

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – October 18, 2018**

A reconvened 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 October 18, 2018, commencing at 6:30 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; Jennifer Lake; Steve Cukalevski.

Chairperson Thorpe called the meeting to order at 6:30 p.m.

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.

Counsel Lester gave a brief overview of last meeting. Additional information was requested for review and a second meeting was scheduled.

Mr. Daniel Brennan, Nixon Peabody, representing ABVI-Goodwill, introduced Ms. Lake and Mr. Coalesce, who are present to answer any questions. He explained that a use variance has been requested to allow a freestanding sign along with the existing on building sign. Also, seeking an area variance for the height of the freestanding sign at 30 ft., where 20 ft. is the maximum height allowed.

At the September 6 meeting, it was determined that additional information regarding the lighting be provided. A SEQR motion was not granted at that meeting, which would then be requested for tonight's meeting. Since that meeting, a letter with the lighting plan was sent on September 19, 2018. The Town Engineer reviewed the application and submitted a letter to the Town on September 21, 2018, with comments, which we received a copy of same.

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Mr. Brennan proceeded to go through the responses to the Town Engineer's comments from the letter submitted and dated October 16, 2018.

Exhibit 1, letter from Bergmann Associates, reports that MRB's request to do a lighting study would be unduly burdensome to conduct, and that no IES file is available for this type of sign. Lighting from the sign won't have any impact because the parking lot is already lit. The LED bulbs aren't too bright. Mr. Brennan doesn't believe the Board needs this lighting study since the sign light is not meant to light the ground.

Counsel Lester asked for confirmation of the proposed distance from Rte. 31 that the applicant would like the sign to be seen. Mr. Brennan didn't have an exact distance, but was confident that the light from the sign would not project on Rte. 31, but still be seen from Rte. 31 at night.

Also, submitted are two renderings showing the sign from Rte. 31 at a height of 20 ft. and 30 ft. Mr. Brennan believes that either sign height will not have any negative significant impacts on the neighborhood. The sign isn't overly large, obtrusive and will be located in a commercial area. Mr. Brennan pointed out that a 30 ft. sign would be safer to drivers passing by because they won't have to look at it longer if it was a smaller sign, which reduces its visibility.

Mrs. Pauline Johnson asked how the sign is lit. Mr. Brennan stated the whole sign would be internally lit or glow so that the words could be seen from Rte. 31. The sign would only be on during store operating hours. ABVI would like to just guide residents to the store.

Mr. Kevin Johnson commented, in his opinion, with a large percentage of the sign being dark blue, that the sign wouldn't give off a lot of light. Mr. Brennan agreed. Exhibit P shows the exact location on the site plan for the proposed sign.

Lastly, Exhibit Q, SEQR form, has been updated per MRB's comments. Mr. Kevin Johnson asked what specifically was changed on the form. Mr. Brennan stated as follows:

#7 – changed to no.

#12B – changed to yes.

#5B – changed to say it is not consistent with comprehensive plan because there already is an on building sign.

#14 – changed to suburban.

Mrs. Pauline Johnson stated for #2, if the hours of operation could be given per the Town Engineer's request. Ms. Lake stated typically the store is open from 9 a.m. to 9 p.m. except on Sundays where it is 10 a.m. – 6 p.m. She added the sign would be on a timer to shut off when the store closes. The parking lights stay on longer, maybe 10 p.m., for the employees.

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Mr. Brennan restated that the ISO Foot Candle calculation was not completed as per reported earlier from Bergmann Associates, it would be too expensive. Ms. Lake tried to find other companies, but was told that the proposed sign isn't designed to project a lot of light, that the manufacturer of the sign would have to be contacted for data. The sign won't even be able to be seen at night.

Counsel Lester asked Mr. Brennan to review the five criteria that the ZBA looks at. Mr. Brennan stated Exhibit E and Exhibit F of the August 10 letter addresses all the criteria for both the use and area variance requests. To summarize, Mr. Brennan explained.

Area Variance

1. The benefit to the applicant outweighs any detriment to the neighbors. There is a large benefit to the applicant by bringing customers to the store, but there are no negative impacts to the community, which is an existing commercial neighborhood.
2. Undesirable change in the character of the neighborhood. There won't be any due to existing freestanding signs in the neighborhood.
3. Benefit achieved by another method. Based on where the store is located, there is no other way to achieve visibility from Rte. 31 except for the proposed 30 ft. sign.
4. Variance request is substantial. The request is only for an additional 10 ft. from the existing code.
5. Adverse environmental impact or physical characteristics of the neighborhood. There are no physical or environmental impacts to the neighborhood.
6. Alleged difficulty is self-created. As explained how the development of the area never materialized as proposed when Goodwill was built, and the overgrowth of trees makes this variance not self-created. Also, this criterion doesn't have to be proven for an area variance.

Use Variance

1. Exhibit L, dollars and cents. Reduction in property value by not having a sign visible from the street. Exhibit K, compares sales per square foot for Brockport store to benchmark stores. The Brockport store is the lowest. The fact that this store does not have a sign puts it at a distinct disadvantage.
2. Hardship is unique. The request is unique because the store is not located on Rte. 31.
3. Alter the essential character of the neighborhood. It will not. Exhibit J, provides documentation of existing freestanding signs in the neighborhood. The nearby Aldi store has both building and freestanding signage for which it was granted a use variance.
4. Self-created. Same explanation as above in #6.

Mr. Brennan asked if the Board has any additional questions.

Mrs. Pauline Johnson clarified that Lowe's is permitted to have a freestanding sign as the code allows a plaza tenant sign for such type of business. Mr. Brennan pointed that out just to show similarity in the neighborhood. Mrs. Johnson agreed; however, gas stations

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and convenience stores are also permitted to have both types of signage. Hotel and motels are also allowed to have two signs. The above code is referenced in Section 175 of the Zoning Code.

Counsel Lester asked when construction of the sign is planned. Mrs. Lake said Goodwill is prepared to move forward as quickly as possible this year. Goodwill feels the overgrowth of trees and under developed areas have hurt the store sales and would hope that increased sales from the addition of a freestanding sign would rebound to support its mission.

Chairperson Thorpe closed the public hearing by motion. The Board has 62 days from today to make a decision. Counsel Lester suggested a meeting date be set tonight.

Mrs. Pauline Johnson asked if the Town Engineer had reviewed the applicant's responses. Ms. Lake stated that a discussion was had between Bergmann Associates and MRB as to what would be discussed at this meeting. Mrs. Johnson will check with the Clerk to reach out to the Town Engineer to make sure there are no other issues or questions.

Counsel Lester asked if Planning Board approval would be required. Mr. Brennan stated he believed it does not, but will check to confirm.

The next meeting will be scheduled for Thursday, October 25 at 6 p.m. Mr. Brennan has a conflict but can send a representative if needed.

Moved by Mrs. Pauline Johnson, seconded by Mr. Sharpe, to adjourn the meeting at 8 p.m.

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

Respectfully submitted,
Pauline Johnson
(Acting) Zoning Board of Appeals Clerk