

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – March 6, 2025

A regular meeting of the Zoning Board of Appeals (ZBA) of the Town of Sweden was held at the Sweden Town Offices, 18 State Street, Brockport, New York on March 6, 2025, commencing at 6 p.m.

Members present: Stacey Costello; Kevin M. Johnson; Mark Sealy.

Absent: Pauline Johnson; Robert Carges

Also present: Nat O. Lester, III, ZBA Counsel; Craig McAllister, Planning Board Chairperson; David Matt, Schultz Associates; Sam Simone.

Acting Chairperson Johnson called the meeting to order at 6 p.m. and asked everyone to say the Pledge of Allegiance.

Acting Chairperson Johnson introduced the Board members, Counsel, and Clerk.

Acting Chairperson Johnson waived the reading of the legal notice.

Application of Samuel Simone, Simone's Properties LLC, 4740 Lake Road, Brockport, New York, for four (4) area variances. The applicant is proposing to construct a proposed 6-unit, ±5,060 sq. ft., townhouse building with access from Crestview Drive. The property is zoned MR-1, Multiple Residence, which requires properties to be 200 ft. long by 200 ft. wide and a 50 ft. rear setback. The following area variances are requested for the existing property lines: 199.39 ft. south property line (.61 ft. area variance), 118.26 ft. east property line (81.74 ft. area variance), 118.48 ft. west property line (81.52 ft. area variance), and 20 ft. rear setback (30 ft. area variance).

Town of Sweden Ordinance §175-39 MR-1 Multiple Residence District, B. Lot and area requirements shall be as follows: (2) Required lot area (a) Frontage: 200 feet and (b) Depth: 200 feet., (3) Required setbacks. (c) Rear: 50 feet. The property is owned by Simone's Properties LLC, tax account number 083.08-8-1.12.

4740 Lake Road

Acting Chairperson Johnson stated Craig McAllister, Planning Board Chairperson, would like to briefly address the Board regarding this application.

Chairperson McAllister explained his only purpose in attending tonight is because the Planning Board made a recommendation to the ZBA in the planning minutes on its thoughts for approving the project. Chairperson McAllister wanted to transfer that information to the ZBA tonight so there was no misunderstanding. The project fits the site even though the site is not the minimum required by code. There is no history as to why the 200 ft. by 200 ft. minimum lot area in MR-1 is required, only that it is in the code. The site meets all setback requirements except for the Planning Board's recommendation to the developer to move the building back resulting in the need for a rear setback variance.

ZBA Counsel Lester clarified the rear setback is the south boundary line adjacent to the mall. He added the other three area variances will always exist with any new project because it will not meet the 200 ft. by 200 ft. requirement in MR-1.

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Member Sealy confirmed with Planning Chairperson McAllister that the Planning Board requested the building be located at the back on the property for better visibility on Crestview Drive and for approaching the intersection, which resulted in the need for a rear setback variance.

Planning Chairperson McAllister stated the Board might not realize the impact until the multi-story building is constructed. Member Sealy understood as visibility is poor when the site has a large election sign placed on it.

Member Costello asked for the reason for changing the zoning from residential to multi-residence. Planning Chairperson McAllister thought it was financial. ZBA Counsel Lester stated the rezoning was changed by the Town Board not the Planning Board or ZBA.

The Board thanked Planning Chairperson McAllister for attending the meeting.

David Matt, Schultz Associates, addressed the Board. The property owner, Sam Simone, is present tonight. He stated the property is located on the southeast corner of Lake Road and Crestview Drive. Mr. Simone is proposing to construct a six-unit townhome building and is currently before the Planning Board. He has owned the property since 1999. In 2013/2015, the Comprehensive Plan stated the property would be good for future use as B-1, Retail Commercial. In 2017, a rezoning application to change the zoning to B-1 and construct an office building was denied. In September 2023, a rezoning application to change the zoning to MR-1, Multiple Residence was granted. In October 2024, the Planning Board held an informal meeting for site plan approval to show a couple concepts. One concept is the proposed site plan showing the requested variance for the rear setback and a concept showing the rear setback met with the building closer to Crestview Drive. The Planning Board recommended the option that pulls the building away from Crestview Drive, better visibility at the intersection, and lines up better with the other houses. MR-1 zoning requires a minimum 200 ft. lot width and 200 ft. lot depth., which would require additional variances as the property is approximately 199 ft. by approximately 118 ft. for any proposed development. All other code requirements have been met.

Member Sealy confirmed with Mr. Matt where grass and pavement would be after construction. Mr. Matt pointed to the different areas and stated it was just over 10,000 sq. ft. of grass. The whole lot is just over half an acre or approximately 22,000 sq. ft.

The applicant met again with the Planning Board in August and November 2024, which is when the Planning Board accepted the project for review and made the recommendation to switch the required front and rear setbacks to 50 ft. front and 20 ft. rear. A white vinyl fence will be installed at the back of the property to separate the yard from the plaza. The landscaping plan shows some shrubbery at the end of the parking lot to protect Mr. Dempsey's view. More landscaping and a slight berm at the front on Crestview Drive to protect the parking area, and nice street trees along Lake Road for curb appeal. A public hearing was held in January 2025. Most of the Town Engineer's comments have been addressed with minor revisions outstanding. Since the public hearing, the project has been on hold until a ZBA hearing could be scheduled for tonight.

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Mr. Matt stated historically, there was a house on this property from the 1950s to the 1970s. Since the house was demolished, it has been a vacant maintained property. The neighborhood around the site has exploded with development, such as, Wegmans, Taco Bell, CVS, Wal-Mart, and Runnings. Building a single-family home on this corner was not a big sell at that time. The applicant started to seek rezoning applications for commercial and multiple residential zoning.

Member Sealy confirmed with Mr. Matt that the original zoning for this property was residential, which permits a single-family home, which would meet setback requirements. Member Sealy stated Mr. Simone requested MR-1 zoning for the property. Mr. Simone agreed but added that the property was mentioned in the Town's Comprehensive Plan for commercial use. At that time, he was planning to develop the property as multi-use commercial and residential, but that did not work so he requested MR-1 rezoning. The property was never rezoned commercial, just planned for future use.

Member Costello confirmed with Mr. Simone that when he originally purchased the property, it was zoned residential.

Mr. Matt stated that in the 2015 Comprehensive Plan, the property was listed with a future use of B-1 and Mr. Simone made a rezoning application to the Town Board for an office plan. Member Sealy confirmed with Mr. Simone that the property was purchased before 2015.

Mr. Matt is requesting variances for the existing, nonconforming south, east and west lot lines as well as the rear setback. Mr. Simone took it upon himself to send out letters to the neighbors to discuss his rezoning application and only one person came to the meeting. When the rezoning application was before the Town Board, the current Master Plan, Chapters Four and Five, recommended some type of multi-use residential to act as a transition between commercial and residential properties. This was a factor in the decision made to rezone the property as multi-residential. Member Sealy confirmed with Mr. Matt that at the time of the rezoning, it was known that the lot lines were required to be 200 ft. by 200 ft. The Town Board stated in its minutes that the applicant would have to seek site plan approval from the Planning Board and seek any variances needed for approval.

Acting Chairperson Johnson asked Mr. Matt to address the five criteria for granting area variances. Mr. Matt addressed the five criteria separately for the three property lines and rear setback.

Property Lines:

1. Undesirable change in neighborhood character or detriment to nearby properties.

It is an existing lot and has been vacant for years. It was rezoned to MR-1 to provide a transitional buffer. Any undesirable changes were known at the time of the rezoning.

Acting Chairperson Johnson confirmed with Mr. Matt that a public hearing was held for the rezoning and only two persons attended with concerns for traffic.

Counsel Lester asked that the Town Board's public hearing minutes be submitted as part of the record (attached).

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

Mr. Matt provided a map showing that the lot has existed since 1959, approximately 120 ft. by 200 ft. He can go back further into the abstract if necessary. Mr. Simone tried to purchase the house lot and combine it with this lot to construct an office building.

Member Sealy stated that would have resolved the need for any variances. Mr. Matt stated the final decision was the Town did not want an office building on the edge of the neighborhood.

3. Whether request is substantial.

Mr. Matt does not see the variance requests as substantial because there are no other options. Purchasing property from the plaza would not work because the building is in the way. There is no land to buy heading towards Crestview Drive because the road is there.

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

Mr. Matt stated anything with lot lengths, depths and widths will not have an adverse impact on the environment.

5. Whether alleged difficulty is self-created.

Mr. Matt stated it was self-created when the rezoning was requested, but once rezoned, the area variances are needed to develop the property.

Member Sealy stated that when the rezoning application was requested, the property owner was aware that variances would be needed, which makes it self-created. Mr. Matt stated the other option would be not to do anything about it, leaving it vacant for another 50 years or trying to sell it to build a single-family home which no one has wanted to do for about 26 years.

Acting Chairperson Johnson stated that the property is not a prime location to build a house.

ZBA Counsel Lester confirmed with Mr. Matt that the Town's Comprehensive Plan recommends a transition from commercial to multi-family to single-family. The Town code was spelled out in the resolution in the Town Board meeting minutes: Chapter Four Goals and Policies A.2.a. Require buffers such as landscaping and/or transitional uses between commercial/industrial development and residential neighborhoods; and Chapter Five Land Use Plan: Multi Family residential – Multi-family residential development is appropriate in many local areas as a transitional land use between lower density neighborhoods of single or two-family dwellings and the higher intensity commercial or light industrial development.

Rear Setback:

1. Undesirable change in neighborhood character or detriment to nearby properties.

Mr. Matt stated it is a better option, than not granting the variance, to have the building 20 ft. off the Crestview Drive property line and the building 50 ft. from the plaza lot line. There will not be any undesirable change in the neighborhood with the granting of the variance for the rear setback.

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

Mr. Matt stated yes, the design could be fit without the rear setback variance, however, it is not the right design for that intersection. Farther away from the intersection is what the transition use is looking for.

3. Whether request is substantial.

Mr. Matt stated the front and rear setbacks recommended by the Planning Board are being reversed for better visibility at the intersection.

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

Mr. Matt stated that it will not have an adverse environmental impact on the neighborhood.

5. Whether alleged difficulty is self-created.

Mr. Matt stated almost every variance is self-created in that this property was purchased by the applicant the way that it is.

Member Sealy stated that except with this rear setback variance request, the applicant could locate the building so that it meets code instead of complying with the Planning Board's recommendation to switch the setbacks. Mr. Matt added that to meet the Planning Board's recommendation and the Town Board's Comprehensive Plan idea of it, the applicant is requesting a rear setback variance.

ZBA Counsel Lester asked if there was a picture of what the building will look like. Member Costello asked if there was a rendering of the building's appearance from Lake Road. Mr. Matt stated he did not have a side view of the building. Member Costello stated her thoughts are that the building will be substantial driving north on Lake Road; the view of it. Mr. Matt stated included in the submission is only a rendering of the front elevation on the Crestview Drive side. The proposed landscaping includes a small berm with shrubs and bushes along the front of the building to block headlight level and three shademaster locust trees along Lake Road.

Acting Chairperson Johnson asked if Mr. Simone would consider reducing the size of the building to four units and make better use of the space, for example, turn the building sideways. Mr. Matt stated the current site plan has 43 percent greenspace which is a decent amount of greenspace for multi-family use. Acting Chairperson Johnson was thinking more like turning the two buildings to face each other with the parking in the middle, making it not so close to the lot line. Mr. Matt stated that even with moving the buildings, the entrance would need to be far back as possible, and it would be tight to come in and get around the buildings in the middle.

Mr. Matt stated the other plan shown to the Planning Board in August had the parking lot at the rear and the building up front, but the Planning Board preferred the plan to park in the front, giving the building more distance from Crestview Drive and the intersection, more privacy with the units' patios facing the plaza property.

ZBA Counsel Lester requested Mr. Matt to provide a rendering for the next meeting of how the side of the building will look heading north. Mr. Matt will have an architectural rendering created.

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Member Sealy asked for clarification regarding the staking on site with the green and pink flags. Mr. Matt explained that the green and pink indicate a building situated close to the front or close to the rear. The green flags were the farthest back with the parking lot in the front.

ZBA Counsel Lester asked if the applicant had any questions or comments related to the project or history of the property. Mr. Simone stated relative to how any proposed development will look at that intersection, he thinks the best option is to have berms and plantings around the site. Member Sealy confirmed with Mr. Matt that street trees, no berms, are proposed along Lake Road with 40 ft. of grass.

Mr. Matt asked the Board if the issue is with the building being closer to the plaza or closer to Crestview Drive.

Acting Chairperson Johnson stated the building closer to the plaza makes the most sense, however, it creates a variance. Member Sealy stated the biggest issue is that the lot is 82 ft. short in depth. Member Costello stated that there is a lot of building for an extra small lot. Member Sealy understands that when it was zoned single-family residential it was difficult to sell and build on it, but it would have been in conformance. Now, with the property zoned MR-1, the applicant is asking for relief for half the lot. Mr. Matt agreed and stated that there are other areas that are greatly under the coverage areas. For example, the maximum building coverage is more than half of what is allowed for the building itself. Member Costello stated there is a reason for the 200 ft. requirement and by taking half the lot away, the variance request is substantial.

Mr. Matt explained if the lot were 200 ft. by 200 ft., a 100 ft. by 100 ft. building could be built per code. A 5,000 sq. ft. building is proposed on a 22,000 sq. ft. site. If the property were 200 ft. by 200 ft., the size of the building could be multiplied by four. For open space, 25 percent is required versus 43 percent proposed; the amount of greenspace is almost doubled.

Acting Chairperson Johnson asked if there were any other questions or comments. There were none.

ZBA Counsel Lester requested a motion to go into Executive Session.

Moved by Member Sealy, seconded by Member Costello, to go into Executive Session at 6:49 p.m.

Acting Chairperson Johnson - Aye
Member Costello - Aye
Member Sealy – Aye

Moved by Acting Chairperson Johnson, seconded by Member Sealy, to leave Executive Session and return to the regular meeting at 6:55 p.m.

Acting Chairperson Johnson - Aye
Member Costello - Aye
Member Sealy – Aye

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ZBA Counsel Lester stated the Board is interested in seeing what the building will look like from the back and side views to those traveling north and south on Lake Road. Also, ZBA Counsel Lester requested an abstract title for the property to be emailed to the Clerk. Mr. Matt agreed to both requests.

Mr. Matt requested the public hearing be continued beginning May 15, 2025, to May 29, 2025.

Moved by Member Sealy, seconded by Acting Chairperson Johnson, that the public hearing be continued until May 15, 2025, at 6 p.m. or a later date as requested by the applicant.

Acting Chairperson Johnson - Aye
Member Costello - Aye
Member Sealy – Aye

Moved by Member Sealy, seconded by Member Costello, that the minutes of February 20, 2025, be approved.

Acting Chairperson Johnson - Aye
Member Costello - Aye
Member Sealy – Aye

Minutes – December 12, 2024, are on hold until Chairperson Carges returns.

Moved by Member Sealy, seconded by Member Costello, to adjourn the meeting.

Acting Chairperson Johnson - Aye
Member Costello - Aye
Member Sealy – Aye

Respectfully submitted,
Phyllis Brudz
Zoning Board of Appeals Clerk