

**UNION VALE ZONING BOARD OF APPEALS  
Minutes of the Regular Meeting**

**August 3, 2016**

Members Present: Chairperson Jane Smith, James D. Layton, Ilana Nilsen, and Jeff Wimmer

Member Absent: Dan Tuohy

**CALL TO ORDER / DETERMINATION OF QUORUM**

Chairperson Jane Smith determined that there was a quorum and called the meeting to order at 7:30 p.m.

**CONFIRMATION OF THE AGENDA**

Chairperson Jane Smith reviewed and stated that the Agenda will stand as published.

**REVIEW / APPROVAL OF MINUTES**

Chairperson Jane Smith asked for a motion to approve the July 6, 2016 meeting minutes as submitted by the clerk; a motion was made by Board member Jeff Wimmer, seconded by Board member James D. Layton, and unanimously approved.

**CORRESPONDENCE**

None.

**PUBLIC HEARING(S)/ DECISION ON PUBLIC HEARING(S)**

**7:35 PM**

**Richwine, Chuck – 22 On the Green, Verbank, NY 12585.**

Rehearing of June 1, 2016 determination granting an unconditional 10 foot side yard variance as per Town Code 210-80C.

Chairperson Jane Smith opened the public hearing and the clerk read the notice into the record.

Mr. Richwine was present with his son. Chairperson Jane Smith began the hearing with a review of the procedural history of the application:

Mr. Richwine requested a 10-foot side yard variance in order to construct a detached garage.

A public hearing was conducted on May 4, 2016, and on June 1, that application was granted without conditions.

At a duly noticed special meeting conducted on June 15, 2016, Board members discussed whether the application had been improvidently granted in light of several factors: (1) the applicant's lack of specificity as to the size and precise location of the proposed garage in both his application and presentation to the Board and a similar lack of specificity in the public hearing notice; (2) statements made by both the applicant and his son regarding the intended use of the garage; and (3) zoning restrictions particular to the Hamlet District. In an exercise of the discretion granted to the ZBA under New York Town Law (§267-a 12) and the Union Vale code (§210-80 C), the Board voted unanimously to conduct a rehearing at the next scheduled meeting of the ZBA on July 5.

Mr. Richwine was immediately notified of the rehearing and requested that the rehearing be rescheduled to accommodate the schedule of his attorney. As per this request, rehearing was postponed until this date, the regularly scheduled August meeting.

Chairperson Smith then reviewed both the substantive information presented to and considered by the Board prior to reaching its determination on June 1, as well as both newly acquired information and pertinent provisions of the Town Code relating specifically to the Hamlet District, and then asked Mr. Richwine to address if there are any changes in this information:

On May 4, Mr. Richwine advised that he could construct the proposed structure within the required setbacks and without a variance, but preferred the location within the setback. Mr. Richwine indicated that the dimensions of the structure he wished to construct were not fixed; he was contemplating a two story structure with a width of 24-26' by 40' in length, then it was estimated to be 25' x 25' (or 24'-26' x 25') structure, based on the sheet from the manufacturer. Ilana Nilsen explained that this is confusing, the structure grew in size from 24'x40' feet to 24'x50' with an unknown amount of square footage upstairs as he hadn't actually chosen a building yet. The building footprint changed every meeting. Mr. Richwine and his son explained that they were building the garage for the son (he works in a body shop, and planned to use the garage for storing cars) and Mr. Richwine who planned to tinker with cars in his retirement.

On June 1, the Board considered (in addition to a letter in support dated April 25, 2016 submitted from contiguous landowner Arlene Hart that had been before the Board on May 4) several letters from neighbors who also uniformly supported the application. None of the letters referenced the size or the precise location of the planned garage. Mr. Richwine

explained that he wrote each of these additional letters and the neighbors signed them. The Board's secretary also provided information from Town records relating to other accessory garages within the Hamlet District: this showed three garages within 10 feet of the property lines all of which had been constructed in the 1900's before zoning restrictions were enacted, and one constructed in 2014, that was not within the setback; all were two car garages. The Board also considered various provisions of the Town Code (§§ 210.17 A (3) and (5)) that placed limits on the placement and floor area of an accessory structure, and noted that the limits would need to be enforced for any building even if the variance were granted.

In connection with this rehearing, the Board requested and received additional information regarding accessory structures, particular to garages, in the Hamlet District from CEO George Kolb: That information (provided in writing on July 2, 2016, and included in the file) related to 5 accessory structures (3 sheds and 2 garages). 4 of the 5 were considerably smaller in size than the structure proposed by Mr. Richwine (24x24; 16x16; 12x24; 10x20; 38x28), and all were constructed pre-zoning and/or within the required set back. There was no evidence of any post-zoning law area variances for an accessory structure in the Hamlet District.

A review of the zoning regulations applicable in the Hamlet District and relevant to the density issue showed that the Richwine lot was already non-conforming: the minimum lot required is 1.5 acres, this lot is .68 acres; the required lot frontage is 100', this lot is 64.29'; the minimum lot width at the building line is 150', this lot in the vicinity of the principal building is at most 64.29'; the side setbacks for the principal dwelling are 25' and the driveway is 15', it is not clear from the submitted survey whether these setbacks are satisfied but it appears that they are not.

Mr. Richwine updated the previously submitted survey to reflect that the narrowest part of his property is 56' feet. He reaffirmed that he has enough room to build the garage he wants behind his house without a variance (and vowed to do so if the variance were denied), but reiterated that both he and his son believe a garage is more suitable in line with the existing driveway than in the middle of the back yard. He pointed to the seven letters in support from his neighbors, three of whom who were at the rehearing. Mr. Richwine explained that, currently, he is working on cars in his driveway, that it would be better for both him and his neighbors if these projects were done in a garage, and complained that if the Board had not prolonged these proceedings, his garage would have been completed by now. (Chairperson Smith reminded that the Board had postponed the rehearing for one month at Mr. Richwine's request.)

Board member James D. Layton asked Mr. Richwine to specify the size of the garage he was planning to build. Mr. Richwine declined to provide firm

specifications. He stated it is either going to be 24' x 40' or 24' x 50' (the latter being a structure even larger than he had previously indicated). He explained that he intended to put in two lifts (which means that the area on the second floors above those bays will not be available for use), and the other bays will be used to park cars. Referring to the two lifts, Board member James D. Layton asked if the Richwines were planning to conduct a business there; Mr. Richwine stated "no".

Neighbor Sharon Slocum vouched that Mr. Richwine would not be running a business (for profit) out of this proposed garage. Neighbor Arlene Hart, an adjoining neighbor stated that the Richwines' driveway would look 100% better if they could put the cars that they were repairing in a garage, instead of out in the middle of their driveway. Mr. Richwine explained that there are five cars that are registered in his name that sit in his driveway. Mr. Richwine further explained that he contacted Ms. Hart before beginning this project and they worked out that the siding of the garage would match the existing house, that he would insulate the inside of the garage which will be 2' x 6' construction, and he would install insulated garage doors to keep any noise at a reasonable level while they were working in the garage.

Chairperson Jane Smith asked the neighbors present to explain why they thought placing the garage behind the house (where Mr. Richwine would not need a variance) would be less attractive than having it right next to the property line, between his house and Ms. Hart's, and visible from the street. Ms. Slocum stated it is going to be behind the house either way, but it lines up more with the driveway closer to the property line. Ms. Slocum stated that having the cars in a closed garage would be more attractive and in keeping with the hamlet.

Noting that, when a variance is granted, it runs forever with the property, Board member Jeff Wimmer expressed concern that, even if Mr. Richwine had no intention to conduct a commercial business out of the garage, a subsequent owner might well do so given the kind of the structure Mr. Richwine was planning to build and equip. This would be a code violation (home occupations are prohibited in accessory structure in the Hamlet and no auto body shops can be on residential property), which then would become an issue for the code enforcement officer and the neighbors within the district. Furthermore, the residents that live there, who have property values that they would like to protect, are now saddled with this. The Zoning Board of Appeals is being asked to relieve a resident of the requirements of the code, and if it grants something that invites a problem for the community in the years to come, it has not fulfilled its responsibilities as Board members.

In response to inquiry by Mr. Richwine, Chairperson Jane Smith, Board member Jeff Wimmer and Board Member Ilan Nilsen each stated that they had visited the property.

Board member Ilana Neilson commented that, at every meeting, there has been a change in the size and/or style of the garage that is being proposed. She expressed concern that it was difficult to make a proper determination without accurate or precise information.

Chairperson Jane Smith explained that, when granting an area variance, the board of appeals has the power to impose reasonable conditions and restrictions related to and incidental to the proposed use of the property to protect the neighborhood, and to mitigate the impact of the project on the community and on the integrity of the zoning law. In light of the expressed concerns of board members that the size of the proposed structure was out of proportion to other accessory structures in the Hamlet District and that an unreasonable increase in density would result from the proposed garage, and in light of Mr. Richwine's emphatic assertion that he intended to build a garage to his specifications in the area where a variance was not required if the requested variance were not granted, Chairperson Smith asked Mr. Richwine whether he thought it would be productive for the board to discuss and consider conditions limiting the size of the structure. Mr. Richwine confirmed that was not interested in a conditional variance: he would build elsewhere on the property if a building to his specifications within the setback was not permitted.

Chairperson Jane Smith noted a concern that granting of such a large garage in the Hamlet district would set a precedent: multiple owners might then submit applications to build large garages in the Hamlet district and next thing you know you won't have any trees or space left between buildings.

Chairperson Jane Smith asked for a motion to close the public hearing; such a motion was made by James D. Layton, seconded by Jeff Wimmer, and unanimously approved by the Board.

## **DECISION**

Chairperson Jane Smith enumerated the factors the Board must consider in making its determination:

***In making its determination, the ZBA shall take into consideration the benefit to the applicant if the Area Variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall also consider:***

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the Area Variance. Comments?***

Chairperson Jane Smith stated the proposed size and height have varied but the planned structure is two stories and considerably larger than other

accessory structures in the District, and it would produce an undesirable change in the neighborhood. Board member James Layton agreed, adding he could not make a determination unless there was an exact size and style presented to this board for consideration. Board member Jeff Wimmer stated the size would produce a density issue problem now and for the future.

**2. *Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an Area Variance. Comments?***

Board member Jeff Wimmer stated yes. Chairperson Jane Smith agreed: the owner stated numerous times that it could be built without a variance on a different part of his property.

**3. *Whether the requested variance is substantial. Comments?***

Board member Jeff Wimmer stated yes; Board member James D. Layton agreed and Chairperson Jane Smith stated it is 2/3rds or roughly 66%.

**4. *Whether the proposed Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Comments?***

Chairperson Jane Smith stated the detached structure could be larger than the main residence. Board member Ilana Nilsen states she was uncomfortable with the square footage of the proposed garage. Board member James D. Layton stated it would block the view and Board member Jeff Wimmer had concerns regarding the increased density of the Hamlet District.

**5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the Area Variance. Comments?***

Board member Ilana Nilsen stated yes; Board member Jeff Wimmer agreed, the property is small and if a smaller garage were proposed, it would make more sense.

Motion by Chairperson Jane Smith and seconded by Board member Jeff Wimmer to adopt the following resolution:

**Upon rehearing, the Town of Union Vale Zoning Board of Appeals reverses its previous determination (made at the June 1, 2016 Zoning**

**Board of Appeals meeting) and DENIES the request for a 10 foot side yard area variance for Chuck Richwine, 22 On the Green, Verbank, NY 12585.**

Resolution approved unanimously: the previous determination is reversed, and the variance is denied.

**ZITTEL, Bryan and Katie – 35 Patrick Drive, Lagrangeville, NY 12540.**

Requesting 3 area variances to construct an 26' x 34' (884 square foot) one floor accessory apartment in the RA3 district: (1) a 1.19 acre area variance (under § 210-56 B. (1)(a)[2], the minimum lot size required is 3 acres; the lot size is 1.81 acres); (2) an area variance to allow for 228 square feet of additional habitable floor area (under § 210-56 B. (1)(a)[3], an accessory apartment may not be more than 35% of total habitable floor area of principal dwelling); and (3) an area variance to allow for an additional 758 square feet to the 150 square foot maximum allowed under § 210-56 B.(1)(a)[4] for an extension to the existing foundation.

Chairperson Jane Smith opened the public hearing and the clerk read the legal notice into the record. Alternate Board Member John Hughes (having arrived at the meeting after the start of the rehearing of the Richwine matter and not having participated in that matter) joined the Board.

Mr. Rutledge (the father of applicant Katie Zittel) was present and, as authorized at the July 6 meeting, presented the application. He explained that he and his wife are retired and are going to be taking care of their grandchildren while their daughter and son in law work. The accessory apartment is planned for them.

Chairperson Jane Smith asked if any trees were going to be cut in order to construct this addition. Mr. Rutledge stated only the removal of a dead tree. He explained they are going to attach the 884 square foot accessory apartment with a breezeway from the main dwelling. Board member James Layton asked if the breezeway was going to have a full foundation, Mr. Rutledge stated it is going to be built according to the standards that George Kolb, the Building Officer states are required.

The question whether the breezeway would have a foundation was relevant to the third requested variance because, if so, then the applicants would be extending the existing foundation by more than the 884 square feet of the apartment; they would need to include the square footage of the breezeway in their application. After further discussion, the Chairperson concluded that the Code Enforcement Officer, George Kolb, would need to re-examine the matter and come to a determination as to whether the breezeway was to be included and, if so, recalculate the square footage of the variance needed for extending the foundation. Chairperson Smith proposed that the Board consider whether to grant

a variance in language broad enough that it could embrace the square footage of the proposed breezeway.

It was further discussed that, with respect to the variance for additional habitable floor area, the applicants appeared to be seeking more of a variance than they actually needed. The Code allows for an accessory apartment that is 35% of the “habitable floor area” of the principal structure. (“Habitable Space” is a term defined in Town Code §210-86.) According to the materials submitted, the principal structure is 2 stories 34.5’ x 32.3’ (for a total of at most 2228.7 square feet); assuming all of this is habitable, 35% of this is 780. The variance needed for a 884 square foot apartment would appear to be less than the 228 square feet requested. Again, the Chairperson pointed to the need for the Code Enforcement Officer to re-examine the submitted materials and determine the actual size of the variance required to accommodate the proposed project.

With no further questions, from the Public or Board members, Chairperson Jane Smith asked for a motion to close the public hearing; motion made by Jeff Wimmer, seconded by James D. Layton, and unanimously approved.

### **DECISION**

Chairperson Jane Smith enumerated the factors the Board must consider in making its determination:

***In making its determination, the ZBA shall take into consideration the benefit to the applicant if the Area Variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall also consider:***

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the Area Variance. Comments?***

Chairperson Jane Smith stated no it is within the setbacks and it could be considered an addition; Board member Jeff Wimmer stated no it is in the back of the house and it is not prominent.

- 2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an Area Variance. Comments?***

Chairperson Jane Smith stated no, it would be a separate unit from the daughter.

- 3. Whether the requested variance is substantial. Comments?***

Board member Jeff Wimmer stated yes, more so for the foundation area, Board member Jane Smith agreed.

**4. *Whether the proposed Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Comments?***

Chairperson Jane Smith stated no trees would be cut, except one dead tree; Board member James D. Layton agreed.

**5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the Area Variance. Comments?***

Chairperson Jane Smith stated it is self-created; Board member James D. Layton agreed.

Motion by Board member James D. Layton and seconded by Board member Board member Ilana Nilsen to adopt the following resolution:

**The Town of Union Vale Zoning Board of Appeals GRANTS** 3 area variances necessary in order for Bryan and Katie Zittel, 35 Patrick Drive, Lagrangeville, NY 12540, to construct an 884 square foot accessory apartment in the RA3 district: (1) a 1.19 acre area variance to the 3 acre requirement under § 210-56 B. (1)(a)[2]; (2) an area variance sufficient to allow for at most 884 square feet of additional habitable floor area under § 210-56 B. (1)(a)[3]; and (3) an area variance to the 150 square foot limitation on an extension of the existing foundation under § 210-56 B. (1)(a)[4] to allow for the construction of the 884 square foot accessory apartment and breezeway; the precise square footage needed with respect to the latter 2 variances is to be determined by the Code Enforcement Officer (who -- prior to issuing a building permit -- must (a) ascertain the habitable floor area of the existing dwelling, and then calculate 35% of that and subtract that amount from the habitable floor area of the 884 square foot apartment; and (b) determine whether the breezeway requires a foundation, and, if so, add that to 884 before subtracting the 150 square feet allowed under § 210-56 B. (1)(a)[4]).

**Conditions: Any occupant of the accessory apartment shall be a family member or relation to the family that resides in and owns the principal dwelling.**

Motion unanimously approved; variances granted.

**BULLS HEAD-OSWEGO MONTHLY MEETING – 4 N. Smith Road, Union Vale, NY.** Requesting a 1.621 acre area variance in order to subdivide a parcel

of land and to create a non-conforming lot containing a cemetery in the RD3 District.

Chairperson Jane Smith opened the public hearing and the clerk read the legal notice into the record.

Mr. Robert Frick was present representing the Bulls Head-Oswego Monthly Meeting application. Mr. Robert Frick clarified that the Monthly Meeting is requesting two variances: one to create a non-conforming lot in the RA3 district and an additional variance to allow that lot to have graves within 100 feet of the proposed lot line change. He explained that the existing parcel contains both a cemetery and an historic Meeting House. The applicant cannot afford to maintain the Meeting House, and estimated that approximately \$100,000 of repairs are needed to make the structure safe. The applicant intends to gift the Meeting House and surrounding land (.671 acres) to the adjoining property owners Israel and Burns to become part of their lot; in exchange, Mr. Israel has agreed to restore and maintain the Meeting House, and to allow the Monthly Meeting access for occasional meetings there. The applicant will continue to own that portion of the parcel (1.379 acres) on which the cemetery is situated.

Adjacent neighbors Richard Plambeck and Thomas Plass raised concerns regarding the continued maintenance and public access to the Meeting House. They noted the historical value of the building and the interest of visitors who, over the years, stop by see it. Mr. Plass suggested the possibility of neighbors raising the money necessary to maintain the Meeting House and/or purchasing it. Mr. Robert Frick stated that the Bulls-Head Oswego Monthly Meeting was approached by Mr. Israel and put considerable thought into this sale, and felt it was the best option to keep the Meeting House in its original condition.

Councilman David McMorris' interjected that he works for Mr. Israel, and made a phone call to Mr. Israel during the meeting; he assured the adjacent neighbors that Mr. Israel intentions are to merge the Meeting House with his property, restore and maintain the building, and keep it a historical site. Discussion ensued regarding whether the Board had the authority, or, if so, should exercise its discretion to impose any conditions on the contiguous landowner (or any property owner) to maintain the Meeting House as a historical structure.

Karen Snare, a member of the Meeting House and its cemetery committee, spoke about the history of the cemetery and the burials. She explained that the cemetery is active and the last burial was somewhere around the late 1900's. In response to a question by Board Member Ilana Nilsen as to the type of burials that take place, Ms. Snare stated that only cremated remains are buried in the cemetery. Ms. Snare also stated that there are existing graves about 10 feet from the proposed lot line on the side of the Meeting House.

With no further questions or comments from the public or Board Chairperson Jane Smith asked for a motion to close the public hearing, motion by James D. Layton, seconded by Jeff Wimmer, motion unanimously approved.

## **DECISION**

Chairperson Jane Smith enumerated the factors the Board must consider in making its determination:

***In making its determination, the ZBA shall take into consideration the benefit to the applicant if the Area Variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall also consider:***

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the Area Variance. Comments?***

Board member Jeff Wimmer stated the building will be maintained, Chairperson Jane Smith stated the potential owner will maintain the property.

- 2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an Area Variance. Comments?***

Board member James D. Layton stated no, the Oswego Monthly Meeting does not have the financial ability to maintain the Meeting House. Chairperson Jane Smith agreed.

- 3. Whether the requested variance is substantial. Comments?***

Chairperson Jane Smith stated it is already a non-conforming lot, Board member Jeff Wimmer agreed, it is only creating a lot line adjustment.

- 4. Whether the proposed Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Comments?***

Board member James D. Layton stated no, it is going to be maintained, Board member and Chairperson Jane Smith agreed, and stated no.

- 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the Area Variance. Comments?***

Chairperson Jane Smith stated it is self-created, due to not having the money to maintain the structure. Board member Jeff Wimmer stated yes, the situation, they don't have the money to sustain/maintain the property.

Motion by Board member James D. Layton and seconded by Board member Jeff Wimmer to adopt the following resolution:

**The Town of Union Vale Zoning Board of Appeals GRANTS two area variances for BULLS HEAD-OSWEGO MONTHLY MEETING – 4 N. Smith Road, Union Vale** to create a non-conforming lot containing a cemetery in the RD3 District: **(1)** a 1.621 acre area variance to create a non-conforming lot (in order to subdivide an existing non-conforming parcel in the RA3 District into two parcels -- a 1.379 acre parcel containing an existing cemetery, and a .671 acre parcel containing a historical Meeting House -- to further allow for the .671 acre parcel containing the Meeting House to be merged with a contiguous parcel currently owned by Israel and Burns); and **(2)** an area variance allowing the 1.379 cemetery parcel to maintain existing graves within the 100 feet of the newly created lot lines.

**Conditions:** No burials shall take place closer to any lot line than currently existing gravestones, memorial plats, and/or historical stoneways/stonewalls/barriers.

Motion unanimously approved; variance granted.

#### **REGULAR SESSION/ NEW BUSINESS**

None.

#### **OTHER BUSINESS**

None.

#### **NEXT MEETING**

The next regular meeting of the Zoning Board of Appeals is scheduled for **WEDNESDAY, September 7, 2016 at 7:30 p.m.**

The agenda will close on **August 17, 2016 at 12:00 NOON.** Items for consideration at the **September meeting** must be received by that date.

#### **ADJOURNMENT**

As there was no further business, a motion was made by Board Member Jeff Wimmer seconded by Board Member Ilana Nielson, and unanimously accepted by the Board, to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

*Joan E. Miller*

ZONING BOARD OF APPEALS CLERK

*Annexed documents: Public hearing notices, Poughkeepsie Journal for Richard Chuckwine, Bryan and Katie Zittel and Bulls Head-Oswego Monthly Meeting*