

**TOWN OF SWEDEN  
Zoning Board of Appeals  
Minutes – May 9, 2024**

A meeting of the Zoning Board of Appeals of the Town of Sweden was held at the Sweden Town Offices, 18 State Street, Brockport, New York on May 9, 2024, commencing at 6 p.m.

Members present: Robert Carges; Kevin M. Johnson; Pauline Johnson; Mark Sealy; Mark Horschel.

Also present: Nat O. Lester, III, ZBA Counsel; Craig McAllister, Planning Board Chairman; Randy Bebout, Bohler Engineering; Hany Nissiem, MD, Brockport ASAP.

Chairman Carges called the meeting to order at 6 p.m. and asked everyone to say the Pledge of Allegiance.

Chairman Carges waived the reading of the legal notice.

Application of 4871 Lake Road Brockport SRE, LLC, 1657 East Avenue, Rochester, New York, for five (5) area variances. The applicant is proposing to redevelop the site with a new ±4,700 sq. ft. quick serve restaurant located at 4871 Lake Road South, Brockport, New York, in B-1, Retail-Commercial Zoning District. The requested variances are as follows:

1. 16.3 ft. front setback (43.6 ft. proposed for building and 15.1 ft. proposed from canopy where 75 ft. is required).
2. 17.5 ft. side setback (7.5 ft. from canopy proposed where 25 ft. is required).
3. 7% greenspace (23% proposed where 30% is required).
4. 4.7 ft. perimeter buffer (2.8 ft. proposed where 7.5 ft. is required).
5. 15.1 ft. front parking area (9.9 ft. proposed where 25 ft. is required).

Town of Sweden Ordinance §175-40 Regulations applicable in all business districts.

B. In addition to vehicular loading and parking requirements, each individual unattached principal building site shall have a perimeter buffer zone of 7 ½ feet in width. All perimeter buffer zones shall be landscaped, shall have decorative plantings, and shall be constructed to prevent the cross flow of vehicular traffic at other than designated locations. §175-41 B-1 Business District, E. Lot and area requirements in the Retail Business District shall be as follows: (4) (a) Front: 75 ft., (b) Side: 25 ft., (6) Open area requirement. At least 30% of the total lot area shall remain open and unused. (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, which strip of land shall remain vacant, unused, and clear for visibility, to be curbed, fenced, or otherwise rendered impassable to vehicles and set aside for lawn or landscaped, with advertising signs permitted in accordance with the sign provisions of this chapter.

The property is owned by 4871 Lake Road, Brockport SRE, LLC, tax account number 083.02-1-19.

**Quick Serve Restaurant – 4871 Lake Road**

Randy Bebout, Bohler Engineering, addressed the Board. Mr. Bebout distributed graphic copies to the Board as requested.

Mr. Bohler is representing 4871 Lake Road, Brockport, SRE, for the proposed Quick Serve Restaurant. The proposed project is to demolish the existing bank at the proposed location, and to construct an approximately 4,700 sq. ft. quick-serve restaurant with drive-through lanes and 49 parking spaces. The site has two existing driveways. The applicant is proposing to close off the

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driveway on Rte. 31 and reconstruct the driveway on Rte. 19 in approximately the same location. There will be cross access with WellNow to the west. The easement agreement for cross access and nine employee parking spaces is forthcoming.

Mr. Horschel added that the easement agreement should state who is responsible for maintaining the easement area, for striping it, and snowplowing, etc. Mr. Bebout explained the owners of the properties will maintain the site as before. The easement agreement allows vehicles to circulate on either property. Mr. Horschel recommended striping so that the drivers know where to go. Mr. Bebout agreed.

Dr. Hany Nissiem, 6565 Fourth Section Road – Dr. Nissiem, owner of the Brockport ASAP, stated there is already a cross access easement agreement in place between his property and WellNow. There will need to be a new easement agreement in place for WellNow, the proposed project and the Brockport ASAP. Mr. Bebout agreed. The cross access and R.O.W. easement agreement will be shared by three properties. Dr. Nissiem is concerned there will be too much traffic for one access. Mr. Bebout stated traffic will be able to disperse east or west.

Mr. Horschel confirmed with Mr. Bebout that the traffic study took the revised shared access into account. Mr. Bebout added that NYSDOT's review comments required the eastbound travel lane on Rte. 31 to be revised to a 12 ft. wide travel lane to keep vehicles in line and avoid cars passing on the shoulder. Also, required is a green signal time change on Rte. 31 for Saturday peak hour which will match the existing signal time on the evening weekday peak hour.

Mrs. Pauline Johnson asked for an explanation of how the drive-through will work. Mr. Bebout pointed to the plan where cars can enter from either direction to the drive-through lane entrance on the east side of the site and exit through the west side. There will be two lanes for stacking. Vehicles will proceed under the canopy where there is a menu board order speaker. Employees take orders from the customers instead of using the speaker to speed up the process. Orders are delivered by employees to the customers in their cars. Part of the design is a three-foot striping area between the drive-through lanes, so employees are safe to deliver orders. A 31-vehicle stacking will be provided similar to other locations. Mr. Sealy confirmed with Mr. Bebout that the 31 vehicle-stacking is from the beginning of the drive-through to the service point.

Mrs. Pauline Johnson confirmed with Mr. Bebout that both canopies are free standing. Mr. Bebout added the canopies are very simplistic in design so as not to be overbearing. They are made as narrow as possible to handle the wind and snow load for this area. Each canopy will have six metal columns. The canopies are lighted, heated and cooled for climate control during the different seasons.

Dr. Hany Nissiem, 6565 Fourth Section Road – Dr. Nissiem confirmed with Mr. Bebout that there is an entrance off Lake Road and Fourth Section Road. Dr. Nissiem is concerned about the shared access as there is a lot of traffic on Fourth Section Road.

Chairperson Carges moved the discussion forward as the approval of a new access easement agreement doesn't change the variances needed. Discussion followed.

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Mr. Bebout read the proposed variances:

1. Minimum front building setback: 75' required, 43.6' (building) and 15.1' (canopy) proposed.
2. Minimum side building setback: 25' required, 7.5' (canopy) proposed.
3. Minimum greenspace: 30% required (14,767 sq. ft.), 23% proposed (11,264 sq. ft.).
4. Minimum perimeter buffer: 7.5' required, 2.8' proposed.
5. Minimum front parking setback: 25' required, 9.9' proposed.

Mrs. Pauline Johnson asked for clarification relative to the perimeter buffer, 7.5 ft. on the south (bottom) side of the drawing. What is the distance from the proposed restaurant's parking spaces to the Hampton Inn's parking? Mr. Bebout did not have an exact dimension but would estimate it at 13 to 15 feet. Would that area be asphalt? Mr. Bebout stated there is a drainage swale and grass between them.

Mr. Bebout explained the site plan is designed so the end user has the size of the building and number of parking spaces it needs to make the business operate effectively. Mr. Bebout pointed out the large green area in front is owned by NYSDOT and makes this property unique in that the setback to the road is much greater.

Mr. Horschel asked if there will be an agreement of understanding for the maintenance of the NYSDOT area by the Quick Serve Restaurant. Mr. Bebout stated yes, the owner of the business will want to maintain it. Mr. McAllister added that it is a matter for the Building Department.

Mr. Bebout stated the variances could not be eliminated and still provide a functional layout for the business owner. The variances have been minimized where they could be, and landscaping has been provided around the perimeter. Mr. Sealy noticed on the west side there is shrubbery but didn't notice anything on the south side. Mr. Bebout stated it is hard to see but there is landscaping around the entire perimeter.

Mr. Horschel asked if any consideration has been given to the traffic coming around the upper corner of the property to screen the headlights that will shine onto Fourth Section Road in the evening. Mr. McAllister stated Mr. Horschel's concern will be reviewed by the Planning Board. Mr. Bebout stated he will look into the landscaping. Mr. Sealy asked if there was any elevation/berm to the landscaping. Mr. Bebout wasn't intending to have a berm because of the narrowness of the area but can take a look at it.

Chairman Carges confirmed with Mr. Bebout that 49 parking spaces are proposed and that 35 parking spaces are required for 70 seats inside the restaurant. The 49 parking spaces do not include the employee parking spaces in the easement with WellNow.

Mrs. Pauline Johnson asked what the actual side setback of the building is, not the canopy on the west side. Mr. Bebout stated 36 ft., which meets the setback requirement. The canopy requires a variance. Mrs. Pauline Johnson asked how high is the canopy? Mr. Bebout stated approximately 9.5 ft. clear to the bottom. Mr. Bebout did not have an elevation of the canopy but described it. The Irondequoit and Henrietta stores have canopies.

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Mr. Bebout added the canopy had to be moved back due to a 40 ft. wide easement to MCWA that goes across the front of the property. There is no problem with the easement to MCWA on the east side as the dumpster enclosure structure is outside the easement and only some of the parking spaces encroach slightly in the easement.

Mr. Horschel asked what type of vehicles were used to determine the turning radii. Mr. Bebout stated the lane is ten feet wide. Mr. Horschel confirmed with Mr. Bebout that a half ton long bed pickup would go through without driving over the curb. Mr. Horschel asked if the delivery trucks on Sunday would have any issues. Mr. Bebout explained the delivery trucks will not fit under the canopies. Deliveries are generally made between 2 a.m. and 5 a.m.

Chairman Carges asked if Mr. Bebout would like to cover anything else. Mr. Bebout stated responses have been provided to the five criteria for area variances and he would be happy to answer any questions. In general, this project doesn't change the character of the neighborhood, there's no other feasible way to achieve the desired benefit without seeking the variances, and hopefully, the project cleans up the site that has been vacant for some time.

ZBA Counsel Lester asked Mr. Bebout, for the record, what is the character of the neighborhood, adjoining properties. Mr. Bebout explained the character of the neighborhood or the properties that surround the project, are commercial uses. There is the plaza across the street, Wegmans, a bank, WellNow, Tim Hortons, the hotel to the south, and more commercial buildings. The proposed project fits with the character of the neighborhood.

Dr. Hany Nissiem, 6565 Fourth Section Road – Dr. Nissiem had one additional comment as the neighbor to the WellNow and part owner of the access off Fourth Section Road. His concern is that there will be a lot of congestion at the entrance off Fourth Section Road. Mr. Nissiem thought the entrance to the drive-through would be off Lake Road not Fourth Section Road where access is shared by three businesses.

Mr. Bebout stated that is correct, but the developer is not anticipating cars standing in the access because of the length of the access leading up to the drive-through and how this particular drive-through operates very efficiently. The only negative impact is that vehicles will be entering and exiting the WellNow site.

Chairperson Carges asked if there were any pavement arrows on the Lake Road access indicating where to enter and exit. Mr. Bebout stated there will be directional signs. Mr. Bebout added the eastbound lane on Rte. 31 will be restriped as required by NYSDOT.

Mr. Sealy understands Dr. Nissiem's concern over the driveway off Rte. 31, however, it's not this Board's responsibility to resolve. Dr. Nissiem's concern should be further discussed with the Planning Board.

Chairman Carges closed the public hearing.

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Mrs. Pauline Johnson stated on the Project Information Form (PIF) it indicates the project site is located near or adjacent to an area designated as sensitive for archeological sites of NYS SHPO. What does that mean? Mr. Bebout stated that is correct according to the archeological maps, this site shows up in that area. Because of this, an application was submitted to SHPO and in return a letter was received indicating this project has no impact on it. The SHPO letter is made part of the SWPPP.

Mrs. Pauline Johnson stated another question on the Project Information Form indicates there are wetlands on the site. Mr. Bebout stated the SEQR application is an online form that will automatically check boxes if there is something in the area, however, this site does not have any wetlands.

Mrs. Pauline Johnson's last question from the PIF is whether the site of the proposed action or adjoining property has been the subject of remediation for hazardous waste. It was checked yes with no description. Mr. Bebout stated that is another box that is automatically checked. He indicated an environmental study was completed. Mr. McAllister stated that question was asked at the Planning Board, and it was determined coring was done because of the former Mobil Gas Station across the street with no impact found.

Mrs. Pauline Johnson referenced the blue area on the exhibit map, the requested 15.1 ft. front parking variance where 25 ft. is required. She read the zoning code for the required frontage and asked Mr. McAllister for an explanation. Mr. McAllister informed the Board that the code requires a 25 ft. green space across the front of the property with nothing going into it. Mrs. Johnson asked if that was for safety and sight distance. Mr. McAllister agreed. It is also for utilities and future expansion. For example, the road expansion work being done currently in front of the Sweden Corner's Plaza.

Mrs. Pauline Johnson understands it's always good to have a lot of parking spaces and since you have an agreement with WellNow for an additional nine employee spots, would your client consider eliminating the proposed four parking spaces in the front 25 ft. greenspace, eliminating that requested variance.

Mr. Bebout stated the preference would be to not eliminate those four parking spaces as the prospective tenant needs this number of parking spaces. He explained further to what Mr. McAllister referenced as far as adequate room for utilities and sight distance. The edge of the pavement to the R.O.W. is approximately 25 ft. to 30 ft. and between the R.O.W. and the back edge of the four parking spaces is another 10 ft. There is approximately 35 ft. should there be a need to add or modify utilities; there is adequate room. As far as sight distance, there is enough depth in the driveway that if a car is ready to pull out at the edge of road, sight distance or vision wouldn't be obstructed with the proposed parking spaces in the greenspace.

Mrs. Pauline Johnson questioned how long the proposed site has been vacant for. It was determined about ten years. Mrs. Johnson added that this property is a premier site at the entrance to our Town and it is sitting vacant, looking very bad. Her personal opinion is that it would be nice to have that spot developed. Also, a quick serve restaurant fits nicely with the character of the neighborhood. Mrs. Johnson asked Mr. Bebout to summarize the tests for the Board and for the record.

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Mr. McAllister stated regarding the character of the neighborhood, the Quick Serve Restaurant is a high-volume commercial use where the other businesses are low volume. Mrs. Johnson agreed the traffic is a concern, but in her opinion, Wegmans is high volume too. Other members stated McDonald's and Tim Horton's are high volume.

Mr. Bebout stated the following:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. **The requested area variances will not result in an undesirable change or detriment to the neighborhood or nearby properties. The use is consistent/compatible with the surrounding properties. The property is somewhat unique in that it has a large triangular NYSDOT ROW area at the intersection that provides for a significant front green area and provides the appearance that the building is setback much farther from the road. The reduction in greenspace/buffers will be mitigated with landscaping.**
- b. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. **There is no feasible way to achieve the benefit other than requesting the area variances. The building and number of parking spaces is the minimum anticipated to operate the business at an efficient level.**
- c. Whether the requested area variance is substantial. **The requested area variances are the minimum necessary to achieve the desired building size and drive-thru/parking layout. The canopies are detached structures that improve the working conditions for employees by providing protection during different climate events.**
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. **The requested area variances will not have an adverse impact on the environment. The additional impervious area will be mitigated by the proposed stormwater mitigation system which will reduce runoff to pre-development rates.**
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance. **Though it may be considered self-created; the properties unique shape and large ROW area results partly in the need for the area variances. The benefit to the community (redevelopment of a vacant site) outweighs any detriment as a result of the redevelopment.**

Chairman Carges stated that this project will create considerably more impervious surface. There have been runoff issues with all the pavement that has been added to Rte. 31. Mr. McAllister stated part of the engineering design for this project is putting all the runoff storage underground. It could be an issue down the road for the Town if it gets plugged up and doesn't work properly. Mr. Bebout added that there is a surface bioretention area on the east property line that will pretreat the runoff which then goes into the underground detention system to be stored and slowly released. There will be a maintenance agreement with the Town as part of the approvals. The tenant will have to maintain the system.

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Mrs. Pauline Johnson asked the Clerk if she received any comments from the legal notice or letters sent to neighbors. The Clerk stated no concerns, but more of an interest in knowing what type of restaurant business it will be.

Mr. McAllister added that the Planning Board held a public hearing and no one from the public attended. He mentioned that he received several calls regarding this project, and no one has had an objection to the project coming to town. It is a tremendous business with a great product, reasonably priced, and arguably the fastest service lane of any fast-food business around today.

Mr. Sealy asked how many new jobs it will create. Mr. Bebout estimated 125 new jobs and will be owner operated from the general area. For example, the Irondequoit store was opened by a husband and wife who left the corporate world. This is their life now; they enjoy making sure customers are happy and the place is clean. They do a lot of charity work and try to hire college and high school students. They take a lot of pride in their facility.

In respect to the drive-through, it is very manageable on the fly utilizing one or both lanes as they see fit depending upon the number of customers. For grand openings, there is a team of experienced workers for thirty days to guarantee a successful opening.

Chairman Carges asked the Board if there were any more questions or discussion. Mrs. Pauline Johnson did not have any additional questions but would like more time to think about everything that was discussed. Chairman Carges asked if two more weeks would work. The Board agreed.

Mrs. Pauline Johnson added she would like to see responses to the latest Town Engineer's comments. Mr. Bebout understands but stated that won't change the variances before the Board. She also asked for clarification as to when the start date would be as the information submitted states the construction date is April 2025.

Mr. Sealy asked what the construction plan for this project is. Mr. Bebout stated in a perfect world, construction could start this summer. After a certain date, it would be Spring 2025.

Chairman Carges confirmed with the Clerk that the next Planning Board meeting is Monday, June 10, 2024.

Mr. Horschel asked what the critical path for this project is; longest item to resolve. Mr. Bebout stated they are at stage two with NYSDOT and could potentially have a NYSDOT permit approval within the next thirty days. Building plans won't be started until the project is approved by the Planning Board. With the next Planning Board meeting scheduled for June 10, and addressing all other concerns, such as, easements, would push a start and finish date into 2025.

Moved by Mrs. Pauline Johnson, seconded by Mr. Kevin Johnson, to table the meeting until Thursday, May 23, 2024, at 6 p.m.

Chairman Carges – Aye  
Mr. Mark Horschel - Aye  
Mr. Kevin M. Johnson – Aye  
Mrs. Pauline Johnson – Aye  
Mr. Mark Sealy – Aye

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Moved by Mrs. Pauline Johnson, seconded by Mr. Mark Sealy, that the minutes of December 21, 2023, be approved.

Chairman Carges – Aye  
Mr. Mark Horschel - Abstain  
Mr. Kevin M. Johnson – Aye  
Mrs. Pauline Johnson – Aye  
Mr. Mark Sealy – Aye

The meeting was adjourned by motion at 7:07 p.m.

Respectfully submitted,  
Phyllis Brudz  
Zoning Board of Appeals Clerk