

TOWN OF SWEDEN
Zoning Board of Appeals
Minutes – December 18, 2006

A regular meeting of the Zoning Board of Appeals of the Town of Sweden was held at the Town Offices, 18 State Street, Brockport, New York on Monday, December 18, 2006, commencing at 7:00 p.m.

Members present: Frank Fisher, Pauline Johnson, Kenneth Reid, Peter Sharpe, Mary Ann Thorpe

Also present: Robert Sodoma, Christian Brunelle, Harold Mundy

Chairman Reid called the meeting to order, introduced the Board members and read the notice of public hearing for:

Application of Sonbyrne Sales, Inc., 171 Route 5, Weedsport, New York, for an area variance to operate a Byrne Dairy retail store and fueling station at 5550 Brockport-Spencerport Road, Brockport, New York. The fueling station canopy is approximately 600 ft. from the northeast corner of the shopping center or plaza building located at 5605 Brockport-Spencerport Road. Town of Sweden Ordinance § 175-41, C, (1) b, states no filling stations, gas pumps or storage tanks shall be permitted in or within 1,000 ft. of a shopping center or plaza. The property is owned by Sodoma Farms Inc., tax account number 085.01-1-3.2.

5550 Brockport-Spencerport Road

Chairman Reid stated the Board has 62 days to make a decision, and the applicant has 30 days to appeal.

Mr. Christian Brunelle, Chief Operating Officer, Sonbyrne Sales Inc., addressed the Board. He has been to the Planning Board twice. At the December 11 meeting, a public hearing was held, and there was no opposition. The project is moving along smoothly.

Mr. Robert Sodoma addressed the Board. He is the applicant and owner of the farm market being sold to Byrne Dairy. For the record, Mr. Sodoma read the attached presentation.

Chairman Reid thanked Mr. Sodoma for his extremely thorough presentation and asked the Board if they had any questions.

Mr. Fisher asked where would the gas pumps be located? Mr. Brunelle showed the Board on the submitted aerial map where the canopy will be in relation to the shopping center or plaza located at 5605 Brockport-Spencerport Road.

Mr. Sharpe asked what would the traffic pattern look like? Mr. Brunelle explained traffic would enter off Rte. 31 and exit onto Sweden Walker Road.

Attorney Bell stated the applicant is asking for a variance for 600 ft. while the actual distance from the shopping center or plaza to the corner of the canopy is more like 700 ft. He added that this is a by-product of a deficiency in our Town code because there is no specific definition for a shopping center or plaza. This will be corrected in the future, but

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that doesn't help the applicant tonight. Attorney Bell stated that he believes a real good case has been presented that 5605 Brockport-Spencerport Road is not a shopping center or plaza. It was never intended to be a plaza when it was built, it isn't one now, and has never really been used as a plaza. It would be a misuse of a term to apply that definition in this case.

Mrs. Thorpe stated what this Board should determine is whether or not the building located on the Rossi property (a.k.a. Grentzinger Plaza) is, in fact, a shopping center or plaza. Attorney Bell stated if this Board determines that the building is not a shopping center or plaza, the area variance does not need to be addressed. If the Board decides it is a shopping center or plaza, then the area variance needs to be addressed. The Board could do both by determining that it is not a shopping center or plaza, and approve the variance just in case it does meet that definition in the future. A variance would be granted now so that this does not become an issue down the road after the store is in operation.

Mr. Brunelle stated that is what Byrne Dairy would like to see happen. Attorney Bell stated that would be the safe way to go.

Mr. Fisher stated he agreed from the facts presented that the property is not a shopping center or plaza, but wouldn't a variance come into play only when, and if, there are four businesses in operation to avoid setting a precedent. Attorney Bell understood his concern, but each case should be reviewed individually.

Attorney Bell stated that Byrne Dairy is making a great investment in the community. The main reason to do both, interpretation and area variance, is if the interpretation is challenged, the store's operation will stay approved with an area variance.

Attorney Bell added that because there is a deficiency in the Town code, and to assure the applicant's investment is sound, he would recommend and encourage both, interpretation and area variance.

Board Member Johnson arrived – 7:30 p.m. Mrs. Johnson took some time to review the presentation material.

Chairman Reid asked if there were any more questions. There were none.

The Clerk stated at the December 11 Planning Board meeting, Chairman McAllister took a roll call to see how each member felt about the Byrne Dairy store and fueling station coming to that location, and the majority of the Board was in favor of it.

Chairman Reid closed the public hearing.

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Moved by Mr. Fisher, seconded by Mrs. Thorpe, that having reviewed Sonbyrne Sales Inc./Robert A. Sodoma's application for an area variance to permit Sonbyrne Sales Inc. to operate a Byrne Dairy retail store and fueling station at 5550 Brockport-Spencerport Road is an unlisted action that will not have a significant impact on the environment.

Mr. Fisher – Aye
Mrs. Johnson – Aye
Mr. Sharpe – Aye
Mrs. Thorpe – Aye
Chairman Reid – Aye

Moved by Mrs. Thorpe, seconded by Mr. Fisher, to **approve** the application of Sonbyrne Sales Inc./Robert A. Sodoma for an area variance to allow Sonbyrne Sales Inc. to operate a Byrne Dairy retail store and fueling station located at 5550 Brockport-Spencerport Road at a minimum distance of 600 ft. from a shopping center or plaza, tax account number 085.01-1-3.2, based on the fact that a shopping center or plaza is not defined in the Town code, and it is the Board's opinion that the Rossi property (a.k.a. Grentzinger Plaza), 5605 Brockport-Spencerport Road, is not a shopping center or plaza, and therefore, a variance is not necessary. In the event of a future contrary determination of the Rossi property (a.k.a. Grentzinger property) being designated as a shopping center or plaza, the Board's recommendation is to grant the area variance 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 because the alternative would be acquisition of additional residential property which is not feasible.
3. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.
4. The hardship is not self-created due to the uncertainty of the definition of a shopping center or plaza.

Mr. Fisher – Aye
Mrs. Johnson – Aye
Mr. Sharpe - Aye
Mrs. Thorpe – Aye
Chairman Reid – Aye

Moved by Mr. Reid, seconded by Mr. Sharpe, to approve the October 19, November 8, 15, and 20, 2006 minutes.

Mr. Fisher – Abstain
Mrs. Johnson – Aye
Mr. Sharpe - Aye
Mrs. Thorpe – Aye
Chairman Reid – Aye

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Moved by Mrs. Johnson, seconded by Mr. Reid, to approve the November 29, 2006, minutes.

Mr. Fisher – Aye
Mrs. Johnson – Aye
Mr. Sharpe - Abstain
Mrs. Thorpe – Abstain
Chairman Reid – Aye

The meeting was adjourned by motion at 8:30 p.m.

Clerk to Zoning Board of Appeals