

**TOWN OF SWEDEN
Planning Board Minutes
February 23, 2009**

A regular meeting of the Town of Sweden Planning Board was held on Monday, February 23, 2009, 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

Also present: James Oberst, MRB, James Bell, Esq., Joseph Darweesh, Esq., Greg McMahan, Don Payne, Jim Pappas, Nate Rozzi, Harold Mundy, Luie Popovski, Ken Reid, ZBA

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

Correspondence passed to members for review.

Moved by Richard Dollard, seconded by Mr. Hertweck, that the minutes of February 9, 2009, be approved.

Ayes – 7

Moved by Mr. Monno, seconded by Mr. Minor, that the regular meeting be adjourned to the public hearing.

Ayes – 7

Chairman McAllister read the notice of public hearing and affidavit of publication.

CountryMax Farm and Garden Center Site Plan

Mr. Greg McMahan addressed the Board. He introduced Nate Rozzi, Hanlon Architects. Mr. McMahan explained that the entire property is shown as two tax account parcels, and the project will occupy the southern parcel. The site will maintain the two existing entrances off Lake Road and the applicant has provided for a 24 ft. wide connection to the northern parcel. The northern parcel is predominantly pavement and previously used for the display of new and used cars. There is parking along the north side of the parcel with some parking/material storage in the rear. Also, there is parking along the front. Enhancement work will be done on the existing loading dock so that tractor-trailers will be able to access it. The front of the parcel will be used for outdoor display, i.e., plants, trees, shrubs. The main enhancement to the building will be a 10 ft. wide porch and façade redevelopment of the building. From a utilities standpoint, there is an existing sanitary. There will be an upgrade to the existing two-inch water service to sprinkle the building.

The owner intends to preserve as much of the existing pavement as possible. The pavement on the north side of the building, main customer area, will be reconstructed and re-stripped. The number of parking spaces has changed from 132 spaces, based on the total square footage of the building, to 115 spaces, which is retail versus warehouse square footage. Seventeen parking spaces have been eliminated due to the recalculation. Mr. McMahan turned the review over to Mr. Nate Rozzi, Hanlon Architects.

Mr. Rozzi explained that the majority of the improvements include a 10 ft. covered porch off the east and north sides. There will be a reconfiguration of the entrance towers and a fence to enclose the nursery products. The overall height of the towers will be 25 ft.

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Mr. Rozzi explained how the existing showroom floor would be lowered approximately 16 inches. Mr. Strabel confirmed the building was a metal building type construction. The existing floor is a floating slab. Mr. McMahon stated there would be a sidewalk from the parking lot to the entrance that would be at a slope that is handicap accessible with a handicap ramp and curbing.

Mr. Rozzi added that the blue roof shown would be newly constructed. There would be a new white panel, but the existing structure behind it would remain. Mr. Strabel confirmed that there would be a new wrap around porch with a couple of vestibules.

Harold Mundy, 121 Campbell Road – Mr. Mundy asked if the entrance would be to the north. Mr. Rozzi stated yes.

Mr. Oberst asked if any greenspace was picked up with the elimination of the 17 parking spaces. Mr. McMahon stated pavement has been torn up to provide greenspace, but not in the area where the 17 spaces were eliminated.

Mr. Dollard asked what would the south and west sides of the building look like because that's the first thing customers see when driving over the rise into Town. Mr. Rozzi stated people would see the side of the porch. Mr. Dollard asked if any fencing was proposed to cover all the storage on the west side. Mr. Rozzi stated fencing is not proposed.

Mr. Hertweck asked where the loading dock would be. There is an existing door that will be used for the loading dock, which is on the south side.

Chairman McAllister asked if there were any questions from the public. There were none.

Moved by Mr. Hale, seconded by Mr. Strabel, to adjourn the public hearing to the regular meeting.

Ayes – 7

Chairman McAllister explained that since this project was discussed at the last meeting, there has been some discussion as to how fast this project should progress. The seller's attorney is present tonight to decide whether this project should be an amended site plan and/or should a subdivision be done. What this Board needs to discuss are the impacts and requirements should this project be subdivided at this time.

Attorney Darweesh stated that a double application was not completed because the northern parcel will be separately sold in the future and that Arjay enterprises wanted to move this project along. Walgreens was interested in this parcel a year ago, but that fell through. There is no interest in this parcel at this time. Chairman McAllister added because the northern parcel has not been subdivided, it would have to be done before selling the parcel and comply with the Town's code.

Attorney Darweesh didn't see the above as a problem. The only problem would be if someone wanted to develop the site with an overly large building. The building size would have to be reduced or an area variance applied for. Chairman McAllister explained there is a different subdivided, developable commercial lot in Town for which variances were granted. Now, the owner is back before the ZBA trying to obtain more variances because he is asking so much for the lot, most tenants can't justify the cost, which is not this community's problem.

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Attorney Darweesh stated the seller has been paying taxes and a mortgage on two parcels that aren't being used and would like to seek only site plan approval at this time. Chairman McAllister confirmed the plan of action is to move forward for an amended site plan approval for the overall site, and then come back for subdivision approval at a later time.

Mr. Hale asked if we have record of a site plan approval for the dealership, which goes way back in time. Chairman McAllister asked the Clerk to see if the original site plan could be located to determine if the project should be an amended site plan or (new) site plan.

The Clerk returned to the meeting, but an original site plan could not be located.

Chairman McAllister stated it should be understood that if the applicant's intention were to subdivide in the future, and do a site plan application for the overall site now, both parcels would have to come into conformance when subdivision takes place. For the record, this overall site would be pre-existing, nonconforming and when it is subdivided, it will have to come into conformance by law or seek variances. There are no guarantees that variances will be granted.

Mr. Minor confirmed that both the northern and southern parcels are part of the site plan approval. As far as the green strip shown on the northern edge of the southern parcel, a green strip would also have to be shown on the northern edge of the northern parcel as well. The green strip shown is in the middle of nowhere.

Mr. McMahon reiterated that what Mr. Minor is requesting is to leave the 7.5 green strip shown in the middle for the future, and add a 7.5 ft. green strip to the northern edge of the northern parcel. Also, a 25 ft. green strip would be required along the front of the parcel.

Mr. Minor asked if the State of New York owns the small piece of property between the two parcels, would it allow for an ingress/egress over it. Mr. Minor's point is if the State won't allow an ingress/egress there, it would have to be shown somewhere else. Chairman McAllister stated this is important because the State is very reluctant to give new curb cuts around that intersection. Attorney Darweesh stated he would look into that matter.

Mr. Minor added that since another party owns that small piece of land, the 7.5 ft. buffer would have to go around it as well. Attorney Darweesh stated it depends if an easement or a taking was done to obtain the land. This would also have to be clarified before final approvals are given.

Mr. Minor brought up the proposed signage for clarification. The Clerk stated signage would be approved through the Building Department. The signage for the business could be freestanding or only on the front façade of the building.

Mr. Minor asked in terms of green space, what is it now for the two parcels. Mr. McMahon stated based on the 6.44 acres, the green space is 17.2 percent. Both parcels would be short on greenspace when subdivision occurs, and conformance to current codes would be required.

Chairman McAllister stated that with the amended site plan approval, the Board is looking at pre-existing, non-forming conditions. Both parties, buyer and seller, are in agreement with the above.

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MRB Comments

1. The issue regarding one or two parcels has been addressed.
2. There was an environmental audit completed and it will be updated. If there is an oil water separator, it will be cleaned out, but left onsite. There are no fuel tanks buried on the site.
3. Lighting plans have been updated to include detail for the shoebox fixture.
4. New wall packs will not be added, the ones on the building will be used.
5. The existing loading dock will continue to be used with some modifications to have the loading dock at grade.

Chairman McAllister stated the Board would prefer to have box lighting. Mr. McMahon stated the wall packs on the building would be used. Mr. Oberst asked for confirmation that the wall packs are in conformance with the Town code. Mr. McMahon stated the proposed lighting will be in compliance and he will look into whether the existing lighting is in compliance.

Mr. Oberst asked if the plan is to use all the existing lighting. Mr. McMahon stated the lighting on the northern parcel would not be used. Several poles along the frontage of the property would continue in use.

Mr. Minor asked how come some issues are okay and others not, it should be all or nothing. Mr. Minor discussed if this is truly a site plan, then it should be approved according to 2009 standards.

Mr. Strabel stated considering this is a new site plan, the lighting becomes an issue if they don't comply. The Board has expressed a preference to use box lighting. The existing lighting would be pre-existing, nonconforming if this were an amended site plan.

The Board discussed that there is no change of use going from an auto dealership to a store; however, the pre-existing, nonconforming conditions are no longer permitted due to the dealership being vacated for over a year.

Mr. Strabel asked then why not bring the greenspace into conformance with the lighting. Chairman McAllister stated the greenspace doesn't present an issue until a subdivision is done. Attorney Darweesh and the applicant are both in agreement with the risks involved and accommodations will be made at that time.

Mr. Monno asked Attorney Darweesh why he would want to put his clients in a position where they have to spend more money to conform when they can do it now. Attorney Darweesh stated he had a long discussion with his client, Mr. Johnson, who requested that he proceed with the risk of additional expenses, if and when the northern parcel is sold.

Attorney Darweesh commented that both parties could only understand the risk that's associated with a subdivision of the future. They can't anticipate what the site plan for the northern parcel will look like. They can anticipate that the southern parcel may have to remove pavement and/or seek an area variance.

Attorney Bell stated he could see the northern parcel becoming unmarketable or worthless if something doesn't happen such as a variance granted. He added that if there are problems with the greenspace, ingress or egress, or with granting variances, it might be difficult to market that parcel in the future other than to the owners of the southern parcel.

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It was asked if the northern parcel was landlocked. Chairman McAllister stated this Board couldn't approve a landlocked parcel.

Chairman McAllister stated that the question before the Board now is that because we don't have the original site plan, is this application an amended site plan and/or a pre-existing, nonconforming site. Since the building has been there for over 40 years, it's pretty hard to argue that it's not a pre-existing condition. Mr. Minor read the following verbiage from the Town's zoning book, §175-23. Nonconforming uses.

A nonconforming use, if changed to a conforming use, may not be changed back to a nonconforming use. Whenever a nonconforming use has been discontinued for a period of one year, such use shall not hereafter be reestablished and any further use shall be in conformity with the provisions of this chapter.

Attorney Bell stated that if it has been out of business for over a year, it must come into conformance. Attorney Darweesh stated it has been out of business since June 2007.

Chairman McAllister requested direction and a ruling from Attorney Bell to resolve the pre-existing, nonconforming issue.

Mr. McMahon stated the greenspace issue by itself can be resolved without a lot of money, however, storm water issues and switching out the lighting is a whole different scenario. These are new costs that need to be addressed because they weren't costs considered when they bid on this parcel.

Mr. Oberst stated the storm water requirements couldn't be avoided. Mr. McMahon stated, but if the applicant is not disturbing an acre of land and increasing impervious, then the project doesn't fall under the storm water criteria. Mr. Oberst stated the Town's requirement is if a quarter of an acre is disturbed. The issue won't be with quantity because the greenspace is increasing, but with quality. It may just be an issue with putting filter strips around the perimeter of the site.

Chairman McAllister asked for a determination from Attorney Bell before the next meeting, March 9. Attorney Bell will research the issue and notify the Board and/or Attorney Darweesh.

Mr. Monno asked if the plans could show a detail regarding how the new elevation is being reached inside the building. Mr. McMahon stated that is something the architect prepares as part of the building permit process.

The Board agreed not to proceed until a determination was made. Chairman McAllister apologized for any delay caused by the confusion with the approval process.

Slattery-Doe Subdivision.

Moved by Mr. Monno, seconded by Mr. Hertweck, that the Chairman be authorized to update his signature on the mylar.

The Board asked MRB if there was a fee to update his signature on the mylar. Mr. Oberst stated no. It was recommended that for each occurrence, a subdivision reaffirmation fee of \$50 be added to the Building Control Fees Schedule. The Clerk will check with the Town Clerk as to what process to follow.

Ayes - 7

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

Planning Board Secretary