

**TOWN OF SWEDEN
Planning Board Minutes
August 9, 2021**

A regular meeting of the Town of Sweden Planning Board was held on Monday, August 9, 2021, at the Sweden Town Courtroom, 18 State Street, Brockport, New York, commencing at 7 p.m.

Members present: Richard Dollard, David Hale, Matthew Minor, Craig McAllister, David Strabel.

Absent: Wayne Rickman; Peter Sharpe; James Oberst, P.E., Town Engineer, MRB.

Also present: Nat O. Lester, III, Planning Board Counsel; Kris Schultz, Schultz Associates; Sean McLean; Garrett Steiner, DDS Companies; Kristi Henner.

Chairman McAllister called the meeting to order at 7 p.m. and asked everyone present to say the Pledge of Allegiance.

Correspondence was passed to members for review.

Moved by Mr. Dollard, seconded by Mr. Minor, that the minutes of July 12, 2021, be approved.

Chairman McAllister – Aye
Mr. Dollard – Aye
Mr. Hale - Abstain
Mr. Minor – Aye
Mr. Rickman – Absent
Mr. Sharpe - Absent
Mr. Strabel – Aye

Moved by Mr. Dollard, seconded by Mr. Minor, that the regular meeting be adjourned to the public hearing.

Chairman McAllister – Aye
Mr. Dollard – Aye
Mr. Hale - Aye
Mr. Minor – Aye
Mr. Rickman – Absent
Mr. Sharpe - Absent
Mr. Strabel – Aye

Public Hearing began at 7:04 p.m.

Chairman McAllister waived reading the legal notice.

Henner Subdivision and Site Plan – 2 Lots. 6620 Redman Road. 113.04-1-5.8.

Mr. Garrett Steiner, Project Manager, addressed the Board. He introduced the owner of the property, Kristi Henner. The proposed project is for a 2,500 sq. ft. single family home located at 6620 Redman Road. The existing parcel is approximately 70.63 acres, zoned one-family residential. The site plan is also in conjunction with a subdivision plan which will subdivide the existing parcel into two lots. Lot 1 will include the home and utilities on approximately 8.073 acres, and the remaining lands, Lot 2, approximately 62.5 acres.

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An asphalt driveway will connect the house to the dead end of Redman Road through an existing 25 ft. wide ingress/egress easement. A conventional leach field septic system is proposed and a private well. The entire project will disturb approximately 1.5 acres and erosion and sediment techniques will be in place.

Chairman McAllister noted that this property received a variance from the ZBA for road frontage. Mr. Steiner agreed.

Chairman McAllister asked if there was anyone present with comments, questions, or concerns. There were none.

Moved by Mr. Strabel, seconded by Mr. Dollard, to adjourn the public hearing to the regular meeting.

Chairman McAllister – Aye
Mr. Dollard – Aye
Mr. Hale – Aye
Mr. Minor – Aye
Mr. Rickman – Absent
Mr. Sharpe - Absent
Mr. Strabel – Aye

The Public Hearing ended at 7:06 p.m.

Maier Subdivision and Site Plan – 2819 Colby Street. 099.01-1-1

Mr. Kris Schultz, P.E., addressed the Board. He stated this was a fun project. It was before the Board a year ago. The original design was based on wetland mapping. Something was off because there were good percolation deep hole tests for the leach field systems. The original design was done so that there was the least amount of disturbance to the tributary. At the public hearing, there was testimony that the main channel was different than what the mapping showed. A good delineation of the wetlands was needed.

In the meantime, the applicant built a house in Ogden which stalled the project. Mr. Gene Pellett, Wetland Biologist, was hired to do the wetland delineation and he tested everything. Mr. Pellett identified where the main channel tributary was located. It was shifted farther south than the wetland mapping showed. Mr. Schultz stated he has never had an instance where the National Inventory Wetland Maps were so much in error. This tributary which runs through the property extends quite a distance to the west and crosses Colby Street by Lake Road and continues. It is not just a farm ditch. It has been in place for many, many years. With the exact location of the wetlands identified, retesting was done. The goal was to avoid any impacts to the tributary corridor. There are no DEC regulated wetlands on the site. The wetlands are Federal Wetlands.

In the process of redesigning the site plan, Mr. Schultz could see how the corridor was moved. Particularly to the west, there is a development of a house and barns. The proposed houses are in line with the same development to the west. The corridor or main channel is now a nicely mowed swale coming from the neighbor to the west. The new site plan shows all the development north of the tributary with no impact to the wetlands. Perc testing went very well. He is confident the plans will work. Copies were sent ahead of time to the Town Engineer.

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Mr. Strabel confirmed with Mr. Schultz the wetland on the property is the ditch. The good news is there is no backup in the flow. It has been designed with a lot of drainage arrows and direction to show any drainage will be picked up and directed to the swale. There will be no impacts to the neighbors.

Moved by Mr. Hale, seconded by Mr. Strabel, that the Maier Subdivision and Site Plan – 2 Lots be accepted for review.

Chairman McAllister – Aye
Mr. Dollard – Aye
Mr. Hale - Aye
Mr. Minor – Aye
Mr. Rickman – Absent
Mr. Sharpe - Absent
Mr. Strabel – Aye

The Public Hearing will be September 13, 2021.

Clay Amended Site Plan – Lot 1. 2434 Reed Road. 128.01-1-7.11.

Mr. Kris Schultz addressed the Board. This two-lot subdivision was originally approved in 1999. The homes were close to the road with inground septic systems. Lot 1 was never built on. The applicant is proposing to slide the house up the hill much closer to the wood line. The original leach system design still works, just need to add some cleanouts. The applicants are also proposing an inground pool. The new plan will have less impact on the neighbors with the house moved to the back.

The Clerk asked if there was a change to the well location. Mr. Schultz stated the well will be moved over to the west side of the property.

Moved by Mr. Strabel, seconded by Mr. Hale, that the Clay Amended Site Plan – Lot 1 be accepted for review.

Chairman McAllister – Aye
Mr. Dollard – Aye
Mr. Hale - Aye
Mr. Minor – Aye
Mr. Rickman – Absent
Mr. Sharpe - Absent
Mr. Strabel – Aye

The Public Hearing will be September 13, 2021.

Mr. Hale asked before proceeding to Heritage Square, should the Henner project be discussed further?

Chairman McAllister stated the Town Engineer still had the following outstanding issues:

- Wetland boundaries need to be confirmed with NYSDEC.
- Lot 2 may be unbuildable depending on locations of wetland boundaries.
- Lot 2 appears to be landlocked in the current configuration.
- Clarification of the conditions of their access agreement is still needed.

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Heritage Square Phase 1A Site Plan. Persistence Path. 068.03-1-18.113

Mr. Sean McLean addressed the Board. He explained it is good to be back since last August. He understands that the Board would like to have a discussion on some of the issues discussed at the July meeting. He would love to have a conversation to figure out how we can all move forward.

Chairman McAllister stated one issue is which units are townhomes and which are apartments. Town code requires townhomes to have garages which was missed the first time around. Mr. McLean agreed stating there was some discussion of the functionality of garages and whether they were needed as part of the project. Chairman McAllister stated the code is specific that garages are required.

Mr. McLean stated he understood, however, he couldn't find a clear definition of a townhome, so he used the code based on five units per building under MR-1 versus less than five. Garages were provided for buildings with fewer than five units. Adequate parking was then provided for the rest of the units, just not covered parking. We also land banked 52 parking spaces to make sure there was even more parking resulting in nearly three spaces per unit.

To summarize, 80 units with 160 parking spaces are proposed. Fifteen of those units have covered parking. Lack of a clear definition of townhomes versus apartments led us to make that "best guess" interpretation of the code. The Fire Code will require a two-hour rating and NYS Building Code will be used.

In the discussion with the Town last year, it was clear that the Town did not want to take ownership of any of the public utilities. The sanitary sewer will remain in private ownership. The design doesn't allow for any of the units to end up in private ownership individually. They cannot be subdivided or become condominiums.

It became clear that the design was for apartment buildings, some two stories, and attached by a common wall that can't be for sale like a townhome would be.

Mr. Strabel stated there may have been some confusion due to Tammy Baker, Town Assessor, asking at the last meeting if they would ever be sold individually which was just confirmed by Mr. McLean that they can't be due to the way the utilities will be set up.

Mr. Strabel stated clarification is needed regarding the construction of the units. If the residential code is used to build duplexes or townhomes, which is the true definition of a townhome, it is built with a two-hour separation, side by side, and no sprinklers. If it is not built that way, then the commercial building code under R2 is used for apartments, dormitories, etc., which require sprinklers.

If the units are going to be built without sprinklers, then the residential code, different than the commercial building code, should be used, which states they are townhomes. Sweden's MR-1 code states townhomes are required to have garages. The MR-1 zoning is specific in that it requires one garage plus two additional parking spaces per unit.

Mr. McLean understands the Town's position. In reading the zoning and trying to understand how this project fits into the zoning and the additional abilities of the Planning Board to consider the application based on the original rezoning. Mr. McLean has read the original finding statement for the 2006 rezoning where it was discussed using PUD rights but couldn't be due to the way the long-term development would change over time. The attorney's solution, at that time, was to grant the Planning Board additional powers.

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Mr. McLean asked did the Planning Board have the power granted to it from the 2006 Finding Statement to have leeway with the design of this development knowing that it doesn't conform to the zoning code and to avoid having to go to the ZBA?

Mr. McLean would be happy to discuss what value the Planning Board feels garages bring to the project. Chairman McAllister stated it is code and every other developer who has built townhomes has been required to have garages.

Mr. Schultz stated consistency is important, but it is also important to remember what this project went through during the rezoning. Chairman McAllister stated MR-1 zoning was chosen. The Planning Board does not have the authority to change the zoning. The zoning would have to be changed by the Town Board.

Mr. Schultz stated a year ago, it was determined that this Board has the authority to grant relief from some of the requirements of MR-1 zoning. It was made part of the record in the minutes. Chairman McAllister stated the Planning Board does not have the authority to give a variance on setbacks, that would be the ZBA.

Counsel Lester stated assuming the Planning Board has that ability from the Town many years ago, it doesn't mean the Board has to grant anything. The Planning Board can refer the project to the ZBA.

Mr. Schultz summarized that the wording in the 2006 Findings Statement basically said that if an applicant gives you a plan that the Board is in favor of, the Board can grant some leeway. That was a result of the site plan design not matching anything. Mr. McLean added the Town Engineer did not analyze the design, i.e., setbacks because none of it conforms to code.

Chairman McAllister asked Mr. McLean to confirm that none of the setbacks are per code because he doesn't feel that's accurate. Mr. Schultz stated Mr. McLean is referring to the front setbacks off Persistence Path which do not meet the code and was consistent with the project from day one. Chairman McAllister confirmed with Mr. Schultz that it was defined that way with the Town Board. Mr. Schultz stated and that is why the attorney gave the Planning Board power to waive some of the codes.

Mr. Strabel stated that the project can only be 30 percent use of B-1, Business – Commercial. B-1 zoning has different setbacks than MR-1. Discussion took place regarding uses proposed then and today and why the Planning Board was given the ability to grant leeway as part of the rezoning.

In the matter of garages, SWBR, project architects, took a stab at what that meant under zoning. SWBR didn't realize the Town would look at building codes to define a townhome under zoning. Chairman McAllister stated what you can build is what this Board approves.

Mr. Strabel stated part of the confusion with the first application was how the units were named, i.e., quadplex or triplex. Mr. Schultz stated quadplexes are in the MR-1 code as an allowed unit. The plan was to design five or more units per building so garages weren't required.

Mr. McLean indicated that the architectural plans are just about done with the construction drawings going out this week for bid based on the site plan that was approved last year. We didn't meet the extension due to the current times and a second extension was granted so Mr. McLean doesn't know how to redesign the whole site plan.

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Chairman McAllister stated it doesn't have to be a redesign. It's either townhomes with garages or apartments that are sprinkled.

Mr. McLean stated the sprinkler code states the units must be one on top of the other to require sprinklers. Per Mr. Strabel if you are side by side with a 2-hour separation and no sprinkler, it's a townhome and if it's a townhome in MR-1, garages are required.

Mr. Schultz stated a year ago the general plan was acceptable to this Board regardless of what the units were called. If the applicant were to get relief for the requirement of garages, would that keep the project intact. Mr. Strabel stated that would be up to the Board. According to the 2006 Findings Statement, there were a couple of sentences in the original agreement to change the zoning from B-1 to follow MR-1. The language in the agreement gives the Planning Board the flexibility to extend the rules. Chairman McAllister stated the flexibility is with the mix of units, not in setbacks, etc.

Mr. McLean stated he would be happy to go back and get the Board the information it needs. Chairman McAllister asked Mr. McLean to extend the review process since a decision must be made within 62 days of the public hearing which is coming up. He appreciates the request and is very much wanting to be on the same page as the Board. A tremendous amount of the family's wealth has been invested in this project since 2006. If there is ambiguity, we can work together to resolve it. If we can't agree on the Board's flexibility, there is still the ZBA to help, especially if there is a financial hardship.

Discussion on the extension was discussed. The Board requested 60 days. Mr. McLean agreed. Mr. Schultz asked if there could be a separate meeting between now and the next meeting with one or two members to discuss the issues so that the next meeting can be productive. The Board agreed.

The Clerk confirmed with Chairman McAllister the extension would be 60 days from September 12, the date the project will expire from the public hearing. Counsel Lester recommended a motion for the extension.

Moved by Mr. Hale, seconded by, Mr. Strabel, to accept the applicant's request to extend the review 60 days from September 12, 2021.

Chairman McAllister – Aye
Mr. Dollard – Aye
Mr. Hale - Aye
Mr. Minor – Aye
Mr. Rickman – Absent
Mr. Sharpe - Absent
Mr. Strabel – Aye

The meeting was adjourned on motion at 7:50 p.m.

Respectfully submitted,
Phyllis Brudz, Planning Board Clerk