but he wasn't sure if the comments were intended to be negative or observations as to what may or may not happen.

Mrs. Johnson explained that if the developer encounters construction problems, it's not the ZBA's concern because the developer is the one who requested the variance and is responsible for making the project work.

Mrs. Johnson commented that this project has come along way from when it was first presented. Town code concerns have been addressed as much as possible and all of the Town Engineer's comments have been addressed.

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Mr. Sharpe explained that the Board was advised by the Town Attorney to make sure that it is comfortable with what is before them and what is being requested. Chairman Reid asked the applicant then what could be done to increase the 9 ft. setback? Mr. Schultz stated that the green space or parking could be reduced, but once that happens the variances requested increase.

Mr. Sharpe commented that he is in support of this project primarily because it involves low traffic businesses. If it weren't next to a car dealership, he would feel differently, but that location is too valuable as a dealership, and it will be there for a long time.

Mrs. Johnson asked the resident in attendance if he had any comments before she made a motion. The man stated in his opinion, he would like to see as many parking spaces as possible, and would rather see a setback variance approved than a parking variance.

Chairman Reid closed the public hearing.

Moved by Mrs. Johnson, seconded by Mrs. Thorpe, that having reviewed HDL Property Group's application for two area variances to construct a 5,610 sq. ft. commercial building at 1000 Transit Way with a side setback from the west property line to the proposed building of 9 ft., and a side setback from the south property line to the proposed building of 20 ft. is an unlisted action that will not have a significant impact on the environment.

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

Moved by Mrs. Johnson, seconded by Mrs. Thorpe, to **approve** the application of HDL Property Group LLC, East Syracuse, New York, for two area variances to construct a 5,610 sq. ft. commercial building at 1000 Transit Way with a side setback from the west property line to the proposed building of 9 ft., and a side setback from the south property line to the proposed building of 20 ft., tax account #084.01-1-1.113, for the following reasons:

1. An undesirable change in the neighborhood will not be created by granting these variances. It is the opinion of the Board that the appearance of the neighborhood will be improved.
2. The benefit can't be achieved by another method, as this is a corner lot subject to two front setbacks of 75 ft. Additional adjacent land cannot be purchased to increase the size of the lot.
3. The proposed variance will not have an adverse effect on the physical or environmental conditions of the neighborhood.
4. No one appeared against the proposed project over the course of five meetings.

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

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Moved by Mrs. Johnson, seconded by Chairman Reid, to approve the December 18, 2006 minutes.

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

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

Clerk to Zoning Board of Appeals