

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – February 26, 2009

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 26, commencing at 7:00 p.m.

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

Absent: Frank Fisher - recused

Also present: Kris Schultz, Richard LeFrois

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

Application of LeFrois Builders and Developers, 1020 Lehigh Station Road, Henrietta, New York, for two (2) area variances to construct a 5,839 sq. ft. commercial building at 1000 Transit Way, Brockport, New York. The following variances are requested:

- The proposed perimeter rear buffer zone is 6 ft. Per Town of Sweden Ordinance §175-40, Section B, Required perimeter buffer zone is 7.5 ft. in width.
- The proposed use of frontal area is 16.5 ft. Per Town of Sweden Ordinance §175-41, (E), (7), Use of frontal area. Employee and customer parking is permitted on all except a strip of land 25 feet in depth adjacent to the public highway boundary.

Chairman Reid read a letter from Member Fisher recusing himself from the public hearing due to his professional association with the current owner of the property.

1000 Transit Way

Mr. Kris Schultz addressed the Board. He explained the last time he was here, two years ago, was with a another potential developer with different ideas. Two variances were granted to construct a 5,010 sq. ft. building. That developer changed his mind and the lot sat idle until LeFrois Builders and Developers submitted an application for site plan approval using the approved side and rear setback variances. Mr. Schultz showed the Board the approved site plan. Mr. Schultz explained the approved site plan is for a small building with a single tenant. He added it wasn't until Mr. LeFrois started working the numbers that he came to an impasse.

Mr. LeFrois explained that the world has changed in the last few months from a finance and banking standpoint, as well as a business standpoint. Verizon Wireless pulled back from wanting the whole 5,010 sq. ft. building to only wanting approximately 3,000 sq. ft. Verizon Wireless is a well-known name to the banking industry so financing wasn't an issue. Mr. LeFrois explained in terms of financing, he looked for his return on investment. With Verizon Wireless as the only tenant, the return was 7½ percent, which is low. Now, that Verizon Wireless is only taking a part of the building, there has to be another tenant in order to get the financing equal or close to a 12 percent return. With the proposed increase in building size, Mr. LeFrois is at 11½ percent return, which he can make work.

Mrs. Johnson asked for clarification regarding the financing. Mr. LeFrois explained that when it was just Verizon Wireless last fall, the return was 7½ percent, and the banks were easier to work with. Now, the banks are getting scrutinized a lot more, and are asking for a

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lot more coverage to make a deal. The 11½ percent return is based on approximately 5,900 sq. ft., and the 7½ percent is based on approximately 5,000 sq. ft.

Mr. Schultz explained the two proposed changes are the extension of the loading dock to facilitate the use by the second tenant, and the moving of the dumpster to the back of the building. With the increase in building size, it lessened the front green strip from 25 ft. to 16.5 ft., and the rear buffer zone from 7.5 ft. to 6 ft. As part of planning, the applicant is required to install a sidewalk along the front. Mr. Schultz reviewed the plans for quite awhile trying to come up with something more appealing. Originally, the landscaping plan was approved with a 25 ft. strip of trees and shrubs and the sidewalk. That strip of trees and shrubs were shrunk down to a narrow strip, which Mr. Schultz didn't care for. So, he proposed moving the sidewalk adjacent to the edge of the blacktop and to switch the exact landscaping scheme to the other side of the sidewalk. With these proposed changes, the 12 ft. of planting bed is now 11½ ft., the sidewalk will be farther away from the travel lanes, which will be safer, and the parking lot lampposts can be moved closer to the sidewalk for additional safety.

Mrs. Thorpe stated all of the above doesn't change the need for the two additional variances. Mr. Schultz stated that's correct.

Mrs. Johnson asked how high would the plantings be. The plantings will be 6 to 8 ft. tall. Mr. Schultz added the plantings would not interfere with site visibility.

Mr. Schultz distributed copies of the original approved site plan and the proposed plan with the additional two variances.

If these variances are granted, the applicant still has to go back before the Planning Board for an amended site plan approval.

Mr. Schultz showed an aerial view of the project. The aerial view showed that the car dealership next to it is still parking cars near the road in its 25 ft. green strip. This was mentioned to show how our proposed change to the front green strip would not affect the character of the neighborhood.

Mrs. Johnson asked if there is another tenant. Mr. LeFrois is negotiating with a second tenant.

Mrs. Johnson asked if there were any comments from the neighbors across the street. The Clerk stated no.

Mrs. Johnson asked why the original size, 5,000 sq. ft., couldn't be divided into 2 tenants, 2,000 and 3,000 sq. ft. Mr. LeFrois stated the problem is the numbers don't work with the sub drainage system underneath the building. A lot of time and expense has been spent on designing this development.

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Mr. Schultz explained there is no detention pond for drainage on this site. The storm water would drain onto Rte. 31, which is not permitted with the new requirements. Presently with the sub drainage system, the storm water goes across the road past the gas station to the creek.

Mr. Reid asked how does the drainage affect the size of the building. Mr. Schultz explained underneath the parking lot, there are additional pipe structures for when there's a rain event. The additional water is held in chambers, and then modified manhole structures meter it out. It's more expensive to put in. He added this site was very difficult to develop because it's small and isolated. When the lot was created, many of today's regulations were not in place.

Mrs. Thorpe asked if the runoff goes north. Mr. Shultz stated yes and that it drains into the Baltz property. The site plan meets all the current DEC regulations. She asked if the runoff is controlled. Mr. Schultz stated yes the amount of water and the quality of water leaving the site is controlled.

Mr. Schultz added with the change in the building size, the site plan needs to be slightly modified, and resubmitted with the required reports to the agencies.

Chairman Reid stated two years ago, the ZBA granted two variances for a proposed 5,010 sq. ft. building. Now, the proposed building is 5,839 sq. ft., and the applicant is asking for two additional variances.

Verizon Wireless has reduced its size to 2,900 sq. ft. If Mr. LeFrois can't get a variance, he will have a hard time financing the job because the bank is looking for a 12 percent return.

Mrs. Thorpe stated this Board granted a number of variances over many meetings and the project fell through, but the variances still run with the land. Now, a different applicant is coming in for additional variances, and if granted, those variances will stay with the land forever. Is there anything that allows for a variance to be set with a construction timeline so if the project falls through again, the variances can be forfeited if the timeline isn't met.

Mrs. Johnson asked if the Planning Board has seen this new proposal for variances. Chairman Reid stated he went to the Planning Board meeting this past Monday and discussed the new proposal. The Town Engineer didn't have a comment, but the Chairman stated he liked the approved site plan. He does not see the need for additional variances.

Mrs. Johnson asked by what date does the developer want to break ground. Mr. Schultz explained that the agencies have already seen the application so it should move through rather quickly.

The Clerk was asked to check with Attorney Bell to see if conditions are permitted with variances. Mrs. Johnson explained that she believes the hardship is that it's a corner lot. Plus, it's a prime piece of building space.

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Chairman Reid asked what if the variances are turned down. Mr. LeFrois stated he would probably not build the building. At the end of the day, the numbers just don't work. To make the numbers work, the building size needs to be as close to 6,000 sq. ft. as possible.

Mrs. Johnson explained that she is prepared to make a motion dependent upon the Town Attorney's opinion, and that a time limit is included for the issuance of a building permit.

Mr. Sharpe stated the plan would be to go to the Town Attorney with the Board's motion, and if he approves, then it is done, if not, the Board has to revisit it.

Chairman Reid closed the public hearing.

Moved by Mrs. Thorpe, seconded by Mrs. Johnson, that having reviewed the 1000 Transit Way application for two (2) area variances is an unlisted action which will not have a significant impact on the environment.

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

Moved by Mrs. Thorpe, seconded by Mrs. Johnson, to **approve** the application of LeFrois Builders and Developers, Henrietta, New York, for a perimeter rear buffer zone variance of 1.5 ft. and a front green strip variance of 8.5 ft. to construct a 5,839 sq. ft. commercial building at 1000 Transit Way, Brockport, New York, tax account number, 084.01-1-1.113, 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 because it is a corner lot.
3. The proposed two (2) area variances will not have an adverse effect on the physical or environmental conditions of the neighborhood.
4. No one appeared for or against the proposed project over the course of the advertisement or at the public hearing.

The above approval is contingent upon that a building permit is issued no later than September 1, 2009. If a building permit is not issued, the above-mentioned two (2) area variances granted are declared null and void.

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

Mrs. Johnson requested if the Town Attorney doesn't authorize the time limit put on the motion, then this Board will reconvene to discuss the project further. The Board was in agreement.

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Chairman Reid suggested that the ZBA's motion should be specific as to the reasons why the Board decided in favor or against the project.

Moved by Mrs. Johnson, seconded by Mr. Sharpe, to approve the December 4, 2008 minutes.

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

Moved by Mrs. Johnson, seconded by Mr. Sharpe, to approve the December 10, 2008 minutes.

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

The meeting was adjourned by motion at 8:15 p.m.

Clerk to Zoning Board of Appeals