



The City of Cortland
Zoning Board of Appeals
Special Meeting
April 25, 2022
City Hall, 25 Court Street

A Public Hearing was opened at 5:32 p.m. regarding a rehearing of area variances for a proposed project by Byrne Dairy located at the corner of Port Watson Street and River Street.

The following members of the Zoning Board of Appeals were recorded present:

Maria Manning, Chairperson
Brett Barnes, Vice Chairperson
Abigail Cleary
Kyle Davis
Karen Leahy
Juliene Ray
Ray Parker

Tony Terchert, residing at 21 East Avenue, Cortland NY, spoke against approval of the area variances, stating that it was not consistent with the City Code.

John Stupke, residing at 227 Port Watson Street, Cortland NY, spoke against approval of the area variances, citing the number and gas stations in the area, potential traffic problems and that the proposed business would be open 24 hours a day.

Larry Knickerbocker, Esq. spoke on behalf of Bill Bros. Dairy & Farm Market. Mr. Knickerbocker noted that the area variance had already been denied by the Zoning Board of Appeals, and said he was unaware of any process, documents or request that warranted a rehearing. He also questioned why the variance is being considered as part of a Special Meeting. He said that the project is too big for the lot size and that the number of variances being sought is evidence of that. He suggested Byrne Dairy redesign the project to minimize or eliminate the variances being sought. Mr. Knickerbocker said that it is a residential area even though it is zoned GB-2 and that the proposed project is detrimental to surrounding properties. He also cited traffic as a problem and said that a traffic study conducted did not address deliveries and truck traffic. He cited the fact that the business would be open 24 hours a day as a problem as would noise at night and trash pickup. Mr. Knickerbocker said that just because the project is a permitted use doesn't mean that it should be permitted.

Chad Horihan, owner of property located at 218 Port Watson Street, Cortland NY, spoke in opposition of the proposed area variances. He said that Byrne Dairy's 24 hour operation, noise, lights and loitering may cause his tenants to move. He asked that these concerns be mitigated and that the proposed project be pushed further away from his property.

Tom Fuccillo Esq. spoke on behalf of Byrne Dairy and in favor of the area variances. He said he requested a rehearing because there was not a rational basis for the previous denial of the area variances. He noted that the Cortland County Planning Department recommended approval of the project even though the Cortland County Planning Board recommended against approval. He said the project is in accordance with the City's Master Plan and gateway project. Mr. Fuccillo noted that the Zoning Board of Appeals has issued similar variances for properties such as CFCU Credit Union and Walgreens. He contended that the need for area variances was not due to the project being too big. He said the current property is an eyesore and the proposed project will improve the neighborhood. He noted that the lighting plan was reviewed by the City Planning Commission. He said that traffic concerns were anecdotal and that the state department of transportation had not requested a traffic study. Mr. Fuccillo said that the city has designated the area as a commercial corridor and that the City's Master Plan calls for good, professional development. In regard to the area variance, he said that the benefit could not be obtained through other methods because the proposed site is a corner lot and the area variances will provide for suitable ingress and egress. Mr. Fuccillo said that the Zoning Board of Appeals should weigh all appropriate factors which do not include protecting other businesses.

Dominic Tutino, whose family owns a nearby business, spoke in favor of the area variances. He said the project is a good opportunity for the area, and that would provide the only business open 24 hours a day. He noted that the Byrne Dairy in Homer served as an example of successful mitigation of issues that have been raised.

Zoning Board of Appeals member Ray Parker made a motion to close the public hearing. The motion was seconded by Ms. Leahy and approved 7-0. The public hearing was closed at 5:58 p.m.

The Zoning Board of Appeals held a discussion on the matter.

City Corporation Counsel A.J. Meldrim noted that the rehearing vote on the area variances required unanimity.

Brett Barnes said that the area variances are about parking and not about the size of the project.

Robert Rhea, Zoning Officer for the City of Cortland noted that the proposed project has been subject to multiple reviews by the Planning Commission and explained the applicable code. He said that none of the existing business on Port Watson Street conformed to the standards addressed in this area variance. Mr. Rhea said that the issue under consideration is where the proposed building will be located and its parking in relation to the street.

The Zoning Board of Appeals considered and discussed the Area Variance Five Factor test pursuant to City Code, Article XV, Section 300-150. The following factors were discussed.

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

No such issues were noted. Kyle Davis said that noise, light and traffic were issues outside the Zoning Board of Appeals' purview.

- Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.

Members agreed that the area variances are the only way.

- Whether the requested area variance is substantial.

It was noted that some set-back variances are substantial as were set-back variances for other businesses in the area.

- Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district.

Mr. Barnes noted that the state Department of Environmental Conservation and the Cortland County Soil and Water Conservation District determined there to be no such effect or impact.

- Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the variance.

Members of the Board did not note this to be the case.

Mr. Davis said that, if approved, design should take into consideration issues raised by neighbors, and that doing architectural renderings may help the public in their understanding of the project.

Mr. Barnes made a motion that the Zoning Board of Appeals reverse its original decision of December 13, 2021 which denied the area variances. Mr. Parker seconded the motion. The motion was approved by a vote of 7-0. The vote was recorded as follows:

- Maria Manning - Aye
- Ray Parker - Aye
- Karen Leahy - Aye
- Julienne Ray - Aye
- Kyle Davis - Aye
- Abigail Cleary - Aye
- Brett Barnes - Aye

The minutes of the December 13, 2021 Board meeting was approved 7-0 on motion of Mr. Barnes and seconded by Ms. Ray

The minutes of the February 14, 2022 Board meeting was approved 7-0 on motion of Mr. Parker, seconded by Ms. Cleary.

The meeting was adjourned at 6:19 p.m. on motion of Mr. Parker, seconded by Ms. Leahy and approved 7-0.

I, ANDREW T. JEWETT, CITY CLERK FOR THE CITY OF CORTLAND, NEW YORK, DO HEREBY CERTIFY THAT THE MINUTES ABOVE WERE APPROVED BY THE ZONING BOARD OF APPEALS ON THE 9th DAY IN MAY 2022, AND THAT SAID MOTION WAS ADOPTED BY THE ZONING BOARD OF APPEALS AT A SPECIAL MEETING OF THE BOARD, HELD ON THE 25th DAY IN APRIL, 2022.

ANDREW T. JEWETT, CITY CLERK

**MARIA MANNING, CHAIRPERSON
ZONING BOARD OF APPEALS**