

# DRAFT COPY

## UNION VALE ZONING BOARD OF APPEALS Minutes of the Regular Meeting 7:30 pm

January 7, 2020

Members Present: Chairperson Jane Smith and Board members Dennis Dunning, Michael McPartland and Ilana Nilsen

Member Absent: John Hughes

Others present: James Nelson, Union Vale Town Attorney

### **CALL TO ORDER / DETERMINATION OF QUORUM**

The Chairperson Jane Smith determined that there was a quorum for the Zoning Board of Appeals ("the Board") to conduct business and called the meeting to order.

### **CORRESPONDENCE**

Chairperson Jane Smith stated that two responses were received from Dutchess County Planning, one with respect to the 239 referral for the Town of Union Vale Fire District sign variances dated December 17, 2019, and one with respect to the 239 referral for Verbank Deli dated January 3, 2020. In addition, the Board had received two submissions related to the Verbank Deli application, one from Peder Scott Engineering, received January 7, 2020 at 12:14 pm (via email), and one from Michael Caruso, received January 7, 2020 at 1:00 pm (via email).

### **BUSINESS SESSION**

Chairperson Jane Smith announced that Michael McPartland has been appointed to the Board.

Chairperson Jane Smith asked for a motion to accept the December 3, 2019 regular session minutes; motion by Board member Dennis Dunning, seconded by Board member Ilana Nilsen. All members present voted to accept, except Board member Michael McPartland who abstained.

### **PUBLIC HEARINGS:**

**Union Vale Fire District - CONTINUED**  
**3373 Route 82**  
**Verbank, NY 12585**

**Meeting – 3**  
**Three Variances**

Applicant applying for three area variances, 1) proposing a 25 square foot sign, 8 square feet allowed, requesting a 17 square foot area variance, 2) a sign made of material other than wood or etched stone and, 3) variance to have an LED illuminated sign in the Neighborhood commercial zoning district.

Chairperson Jane Smith opened the public hearing. No one was present representing the applicant. Chairperson Jane Smith made a motion to continue the public hearing

until February 4, 2020, and have the clerk notify the applicant of this continuation; motion seconded by Board member Michael McPartland, and approved by unanimous vote of the Board members present.

**JAMES & ERMINIO BISCEGLIA**  
**141 N. Clove Road**  
**Verbank, NY 12585**  
**TMP # 6662-00-924685**

**MEETING - 3**  
**21' side yard**  
**area variance**

Applicant applying for a 21-foot side yard area variance, to legalize a pre-existing garage to obtain a certificate of compliance for an existing apartment that is in the required side yard setback of 35 feet in the R 1.5 zoning district as per Zoning Administrator's letter dated April 3, 2019.

Chairperson Jane Smith opened the public hearing. No one was present representing the applicant. Chairperson Jane Smith made a motion to continue the public hearing until February 4, 2020, and have the clerk notify the applicant of this continuation; motion seconded by Board member Michael McPartland, and approved by unanimous vote of the Board members present.

#### **PUBLIC HEARINGS/DECISION ON PUBLIC HEARINGS**

None.

#### **REGULAR SESSION / OLD BUSINESS**

**DAWN Sun Corp.**  
**Aka Verbank Deli**  
**3122 Route 82**  
**Verbank, NY 12585**

**Meeting - 2**  
**Five variances**

Applicant applying for five area variances: a 640 square foot area variance of existing floor area of a Deli and Pizzeria; a 200 foot area variance for no such establishment shall be located within 200 feet of a church or other public gathering place; 9.3 foot area variance to install a canopy from the front property line; 10 foot area variance for parking lot setback from Route 82; and 7 foot area variance for parking lot setback from Tompkins Road – all variances needed in order to add gasoline pumps to an established Deli and Pizzeria in the NC zoning district.

Board member Michael McPartland recused himself from voting on this application.

Chairperson Jane Smith explained that this meeting is a continuation from the December 3, 2019 meeting regarding the State Environmental Quality Review (SEQR) process. At the December 3, 2019 meeting, the Zoning Board of Appeals identified several areas of concern and asked the applicant to provide specific information regarding: release of vapors; leaks, spillage & ground water contamination; fire/explosions; traffic and noise.

Chairperson Jane Smith explained that a special meeting scheduled for December 17, 2019, at which these issues were to be addressed, was canceled because of inclement weather. She also explained that, contrary to what was suggested at the last meeting, the 20-day rule for determining significance under 6 CRR-NY 617.6(b)(3)(ii) does not

apply; that rule only applies when it is a coordinated review and, in this matter, the Board is conducting an “uncoordinated” review.

Chairperson Jane Smith noted two submissions from the applicant that had been received earlier in the day: one from the applicant’s lawyer, Mr. Caruso, setting forth the New York State Department of Environmental Conservation regulations relating to underground and above ground storage tanks, and making the point that this comprehensive regulatory oversight mitigates the risk of environmental significance; and one from the applicant’s engineer, Mr. Scott, addressing various systems that could be put in place to mitigate vapor exposure, ground water contamination, spills, fires and explosions. Chairperson Smith also provided the applicant with a copy of the January 3, 2020 response to the referral from Dutchess County Department of Planning and Development finding the application a “Matter of Local Concern.”

Mr. Peder Scott, P.E., from Scott Engineering, was then invited to address the Board. He began by handing out copies of the packet with cover letter dated January 6, 20[20], that had been submitted to the Board earlier that day via email, and proceeded to explain the contents.

In his letter to the Board, Mr. Scott presented available options to address several of the specific areas of concern that the Board identified at the last meeting. In his presentation, Mr. Scott elaborated upon the options set forth in his letter. This included discussion of (1) a “Refueling Vapor Recovery System (RVR)” that includes the use of specialized hoses, pumps, seals, a storage tank venting system, and a periodic maintenance program to minimize the release of fuel vapors released when gasoline is transferred between tanker trucks, storage tanks, and vehicles; (2) mitigation of potential ground water contamination from small gasoline spills occurring at each step of the distribution process; this involves the use of an impermeable liner beneath the pavement at the pumps coupled with collection containers, control of canopy runoff, periodic cleaning, and regular monitoring, testing and maintenance (that, Mr. Scott suggested, could be performed by third parties); (3) a Spill Prevention and Control and Countermeasures Plan (“SPCC Plan”) to collect and treat spills and protect against hazardous stormwater discharges; this consists of both systems to collect spills and runoff as well as systems to treat spills and contaminated rainwater (as to the latter, Mr. Scott identified a list of alternatives, several of which are manufactured by the company Contech); and (4) a listing of safety precautions and maintenance procedures that minimize the inherent risk of fires and explosions (such as preventing smoking at the facility, re-entering a vehicle during the fueling process, and ensuring that all stoves and grills are shut down each night and tested for leaks). Mr. Dunning asked how people would be prevented from re-entering a vehicle during the fueling process. Mr. Scott said that employees would be watching and notify the person who fueling a vehicle not to do so if it appeared that someone was going to re-enter their vehicle.

Some of the options Mr. Scott described were also illustrated and/or further described in promotional materials included in the packet. In addition, a site plan (indicating a last revision date of December 20, 2019) was attached to Mr. Scott’s letter; the plan identified the potential placement of various components of the proposed SPCC Plan.

According to Mr. Scott, the systems presented conformed to California design standards, and in many respects went beyond what was required for gasoline stations in New York. He explained that the risks from the release of gasoline in vapor or liquid form into the

environment can be mitigated -- though not completely prevented or eliminated -- through the installation of the mechanical systems he described and the employment of the best management practices he identified. For example, according to the promotional literature relating to the Contech Filterra – Mini Bio-Retention System, testing showed the median removal efficiency for Petroleum Hydrocarbons at 87%; employees could be trained to use dry cleaning methods for spills and periodic vacuuming of the surface areas around the pumps, but could not eliminate the possibility of customers driving off with the pump hose still attached to their cars; the use of a bio-swale at the end of the treatment stream provides additional protection against the harm from spills, but is inefficient in the winter. Mr. Scott commented that the areas of concern identified by the Board were valid and must be mitigated; he said these systems he described provided such mitigation and would be incorporated into the plans for the project.

Chairperson Jane Smith asked Mr. Scott about traffic, specifically whether he could provide a traffic study of the area and any information about any anticipated increase in traffic as a result of installation of a gasoline station and the anticipated number and flow of vehicles using the station. Mr. Scott said he would provide international Traffic Engineer's Manual information regarding traffic impacts. He also said he would provide sales volumes estimates.

Board member Dennis Dunning and Chairperson Jane Smith pointed to recently reported studies concerning the volume of gasoline vapors released from storage tanks through vent pipes, see <https://doi.org/10.1016/j.scitotenv.2018.09.303> [Get rights and content](#), and the extent of plume dispersion of contaminants emitted during the filling process, see <https://www.seeker.com/gas-stations-are-toxic-neighbors-1765175237.html>, and <https://www.sciencedirect.com/science/article/pii/S1309104215304384>. Mr. Scott was asked to comment on these materials. Mr. Dunning also noted that the best management practice guide for retail gasoline outlets submitted with Mr. Scott's packet is dated March, 1997, and asked if there is a more recent publication. Mr. Scott acknowledge that vapors can present health risks.

Chairperson Jane Smith noted that the short Environmental Assessment Form (EAF) submitted with the application received in October was prepared in April 2019. She asked Mr. Caruso and Mr. Scott to review it and, if appropriate, re-submit the short EAF to reflect any changes in the plans.

Chairperson Jane Smith stated that the Board needed additional time to consider the material submitted today and for the additional information requested from the applicant. She also stated that it may be appropriate for the Board to consult with an engineer. Chairperson Jane Smith then moved to adjourn this SEQR significance determination to the next meeting on February 4, 2020; motion seconded by Board member Dennis Dunning. Motion approved by Board Members Smith, Dunning, and Nilsen. Board member Michael McPartland recused.

The applicant was advised that the escrow account has been depleted, and was provided with related invoices. After the applicant pointed out that there was a sizable balance in the Planning Board's escrow account, Mr. Caruso stated that he will review the matter with the applicant.

**OTHER BUSINESS**

None.

**ADJOURNMENT**

As there was no further business, a motion was made by the Chairperson Jane Smith, seconded by Board member Ilana Nilsen, and unanimously accepted by the Board, to adjourn the meeting at 10:45 p.m.

The next regular meeting of the Zoning Board of Appeals is scheduled for **Tuesday, February 4, 2020 at 7:30 PM.**

The agenda will close on **January 21, 2020 at 12:00 Noon.** Items for consideration at the **February** meeting must be received by that date.

Respectfully submitted,

*Jean E. Miller*

ZONING BOARD OF APPEALS CLERK

*annexed documents: public hearing, UV fire district, Poughkeepsie Journal*