

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – July 13, 2023**

DRAFT

A meeting of the Zoning Board of Appeals of the Town of Sweden was held at the Sweden Town Park Lodge, 4761 Redman Road, Brockport, New York on July 13, 2023, commencing at 6 p.m.

Members present: Robert Carges, Kevin M. Johnson, Pauline Johnson, Robert Muesebeck, Mark Sealy,

Also present: Nat. O. Lester, III, ZBA Counsel; Anthony Tintera, Meagher Engineering; Wayne Zyra; Henry Conradt.

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

Moved by Mr. Sealy, seconded by Mrs. Pauline Johnson, that the minutes of December 15, 2022, be approved.

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

Chairman Carges commented that he attended the local government workshop in Batavia a few months ago and it was informative. Zoning and site plan review were covered as well as farmland protection for all the rural communities. The State Department was represented. There was a whole section on the solar eclipse happening next year, which is coming through Brockport, and could cause a lot of traffic concerns.

Chairman Carges read the legal notice.

Application of Henry Conradt, 60 East Buffalo Street, Churchville, New York, for four (4) area variances. Applicant is proposing to construct three self-storage unit buildings in two phases located at 2600 Colby Street, Brockport, New York, in Light Industrial Zoning District. The requested variances are as follows: 40 ft. rear setback (60 ft. provided where 100 ft. is required), 48.1 ft. west side setback (51.9 ft. provided where 100 ft. is required), 20 ft. east side setback (80 ft. provided where 100 ft. is required), and 9 parking spaces (30 parking spaces provided where 39 parking spaces are required).

Town of Sweden Ordinance §175-46 I-2 Light Industrial District use regulations and performance standards, I. Off-street parking. (4) Number of spaces. Use: Manufacturing, wholesaling, and storage – 1 for each 600 sq. ft. of floor area or 1 per employee, whichever is greater. §175-47 I-2 Light Industrial District bulk regulations. A (1) Minimum requirements. (e) Side setback. [4] Side setback for lots abutting a business commercial zoning district: 100 ft. and (f) Rear setback. [2] Rear setback for lots abutting a business commercial zoning district: 100 ft. The property is owned by Henry F. and Carrie Conradt., tax account number 084.03-1-24.002.

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Brockport-Sweden Self Storage

Mr. Anthony Tintera, Meagher Engineering, addressed the Board regarding several area variances requested for the Brockport-Sweden Self-Storage project. Mr. Henry Conratt, applicant, is present tonight.

Mr. Tintera gave a brief overview of the project's timeline beginning in May when the Planning Board accepted the Gretchen Subdivision for review, a resubdivision of 2610 Colby Street, which is property associated with Ledgesdale Airpark. A public hearing was held, and final approval was granted in June for the subdivision. Lot B of the Gretchen Subdivision which is associated with this project is 200 ft. depth from the R.O.W. and approximately 750 ft. lot frontage. Following the Town's approval for the resubdivision, Mr. Conratt waited for the filing of the subdivision plat before purchasing the property and pursuing a rezoning application from B-2, Airport-Commercial to I-2, Light Industrial. The proposed use of the property of mini storage units is not permitted in B-2 zoning even with a special-use permit.

In November of 2022, a formal application for rezoning took place. Throughout the rezoning process, the concept layout of mini storage units similar to what is proposed for this Board tonight took place. It has always been the applicant's goal to meet the requirements of the zoning criteria for the Town of Sweden along with the needs of the applicant. According to Mr. Tintera, throughout the rezoning process, no feedback was provided to the applicant that the concept layout would necessitate any area variances. Correspondence received from the Town Board reinforced the idea that there was approximately a 40 ft. by a to be determined dimension area for development. In January, the rezoning was approved.

Mrs. Pauline Johnson asked for Mr. Tintera to repeat the dimensions available for development. Mr. Tintera explained that the original concept layout had the assumed setbacks of 100 ft. front setback from the R.O.W. and 60 ft. rear setback. Mr. Tintera interpreted that the required setbacks relating to business commercial were for B-1, Retail-Commercial, not B-2 or B-3 zoning.

The Town Engineer and other reviewing agencies received the concept layout for review and no comments or feedback was received indicating that any variances would be required. Mr. Conratt commented that when the rezoning application was approved from commercial to light industrial is when the changes to the setback requirements took place, but he was not notified.

Mr. Tintera continued that ultimately the 60 ft. rear setback is only applicable if a Light Industrial property is bordered by other Light Industrial properties. There are very few Light Industrial properties in the Town similar to the client's property which is surrounded by Airport Commercial properties, including automotive repair shops, a bakery and across the street is a quarry, Iroquois Rock Quarry Products.

Mr. Tintera wanted to stress throughout the rezoning process that there was a 40 ft. by a to be determined linear feet area for development which is why the rezoning was pursued instead of a use variance. Following the Town's rezoning approval of Lot B, the applicant waited for the site survey before starting the site design, which included preparation of site plans and a SWPPP. Brockport-Sweden Self-Storage Site Plan was accepted for review by the Planning Board on April 10, 2023. Site plans were updated by several reviewing agencies prior to the public hearing. There were no review comments received for the need for area variances until the night of the public hearing.

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At the public hearing, variances were identified for the 100 ft. rear and side setbacks. Additionally, there was the parking variance needed as well. Mr. Tintera stressed that the confusion of the setback variances was not caught by anyone during the rezoning process and in the initial stages of the site plan development. It has always been his client's goal to meet the zoning criteria for the Town of Sweden and following the rezoning process his client believed he had the 40 ft. area to develop. Moving to the Planning Board public hearing, the area variances were identified and subsequently, an additional planning meeting was held to confirm the variances needed to make application to the Zoning Board of Appeals.

Mr. Tintera gave a brief overview of the site map explaining the area variances needed.

Mrs. Pauline Johnson asked for the time frame between Phase 1 and Phase 2. Mr. Tintera explained this year for Phase 1 and then two years for Phase 2. Mr. Conradt stated it will take longer to complete the blacktop as the buildings are finished.

Mr. Tintera explained the front setback meets the code requirement; however, the side setbacks and parking requirement will need variances. Customers will park to unload and load their vehicles. The rear strip of property along the back of the buildings has been expanded to show parallel parking spaces. There will be a deficiency of nine parking spaces.

Mr. Tintera referenced the C1 drawing to show the rear setback as the storage buildings relate to the "no build" zone and the airport runway. The eastern side setback abuts B-2 zoning, which is undeveloped and receives runoff from the project site property. The western side setback has access between the neighboring property, Lot A of the Gretchen Subdivision, and the project site property. This access acts as a buffer between the project site property, Industrial zoned, and the residentially zoned properties heading west.

Mrs. Pauline Johnson asked for clarification regarding the property that has accessibility to the neighbor to the west. Mr. Tintera stated mainly that the property is not landlocked as it has access.

Lastly, with respect to the application for a use variance instead of rezoning, this area of Sweden has an industrial presence with the Quarry across the street, a repair garage to the east is more in line with an industrial use, and the future Town of Sweden's Comprehensive Plan states that the Quarry Reclamation Plan will include both Light Industrial and Residential areas.

Rezoning the B-2 Airport-Commercial property to I-2 Light Industrial was necessary given the lack of any other mechanism, specifically a Special Use Permit. Proving a case for a Use Variance would have been difficult as it would have meant that even with the hardship for all the four criteria for a use variance and for all other possible uses allowed in B-2, including those uses in B-1 and those uses in both residential zoning districts as well.

Mr. Tintera added given all of this information, he would like to stress that the approach to the project has always been to meet the zoning requirements of the Town. He would be happy to answer any questions from the Board at this time.

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Chairman Carges asked for clarification of the checkerboard pattern on the site map. Mr. Tintera explained that indicates a water quality stormwater management practice, specifically filtration meant to intercept the runoff generated from the site. It is a built-up area adjacent to the driveway and initially acts like a sump with mulch covering the bioretention soil that the water passes through slowly. The treated stormwater is collected in underdrains and shot out to the south. For Phase II it is a similar situation where the water is shot out to the south to a shallow dry detention basin.

Mrs. Pauline Johnson asked what the dimensions are of the storage units. Mr. Conrardt stated the units are different sizes, all 10 ft. wide at the front by anywhere from 30 ft. down to 10 ft. Most of the units will be 20 ft. depth. Also, there may be some units at the ends that are 5 ft. by 10 ft.

Mrs. Pauline Johnson confirmed with Mr. Conrardt that the buildings will be masonry. Mr. Conrardt stated they will be like the storage units behind Wal-Mart. He presented a picture of the units. Mrs. Johnson asked if the buildings could be made shorter so that the variance on the western side near the residents would not be so large. Mr. Conrardt stated he had to give the property owner 50 ft. back for access to the back property or else the deal would fall through. The building on the eastern side has already been shortened to avoid disturbing any land on the abutting property to the east.

Mrs. Pauline Johnson asked could the building on the west side be shortened. Mr. Conrardt stated at some point that by shortening the buildings, the project will not be economically feasible. Mrs. Johnson understood but this is the Town Code.

Zoning Board Counsel Lester asked Mr. Conrardt who led him to change the acreage he was purchasing. Mr. Conrardt explained the seller stated he had to or else the deal would fall through. Counsel Lester stated that has nothing to do with the Town.

Mr. Conrardt asked, “how much the buildings will have to shrink?” Mrs. Johnson stated the variances are for a lot. Mr. Conrardt asked, “are you asking for the western side setback to go down 50 ft. and the eastern side setback 20 ft.?”

Mrs. Pauline Johnson explained her personal opinion is that she is okay with the rear variance because of the “no build” zone. Is there a parking space in front of each unit? Mr. Conrardt stated there are no trucks pulling in and out, just people in their car or moving van pulling up as close as possible to the units. The smaller the buildings, the less parking spaces are required. Discussion followed.

Mrs. Pauline Johnson explained that in her opinion the Town has been very accommodating because the hardship was self-created. The Town rezoned the property, and now you are before the Zoning Board of Appeals.

Mr. Conrardt stated he will eliminate the 50 ft. western side setback. Mr. Mark Sealy stated the removal of the 50 ft. would take care of the west side, but what about the east side?

Chairman Carges asked if there were any additional questions from the public.

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Wayne Zyra, 2689 Colby Street – Mr. Zyra asked who requested rezoning from Airport Commercial to Light Industrial? Mr. Conradt stated he did. Mr. Zyra added you did without checking the regulations. Mr. Conradt hired a firm to do that. Mr. Zyra stated as the potential buyer of the property you did not check the regulations first. Mr. Conradt tried to develop the property as simply as possible. Mr. Zyra stated that Mr. Conradt took a piece of property that could be developed under commercial zoning and turned it into a piece of property that cannot be developed when rezoning the property was requested. It was not the Town, but rather Mr. Conradt.

Mr. Tintera added the Town has to review what is proposed. Mr. Zyra stated the regulations were not checked prior to making an application for rezoning. If the regulations had been checked, a sane person would not have requested the rezoning. The applicant is effectively asking the Zoning Board of Appeals to rewrite its zoning laws for Light Industrial zoning. Typically, a zoning variance is for a few feet here or there.

Mr. Tintera stated throughout the rezoning review process, based on the five criteria, that this application was a unique situation as far as being self-created, the applicant had every reason to believe there was 40 ft. of usable depth to work with.

Mr. Sealy added that while you indirectly believed there was 40 ft. to work with, the code clearly states that the applicant did not. Just because the Town did not tell you there was a problem that cannot be used as an excuse. The Light Industrial code should have been looked at first to realize the project was not going to work as there would be no place to build.

Mr. Tintera stated he is not blaming anyone with respect to the interpretation of the code and it is the responsibility of the engineering firm to hash out any code that may be ambiguous or how it comes across regarding the interpretation.

Mr. Conradt would like to eliminate the east and west side variance requests and only request variances for the rear setback and parking.

Mrs. Pauline Johnson asked the Clerk if any other residents contacted her regarding the application. No other comments were received.

Mrs. Pauline Johnson appreciates Mr. Conradt's removal of the east and west side variance requests. She added it is important to be sure as the variance runs with the land.

Mrs. Johnson asked Counsel Lester how the dimensions for the variances should be addressed. Counsel Lester stated the measurements for the variances can be stated even if less than asked for or the Board can request a new drawing with the revised measurements. Mr. Sealy added if the applicant is willing to redesign the buildings and eliminate the side setback variance requests, the Board can deny those variances and approve the two they are in favor of so the Board can move forward.

Mrs. Pauline Johnson is okay with that suggestion and is prepared to make a motion.

Chairman Carges closed the public hearing.

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

Having reviewed the application and Short Environmental Assessment Form of Henry Conradt, 60 East Buffalo Street, Churchville, New York, for four (4) area variances. Applicant is proposing to construct three self-storage unit buildings in two phases located at 2600 Colby Street, Brockport, New York, in Light Industrial Zoning District. The requested variances are as follows: 40 ft. rear setback (60 ft. provided where 100 ft. is required), 48.1 ft. west side setback (51.9 ft. provided where 100 ft. is required), 20 ft. east side setback (80 ft. provided where 100 ft. is required), and 9 parking spaces (30 parking spaces provided where 39 parking spaces are required) will not have a significant adverse impact on the environment, which constitutes a negative declaration.

Seconded By Mr. Sealy and duly put to a vote, which resulted as follows:

Vote:
Chairman Carges – Aye
Mr. Kevin M. Johnson – Aye
Mrs. Pauline Johnson – Aye
Mr. Robert Muesebeck – Aye
Mr. Mark Sealy – Aye

Motion carried.

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

That the application of Henry Conradt, 60 East Buffalo Street, Churchville, New York, for two (2) area variances. Applicant is proposing to construct three self-storage unit buildings in two phases located at 2600 Colby Street, Brockport, New York, in Light Industrial Zoning District. The requested variances are as follows: 40 ft. rear setback (60 ft. provided where 100 ft. is required) and nine parking spaces (30 parking spaces provided where 39 parking spaces are required), tax account number 084.03-1-24.002, *be **approved*** for the following reasons:

Area Variance #1 – 40 ft.

60 ft. rear setback rather than the required 100 ft. rear setback (§175-47/I-2) approved for the following reasons:

- a. The land adjacent to the rear property line includes the end of the runway and a designated “No Build Zone;”
- b. An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial; B-2, Airport Commercial Park District, and I-3, Industrial Excavation District;
- c. The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance; and
- d. The proposed variance will not have an adverse impact on the physical or environmental conditions in the neighborhood.

Discussion: Mr. Sealy confirmed with Mrs. Johnson that the variance is for 40 ft. Chairman Carges requested each variance be separate for clarity. Mrs. Johnson agreed.

Seconded By Mr. Kevin Johnson and duly put to a vote, which resulted as follows:

Vote:
Chairman Carges – Aye
Mr. Kevin M. Johnson – Aye
Mrs. Pauline Johnson – Aye
Mr. Robert Muesebeck – Aye
Mr. Mark Sealy – Aye

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Motion carried.

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

That the application of Henry Conratt, 60 East Buffalo Street, Churchville, New York, for two (2) area variances. Applicant is proposing to construct three self-storage unit buildings in two phases located at 2600 Colby Street, Brockport, New York, in Light Industrial Zoning District. The requested variances are as follows: 40 ft. rear setback (60 ft. provided where 100 ft. is required) and nine parking spaces (30 parking spaces provided where 39 parking spaces are required), tax account number 084.03-1-24.002, *be **approved*** for the following reasons:

Area Variance #2 – 9 Parking Spaces

This parking space variance is made with the condition for the use of self-storage units only.

30 parking spaces instead of the required 39 parking spaces (§175-46 I-2) approved for the following reasons:

- a. An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial; B-2, Airport Commercial Park District, and I-3, Industrial Excavation District;
- b. The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance; and
- c. The proposed variance will not have an adverse impact on the physical or environmental conditions in the neighborhood.

Discussion: Mrs. Johnson explained if you should decide to build a restaurant, this variance would not be applicable. Mr. Conratt understood.

Seconded By Mr. Mark Sealy and duly put to a vote, which resulted as follows:

Vote: Chairman Carges – Aye
Mr. Kevin M. Johnson – Aye
Mrs. Pauline Johnson – Aye
Mr. Robert Muesebeck – Aye
Mr. Mark Sealy – Aye

Motion carried.

The Board discussed that the remaining two variances will be denied. The applicant will then return to the Planning Board with a revised set of plans.

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

That the application of Henry Conratt, 60 East Buffalo Street, Churchville, New York, for two (2) area variances. Applicant is proposing to construct three self-storage unit buildings in two phases located at 2600 Colby Street, Brockport, New York, in Light Industrial Zoning District. The requested variances are as follows: 48.1 ft. west side setback (51.9 ft. provided where 100 ft. is required) and 20 ft. east side setback (80 ft. provided where 100 ft. is required), tax account number 084.03-1-24.002, *be **denied*** for the following reasons:

Area Variances #3 – 48.1 ft.

51.9 ft. for the western side setback rather than the required 100 ft. (§175-47/I-2) be denied for the following reasons:

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- a. The benefit sought by the Applicant can be achieved by another feasible method rather than a variance by decreasing the length of the buildings;
- b. The requested area variance is substantial; and
- c. The alleged difficulty was self-created.

Seconded By Mr. Kevin Johnson and duly put to a vote, which resulted as follows:

Vote: Chairman Carges – Aye
Mr. Kevin M. Johnson – Aye
Mrs. Pauline Johnson – Aye
Mr. Robert Muesebeck – Aye
Mr. Mark Sealy – Aye

Motion carried.

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

That the application of Henry Conratt, 60 East Buffalo Street, Churchville, New York, for two (2) area variances. Applicant is proposing to construct three self-storage unit buildings in two phases located at 2600 Colby Street, Brockport, New York, in Light Industrial Zoning District. The requested variances are as follows: 48.1 ft. west side setback (51.9 ft. provided where 100 ft. is required) and 20 ft. east side setback (80 ft. provided where 100 ft. is required), tax account number 084.03-1-24.002, *be **denied*** for the following reasons:

Area Variances #4 – 20 ft.

80 ft. for the eastern side setback rather than the required 100 ft. ((§175-47/I-2) denied for the following reasons:

- a. The benefit sought by the Applicant can be achieved by another feasible method rather than a variance by decreasing the length of the buildings;
- b. The requested area variance is substantial; and
- c. The alleged difficulty was self-created.

Seconded By Mr. Mark Sealy and duly put to a vote, which resulted as follows:

Vote: Chairman Carges – Aye
Mr. Kevin M. Johnson – Aye
Mrs. Pauline Johnson – Aye
Mr. Robert Muesebeck – Aye
Mr. Mark Sealy – Aye

Motion carried.

The meeting was adjourned by motion at 6:48 p.m.

Respectfully submitted,
Phyllis Brudz
Zoning Board of Appeals Clerk