

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – October 25, 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 25, 2018, commencing at 6 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.

Chairperson Thorpe called the meeting to order at 6 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 the last meeting. Chairperson Thorpe read the Short Environmental Assessment Form, Part II, as follows (with the Board's decision):

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? (No or small impact may occur)
2. Will the proposed action result in a change in the use or intensity of use of land? (No or small impact may occur)
3. Will the proposed action impair the character or quality of the existing community? (No or small impact may occur)
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? (No or small impact may occur)
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? (No or small impact may occur)
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? (No or small impact may occur)
7. Will the proposed action impact existing: a. public/private water supplies? b. public/private wastewater treatment utilities? (No or small impact may occur)
8. Will the proposed action impair the character or quality of important historic; archaeological, architectural or aesthetic resources? (No or small impact may occur)

**TOWN OF SWEDEN  
Zoning Board of Appeals  
Minutes – October 25, 2018**

9. Will the proposed action result in an adverse change to natural resources (e.g. wetlands, waterbodies, groundwater, air quality, flora and fauna)? (No or small impact may occur)
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? (No or small impact may occur)
11. Will the proposed action create a hazard to environmental resources or human health? (No or small impact may occur)

APPLICANT: ABVI-Goodwill

Location: 1807 Nathaniel Poole Trail

Tax Map #: 084.01-1-1.002

Zoning District: Retail Commercial (B-1) Zoning District

Requests: 1. Applicant requests a Use Variance to allow a free standing sign relative to the property at 1807 Nathaniel Poole Trail, Brockport, NY 14420, which sign would be in addition to the existing building mounted sign. The current Sweden Town Code only allows a building mounted sign or a ground mounted sign.

2. Applicant also requests an Area Variance, in the event the Use Variance is granted. The requested area variance is to allow a proposed sign to have a height of thirty (30) feet whereas the current Sweden Town Code only allows for a maximum height of twenty (20) feet.

Kevin Johnson offers the following resolution as it relates to Applicant's request for a **USE & AREA Variance** and moves for its adoption:

WHEREAS, this application came before the Town of Sweden Zoning Board of Appeals (the "Zoning Board of Appeals") relative to the property at 1807 Nathaniel Poole Trail, Brockport, NY 14420, as outlined above; and

WHEREAS, having considered carefully all relevant documentary, testimonial and other evidence submitted, the Sweden Zoning Board of Appeals makes the following findings:

1. Upon review of the Application, the Zoning Board of Appeals determines that the application is subject to the State Environmental Quality Review Act (New York State Environmental Conservation law, article 8) and its implementing regulations (6 NYCCR Part 617, the "SEQRA Regulations") (collectively, "SEQRA"), and that the applications constitute Unlisted actions under SEQRA.

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – October 25, 2018**

2. The Sweden Zoning Board of Appeals has considered the Proposals at a public meeting (the “Meeting”) in the Sweden Town Hall, 18 State Street, at which time all persons and organizations in interest were heard.
3. Documentary, testimonial, and other evidence were presented at the Meeting relative to the Proposals for the Sweden Zoning Board of Appeals’ consideration.
4. The Sweden Zoning Board of Appeals has carefully considered an Environmental Assessment Form and supplementary information prepared by the Applicant and the Applicant’s representatives, including but not limited to supplemental maps, drawings, descriptions, analyses, reports, and reviews (collectively, the “Environmental Analysis”).
5. The Sweden Zoning Board of Appeals has carefully considered additional information and comments that resulted from telephone conversations, meetings, or written correspondence from or with the Applicant and the Applicant’s representatives.
6. The Sweden Zoning Board of Appeals has carefully considered information, recommendations, and comments that resulted from telephone conversations, meetings, or written correspondence from or with various involved and interested agencies, including the Town’s own staff.
7. The Sweden Zoning Board of Appeals carefully has considered information, recommendations, and comments that resulted from telephone conversations, meetings, or written correspondence from or with nearby property owners, and all other comments submitted to the Zoning Board of Appeals as of this date.
8. The Environmental Analysis examined the relevant issues associated with the Proposal.
9. The Zoning Board of Appeals has completed Parts 2 and 3 of the EAF, and has carefully considered the information contained therein.
10. The Zoning Board of Appeals has met the procedural and substantive requirements of SEQRA.

**TOWN OF SWEDEN  
Zoning Board of Appeals  
Minutes – October 25, 2018**

11. The Zoning Board of Appeals has carefully considered each and every criterion for determining the potential significance of the Proposal upon the environment, as set forth in SEQRA.
  
12. The Zoning Board of Appeals has carefully considered (that is, has taken the required “hard look” at) the Proposal and the relevant environmental impacts, facts, and conclusions disclosed in the Environmental Analysis.
  
13. The Zoning Board of Appeals concurs with the information and conclusions contained in the Environmental Analysis.
  
14. The Zoning Board of Appeals has made a careful, independent review of the Proposal and the Zoning Board of Appeals’ determination is rational and supported by substantial evidence, as set forth herein.
  
15. To the maximum extent practicable, the project as originally designed or as voluntarily modified by the Applicant will minimize or avoid potential adverse environmental impacts that were identified in the environmental review process, as practicable.

NOW, THEREFORE, be it

RESOLVED that, pursuant to SEQRA, based on the aforementioned information, documentation, testimony, and findings, and after examining the relevant issues, the Zoning Board of Appeals’ own initial concerns, and all relevant issues raised and recommendations offered by involved and interested agencies and the Town’s own staff, the Zoning Board of Appeals determines that the Use and Area Variance Proposals will not have a significant adverse impact on the environment, which constitutes a **negative declaration**.

SECONDED BY Pauline Johnson, and duly put to a vote, which resulted as follows:

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

**TOWN OF SWEDEN**  
**Zoning Board of Appeals**  
**Minutes – October 25, 2018**

Regarding the application of ABVI-Goodwill, of 1807 Nathaniel Poole Trail, in a B-1 Retail Commercial zoning District, the applicant, its representatives and attorney Daniel F. Brennan, appeared before the Sweden Zoning Board of Appeals asking for a USE VARIANCE for a free standing sign. The current code only allows a building mounted sign or a ground mounted sign. The applicant also requested an AREA VARIANCE for a free standing sign with a proposed height of 30 feet, which exceeds the maximum height allowed of 20 feet.

WHEREAS, the findings of fact are as follows:

The applicant has demonstrated to the Zoning Board of Appeals that:

1. The applicable code provisions limiting this property to either building mounted sign or a monumental sign has deprived applicant of economic use or benefit causing unnecessary hardship. Real estate broker Matthew Lester submitted a report confirming same. The applicant likewise submitted data in comparison to other Goodwill stores in the Rochester area.
2. The hardship is unique to the Property because it is not visible from Route 31 due to overgrowth on neighboring properties and the distance from Route 31.
3. The requested USE variance will not alter the essential character of the neighborhood as there are numerous businesses in the area of Nathaniel Poole Trail which have business signs and which businesses were not constructed with a clear view through Transit Way to Route 31.
4. The hardship is not self-created as the subject property was part of a larger development that would have driven traffic to Nathaniel Poole Trail. The overgrowth on nearby properties blocks the view of existing building sign from Route 31.
5. The freestanding sign is in keeping with the existing character of the neighborhood and is the minimum relief necessary to make the store visible from Route 31.

Based upon this, Kevin Johnson, moves to APPROVE the USE VARIANCE to allow a free standing sign in addition to the building mounted sign.

Seconded by Peter Sharpe, and duly put to a vote, which resulted as follows:

*Pauline Johnson asked for clarification regarding #3. Counsel Lester explained that the businesses to the east and west of ABVI when constructed did not have a clear view through Transit Way to Route 31 due to existing businesses in front of the them, and thus, didn't rely on attracting customers from that direction.*

**TOWN OF SWEDEN  
Zoning Board of Appeals  
Minutes – October 25, 2018**

Chairperson Mary Ann Thorpe – Aye  
Member Peter Sharpe – Aye  
Member Frank Fisher – Absent  
Member Kevin Johnson – Aye  
Member Pauline Johnson - Nay

Motion carried, Application for Use variance **GRANTED** to allow a Free Standing Sign.

In regard to the AREA variance, the findings of fact are as follows:

1. The requested area variance of 50% for a sign with a height of 30 feet will result in an undesirable change in the neighborhood as no other signs with such height are in existence in this neighborhood. The examples submitted by the Applicant in Exhibit J of photographs showing existing signs within our community are permitted uses under Town of Sweden Zoning ordinance. Zoning Board Member Pauline Johnson highlighted the differences in other properties within the community.
2. The applicant should be able to obtain the benefit sought by receiving the use variance which allows for a second sign on the subject premises with a maximum height of 20 feet.
3. The requested variance is substantial in that the proposed sign exceeds the allowable height by 50 percent.
4. The proposed sign with a height of 30 feet will have an impact on the physical environment as there are no other signs in this area with a height of 30 feet.
5. The alleged difficulty is somewhat self-created because the applicant chose to build its store on its current location as opposed to being located on State Route 31, a major traffic artery in the Town of Sweden.

Based upon this, Peter Sharpe, moves that the application for an AREA variance of 10 feet be **DENIED**.

Seconded by Kevin Johnson, and duly put to a vote, which resulted as follows:

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

Motion carried, Application for Area variance **DENIED**.

**TOWN OF SWEDEN  
Zoning Board of Appeals  
Minutes – October 25, 2018**

Moved by Pauline Johnson, seconded by Peter Sharpe, that the minutes of September 6, 2018, be approved.

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

Moved by Pauline Johnson, seconded by Peter Sharpe, that the minutes of October 18, 2018, be approved.

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

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

Respectfully submitted,  
Phyllis Brudz  
Zoning Board of Appeals Clerk