



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

**MINUTES APPROVED  
BY BOARD OF APPEALS  
7/17/2024**

## BOARD OF APPEALS

MINUTES JUNE 24, 2024

### INFORMATIONAL HEARINGS (3)

#### STEPHEN VEDDER

808 BROADWAY, ELMIRA, NY 14904

**AREA VARIANCE-525-24-BULK & DENSITY CONTROL**  
SCHEDULE, FRONT YARD SETBACK TO BUILD A COVERED  
FRONT PORCH WITHIN FRONT YARD SETBACK. ZONE: AR  
2441 SOUTH BROADWAY, WELLSBURG, NY 14894

#### JOSEPH STRONG

1169 PLYMOUTH AVENUE, ELMIRA, NY 14904

**AREA VARIANCE 525-24-BULK & DENSITY CONTROL**  
SCHEDULE-BUILD A FRONT PORCH WITHIN FRONT YARD  
SEBACK.

1169 PLYMOUTH AVENUE, ELMIRA, NY 14904 ZONE: R3

#### ANDREW PATROS

1127 PENNSYLVANIA AVENUE, ELMIRA, NY 14904

**INTERPRETATION 525-5 CONVENIENCE FOOD MART**  
A COMMERCIAL RETAIL USE THAT COMBINES TWO PRINCIPAL  
USES ON A SINGLE PARCEL: THE SALE OF MOTOR VEHICLE  
FUEL AND ACCESSORY SUBSTANCE, AS WELL AS THE SALE OF  
GROCERIES

1151 BROADWAY, ELMIRA, NY 14904 ZONE: CR

Minutes of the Zoning Board of Appeals, Town of Southport, held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on June 24, 2024 at 7:00 p.m.

Board Members Present: Shawn Crater  
Susan Silvers  
Ken Wrigley  
Kent Collier, Alternate

Board Members Absent: Justin Faulkner  
Belinda Combs

Others Present: Megan Dorritie, Town Attorney  
Peter Rocchi, Town Code Enforcement Officer  
Bonnie Balok, Secretary-Zoning Board of Appeals

### **1. Call to Order**

Vice Chairwoman Silvers called the meeting to order at 7:00 pm. Secretary Balok called the roll.

### **2. Approval of the Minutes of April 29, 2024**

Vice Chairwoman Silvers advised the next item on the agenda is the approval of the minutes of April 29, 2024. Mr. Crater made a motion to accept minutes; seconded by Mr. Wrigley. Minutes of April 29, 2024 were unanimously approved.

**3. New Business**

Vice Chairwoman Silvers advised the next item on the agenda is an informational hearing for Stephen Vedder, 808 Broadway, Elmira, NY 14904. Mr. Vedder is requesting an area variance to build a covered front porch within front yard setback, as per Section 525-24-Bulk and Density Control Schedule in an AR zone, Tax Map #: 119.00-1-4; Zoned: AR.

Present: Mr. Stephen Vedder.

Mr. Vedder explained he wanted to build a porch on the home for a place to sit, protect the front door and be more attractive. There are no environmental issues. He spoke with his neighbors and they all signed a letter expressing support for the porch. (*Letter of Support submitted for file*). The porch will be on the front side of the house, Boston style with two (2) dormers, with the porch there will now be three (3) dormers. Mr. Vedder provided a survey and advised the front porch is shown on the front of the house, listed as front porch and several feet from the existing setback.

Mr. Crater asked about the setback on the survey and Mr. Vedder clarified the porch section on the survey.

Mr. Wrigley asked about the dormer, porch has a roof over it to be a third dormer. Door has a dormer and the porch will keep the weather off the front of the house and the sun from beating down on the door.

Chairwoman Silvers discussed the setback and advised it is not forty feet (40’); 20.49 on one side and 18.7 on the second side. Pre-existing is not forty feet (40’), and there is other no other option than to do this.

Mr. Vedder explained the property parallels with Seeley Creek not the highway.

Chairwoman Silvers advised Mr. Vedder should submit a plan at the public hearing. Mr. Vedder advised he will submit a drawing with dimensions, etc. and the SEQR form has been filled out.

Mr. Crater asked about the amount of land; survey lists .693 and the SEQR lists 1 acre. Clarified as .693

Public hearing scheduled for July 17, 2024 at 7:00 pm. Secretary Balok will send Mr. Vedder instructions on the public hearing process, a copy of the Notice of Public Hearing Legal Ad sent to the “Star-Gazette.” Payment must be made to the “Star-Gazette” in advance of the legal ad publication. Mr. Rocchi will put a sign on the property notifying the public of the hearing.

Attorney Dorritie discussed the SEQR form clarifying the acreage is .693 acre not as listed one (1) acre, this is a permitted use consistent with the neighborhood, residential use permits a Class Type 2 construction for expansion, deck, patio, front porch; 6 NYCRR

Informational Hearing for Mr. Vedder adjourned: 7:10 pm

Original on File: Town Clerk

Copy: Town Supervisor-----Town Attorney----Town Code Enforcement Officer-  
Zoning Board of Appeals---Town Board-----Town Planning Board  
Minutes to Stephen Vedder, 808 Broadway, Elmira, NY 14904

Bonnie Balok, Secretary  
Zoning Board of Appeals  
June 26, 2024

**MINUTES APPROVED  
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7/17/2024**

1169 Plymouth Avenue, Elmira, NY 14904  
Re: 1169 Plymouth Avenue, Elmira, NY 14904  
**Area Variance 525-24-Bulk & Density Control Schedule-**  
**build front porch within front yard setback. Zone: R3**

**3. New Business** (*continued*)

Chairwoman Silvers advised the next item on the agenda is an informational hearing for Joseph Strong, 1169 Plymouth Avenue, Elmira, NY 14904; regarding 1169 Plymouth Avenue, Elmira, NY 14904, requesting an Area Variance 525-24-Bulk and Density Control Schedule-to build a front porch within front yard setback. Tax Map #109.08-2-62, Zone: R3

Present: Mr. and Mrs. Joseph Strong.

Mr. Strong explained the setback of fifteen feet (15') is fine and thirty nine feet (39') from house to the road, but because of the existing neighborhood this requires a variance, and this is two hundred feet (200') from what Mr. Rocchi advised beyond what the zoning law reads. Mr. Strong advised he did check with the neighbors and they are in favor of this.

Mr. Crater advised a drawing would be needed for the public hearing detailing flat roof or peaked roof, etc.

Public hearing scheduled for Wednesday, July 17, 2024 at 7:00 pm. Secretary Balok will send Mr. Strong instructions on the public hearing process, a copy of the Notice of Public Hearing Legal Ad sent to the "Star-Gazette." Payment must be made to the "Star-Gazette" in advance of the legal ad publication. Mr. Rocchi will put a sign on the property notifying the public of the hearing.

Attorney Dorritie discussed the SEQR form clarifying the acreage is .3 acre, could be a permitted use Type 2 action, consistent with the neighborhood, permits a construction because it is a porch.

Informational Hearing for Mr. Strong adjourned: 7:18 pm

Original on File: Town Clerk

Copy: Town Supervisor-----Town Attorney-----Town Code Enforcement Officer-  
Zoning Board of Appeals---Town Board-----Town Planning Board  
Minutes to Joseph Strong, 1169 Plymouth Avenue, Elmira, NY 14904

Bonnie Balok, Secretary  
Zoning Board of Appeals  
June 26, 2024

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A COMMERCIAL RETAIL USE THAT COMBINES TWO  
PRINCIPAL USES ON A SINGLE PARCEL: THE SALE OF MOTOR  
VEHICLE FUEL AND ACCESSORY SUBSTANCE, AS WELL AS  
THE SALE OF GROCERIES  
1151 BROADWAY, ELMIRA, NY 14904  
ZONE: CR

### 3. New Business (continued)

Chairwoman Silvers advised the next item on the agenda is an interpretation 525-5 Convenience Food Mart  
A Commercial Retail Use that Combines Two Principal Uses On A Single Parcel: The Sale Of Motor Vehicle Fuel and  
Accessory Substance, as well as the Sale Of Groceries, 1151 Broadway, Elmira, NY 14904  
Zone: Cr

Present: Mr.Andrew Patros.

Mr. Patros advised his reason for bringing this before the Board is spelled out in his cover letter concerning the  
Code Officer's decision, and how this could impact him being a resident in the area with a 24/7 business  
operation. No residential district boundary. Even though Mr. Patros did the filing, he explained he is here on  
behalf of other neighbors also. Collectively they feel that this will be impactful and he is looking forward to the  
filing for an interpretation.

Chairwoman Silvers explained this is not the first filing for an interpretation that the ZBA has received and she is  
going to let the ZBA Attorney Megan Dorritie handle this because it is more technical.

Attorney Dorritie advised she had a question, Mr. Patros referenced a previous appeal was made and that, to what  
are you referring? Mr. Patros advised Mr. Gensel's request for interpretation decision. Attorney Dorritie asked  
Mr. Patros when he says his application, that would have been his request for an interpretation? Do you have a  
written decision from the Code Officer that you are asking for an interpretation and that you are asking the ZBA  
to interpret? Attorney Dorritie explained the application for an interpretation from the Board of Appeals actually  
requires a decision made by the Code Enforcement Officer. Often it comes up like a permit that is issued or that  
you request that the Code Enforcement Officer actually provide that decision. Mr. Patros advised he probably  
did not provide that because apparently he was unaware. Mr. Patros advised he does have some information with  
him, but he is sure it does not bear on the attorney's particular question, it is the letter of intent for Byrne Dairy's  
project, dated back in March, but he is sure that would not suffice what the attorney is requesting. Mr. Patros  
advised he doesn't have that out of lack of knowledge. Attorney Dorritie advised unfortunately the underlying  
decision is a condition. Mr. Patros inquired, what the attorney is asking him to do is to have documentation from  
Mr. Rocchi? Mr. Patros asked, what is the documentation he should have? Attorney Dorritie explained, it's got  
to be you have asked him for an interpretation of the Code as it applies to the particular facts and I don't know if  
you are talking about the Byrne Dairy, I don't have other types of written decisions. Attorney Dorritie advised,  
the Code Enforcement Officer doesn't have any permits for this and hasn't written any permits and he is not  
issuing any violations. Mr. Patros advised he doesn't have that information, but going back to the cover letter, is  
there anything in that cover letter that he provided that allows for the review or interpretation tonight or are you  
telling him that since he didn't provide that? Attorney Dorritie advised, there's a step before going to the Zoning  
Board, that is what the problem is. Mr. Patros asked, if he was to do that, could he come back? Attorney Dorritie  
advised, absolutely, you could. Attorney Dorritie further advised, if Mr. Patros would like to withdraw his  
application for now, he wouldn't need to pay again. Mr. Patros asked, so what is it that I need? Attorney Dorritie  
explained, an underlying interpretation from the Code Enforcement Officer and I would recommend, not that I'm  
giving you legal advice because I represent the Town and the Zoning Board of Appeals, but typically we would  
see a request goes to the Code Enforcement Officer by an individual that says I would like to know, given these  
facts and circumstances, how the Code would apply to that. Attorney Dorritie further explained Mr. Patros  
doesn't want to leave it too opened ended because that would make it difficult for the Code Enforcement Officer  
to understand what he is getting at. Attorney Dorritie suggested that scenario and ask how the Code would be  
interpreted. Mr. Patros asked, so that could be an email from me to Mr. Rocchi asking for exactly what I need to  
provide him as per the meeting this evening?

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ZONE: CR

### 3. **New Business** (*continued*)

Mr. Patros advised he is trying to make sure he doesn't miss a step and then come back and be advised, well you missed a step, and Mr. Patros explained, very frankly this is his first time coming here in front of this body; it's been very unclear, the process has been very unclear, has been confusing. Mr. Patros explained if he doesn't have something, it's only because he wasn't directed in a proper manner to have it this evening.

Mr. Crater asked Mr. Patros a question concerning his statement that he hasn't been attending any of these meetings, but he knows of Mr. Gensel's request. Mr. Crater asked how Mr. Patros found out about Mr. Gensel's request? Mr. Patros advised they talked a few months ago. Mr. Crater asked if Mr. Gensel is asking Mr. Patros to make this request on behalf of Mr. Gensel? Mr. Patros explained, no, Mr. Gensel is assisting him since he lives within the residential boundary. Mr. Patros explained he did attend, back in March, the County Planning Board meeting, and again, it was beginning a process, as he heard that Byrne was coming in, looking for 24/7, and for him and his neighbors that is the item that is of most concern. Mr. Patros advised he attended that meeting, saw Mr. Gensel and Mr. Patros told Mr. Gensel his concern and he told me he didn't think I had to worry about 24/7 because as it states in Town Code, no twenty four (24) hour business can be within 250 feet of a residential district, so he thought okay, Mr. Patros explained he is not against the operation of the business, he has lived here thirty three (33) years, but with the Pizza Hut it was reasonable to assume that other businesses would come in. Mr. Patros advised he didn't come to the April 29<sup>th</sup> Board of Appeals meeting, on that, subsequent to that, Mr. Gensel contacted him and he met with Mr. Gensel and he said it looks as though Byrne is continuing to look at 24/7. Mr. Patros explained what he is trying to understand, trying to make sure his voice is heard or our voices are heard on the concern of 24/7 during this process. Mr. Patros further explained if he didn't attend prior Board of Appeals meetings it wasn't out of the reason he didn't want to become involved or didn't want to express concern, he thought there was not going to be a 24/7 after he met Mr. Gensel in March at the March County Planning Board meeting; but now that appears to be on-going and actually at the June 3, Planning Board meeting a representative from Byrne was asked directly by a Planning Board member, would they consider no 24/7. The Byrne Dairy representative said, no, we want 24/7. Mr. Patros explained he is going to share this because again, of the confusion, the day after the June 3 meeting; he called the Planning Board member and said, he is not calling to twist your arm, he was just trying to understand the process; it's a process, he has never engaged in this before.

Chairwoman Silvers, advised the only way the Zoning Board has been involved with Byrne Dairy has to do with an area variance which the ZBA granted, pursuant to the process that the Board has to follow that comes from the State, so that is the only thing that the Board has addressed, that is the only thing that has been sent to the ZBA. Mr. Patros stated this project may come and go and the Town has to live with what the consequences are for the 24/7 hour business and may lead to another 24/7 business. Mr. Patros asked for clarification that the area variance was the only thing that came before the ZBA and what was that exactly? Chairwoman Silvers advised an area variance for their green space and that was the only area variance that was referred to the Board, it was the only one the Board looked at, nothing else referred to the Board from Mr. Rocchi or the Planning Board. Chairwoman Silvers advised if something else comes from the Planning Board to the ZBA we will look at that, but ZBA has had nothing to do with the 24/7 and the other things that have been brought forward; the only thing the ZBA has dealt with is just that one area variance, everything else, as far as the ZBA is concerned, at the present time, is irrelevant that we've done so far. Mr. Patros stated, just as a citizen and as a fellow taxpayer, he is just trying to understand. Mr. Patros explained based on his conversation with the Planning Board member, he understands this has no bearing on what is being talked about this evening, but he thinks, as a fellow citizen, it is only reasonable to realize he is just trying to understand. Chairwoman Silvers explained she understands his concern, but there are rules and regulations that come from the State that the ZBA has to follow and when the Board grants a variance it's not a nilly-willy thing.



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### 3. New Business (continued)

Chairwoman Silvers advised the ZBA followed the process and the Board processed the variance that was before us; the Board is done with that, so if anything else is referred to the ZBA we will look at that then, but there is nothing that we are looking at now. Mr. Patros, is there any reason for me to continue with this request, am I getting ahead of what the Board of Appeals maybe looking at for that project concerning the Code Officer's underlying interpretation? Is it a waste of time?

Attorney Dorritie explained, it may be helpful for Mr. Patros that if he is specifically concerned about the twenty four (24) hour issue, it would be helpful for him to ask the Code Enforcement Officer how he is advising concerning a particular project because there is fact Byrne did apply as a convenience food mart as opposed to a vehicle fuel and accessory substance, as they are two separate and they have both been approved by the Town Board as separate uses, and the Town Board has given different parameters for operation, so 24/7 operation is applicable for the convenience food mart where it's not for vehicle fuel substance. Mr. Patros stated, and that hasn't come to any conclusion. Attorney Dorritie advised that is still before the Planning Board, they will be meeting July 1. Mr. Patros explained, as he recalled, a gentleman who is here with him, that the comments were over, but he did make a comment addressing the concerns that we brought forward and Attorney Dorritie stated, "we're not there yet." Attorney Dorritie explained, they are being considered by the Planning Board, she can promise Mr. Patros that, but they are not at that point yet, to make a determination as they applied to the different parameters that the Planning Board is looking at. Mr. Patros stated, then he probably should withdraw this request. Attorney Dorritie advised, if he would like to, he can either get his application fee back or he can just table it and give his request to the Code Enforcement Officer. Mr. Patros advised he probably will table it, but by doing that, and he understands the Planning Board is meeting July 1, and asked if they will be making a decision prior to the ZBA meeting?. Attorney Dorritie explained, it would be a totally separate process; the Planning Board is going to deal with what they have to look at, and as for the Zoning Board of Appeals, they can do their thing. Mr. Patros advised he had another hypothetical question, if he submits what you are educating him on, when the Board of Appeals reviews it, what happens then?

Mr. Crater, explained Mr. Patros would get an interpretation. Attorney Dorritie stated, that is exactly right. Mr. Crater advised, please understand also, through this whole process, our Town Board has requested that the Planning Board hire an outside engineering firm. Mr. Crater advised, in his opinion, that is why things have been getting tabled; they had to wait for another whole new review of a review that had taken place for the Planning Board, so it has gone to that extent already. Mr. Crater explained he believes that is what they are waiting on is for that review, and once it goes to the Planning Board, then we move forward if there are any other variances that need to be granted or anything like that, and Ms. Silvers has explained this. Mr. Patros stated, the only other thing he will leave you with is his request to withdraw or table. Mr. Patros explained when he did have a conversation with the Planning Board member, and this means nothing, again confusion and trying to understand the day after the Planning Board meeting, he was trying to understand the process going forward and this person immediately told him the Planning Board's hands are tied, there is nothing we can do about the 24/7. Now as a taxpayer that may live within the boundary, I was stuck, this added more to the confusion.

Mr. Patros advised he will table it. Attorney Dorritie, the 24/7 operation rules are set by the Town Board. Mr. Patros stated, so just to confirm, the Town Board sets when an application can come under a twenty four (24) hour. Attorney Dorritie explained, it does not, what it says is a convenience food mart, anyone who applies in that manner, they are eligible for 24/7, so any convenience food mart is eligible for 24/7 operation. Mr. Patros asked if there are conditions that can be set as well? Attorney Dorritie explained under the law the Planning Board and the ZBA both are subsidiaries of the Town Board and the Town Board sets the general rules, the Planning Board and the ZBA have to operate within the Town Code set by the Town Board, and

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**3. New Business** (*continued*)

as far as conditions go, yes conditions can be applied, but with respect to 24/7 operations there are very onerous requirements for the Planning Board to be able to actually set any certain conditions for an operation. Mr. Patros asked if that was for this Town's Code or in general. Attorney Dorritie advised, it is NYS law. Mr. Patros asked what would be onerous? Attorney Dorritie explained you would have to have substantial evidence; substantial evidence is studies, some sort of engineering opinion, something concrete that is concerned with the particular location, and the particular type of use. Mr. Patros asked if this is coming from LaBella. Attorney Dorritie, advised, LaBella will be looking at it, but they are not doing independent studies just reviewing the studies that have been submitted. Mr. Patros stated, so regarding the 24/7, in and of itself, there won't be anything in addition either looked at or considered? Attorney Dorritie, they are considering everything that has been submitted, so if there has been a traffic study that has actually been supplied, LaBella is considering, in addition all the public comments they have compiled them and put them into different categories and 24/7 operation is, in fact, one of the categories that they mentioned from the public comments; LaBella is reviewing everything that's been submitted and giving guidance to the Planning Board. Mr. Patros stated, I guess I'll table and get with Mr. Rocchi as to exactly what I should have.

Chairwoman Silvers thanked Mr. Patros and advised the Board will table that interpretation until we hear again from Mr. Patros.

**4. Old Business**

No old business

**5. Discussion**

No further discussion

**6. Adjournment**

Motion to adjourn: Mr. Wrigley  
Adjourned: 7:37 pm

Seconded: Mr. Crater

Original on File: Town Clerk

Copy: Town Supervisor-----Town Attorney-----Town Code Enforcement Officer-  
Zoning Board of Appeals---Town Board-----Town Planning Board  
Minutes to Stephen Vedder, 808 Broadway, Elmira, NY 14904  
Minutes to Joseph Strong, 1169 Plymouth Avenue, Elmira, NY 14904  
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Bonnie Balok, Secretary  
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