

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

**July 6, 2016**

Members Present: Chairperson Jane Smith, Dan Tuohy, Ilana Nilsen, and Jeff Wimmer

Member Absent: James Layton

**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 advised that there were two changes to the published Agenda: (1) At the applicant's request, rehearing to review the Board's determination granting the **Richwine** variance is scheduled for August 3, 2016; (2) Added as new business is the application of **Bulls Head-Oswego Friends Meeting** for a 1.621 acre variance in connection with the subdivision of cemetery property at 4 N. Smith Road.

**REVIEW / APPROVAL OF MINUTES**

Chairperson Jane Smith asked for a motion to approve the June 1, 2016 minutes as submitted by the clerk with two additions requested by Mr. Richwine [to be added as a separate paragraph on the bottom of page 2 after the paragraph ending in the word "storage"]:

"Mr. Richwine advised, and the secretary confirmed, that he contacted the Town to obtain signs and was told that the signs were not available because they were posted at other properties. Several Board members indicated that they had visited the property; others did not."

A motion was made by Board member Jeff Wimmer, and seconded by Board member Dan Touhy, to approve the minutes with the additions. The motion was unanimously approved.

Chairperson Jane Smith asked for a motion to approve the June 15, 2016 Special Meeting minutes as submitted by the clerk with one addition requested by Mr. Richwine [to be added in the middle of page 1 as an additional sentence at the paragraph ending in the word "properties"]: "Mr. Kolb's presentation was oral; it did not include any written materials."

A motion was made by Board member Jeff Wimmer, and seconded by Board member Ilana Nilsen, to approve the minutes with the addition. The motion was unanimously approved.

### **CORRESPONDENCE**

None.

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

#### **Paul Courtien, – 136 Oswego Road, Pleasant Valley, NY 12569.**

Requesting three area variances to construct an accessory apartment in the basement of a principal dwelling in the RA3 district: (1) a 2.2 acre area variance (under § 210-56 B. (1)(a)[2], the minimum lot size required is 3 acres; lot size is 1.08 acres); (2) an area variance to allow for 125 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; here, principal dwelling is 1896 square feet); and (3) an area variance to allow for an additional 130 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 welcomed Mr. Courtien and his father-in-law, Dennis Catalano, the building contractor. Mr. Courtien again confirmed that he is allowing Mr. Catalano to speak on his behalf on this application.

Mr. Catalano explained that the plan is to finish the garage and convert it to an accessory apartment and to extend the foundation out approximately 10 feet. As previously explained, the purpose for this is to create a living space for him and his wife who intend to help care for their grandchildren. He presented drawings illustrating the layout of the intended apartment and showing that the planned addition/alteration to the existing foundation is entirely in the back of the house and within the required setbacks. No trees will need to be cut down and there are no issues with contour of the land.

With no further comments or questions, Chairperson Jane Smith closed the public hearing.

### **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 expressed concern that an undesirable change in the character of the neighborhood would occur if accessory apartments are converted to rental units for non-family members and suggested conditioning any variance so as to limit habitation to family members of the owners who occupy the principal dwelling. Board member Jeff Wimmer agreed.

- 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?***

All Board members agreed that the applicant could not achieve the benefit sought without variances.

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

Board member Jeff Wimmer stated that the requested variances were substantial but the changes to the appearance of the residence would not be substantial because the alterations were to be in the back of the house and not clearly visible from the road.

- 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?***

No adverse physical or environmental impacts were identified, provided the alterations were in compliance with existing code (including Board of Health) requirements.

- 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?***

All agreed that the alleged difficulty was self-created.

Motion by Board member Jane Smith and seconded by Board member Dan Tuohy to adopt the following resolution:

**The Town of Union Vale Zoning Board of Appeals GRANTS the 2.2 acre variance, the 125 square feet of additional habitable floor area variance, and the additional 130 square feet for extension of the foundation for Paul Courtien, 136 Oswego Road, Pleasant Valley, NY 12569.**

**Conditions: Habitation of Accessory Apartment limited to family members of owners and occupiers of Principal Dwelling; Code Enforcement Officer certifies that all alterations are in compliance with all code requirements and required Board approvals including the Board of Health.**

Motion unanimously approved; variance granted.

**Spitzmiller, Christopher – 851 North Clove Road, Verbank, NY 12585.**

Requesting a use variance to allow the property to be used for a commercial pottery dish and plate production business, a purpose otherwise not allowed in the RD-10 District. The parcel adjoins 857 North Clove Road, a residential property owned and occupied by Mr. Spitzmiller.

Mr. Spitzmiller was present and presented the Board with additional information supporting his application. In addition to the materials previously submitted (as set forth in the minutes of the June 1, 2016 meeting), Mr. Spitzmiller provided the copies of the receipts backing up the summary of expenditures previously provided, and a letter from a real estate broker with attachments indicating, based on comparable properties on the market, that the value of the property as a residence is between \$225,000 to \$295,000.

Chairperson Jane Smith reviewed the showing necessary to grant a use variance:

“A use variance shall not be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.”

Chairperson Jane Smith noted that the parcel at issue is unique and the permitted uses limited. This parcel is only .53 acres. Permitted non-residential uses in the RD-10 District require at least 5 acres and up to 150 acres. Historically, the parcel did not have a residential use. An historic Union Vale Grange Hall is situated on the parcel and membership clubs are no longer permitted in the RD-10 District. Moreover, the parcel is directly across the street from land owned by the Town of Union Vale that is heavily used by the Town Highway Department; as indicated in the materials submitted by Mr. Spitzmiller from a local realtor, this diminishes the value of the property if converted to a residence and limits its potential rental income.

Chairperson Jane Smith noted further that Mr. Spitzmiller presented competent evidence demonstrating that he cannot realize a reasonable return on the property: He purchased the property in 2007 for \$165,000; its current assessed value is \$147,500. Beginning in 2014, he worked with the Union Vale Code Enforcement Officer to bring the building up to code and to refurbish the Grange Hall for use as a pottery studio. He also painted the exterior and landscaped the property so as to visually tie it to his residential property next door. He did so in good faith reliance on the Mr. Kolb's interpretation of the Code that the pottery studio on the property adjoining his residential property was a permitted accessory use to his residential use.

Including carrying costs Mr. Spitzmiller has invested a total of \$438,570.27 in the property. (Mr. Spitzmiller presented evidence showing that the estimated cost of converting the structure to a residence would be an additional \$116,300.) The estimated sales price of the property is only \$225,000-295,000, substantially less than what Mr. Spitzmiller has invested. Mr. Spitzmiller also presented evidence that the rental income one could expect from such a residence would be less than \$2000/month. Chairperson Jane Smith noted that, taking into account property taxes and miscellaneous expenses, if rented as a residence, this is not a reasonable return on the investment.

All Board Members agreed that the applicant cannot realize a reasonable return on the property, and that, given its location across the street from the Town Highway Department, its non-conforming size, and its historic use as a Grange Hall, the hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. All Board members also agreed that, in light of the unanimously expressed support of the neighboring landowners and the improvements Mr. Spitzmiller has made to the property, the requested use variance, if granted, will not alter the essential character of the neighborhood, and that the alleged hardship has not been self-created.

Chairperson Jane Smith proposed that the Board consider a number of conditions (including limiting the hours of operation) designed to insure that the

requested use variance will not alter the essential character of the neighborhood.

Betsy Mass, a neighbor at 2377 Clove Rd., spoke in support of the application. She praised Mr. Spitzmiller and the contribution he has made to the neighborhood by substantially improving the properties. She also expressed the view that there was no need to limit the hours of operation, especially given the fact that no limitations had been placed on a nearby mining operation.

After discussion among the Board regarding whether a limitation on the hours of operation was appropriate, and with no further comments, Chairperson Jane Smith closed the public hearing and offered the following resolution:

***“The Town of Union Vale Zoning Board of Appeals hereby acts as follows on the Application of Christopher Spitzmiller for use variance for 851 North Clove Road, Verbank, NY 12585:***

The Board finds that the applicable zoning regulations and restrictions have caused unnecessary hardship and grants the application requesting a use variance to allow the property at 851 North Clove Road to be used for a commercial pottery dish and plate production business with the following **conditions:**

- 1) The property owner must own and occupy a contiguous property;
- 2) The hours of operation are limited to weekdays from 8 a.m. to 6 p.m., and occasional weekend use between 8 a.m. and 6 p.m. not exceeding 16 hours of weekend use per month;
- 3) There shall be no more than 5 employees;
- 4) There shall be 5 parking spaces;
- 5) Pickups and deliveries may only occur during hours of operation;
- 6) There shall be no exterior signs;
- 7) There shall be no retail operations;
- 8) 113' of landscaped screening shall be maintained in front of the parking area;
- 9) The siding of building shall be maintained as clapboard and/or shingle;
- 10) Any trash receptacle shall be located on the interior and not the road side of the screening.”

Jeff Wimmer seconded the motion, and the Board unanimously approved.

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

**ZITTEL, Bryan and Katie** – 35 Patrick Drive, Lagrangeville, NY 12540.  
Requesting 3 area variances to construct an 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.

Mrs. Zittel was present and introduced her father, Bob Rutledge, as authorized to present the application. Mr. Rutledge explained that he and his wife have lived in the house since 1995 and recently sold the house to his daughter and son-in-law. The accessory apartment is planned for him and his wife. He reviewed the drawings and survey map attached to the application to show the location of the existing house and the proposed accessory apartment which would be attached to the house via a covered walkway.

With no further questions or comments Chairperson Jane Smith offered the below resolution:

***“The Town of Union Vale Zoning Board of Appeals hereby acts as follows on the Application of **Katie and Bryan Zittel**:***

1. *Accepts the Application for 3 area variances to construct an accessory apartment in the RA3 district: (1) a 1.19 acre area variance from the minimum lot size requirement; (2) an area variance to allow for 228 square feet of additional habitable floor area; and (3) an area variance to allow for an additional 758 square feet to the 150 square foot maximum allowed for an extension to the existing foundation.*
2. *Classifies the application as “Type II Action” under NYCRR Part 617.5 and as such, is precluded from environmental review under SEQRA.*
3. *Schedules a Public Hearing on the Application for **Wednesday, August 3, 2016 at 7:35 pm** and directs the secretary to provide timely notice thereof.*
4. *Advises the Applicant that all costs involved in notifying the Public shall be reimbursed to the Town of Union Vale.*
5. *Advises the Applicant that a visit to the premises may -or- may not be scheduled.”*

The motion was seconded by Dan Touhy and unanimously approved by the Board.

**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.

Mr. Robert Suter, a Trustee of Bulls Head-Oswego Monthly Meeting and authorized to act in the name of the Meeting, presented the application. He explained that the existing parcel contains both the cemetery and an historic Meeting House. The applicant can not afford to maintain the Meeting House and intends to gift it and surrounding land (.671 acres) to the adjoining property owners Israel and Burns to become part of their lot; the Meeting will continue to own that portion of the parcel (1.379 acres) on which the cemetery is situated (This new lot would be 1.621 acres less than the required 3 acres for a parcel in the RD3 District.)

Board Member Jeff Wimmer asked whether there was any guaranty that the grantees of the lot with the Meeting House would continue to maintain it as an historic structure. Mr. Suter indicated only their word, that the Meeting was trying to keep it simple. Chairperson Jane Smith called attention to Town Code § 210-56 D.(3)(a) which provides that a cemetery shall be allowed by special permit in any residential district provided that “No burial or memorial plats or building shall be located closer than 100 feet to any residential lot line.” She pointed out that, if there were any graves closer than 100 feet to the proposed subdivision lot line, an additional area variance would appear to be necessary. Board Member Ilana Nilsen suggested that, according to the deed, it appeared that two separate parcels may have been deeded (one containing the Meeting House and the other the cemetery); this raised the question whether a subdivision was actually necessary. Board Members Jeff Wimmer and Dan Touhy recommended consulting the Town Planner.

With no further questions or comments Chairperson Jane Smith offered the below resolution:

***“The Town of Union Vale Zoning Board of Appeals hereby acts as follows on the Application of **Bulls Head-Oswego Monthly Meeting**:***

- 1. Provisionally accepts the Application for a 1.621 acre area variance to subdivide an existing parcel and create a non-conforming lot in the RA3 district; gives the applicant an opportunity to amend the application by July 17 to include the request for an additional area variance to allow for graves within 100 feet of the proposed lot line; and recommends consulting with the Town Planner;*



2. *Classifies the application as “Type II Action” under NYCRR Part 617.5 and as such, is precluded from environmental review under SEQRA.*
3. *Schedules a Public Hearing on the Application for **Wednesday, August 3, 2016 at 7:45 pm** and directs the secretary to provide timely notice thereof.*
4. *Advises the Applicant that all costs involved in notifying the Public shall be reimbursed to the Town of Union Vale.*
5. *Advises the Applicant that a visit to the premises may or may not be scheduled.*

The motion was seconded by Dan Touhy and unanimously approved by the Board.

### **OTHER BUSINESS**

None.

### **NEXT MEETING**

The next regular meeting of the Zoning Board of Appeals is scheduled for **WEDNESDAY, August 3, 2016 at 7:30 p.m.**

The agenda will close on **July 20, 2016 at 12:00 NOON**. Items for consideration at the **August meeting** must be received by that date.

### **ADJOURNMENT**

As there was no further business, a motion was made by Board Member Jane Smith, seconded by Board Member Jeff Wimmer, and unanimously accepted by the Board, to adjourn the meeting at 9:30 p.m.

Respectfully submitted,

*Joan E. Miller*

ZONING BOARD OF APPEALS CLERK

*Annexed documents:*