

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – September 6, 2018**

A 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 September 6, 2018, commencing at 7 p.m.

Members present: Kevin Johnson, Pauline Johnson, Peter Sharpe, Mary Ann Thorpe.

Absent: Frank Fisher

Also present: Nat O. Lester, III, ZBA Counsel; Daniel Brennan, Nixon Peabody, LLP; Dave Wiesner; Jennifer Lake; Tony Copie, ABVI; James and Ruth Moore.

Chairperson Thorpe called the meeting to order at 7 p.m., and introduced the Board Members.

Application of Nixon Peabody, 1300 Clinton Square, Rochester, New York, for both an area and use variance. Applicant proposes to install a 30 ft. ground-mounted pylon sign in addition to the existing building signage at ABVI-Goodwill, located at 1807 Nathaniel Poole Trail, Brockport, New York, Town of Sweden. *Town of Sweden Ordinance §175-30 Signs. (B) Allowable signs. Table A, B-1 Zoning, states 3 or fewer businesses or tenants on 1 parcel with a total building size of less than 100,000 sq. ft. is allowed 1 ground-mounted sign plus building mounted directories at each building entrance **OR** building-mounted signs per each business. Also, Table A, Maximum Height Above Ground, states 20 ft.* The property is owned by ABVI-Goodwill, 422 S. Clinton Avenue, Rochester, New York, tax account number 084.01-1-1.002.

**1807 Nathaniel Poole Trail.**

Mr. Brennan addressed the Board. He explained he is here on behalf of the applicant, ABVI-Goodwill, who is applying for both an area variance and use variance for the existing store located at 1807 Nathaniel Poole Trail.

The reason for the variance request is the Town code states that this store is allowed an on building sign or freestanding sign. When the property was developed in 2007, the existing store was built with an on building sign. At that time, it was felt that an on building sign would be sufficient; however, the conditions since then have changed significantly, which has necessitated this use variance application for a freestanding sign. Also, requested is an area variance for the height of the sign at 30 ft. where 20 ft. maximum height is allowed. The 30 ft. sign will be visible from Rte. 31, which is the nearest thoroughfare from the store.

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Mr. Brennan discussed the legal criteria for the granting of variances as submitted with the application. Also, distributed to the Board is an updated variance application with minor changes. Mr. Brennan introduced Mr. Dave Weisner, Mr. Tony Copie and Ms. Jennifer Lake, all from Goodwill, who are available to answer any questions.

Ms. Jennifer Lake addressed the Board. She explained she has been with the organization since 2007 arriving shortly after the opening of the Brockport store. She was charged with the responsibility of recruiting employees for that store. The store was built in Brockport as a way to generate additional surplus for its not-for-profit organizational mission, which is to prepare and empower people who are blind and visually impaired through rehabilitation, teaching, low vision assessment, working with seniors, etc. In addition, there is the operation of the 211 of the Finger Lakes Region, which is an informational, referral and suicide hotline that is open 24 hours a day, seven days a week. Children from the Town of Sweden and Brockport area who are blind or visually impaired are serviced by various recreational programs through Goodwill Retail Stores by selling items donated from the public. There is also a robust manufacturing operation and contact center. Goodwill is generating these funds to support community based programs. Please note that \$.90 to \$.95 cents per \$1.00 dollar of sales is going towards these programs.

From a historical perspective, the land was purchased in the 2004/2005 timeframe with the intent that this area was going to be a new retail corridor of Brockport. The Town Supervisor, at that time, stated with the new Wal-Mart being built, it was going to be the start of many new jobs and retail development in the area. Goodwill was shown additional lands purchased for development and felt a building sign would be adequate. Also, with the maturity of trees along Transit Way there was much better visibility. The above never materialized except for the Jiffy Lube/Verizon center at the corner of Transit Way and Rte. 31, and strip mall along Nathaniel Poole Trail. Currently, today there is vacant land to the right and left of Goodwill.

Goodwill stores are compared by sales per square foot, in order to generate a surplus for mission, which is different for each store. This store for the last two fiscal years in a row, April 1 to March 31, continues to under perform for similarly sized stores. In addition, sales are down 2 percent while the other stores are up 3.5 percent.

Mrs. Pauline Johnson confirmed that Ms. Lake said the Brockport stores are down 2 percent while the rest of the stores are up 3 percent for the last two years. Ms. Lake added that actually the Brockport store is down 10 percent in donations and sales to budget while the rest of the stores are up 2.25 percent. This has been a trend over the last several years, which we believe is due to losing visibility from the Rte. 31 corridor.

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Mrs. Pauline Johnson asked if there was data available for the past five years because the Town's population has been decreasing each year. Ms. Lake stated she could provide the data. As far as the transaction value, which is the average sale, Goodwill is experiencing a decrease from \$16.21 to \$15.50. If these trends continue, the concern is that Goodwill needs an additional way to let people know where the store is located.

We want to make sure Goodwill doesn't put a drain on its mission-based programs, and that the store is still part of the community for Girl Scouts, AA groups, church groups, and two groups of seniors, Card Club and Craft Club, that use the store to meet. These groups are not formal not-for-profit entities, and so are limited in other spaces they can actually meet. Goodwill believes in being part of the community, and so allowing these groups to use our community room at no cost is a way for Goodwill to integrate into the community. Obviously, Goodwill wouldn't be able to provide low vision screening, vision care for kids, and free screening if this store didn't operate anymore.

Mr. Brennan requested that should the Board need more information than what has been submitted and presented tonight, they have the chance to come back to a second meeting to provide any additional information. Also, Mr. Brennan requested that the Board when making its decision, bifurcate, or in other words, treat the two applications separately so that if the use variance is approved and the area variance denied, they still may be able to move forward with the project.

Mr. Brennan addressed the use variance standards.

1. The alleged hardship has not been self-created. It hasn't been because there has been a change in conditions as explained by Ms. Lake. When the property was developed there was going to be a much larger development, and as a result a larger amount of traffic along Nathaniel Poole Trail. When the store was built, it was determined that a single on building sign would be sufficient to notify customers of where the store was located and to drive traffic to the store. That is not the case now where there are vacant parcels across the street all the way to Rte. 31. Also, an over growth of trees and shrubs that are actually blocking the view of the store from Rte. 31. Not only do we not have the local traffic that we thought, the store is not even visible from the main thoroughfare. That is a new condition, not one that Goodwill created or could anticipate at the time the original site plan was approved.
2. Cannot realize a reasonable return. This standard is more difficult to prove since Goodwill is a not-for-profit organization. As Ms. Lake mentioned, the sales for the store are down year after year. Also, Exhibit K, a comparison of benchmark stores in the area, which shows per square foot the Brockport store is under performing. It should be kept in mind the effect sales have on the other community benefits, such as the community space and the organization's mission as a whole.

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3. The alleged hardship is unique and does not apply to substantial portion of district or neighborhood. Most of the commercial development is along Rte. 31. Those businesses do not have to contend with the same issues as Goodwill because Goodwill is set so far back from Rte.31 that cars can't see the store. As the store is so isolated in the back, there isn't as much local traffic, which means there is no cross-shopping as with a larger development.
4. The requested variance will not alter essential character of the neighborhood. Because there is also numerous existing freestanding signs along Rte. 31 and other places in the Town, including some instances where there are both on building signs and freestanding signs. we believe that the character of the neighborhood won't be altered. An example of this is the Aldi's store for which the Board approved a use variance in 1997. A copy of that decision, Exhibit G, has been included for your reference. The Board should consider that ruling, and if this variance request is not distinct, then the Board should follow that prior precedent. It is important to keep in mind, that the Aldi's store is on the main road, and is more visible to traffic than the Goodwill store is.

Mr. Brennan addressed the area variance standards. In general, whether the benefit to the applicant outweighs any detriment to the community. We believe that it does.

1. Undesirable change in neighborhood character or to nearby properties. We believe this request is in keeping with the character of the neighborhood because there are other freestanding signs, and other businesses with both freestanding signs and on building signs. Also, there is no perceived detriment to nearby properties. In fact, any additional traffic to Goodwill will benefit the nearby businesses. The success of this Goodwill store will benefit the community with the community space that is provided, and the organization's mission, which is to benefit the community as well.
2. Whether the benefit can be achieved by other means feasible to applicant. There is really no other way to draw traffic to a store than to have a sign. Goodwill has no control over the other parcels with over grown trees and shrubs that block the view of the store, and an off premise sign is not permitted either to achieve its purpose.
3. Whether the request is substantial. The variance request is not because the request is only for 10 feet over the height limit.
4. Whether the proposed variance will have adverse physical or environmental effects. It won't. There will be no environmental impacts at all.
5. Whether alleged difficulty is self-created. Just like with the use variance, it is not. This area variance for height is necessitated by the property being blocked by over growth of trees, and that commercial development in the area has not materialized as anticipated.

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Mr. Brennan added that photographs of the conditions have been provided under Exhibit H and I. Other existing signs in the neighborhood have been documented as well, Exhibit J. Exhibit L shows the financial and feasibility analysis. A letter from the store's real estate broker explaining the lack of not having a freestanding sign has substantially impacted the value of the property.

Mr. Brennan and colleagues would be happy to answer any questions the Board may have at this time.

Counsel Lester clarified that the broker referenced in Exhibit L has no relation to himself or his son, Matthew Lester.

Counsel Lester asked how the 30 feet for the sign height was determined as opposed to 25 feet, was engineering done. Mr. Brennan stated that 30 ft. is the minimum required to provide visibility from Rte. 31 which is the main concern. Looking at Exhibit F, a rendering looking down from Rte. 31 towards the store, and the proposed sign location and existing traffic stop signs, the existing traffic stop signs will block the view of a smaller proposed sign and create a safety condition. Ms. Lake added that there were discussions with the sign company to make sure that the proposed sign could be seen with a quick glance. The sign company made us aware that with the Town's code, a variance would be required.

Ms. Lake added that the Goodwill store does depend on a quick glance for signage as there are a lot of seasonable shoppers in the Town and at the College of Brockport. The store depends on those shoppers. It should be noted that flyers advertising the store have been unsuccessful. Even some long-time residents don't realize the store is back there, but once they do, they usually return to shop.

Ms. Pauline Johnson asked when the engineers calculated the signage, how was the height of the trees figured into it. Ms. Lake stated that the whole rightside of the road from Rte. 31 is clear of trees. The height of the sign needs to be above the two existing traffic signs due to the slope and the gradient from Rte. 31. The stop sign at Transit Way and Nathaniel Poole, and the diamond shaped sign factored into the proposed height of the Goodwill sign. Ms. Johnson asked if the rendering is to scale. If the existing signs are 10 feet, a 30 ft. sign seems over what would be required to clear those signs.

Mr. Copie added that the 30 ft. was determined because at that height, you could clearly see the sign from Rte. 31. Ms. Johnson asked if you could see the sign at 20 ft. Mr. Copie stated it is possible, but the proposed sign was not configured at 20 ft. Ms. Johnson explained if 20 ft. would work, then you would only need the use variance and not the area variance.

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Mr. Brennan stated that Goodwill doesn't want to build a bigger sign than necessary. A sign that is cost effective and will provide its customers with signage. Having a sign a little higher is safer, but 20 ft. is acceptable if the Board desires. However, to accomplish the goal of driving customers to the site and given the distance the store is from Rte. 31, the taller sign is more appropriate. For example, the sign at Burger King is slightly shorter, but it is located right on Rte. 31.

Ruth Moore, 4 Talamora Trail – Mrs. Moore asked if the sign would be lighted. Mr. Copie stated the sign would be lighted. The lighted sign will be one sided, facing Rte. 31 and will comply with the Town's zoning regulations.

Mrs. Pauline Johnson confirmed with the Clerk that Mr. Daniel Hogan owns the property to the north, and that recently, the only use has been a staging area for NYS road improvements.

Mrs. Pauline Johnson inquired as to when the VOA store closed, a couple years ago, was there an increase in Goodwill's store profits. Ms. Lake explained that there was a slight increase in donations, but that has not sustained. Four of VOA's employees were hired at Goodwill.

Counsel Lester asked would the store's site plan need to be updated to ensure the proposed signage would not affect sight visibility. The application should be given to the Town Engineer for review. Mr. Brennan agreed.

Counsel Lester asked if when the building was built, and seeing the development of the area now, would have a freestanding sign been chosen instead of the building sign. Ms. Lake commented that is a tough question, not knowing that there would be so many tall trees, but if the tall trees were known, then a freestanding sign would have been a better choice.

Counsel Lester wondered if the applicant weren't seeking an area variance, but a use variance to have both signs, and the use variance was turned down, would the value of choosing a freestanding sign over the building sign would make sense. Ms. Lake stated that has been discussed, but again it would depend upon if the freestanding sign was visible from Rte. 31. Mr. Brennan added that knowing there have been decreased sales, removing the building signage wouldn't help their cause.

Chairperson Thorpe asked if there were any more questions.

Ruth Moore, 4 Talamora Trail – Mrs. Moore stated she wanted to know if the sign would be located on the west end of the property. Mr. Copie agreed.

Mrs. Pauline Johnson asked regarding Exhibit K, is it correct that the Victor store is also showing a 4 percent decrease in profits. Ms. Lake stated Exhibit K speaks to year to year sales per square foot. She added if all stores performed like the Victor store, Goodwill

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would be extremely pleased. Goodwill, as a market strategy, reduced prices by \$5 in sales per square foot across the board except at the Victor store until much later.

Counsel Lester asked if different advertising was used for the Brockport store over the other stores. Ms. Lake explained that advertisements and paper mailers are a significant cost, which takes away from the mission, so Goodwill tries to avoid this type of advertising. The cost of one paper mailer to two different zip codes is about \$10,000 to \$20,000.

Chairperson asked if there were any further questions. There were none.

Chairperson Thorpe adjourned the public hearing to another date. Counsel Lester recommended adjourning until the Town Engineer can review the application. Mr. Brennan will submit the proposed illumination to the Town Engineer for review.

A reconvened meeting was scheduled for Thursday, September 27, 2018, at 7 p.m. with a possible workshop at 6 p.m. to discuss the Town Engineer's review comments.

Moved by Mrs. Pauline Johnson, seconded by Mr. Mary Ann Thorpe, that the minutes of May 24, 2018, be approved.

Frank Fisher – Absent  
Kevin Johnson – Aye  
Pauline Johnson – Aye  
Peter Sharpe – Abstain  
Mary Ann Thorpe – Aye

Moved by Mr. Peter Sharpe, seconded by Mr. Kevin Johnson, that the minutes of April 19, 2018, be approved as amended.

Frank Fisher – Absent  
Kevin Johnson – Aye  
Pauline Johnson – Aye  
Peter Sharpe – Aye  
Mary Ann Thorpe – Aye

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

Respectfully submitted,  
Phyllis Brudz  
Zoning Board of Appeals Clerk