

**TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – June 6, 2024**

A reconvened meeting of the Zoning Board of Appeals of the Town of Sweden was held at the Sweden Town Offices, 18 State Street, Brockport, New York on June 6, 2024, commencing at 6 p.m.

Members present: Robert Carges; Kevin M. Johnson; Pauline Johnson; Mark Sealy; Mark Horschel.

Also present: Nat O. Lester, III, ZBA Counsel; Randy Bebout, Bohler Engineering; Anthony Gizzie; Matt Lester, Caliber Commercial; Debbie Horschel.

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

Chairman Carges waived the reading of the legal notice.

Application of 4871 Lake Road Brockport SRE, LLC, 1657 East Avenue, Rochester, New York, for five (5) area variances. The applicant is proposing to redevelop the site with a new $\pm 4,700$ sq. ft. quick serve restaurant located at 4871 Lake Road South, Brockport, New York, in B-1, Retail-Commercial Zoning District. The requested variances are as follows:

1. 9.1 ft. front setback (65.9ft. proposed from the northeast corner of the building where 75 ft. is required).
2. 52.3 ft. front setback (22.7 ft. proposed from the east corner of the canopy where 75 ft. is required).
3. 17.5 ft. rear setback (7.5 ft. proposed from canopy where 25 ft. is required).
4. 7% greenspace (23% proposed where 30% is required).
5. 4.7 ft. perimeter buffer (2.8 ft. proposed where 7.5 ft. is required).
6. 15.1 ft. front parking area (9.9 ft. proposed where 25 ft. is required).

Town of Sweden Ordinance §175-40 Regulations applicable in all business districts.

B. In addition to vehicular loading and parking requirements, each individual unattached principal building site shall have a perimeter buffer zone of 7 ½ feet in width. All perimeter buffer zones shall be landscaped, shall have decorative plantings, and shall be constructed to prevent the cross flow of vehicular traffic at other than designated locations. §175-41 B-1 Business District, E. Lot and area requirements in the Retail Business District shall be as follows: (4) (a) Front: 75 ft., (b) Side: 25 ft., (6) Open area requirement. At least 30% of the total lot area shall remain open and unused. (7) Use of frontal area. Employee and customer parking is permitted on all except a strip of land 25 feet in depth adjacent to the public highway boundary, which strip of land shall remain vacant, unused, and clear for visibility, to be curbed, fenced, or otherwise rendered impassable to vehicles and set aside for lawn or landscaped, with advertising signs permitted in accordance with the sign provisions of this chapter.

The property is owned by 4871 Lake Road, Brockport SRE, LLC, tax account number 083.02-1-19.

Quick Serve Restaurant – 4871 Lake Road

Chairman Carges explained tonight's meeting is a continuation of the May 9, 2024, meeting where there was a lot of information presented and reviewed. Chairman Carges asked the Board if they had reviewed the minutes and if there were any amendments. There were none.

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Moved by Mrs. Pauline Johnson, seconded by Mr. Kevin Johnson, that the minutes of May 9, 2024, be approved.

Chairman Carges – Aye
Mr. Mark Horschel - Aye
Mr. Kevin M. Johnson – Aye
Mrs. Pauline Johnson – Aye
Mr. Mark Sealy – Aye

The Board thanked Randy Bebout, Bohler Engineering, for the revised, easier to read plan.

Mr. Bebout addressed the Board. He explained the recent changes to the plan. There were no physical changes to the plan, everything is the same as it was before. How we dimensioned the variances from the property line is what changed. The dimensions are reflected in the new plan. Mr. Bebout presented a drawing of the proposed canopies to show the sleek design.

Ms. Pauline Johnson explained to the new members of the Board that prior to recent code changes, a corner lot was considered to have two fronts. Mr. Bebout was not aware of the recent code changes. Ms. Pauline Johnson realized this and confirmed with the Clerk that the front setback is how the street address is assigned to a property. For this property, it would be Lake Road and no longer Fourth Section Road. Mr. Bebout agreed that Lake Road is truly the front, especially with the elimination of the Fourth Section Road access. With only one front, dimensions/setbacks changed.

Mr. Bebout would be happy to answer any additional questions.

Mrs. Pauline Johnson has a concern with sight distance at the four parking spaces in the southeast corner of the site plan (variance #6). The three parking spaces to the north will have customers pulling into park. When the cars leave, they will be backing up into oncoming traffic as cars will be entering the drive-thru lanes. Mr. Bebout stated that those spaces would be ideal for team members who would arrive early before the restaurant is open. He noted that the cars will be backing up towards the drive-thru, not the traffic when leaving.

Mr. Bebout added that for the grand opening, there will be an experienced team working who will be assisting in the parking lot, navigating through the drive-thru and in and out of parking spaces. Mr. Kevin Johnson stated that concern happens at Dunkin Donuts. If you park your car in the side spaces and cars are in the queue, you cannot get out.

Chairman Carges would like to see those spaces designated for employee parking. It will be hard to enforce, but the employees will be there early. Mr. Bebout added if parking there is an issue, people will park there once and avoid it after that. Mr. Bebout stated it might only be a concern during rush hour, but otherwise not.

Mrs. Pauline Johnson expressed concerns with variance #6. The project already exceeds the required minimum number of parking spaces onsite and there will be additional parking spaces at WellNow. She understands having more parking spaces than required is important.

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Mr. Bebout stated having a certain number of parking spaces is important to the tenant. They have tried other alternatives with less than a certain number of parking spaces and the tenant was not happy. They know their business well enough as to what number of parking spaces works.

Mrs. Pauline Johnsons understands but the position of this Board is to be concerned with the health, safety, and welfare of the community.

Chairman Carges asked if this was addressed at the Planning Board. Mr. Bebout stated it did not come up at any of the meetings held so far.

Mr. Bebout explained that there may be times during employee shift changes that the three parking spaces may be needed if the additional parking at WellNow is filled, but it can all be managed internally.

Chairman Carges asked if the use of parking spaces with snow removal/storage was discussed at the Planning Board because spaces will be lost for that. Mr. Bebout stated that will have to be managed by the tenant and if needed alternatives put in place.

Chairman Carges asked if there were any more questions, comments, or concerns. There were none.

Mr. Horschel restated his concern regarding the vehicles entering and turning to the west, their headlights will be shining into the vehicles that are on site at Rte. 31/eastbound. Mr. Bebout stated plants are proposed and will take a closer look at them. The Clerk added that it was discussed at the last Planning Board meeting and Mr. Bebout stated he will address the issue by more plantings and/or a berm.

Matt Lester, Caliber Commercial, addressed the Board. He has owner involvement in this project. He wanted to stress the importance of the number of proposed parking spaces as the tenant, Chick-fil-A, will be acquiring the property and has the ability to terminate the project if the required parking spaces are not obtained and not move forward with the project. Sixty-nine parking spaces are required to be operational.

Mrs. Johnson asked how many extra parking spaces will be at WellNow. Mr. Matt Lester stated the maximum number is ten, but not confirmed yet. He added that negotiations are also taking place with Hampton Inn for additional parking spaces. Mrs. Pauline Johnson stated she is looking out for the safety and welfare of the public.

Mr. Matt Lester understood and noted that Chick-fil-A operators are unique in that the owner of the store is the operator and is invested in its location. They are there every day, they know who their neighbors are, where their team members are parked, and will be literally directing traffic. How will the new owner/operator feel about employee only parking spaces? Mr. Matt Lester thought they could work with that with signs and self-policing. It is a great solution.

Mr. Mark Sealy added that the traffic entering the site is going to be low speed, which will help. He is sure there is potential for some fender benders but those happen at other restaurants too.

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Mrs. Pauline Johnson stated her point was that since the number of parking spaces proposed is ten over the minimum, and for health and safety concerns, are the three or four spaces needed.

Mr. Matt Lester added having more parking spaces is better than not enough.

Mr. Horschel stated with the potential usage of additional parking spaces at Hampton Inn, would an ingress/egress easement be needed from WellNow or Quick Serve Restaurant property? Mr. Matt Lester stated there would not be any vehicular cross-access, only staff members parking, staying, and walking across the site. This is yet to be confirmed.

The Board had no other questions and was prepared to make a motion.

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BOARD OF ZONING APPEALS
May 9, 2024, and June 6, 2024**

APPLICANT: Quick Serve Restaurant

Location: 4871 Lake Road South

Tax Map #: 083.02-1-19

Zoning District: Retail Commercial (B-1) Zoning District

Requests:

1. Front northeast corner of the building (75 feet required), 65.9 feet proposed setback, requesting 9.1 feet front variance.
2. Front (east) canopy (75 feet required), 22.7 feet proposed setback, requesting a 52.3 feet front variance.
3. Rear (west) canopy (25 feet required), 7.5 feet proposed setback, requesting a 17.5 feet rear variance.
4. Greenspace (30% required), 23% proposed green space, requesting a 7% greenspace variance.
5. Perimeter buffer (7.5 feet required), 2.8 feet proposed buffer, requesting 4.7 feet perimeter buffer variance.
6. Use of Frontal Area (25 feet required), 9.9 feet proposed setback, requesting a 15.1 feet frontal area variance.

Mrs. Pauline Johnson offers the following resolution as it relates to Applicant’s request for six (6) AREA VARIANCES 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 4871 Lake Road South, Brockport, New York 14420, as outlined above; and

WHEREAS, having considered carefully all relevant documentary, testimonial and other evidence submitted, the Sweden Zoning Board of Appeals makes the following findings:

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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 applications constitute **Unlisted actions** 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 parties in interest and citizens were afforded an opportunity to be 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/or the Applicant’s representatives, or the Town’s staff, which included but was not limited to supplemental maps, drawings, descriptions, analyses, reports, and reviews (collectively, the “Environmental Analysis”).
5. The Sweden Zoning Board of Appeals also has included in the Environmental Analysis and has carefully considered additional information submitted by the Applicant’s representatives, including but not limited to oral or written descriptions of the Proposal; maps and other drawings of the Proposal; and various oral or written comments that may have resulted from meetings with or written correspondence from 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.
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 and all additional relevant information submitted.
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 reasoned elaboration of the rationale for arriving at its determination of environmental significance and the Board of Zoning Appeal’s determination is supported by substantial evidence, as set forth herein.

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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.

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

SO MOVED:

Seconded By Mr. Sealy,

Vote: Chairman Carges – Aye
Mr. Mark Horschel - Aye
Mr. Kevin M. Johnson – Aye
Mrs. Pauline Johnson – Aye
Mr. Mark Sealy – Aye

Motion carried.

Mrs. Pauline Johnson offers the following resolution and moves for its adoption: That the application of Brockport SRE, LLC, 1657 East Avenue, Rochester, New York, for six (6) area variances. Applicant is proposing to redevelop the site with a new ±4,700 sq. ft. quick serve restaurant located at 4871 Lake Road South, Brockport, New York, in B-1 Commercial - Retail Zoning District. The requested variances are as follows:

1. Front northeast corner of the building (75' required) - 65.9' proposed setback, requesting a 9.1' front variance;
2. Front (east) canopy (75' required) - 22.7' proposed setback, requesting a 52.3' front variance;
3. Rear (west) canopy (25' required) - 7.5' proposed setback, requesting a 17.5' rear variance;
4. Green space (30% required) - 23% proposed green space, requesting a 7% greenspace variance;
5. Perimeter buffer (7.5' required) - 2.8' proposed buffer, requesting a 4.7' perimeter buffer variance; and
6. Use of frontal area (25' required) - 9.9' proposed setback, requesting a 15.1' frontal area variance, tax account number 083.2-1-19, be **approved** for the following reasons:

Area Variance #1 – 65.9' proposed setback, requesting a 9.1' front variance

9.1 ft. front setback for the northeast corner of the building measured from the east right-of-way line of Lake Road, instead of the minimum required 75 ft. front setback (§175-41-E-4a) be approved for the following reasons:

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1. An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial. In fact, the existing building and associated landscaping has been vacant and neglected for over ten years. Development of this property would preserve and protect the character of the neighborhood;
2. The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance;
3. The proposed front setback area variance of 9.1 ft. is not substantial;
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and
5. The alleged difficulty is self-created, however because of the property's unique shape and NYSDOT ROW, area variances are needed for the proposed project.

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. Mark Horschel – Aye
Mr. Mark Sealy – Aye

Motion carried.

Mrs. Pauline Johnson offers the following resolution and moves for its adoption: That the application of Brockport SRE, LLC, 1657 East Avenue, Rochester, New York, is proposing to redevelop the site with a new ±4,700 sq. ft. quick serve restaurant located at 4871 Lake Road South, Brockport, New York, in B-1 Commercial - Retail Zoning District. The requested variance is as follows:

Area Variance #2 –22.7' proposed setback, requesting a 52.3' front variance

52.3 ft. front setback for the (east) canopy, 22.7 ft. provided, as measured from the eastern boundary line of Applicant's property from the canopy instead of the 75 ft. minimum required (§175-41 E-4a) approved for the following reasons:

1. An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial. In fact, the existing building and associated landscaping has been vacant and neglected for over ten years. Development of this property would preserve and protect the character of the neighborhood;
2. The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance;
3. The canopies are detached structures that provide protection from the climate and will improve working conditions for employees;
4. The proposed 52.3 ft. front setback variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and
5. The alleged difficulty is self-created, however because of the property's unique shape and NYSDOT ROW, area variances are needed for the proposed project.

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

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

Motion carried.

Area Variance #3 –7.5' proposed setback, requesting a 17.5' rear variance

17.5 ft. rear setback, 7.5 ft. provided, as measured from the western boundary line of Applicant's property from the canopy instead of the 25 ft. minimum required (§175-41 E-4c) approved for the following reasons:

- 1 An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial. In fact, the existing building and associated landscaping has been vacant and neglected for over ten years. Development of this property would preserve and protect the character of the neighborhood;
- 2 The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance;
- 3 The canopies are detached structures that provide protection from the climate and will improve working conditions for employees;
- 4 The proposed 17.5 ft. rear setback variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and
- 5 The alleged difficulty is self-created, however because of the property's unique shape and NYS DOT ROW, area variances are needed for the proposed project.

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. Mark Horschel – Aye
Mr. Mark Sealy – Aye

Motion carried.

Mrs. Pauline Johnson offers the following resolution and moves for its adoption: That the application of Brockport SRE, LLC, 1657 East Avenue, Rochester, New York, is proposing to redevelop the site with a new ±4,700 sq. ft. quick serve restaurant located at 4871 Lake Road South, Brockport, New York, in B-1 Commercial - Retail Zoning District. The requested variance is as follows:

Area Variance #4 – proposed 23% greenspace, requesting a 7% variance

23% (11,264 square feet) greenspace provided rather than the minimum required 30% (14,767 square feet), (§175-41-E-6) be approved for the following reasons:

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- 1 An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial. In fact, the existing building and associated landscaping has been vacant and neglected for over ten years. Development of this property would preserve and protect the character of the neighborhood;
- 2 The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance;
- 3 The proposed 7% greenspace area variance is not substantial as the land in the northeast corner of the property line is unique in that it is a large triangular NYSDOT ROW, which gives the appearance that there is more than 23% greenspace.
- 4 The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and
- 5 The alleged difficulty is self-created, however because of the property's unique shape and NYSDOT ROW, area variances are needed for the proposed project.

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

Discussion: Chairman Carges confirmed with Mr. Randy Bebout that maintenance of the ROW area would be taken care of by the owner of the property.

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

Motion carried.

Mrs. Pauline Johnson offers the following resolution and moves for its adoption: That the application of Brockport SRE, LLC, 1657 East Avenue, Rochester, New York, is proposing to redevelop the site with a new ±4,700 sq. ft. quick serve restaurant located at 4871 Lake Road South, Brockport, New York, in B-1 Commercial - Retail Zoning District. The requested variance is as follows:

Area Variance #5 – 2.8' proposed buffer, requesting a 4.7' perimeter buffer variance

2.8 ft. perimeter buffer rather than the minimum required 7.5 ft. (§175-40-B) be approved for the following reasons:

- 1 An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial. In fact, the existing building and associated landscaping has been vacant and neglected for over ten years. Development of this property would preserve and protect the character of the neighborhood;
- 2 The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance;
- 3 The proposed perimeter buffer variance of 2.8 ft. will be mitigated by landscaping;
- 4 The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and
- 5 The alleged difficulty is self-created, however because of the property's unique shape and NYSDOT ROW, area variances are needed for the proposed project.

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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. Mark Horschel – Aye
Mr. Mark Sealy – Aye

Motion carried.

Mrs. Pauline Johnson offers the following resolution and moves for its adoption: That the application of Brockport SRE, LLC, 1657 East Avenue, Rochester, New York, is proposing to redevelop the site with a new $\pm 4,700$ sq. ft. quick serve restaurant located at 4871 Lake Road South, Brockport, New York, in B-1 Commercial - Retail Zoning District. The requested variance is as follows:

Area Variance #6 – 9.9' proposed setback, requesting a 15.1' frontal area variance

9.9 ft. proposed frontal parking setback rather than the minimum required 25 ft. (§175-41-E-7) be approved with the following condition that the four spaces are for staff parking only for the following reasons:

- 1 An undesirable change will not be produced in the character of the neighborhood as the surrounding zoning is B-1, Business Commercial. In fact, the existing building and associated landscaping has been vacant and neglected for over ten years. Development of this property would preserve and protect the character of the neighborhood;
- 2 The benefit sought by the Applicant cannot be achieved by another feasible method other than an area variance;
- 3 The proposed frontal parking area variance of 15.1 ft. is ± 30 -35 feet from the eastern boundary line which gives the appearance that there is more than 9.9 ft.;
- 4 The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and
- 5 The alleged difficulty is self-created, however because of the property's unique shape and NYSDOT ROW, area variances are needed for the proposed project.

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

Discussion: Mrs. Pauline Johnson confirmed with Mr. Randy Bebout that the exact distance from the Rte. 19 curb line to the ROW line is approximately 30 feet. Chairman Carges asked for clarification that the condition of this variance is for the three north parking spaces, not the fourth parking space to the south. Mrs. Pauline Johnson agreed.

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

Motion carried.

The meeting was adjourned by motion at 7:07 p.m.

Respectfully submitted,
Phyllis Brudz
Zoning Board of Appeals Clerk