

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – August 13, 2020**

A meeting of the Zoning Board of Appeals of the Town of Sweden was held at the Sweden Courtroom, 18 State Street, Brockport, New York on August 13, 2020, commencing at 6 p.m.

Members present: Kevin M. Johnson, Pauline Johnson, Pete Sharpe, Mary Ann Thorpe.

Absent: Mark Sealy

Also present: Nat. O. Lester, III, ZBA Counsel; Anthony Tintera and Wendy Meagher, Meagher Engineering; Marshal and Crystal King.

Chairperson Thorpe called the meeting to order at 6 p.m. and asked everyone to say the Pledge of Allegiance and for a moment of silence for the military, police, fire department, medical personnel, families who have lost family and friends to the coronavirus. Thank you!

Correspondence was passed to Members for review.

Application of Marshal King, King Family Construction LLC, 3313 Chili Avenue, Rochester, New York, for an area variance to construct a single-family home on ± 4.993 acres instead of the required 5 acres, located at 717 Shumway Road, Brockport, New York. The proposed house will be serviced by public water and a full raised fill septic system. *Town of Sweden Ordinance §175-36 R1-2 One-Family Residential Districts. D. Lot and area requirements shall be as follows: (2) Additional requirements. (b) A lot using a full raised fill septic system shall have a minimum area of five acres and a minimum road frontage of 60 feet, and the width at the front of the house shall be 260 feet minimum.* The property is owned by Marshall King, tax account number 084.03-1-39.11.

King Site Plan - 717 Shumway Road

Mr. Anthony Tintera and Wendy Meagher addressed the Board. Mr. Tintera explained that he is the project engineer for the project located at 717 Shumway Road for the small discrepancy with the size of the lot. Initially, the design of the lot showed a modified raised septic system. Comments received from MCDOH indicated that a tight or full raised septic system would be required. All MCDOH requirements have been met with the revised septic system and location, such as the septic system must be 100 ft. from all lot lines.

Mr. Tintera stated it is our belief that the proposed full raised septic system should be allowed to stand given how close the lot is in size to the current law which requires 5 acres. The discrepancy of area is approximately 350 sq. ft. or .007 acres. Mr. Tintera added, per Mr. King, when the subdivision was created, the property line was brought in a little closer to be on the other side of the hedgerow.

It should be noted that the 350 sq. ft. difference is for a modest two-bedroom single family home to whereas it could have been designed for a four-bedroom single family home if the property had the 350 sq. ft. or 5 acres. He feels that the Town of Sweden's code is outdated compared to other towns. Mr. Tintera gave examples from the Town of Ogden to support the above statement.

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – August 13, 2020**

Mrs. Johnson asked for clarification regarding the information presented. The proposed full raised septic system is for a two-bedroom house. It would also be adequate for a four-bedroom house. Is that correct?

Mr. Tintera stated, for example, if there was another 5-acre lot in the same zoning, the septic system would be larger than the one proposed and exceed the 350 sq. ft. Mrs. Johnson confirmed with Mr. Tintera that the proposed septic system for the two-bedroom house would not be big enough for a four-bedroom house. The Building Department would have to ensure that the septic system is large enough for a bedroom addition.

Mrs. Meagher added that the above is just a comparison as the lots in this subdivision are five acres except for this one due to the hedgerow. The septic system is designed appropriately for the house, Mr. Tintera is just trying to emphasize the small discrepancy in acreage.

Mr. Sharpe asked how big the proposed house is. Mr. King stated it will be a 1,750 sq. ft. ranch.

Chairperson Thorpe asked if there were any other questions.

Mrs. Johnson asked the Clerk if anyone called or stopped by regarding the proposed variance. The Clerk stated no one called or stopped by with questions.

Mr. Sharpe confirmed with Mr. King that there will not be dormers or a bonus room over the garage.

Mr. Marshall King, 707 Shumway Road, applicant and owner, asked to address the Board. He explained that the Town of Sweden created the 5-acre requirement when public water was not available. MCDOH specifically states if the land does not perc, no building is allowed in Monroe County. Mr. King believes the Town did not understand that requirement and created the 5-acre lot requirement in case a full raised septic system was needed, which is not the situation. Monroe County's requirements are based on how many feet are required. Two acres is plenty for a three-or four- bedroom house with a septic system if all the setbacks are met from the road, side, and rear lot lines. Mr. King does not think anyone has attempted to change the code so that people can build on at least a 2-acre lot, which is huge, especially if you have the frontage. In summary, Mr. King believes this rule was created when there was no water on the street. Mr. King is asking, not tonight, but at some time in the future, if this 5-acre requirement can be changed in Town of Sweden to encompass the MCDOH laws.

ZBA Counsel Lester explained he understands Mr. King's request, and that it should be handled through the Town Board. The hearing tonight is for an area variance. The code requires 5 acres; what is the percentage short. In this case it is for a minimal amount. There is a test to pass, which includes the following:

- Will an undesirable change be produced with the granting of this minimal request? No

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – August 13, 2020**

- Can the benefit sought by the applicant be achieved by a feasible alternative? Can any of the neighbors sell some land to reach five acres or are all the lots nearby five acres? Mr. King owns all the lots in that area and made them five acres due to the Town's rule. Counsel Lester explained if a neighbor sold some land to Mr. King, that neighbor would be in the same situation as the applicant so there is no alternative.
- Would there be an adverse impact to the environment to the neighborhood? No
- Was the area variance self-created? All lots in the subdivision were approved by the Planning Board because of the 5-acre requirement. For the most part, all variance requests are self-created.

Mr. Sharpe acknowledged and appreciated the information presented regarding MCDOH requirements and that change must take place at the Town Board side. Not a lot of people understand that, but as we expand through the town with providing public water, he promises those concerns are being addressed. Mr. King has addressed the criteria needed tonight for the Zoning Board of Appeals to decide.

Mrs. Pauline Johnson is prepared to make a motion. She has asked the Chairperson to read it due to difficulty breathing with a mask when speaking.

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

Having reviewed the application and Short Environmental Assessment Form of Marshal King for an area variance to construct a single family home with a full raised septic system on approximately 4.993 acres instead of the required 5 acres, located at 717 Shumway Road, Brockport, New York, will not have a significant adverse impact on the environment, which constitutes a negative declaration.

Seconded By Mr. Kevin 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
Member Mark Sealy – Absent
Member Peter Sharpe - Aye

Motion carried.

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

That the application of Marshal King, King Family Construction LLC, 3313 Chili Avenue, Rochester, New York, for an area variance to construct a single-family home on ±4.993 acres instead of the required 5 acres, located at 717 Shumway Road, Brockport, New York, tax account number 084.03-1-39.11, **be approved** for the following reasons:

1. An undesirable change will not be produced in the character of the neighborhood;
2. The benefit sought by the applicant cannot be achieved by another method, as he is not able to purchase an additional 350 sq. ft. of land;
3. The requested area variance is not substantial, in fact, the requested variance is less than 0.16%;

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – August 13, 2020**

4. The requested variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and
5. The alleged difficulty was not self-created because the soil conditions necessitate a full-raised fill septic system design (requiring five acres) rather than a modified raised septic system design.

Seconded By Mr. Peter Sharpe, 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
Member Mark Sealy – Absent
Member Peter Sharpe - Aye

Motion carried. Application for area variance granted.

Mrs. Pauline Johnson acknowledged that the engineer did a very nice job preparing the application materials. Thank you.

WellNOW Urgent Care Use Variance

For the following motion, Mrs. Pauline Johnson acknowledges that she has made herself aware of the application by reading the minutes of the public hearing held on August 6, 2020 and asking questions of the other members in attendance of said hearing.

Mrs. Pauline Johnson offers the following resolution 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 **6555 Fourth Section Road, Brockport, NY 14420**, and

WHEREAS, having carefully considered 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 application constitutes an **Unlisted action** under **SEQRA**.

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 Variance Proposal will not have a significant adverse impact on the environment, which constitutes a **negative declaration**.

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – August 13, 2020**

Seconded By Mr. Kevin 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
Member Mark Sealy – Absent
Member Peter Sharpe - Aye

Motion carried.

Mrs. Pauline Johnson offers the following resolution as it relates to the proposed WellNOW Urgent Care, located at 6555 Fourth Section Road, Brockport, NY, request for a **USE Variance**:
The applicant, its representative, Kirk Wright, Sign and Lighting Services, appeared before the Sweden Zoning Board of Appeals asking for a **Use variance** for an additional building sign on the **East** side of its building where there is no public parking lot or public street. The current Town of Sweden Ordinance, Section 175-30, Signs, C Provisions, (5), does not allow for this.

WHEREAS, the findings of fact are as follows:

The applicant has **not demonstrated** to the Zoning Board of Appeals that:

1. The applicable code provisions limiting this property to a building mounted sign on the **east** side of its building has deprived applicant of economic use or benefit causing unnecessary hardship.
2. The hardship is not unique to the Property because it is visible from Route 31 and Route 19.
3. The hardship is self-created as the subject property chose to build in this location knowing that visibility from the Traffic on Route 19 would not be able to see a sign on the **east** side of the building.
4. The denial of the **east** side sign is in keeping with the existing character of the neighborhood.

Based upon this, Mrs. Pauline Johnson offers the following resolution to disapprove the **USE variance** to install a building sign on the **east** side of the building.

Seconded By Chairperson Mary Ann Thorpe.

Vote: Chairperson Mary Ann Thorpe - Aye
Member Kevin M. Johnson – Aye
Member Pauline Johnson – Aye
Member Mark Sealy – Absent
Member Peter Sharpe - Aye

Motion to deny carried, Application for Use variance denied.

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – August 13, 2020**

Moved by Mr. Peter Sharpe, **seconded by** Mr. Kevin Johnson, that the minutes of August 6, 2020, be approved.

Vote: Chairperson Mary Ann Thorpe – Aye
Member Kevin M. Johnson – Aye
Member Pauline Johnson – Abstain
Member Mark Sealy – Absent
Member Peter Sharpe - Aye

Motion carried.

The meeting was adjourned by motion at 6:35 p.m.

Respectfully submitted,
Phyllis Brudz
Zoning Board of Appeals Clerk