

**TOWN OF SWEDEN  
Zoning Board of Appeals  
Minutes – June 27, 2019**

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 June 27, 2019, commencing at 6 p.m.

Members present: Kevin M. Johnson; Pauline Johnson; Mary Ann Thorpe.

Absent: Peter Sharpe

Also present: Nat O. Lester, III, ZBA Counsel; Lyle Stirk, Building Inspector, CEO; Beth and Daniel Snyder; Samantha Snyder; Scott and Pamela Flohr.

Chairperson Thorpe called the meeting to order at 6 p.m., and introduced the Board Members.

Application of Daniel and Elizabeth Snyder, 3526 Westside Drive, Churchville, New York, for two area variances to construct a handicap accessible ramp on the east side of the house and a deck/ramp on the west side of the house, located at 150/152 Capen Road, Brockport, New York. The proposed deck and handicap ramp on the west side of the house will serve as a second point of egress in case of an emergency. The existing two-family house is pre-existing, nonconforming due to the front setback of 28 ft. *Town of Sweden Ordinance §175-36, Section D, (1), (c) (1), states the required front setback is 75 ft.* The property is owned by Daniel L. and Elizabeth Snyder, tax account number 098.03-1-14.1.

**150-152 Capen Road**

Mrs. Beth Snyder addressed the Board. She explained a little over three years ago, her daughter was in a car accident and is now a quadriplegic. They built their home in Churchville, which they love, but it is not handicap accessible. They have made modifications to the home, but feel they need to do more for their daughter's future.

She introduced her daughter, Samantha, and her brother and his wife, Scott and Pamela. Her brother came from Texas to help make repairs to the house, which has been vacant for over 20 years and was in rough shape when purchased. The house is a duplex and will provide her daughter independence, by living in the front house, 152 Capen Road, but still allow for 24/7 care by them living in the rear house, 150 Capen Road, which sits approximately 70 ft. from the road making the entire duplex nonconforming due to the required front setback. There are two main entrances, one faces the road and the other one is a side entrance at the northeast corner of 150 Capen Road, and is where the proposed handicap ramp will be located.

Chairperson Thorpe stated she noticed there is some type of ramp there now. Mrs. Snyder replied that she discovered this morning her contractor had gone ahead and framed the ramp against her request. She did not notice it because the work was done the past two days when she was at work. Mrs. Snyder explained the contractor knew that the permit issued did not include the ramp even though it was on the blueprints. If the variance is not granted, she will have to address what to do next.

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Mrs. Pauline Johnson asked the Clerk if anyone had contacted her regarding the variance. The Clerk stated no comments were received from the public and/or neighbors. Mrs. Snyder stated the house is quite a distance from any of the neighbors, and has a lot of road frontage and vegetation. The house was built very close to the road.

Mrs. Snyder addressed the following area variance tests:

**1. Whether benefit can be achieved by other means feasible to applicant.**

With the house 28 ft. off the road, to add a ramp approximately 75 ft. back would be impossible to make it compliant. Mrs. Pauline Johnson confirmed that Mrs. Snyder will live in the rear house and her daughter in the front house.

**2. Undesirable change in the neighborhood character or detriment to nearby properties.**

There is no detriment to nearby properties as the existing house is so far away from any. A well-built ramp as opposed to the porch that was caving in makes for a positive change in the neighborhood.

**3. Whether request is substantial.**

With respect for my daughter's condition, the request is not substantial. I understand that there is a lot to think about when granting a variance. Mrs. Pauline Johnson clarified that substantial is determined by a numerical value. For an area variance, as in this case, it would be how many feet. It is a substantial request, but the reason for it is because the house is pre-existing, nonconforming.

**4. Whether request will have adverse physical or environmental effects.**

There shouldn't be any as the proposed structure is not near any wetlands, is being constructed on the lawn, and is far enough off the road as it can be. There is adequate distance to both the well and septic system.

**5. Whether alleged difficulty is self-created.**

This is difficult because my wish is that the accident didn't happen three years ago. Mrs. Pauline Johnson clarified that the rationale behind this State test has to do with its pre-existing, nonconforming issue, not with the people involved. The Town Code for front setbacks was not in place years ago when the house was built in the mid-1800s.

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

Chairperson Thorpe closed the public hearing. The Board has 62 days to make a decision. The Clerk will notify you when a decision has been made.

Discussion of the June 6 meeting minutes took place regarding Canandaigua National Bank (CNB), and the resolution to not approve the use variance. The Board still agreed that CNB will have adequate visibility without the additional fourth sign. To that end,

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Counsel Lester explained that the Clerk received a request from the applicant for an onsite visit and rehearing of the Board's decision. Because the public hearing was closed, a new application would need to be submitted if the Board agrees to a rehearing.

Moved by Chairperson Thorpe, seconded by Mrs. Pauline Johnson, that the request by Canandaigua National Bank for an onsite visit and rehearing be approved.

*Mrs. Pauline Johnson confirmed with the Clerk that during the bank's Planning Board review, elevation drawings of what the bank will look like at the proposed location was submitted. Being that the applicant was represented by an architectural firm, elevation drawings showing the proposed signage should have been submitted for a better understanding of their variance request. Also, the use variance tests were not proven as to why the variance should be granted during the hearing. Mrs. Johnson is in favor of not meeting onsite as they should have been prepared at the first hearing. In addition, if a rehearing was approved, it would set a precedent for future applicants denied. The Board agreed. Mr. Kevin M. Johnson stated he believes the bank will have good visibility.*

Chairperson Mary Ann Thorpe – Nay  
Member Kevin M. Johnson – Nay  
Member Pauline Johnson – Nay

Motion denied.

Moved by Mrs. Pauline Johnson, seconded by Chairperson Thorpe, that the minutes of June 6, 2019, be approved.

Chairperson Mary Ann Thorpe – Aye  
Member Kevin M. Johnson – Aye  
Member Pauline Johnson – Aye

**150-152 Capen Road**

Mrs. Pauline Johnson explained she was very disappointed and surprised to see the ramp already built. Mrs. Snyder stated she was too, and if the variance is denied, the contractor will have to take the ramp down. The contractor did not do the right thing. Mr. Stirk will testify that I have bent over backwards to do what was required. A permit for the ramps has not been issued to date.

Mr. Stirk explained that it was made very clear at the time the permit for the interior remodel was issued, it did not include the ramps, and the drawings were marked that the permit didn't include either of the ramps. A copy of the denied original permit application is included in the members' packets indicating an area variance must be granted in order to proceed.

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Counsel Lester confirmed with Mrs. Snyder that the house is vacant whereby no one was available to see the work being completed in order to stop it. Also, Mrs. Snyder was working the past two days. Mrs. Snyder apologized for the miscommunication. Counsel Lester pointed out that it is worth noting the setback isn't being made any worse.

Mr. Stirk summarized for the Board that a permit to remodel the interior of the house has been granted. The original permit for both the ramps and interior remodel was denied until a variance could be granted. If the variance is granted, a permit application will need to be submitted for the ramps, and all inspections/re-inspections will be completed.

Mrs. Pauline Johnson asked for clarification of the exact distance to each ramp as she is prepared to make a motion. Mrs. Snyder replied that the deck/ramp on the east side is 56 ft. back from the front property line, and the deck will utilize the same footprint of the demolished enclosed porch, which was unsafe. The deck/ramp on the west side which is being used as a means of a second egress is 33 ft. back from the front property line. The variance requests are for 19 ft. and 42 ft. respectively.

Mrs. Pauline Johnson offers the following resolution and moves for its adoption:

Daniel Snyder and Elizabeth Snyder, owners of real property situate at 150/152 Capen Road in the Town of Sweden, County of Monroe and State of New York, on or about April 26, 2019, filed an Environmental Assessment Form (EAF) with the Zoning Board of Appeals of the Town of Sweden, a copy of which is attached hereto and made a part hereof relating to a request for an area variance.

Pursuant to 6 NYCRR section 617.59© of the SEQR regulations, it is hereby determined that the action proposed in said application constitutes a Type II action as defined under said regulation and does not require an environmental impact statement or any other determination or procedure.

Dated: June 27, 2019

Mary Ann Thorpe, Chairperson  
Zoning Board of Appeals  
Town of Sweden

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SECONDED BY Mr. Kevin M. Johnson, and duly put to a vote, which resulted as follows:

VOTE:           Chairperson Mary Ann Thorpe – Aye  
                  Member Kevin M. Johnson – Aye  
                  Member Pauline Johnson – Aye

Motion carried.

Moved by Mrs. Pauline Johnson, seconded by Mr. Kevin M. Johnson, that the application of Daniel and Elizabeth Snyder, 3526 Westside Drive, Churchville, New York, for two area variances. One area variance of 19 ft. to construct a handicap accessible ramp on the east side of the house and a second area variance of 42 ft. to construct a deck/ramp on the west side of the house, located at 150/152 Capen Road, Brockport, New York, tax account number 098.03-1-14.1, **be approved** for the following reasons:

1. An undesirable change will not be produced in the character of the neighborhood nor will a detriment to nearby properties be created by granting of the two area variances as the house was constructed in the mid-1800s, pre-existing to the Town Code.
2. The benefits sought by the applicant cannot be achieved by another method other than an area variance as the pre-existing, nonconforming structure has a front setback of 28 ft.
3. The requested area variances are substantial; however, it is because the house is a pre-existing, nonconforming structure with a front setback of 28 ft.
4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood as it is surrounded by similar structures that are pre-existing, nonconforming.
5. The alleged difficulty was not self-created as the house was built in the mid-1800s and is pre-existing, nonconforming.

Member Kevin M. Johnson – Aye  
Member Pauline Johnson – Aye  
Chairperson Mary Ann Thorpe – Aye

Motion carried. Application for area variances granted.

Mrs. Snyder thanked the Board. Discussion took place of all the work that has been done and still needs to be done. The family is looking forward to living in the Town of Sweden after looking at other Towns to reside. The Board wished the family good luck!

The meeting was adjourned by motion at 6:45 p.m.

Respectfully submitted,  
Phyllis Brudz  
Zoning Board of Appeals Clerk