

**TOWN OF SWEDEN  
Zoning Board of Appeals  
Minutes – April 21, 2022**

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 April 21, 2022, commencing at 6 p.m.

Members present: Robert Carges, Kevin M. Johnson, Pauline Johnson, Mark Sealy, Mary Ann Thorpe.

Also present: Nat. O. Lester, III, ZBA Counsel; Kris Schultz, Schultz Associates; Catherine Bauer.

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

Application of Catherine Bauer, 4475 Sweden Walker Road, Brockport, New York, for a use variance. Applicant is proposing to construct a new single-family home in I-1, Heavy Industrial zoning district. The proposed single-family home will be constructed in the footprint of the existing garage. The pre-existing, nonconforming single-family home located at 4475 Sweden Walker Road, Brockport, New York, was built in 1850, and will be demolished prior to the final certificate of occupancy issued for the new home. Town of Sweden Ordinance §175-44 RI-1 Heavy Industrial District use regulations, B. Uses prohibited in industrial districts, (34) Residential use, except that any existing residence may be remodeled, structurally altered, repaired, or reconstructed. The property is owned by Catherine Bauer, tax account number 084.02-1-2.

**Bauer – 4475 Sweden Walker Road**

Mr. Kris Schultz addressed the Board. He explained this is an interesting one because most cases it is a use variance for a business conducted on a residential property. The Town decided years ago to create a heavy industrial zoning area next to the Village of Brockport's industrial area, which made sense at the time due to the possible growth of Kodak, which never happened.

Currently, the Town's Master Plan calls for this whole area to be B-1, Retail-Commercial zoning. With Wal-Mart and Lowes developments, a commercial use for this property might be the best use. Heavy industrial and commercial developments require a lot of infrastructure, which is not on this property.

Mr. Schultz added this site has been a historic farm for over 100 years. Residential is not permitted in heavy industrial per the zoning code, which makes perfect sense to prevent that type of mix. Mr. Schultz stated the Bauer site plan was before the Planning Board moving along until this issue came up. Mr. Schultz stated his client could apply for rezoning to B-1, which permits residential, but the cost and timeframe to do this was ridiculous.

Mr. Schultz discussed the code and what a residence means. Is it only the house you reside in or is it your whole property, house, garage, barns? The code states you cannot build a new residence, but is vague to this standpoint, because a residence is where you live, the house, garage, driveway.

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Mr. Schultz added going for a use variance turned out to be the logical way to go. Years ago, the property was a farm, always has been a farm. The Town decided to create zoning and made the property heavy industrial and took away a lot of rights from the owner as to how the property could be used.

Then the Town decided to have this property zoned commercial per the Master Plan with no intention of doing it. This is really a unique situation. Mr. Schultz has never seen in all his years of surveying and engineering where a property is zoned for a higher use and a variance is needed so that a lighter use is permitted.

Mr. Schultz discussed the criteria for granting a use variance. For most use variances, a financial reason must be shown. In this instance he is throwing that reason out the window because it makes no sense. This is not a property that has to be used to run a trucking company.

- Alleged hardship is unique and does not apply to substantial portion of district or neighborhood.  
By granting the variance, is the Board doing something grossly opposed to the rest of the neighborhood? No, the new home and barns is exactly what everyone is used to seeing.
- Requested variance will not alter essential character of the neighborhood.  
No, the same as above.
- Alleged hardship has not been self-created.  
The Town created the hardship when it rezoned the property to Heavy Industrial.

Mr. Schultz stated this is the strongest argument he has had for the granting of a use variance because it just makes sense.

Chairperson Thorpe asked for clarification as to where all the structures are located. Mr. Schultz pointed to the location of all the structures on the drawing and explained what the process would be. The only expansion on the site plan is the new septic system, deck, and expansion of the existing driveway turnaround. New foundation or grading is not proposed.

Mrs. Pauline Johnson asked for Mr. Schultz' opinion regarding the original house built in 1850 and the garage built in 1980. If financially, it would be less expensive to renovate the newer structure. Mr. Schultz stated absolutely. The existing house is not in a condition to go in and renovate it.

Mrs. Pauline Johnson confirmed with the applicant, Ms. Catherine Bauer, that she is aware that the zoning of her property is Heavy Industrial and there is the possibility of a factory being built next to her house. Ms. Bauer explained she was unaware that it was zoned Heavy Industrial until the Sweden Building Inspector informed her. She is good with all the various businesses and proposed solar farm around her.

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Mr. Sealy asked if the Heavy Industrial code states a residential structure can be remodeled, structurally altered, repaired, or reconstructed, why is a use variance required at all when the garage is being reconstructed? Mr. Schultz added that is why he explained his interpretation of what a residence was and that the garage is part of that.

Mr. Schultz continued that when an application is made to the Town, it is up to the Town Building Inspector to determine if it meets the code. He reviewed the application, and the zoning became an issue. Mr. Schultz stated to keep this project clean and proceed, a use variance was needed.

Mr. Sealy asked if the applicant is seeking a limited use variance or a use variance for the whole property. Mr. Schultz stated a variance runs with the property, and the Board has the ability to add conditions to any use variance.

Mrs. Pauline Johnson stated that the plan indicates a  $\pm$ .5-acre area of disturbance. Mr. Schultz stated that disturbance includes the leach field system, expanded driveway and deck. The Clerk stated the site plan application before the Planning Board is for a single-family home.

Counsel Lester confirmed with Mr. Schultz that the plans should show the whole existing house is to be demolished as discussed previously. The plans still indicate the south part of the house is to remain. Mr. Schultz agreed and will revise the plans for Monday's public hearing at the Planning Board.

Counsel Lester asked what the proposed square footage of the new house is. Ms. Bauer stated approximately 1,337 sq. ft. Ms. Bauer indicated the existing house is double because it is a two-story house.

Chairman Thorpe asked if there were any other questions. There were none. She explained the Board has up to 62 days to decide, but it rarely takes that long. The Clerk will notify you as soon as a decision is made. Mrs. Pauline Johnson stated she is prepared to make a motion tonight.

The public hearing was closed by motion.

**TOWN OF SWEDEN  
BOARD OF ZONING APPEALS  
April 21, 2022**

APPLICANT: Catherine Bauer  
Location: 4475 Sweden Walker Road  
Tax Map #: 084.02-1-2  
Zoning District: Heavy Industrial (I-1) Zoning District

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Request: Applicant requests a Use Variance to construct a new single-family home in I-1, Heavy Industrial zoning district. The proposed single-family home will be constructed in the general footprint of the existing garage. The pre-existing, nonconforming home was built in 1850, and will be demolished prior to the final certificate of occupancy issued for the new home. Town of Sweden Ordinance §175-44 RI-1 Heavy Industrial District use regulations, B. Uses prohibited in industrial districts, (34) Residential use, except that any existing residence may be remodeled, structurally altered, repaired, or reconstructed.

Mrs. Pauline Johnson offers the following resolution as it relates to Applicant’s request for a **Use Variance** and moves for its adoption:

**WHEREAS**, this application came before the Town of Sweden Board of Zoning Appeals (the “Zoning Board of Appeals”) relative to the property at 4475 Sweden Walker Road, Brockport, NY 14420, as outlined above; 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.
2. The Sweden Zoning Board of Appeals has considered the Proposals at a public meeting (the “Meeting”) in the Sweden Town Hall, 18 State Street, at which time all persons and organizations in interest were heard.
3. Documentary, testimonial, and other evidence were presented at the Meeting relative to the Proposals for the Sweden Zoning Board of Appeals’ consideration.
4. The Sweden Zoning Board of Appeals has carefully considered an Environmental Assessment Form and supplementary information prepared by the Applicant and the Applicant’s representatives, including but not limited to supplemental maps, drawings, descriptions, analyses, reports, and reviews (collectively, the “Environmental Analysis”).
5. The Sweden Zoning Board of Appeals has carefully considered additional information and comments that resulted from telephone conversations, meetings, or written correspondence from or with the Applicant and the Applicant’s representatives.
6. The Sweden Zoning Board of Appeals has carefully considered information, recommendations, and comments that resulted from telephone conversations, meetings, or written correspondence from or with various involved and interested agencies, including the Town’s own staff.

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7. The Sweden Zoning Board of Appeals carefully has considered information, recommendations, and comments that resulted from telephone conversations, meetings, or written correspondence from or with nearby property owners, and all other comments submitted to the Board of Zoning Appeals as of this date.
8. The Environmental Analysis examined the relevant issues associated with the Proposal.
9. The Board of Zoning Appeals has completed Parts 2 and 3 of the EAF and has carefully considered the information contained therein.
10. The Board of Zoning Appeals has met the procedural and substantive requirements of SEQRA.
11. The Board of Zoning Appeals has carefully considered each and every criterion for determining the potential significance of the Proposal upon the environment, as set forth in SEQRA.
12. The Board of Zoning Appeals has carefully considered (that is, has taken the required “hard look” at) the Proposal and the relevant environmental impacts, facts, and conclusions disclosed in the Environmental Analysis.
13. The Board of Zoning Appeals concurs with the information and conclusions contained in the Environmental Analysis.
14. The Board of Zoning Appeals has made a careful, independent review of the Proposal and the Board of Zoning Appeals’ determination is rational and supported by substantial evidence, as set forth herein.
15. To the maximum extent practicable, the project as originally designed or as voluntarily modified by the Applicant will minimize or avoid potential adverse environmental impacts that were identified in the environmental review process, as practicable.

**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 Board of Zoning Appeals’ own initial concerns, and all relevant issues raised and recommendations offered by involved and interested agencies and the Town’s own staff, the Board of Zoning Appeals determines that the Use Variance Proposal will not have a significant adverse impact on the environment, which constitutes a **negative declaration**.

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

**Vote:**  
Chairperson Mary Ann Thorpe – Aye  
Mr. Robert Carges - Aye  
Mr. Kevin M. Johnson – Aye  
Mrs. Pauline Johnson – 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 Catherine Bauer, 4475 Sweden Walker Road, Brockport, New York, for a use area variance to construct a new single-family home and septic system, located at 4475 Sweden Walker Road, Brockport, New York, in I-1, Heavy Industrial zoning, tax account number 084.02-1-2, *be* **approved** for the following reasons:

1. Under the current Heavy Industrial zoning regulation, residential housing is not permitted. It is not financially feasible to remodel the existing house, which is over 150 years old. The existing house will be demolished and the more recently constructed existing garage will be remodeled to a single-family home. In addition, the cost to rezone the property is cost prohibitive.

2. The alleged hardship is unique and does not apply to a substantial portion of the neighborhood. The area impacted, as noted on the site plan, is only .5 acres in a parcel of almost 94 acres.

3. The requested use variance will not alter the essential character of the neighborhood as there are existing houses across the street and adjacent on the north side of her property.

4. The hardship is not self-created, as there is a pre-existing, nonconforming house at this location. The applicant is aware that the property is zoned Heavy Industrial and aware of the uses permitted in that zoning.

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

**Vote:** Chairperson Mary Ann Thorpe – Aye  
Mr. Robert Carges - Aye  
Mr. Kevin M. Johnson – Aye  
Mrs. Pauline Johnson – Aye  
Mr. Mark Sealy – Aye

**Motion carried.** Application for a use variance granted.

The meeting was adjourned by motion at 6:30 p.m.

Respectfully submitted,  
Phyllis Brudz  
Zoning Board of Appeals Clerk