

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

June 1, 2016

Members Present: Chairperson Jane Smith, Dan Tuohy, James D. Layton, Ilana Nilsen, Jeff Wimmer and Alternate member John Hughes

Member Absent: none.

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 confirmed the Agenda would stand as published.

REVIEW / APPROVAL OF MINUTES

Chairperson Jane Smith asked for a motion to approve the May 4, 2016 minutes as submitted by the clerk; after Board member Ilana Nilsen noted the need for a correction on page 3, paragraph six, line one, changing “all” to “most” “neighbors”, a motion was made by Board member Dan Tuohy, seconded by Board member James D. Layton to approve the minutes with the correction. The motion was approved, with Board member Jeff Wimmer abstaining.

CORRESPONDENCE

The clerk advised that correspondence was received relating to the Richwine application and would be read when that application was addressed.

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

RICHWINE, CHUCK, 22 On-The-Green, Verbank, NY 12585. Requesting a 10-foot side yard area variance to construct a detached garage in the Hamlet District which requires a 15-foot side yard variance.

Mr. Richwine and his son were present.

Chairperson Jane Smith noted that this was not continuation of the public hearing, but, rather a continued deliberation among the ZBA Board members after the close of last month’s public hearing.

Chairperson Jane Smith noted that seven letters were received on behalf of Mr. Richwine's application by adjacent neighbors -- Mr. Robert Danserau (50 On the Green), Sharon Slocum (32 On the Green), Ron Cardinal, (28B On the Green), Leonard Totten (21 On the Green), two letters from Arlene Hart (24 On the Green), and Brett Bohlinger (25 On the Green) -- and that all of the letters were in support of Mr. Richwine's variance request.

Chairperson Jane Smith asked the clerk to explain to the Board the findings of research she conducted at the request of the Board at the last meeting regarding properties located On-the-Green, within the Hamlet District, with detached garages. The clerk explained that, according to the Town of Union Vale Assessor's office and Building Department files, three properties with garages within 10 feet of the side yard setbacks were constructed in the 1900's (i.e., before zoning); one garage was constructed in 2014 and was not within the required setback. All of the garages were two bay garages, single story structures.

Chairperson Jane Smith pointed to the limits set forth in Code sections 210.17 A. (3) and (5) regarding the placement and floor area of an accessory structure: the accessory structure must be at least 12 feet from principal dwelling or the height of the accessory structure whichever is greater; and the aggregate floor area of all accessory structures on property must be less than floor area of principal dwelling or 1500 sq. feet whichever is more restrictive. According to the Town of Union Vale Assessor's card, the principal dwelling is 1484 square feet.

Chairperson Jane Smith expressed concern that neither the height of the proposed garage, the expected floor area of the structure and other accessory structures on the property, nor the exact distance between the proposed garage and principal dwelling could be determined from the maps/drawings that were provided by the applicant; Board member Ilana Nilsen agreed. Board member James Layton submitted that the limitations set forth in section 210.17 A. (3) and (5) would be enforced by the Code Enforcement Officer when issuing any building permit or certificate of occupancy.

Board member Jeff Wimmer expressed his concern regarding the size of the proposed garage and its size relative to the size of the principal dwelling. Board member Ilana Nilsen questioned the applicant as to the intended use of the second story; Mr. Richwine stated it would be used for storage.

Chairperson Jane Smith turned to 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 regarding the size of the proposed structure and its placement in relation to the property line, but noted that the numerous neighbors who submitted letters all supported the application and no neighbor had voiced opposition; Board member Jeff Wimmer agreed that the size of the proposed garage is concerning, especially considering that it is in the Hamlet District.

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 noted that the applicant clearly stated at the last meeting that he could build the garage in the middle of his yard, in which case a variance would not be required, but that he preferred the placement in line with the existing driveway; Board members James Layton and Ilana Nilsen agreed that the garage could be built without a variance.

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

Board member Jeff Wimmer stated yes, Board member James Layton 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?*

Board member Ilana Nilsen stated the size of the proposed garage is larger than the others in the neighborhood, and the Hamlet district is more restrictive to keep it quaint.

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 Jeff Wimmer agreed. Board member James Layton stated that it could be moved to another location on the property that did not require a variance.

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

The Town of Union Vale Zoning Board of Appeals GRANTS the 10 Foot Side yard area variance for Chuck Richwine, 22 On the Green, Verbank, NY 12585.

Conditions: None

3 Board members voted to adopt, 2 Board members voted no. Motion passed; variance granted.

OWUSU, George, 242 Mennella Road, Poughquag, NY 12570. Request for a 22-foot side yard area variance to construct a "Tennis Court" in the R1 district.

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

The clerk stated that she received a visit from Mr. and Mrs. Cerchiara, an adjacent neighbor of Mr. Owusu, that they were both in full support of the granting of this variance, for Mr. Owusu is an outstanding neighbor and has done nothing but good things to his property since he moved there a couple of years ago.

Board member Ilana Nilsen asked the clerk to verify which side of the applicant's property the Cerchiaras were on, the clerk verified they are to the East.

Mr. Merchan, the applicant's representative, was present and approached the Board to describe what he is proposing.

Mr. Merchan explained that the court placement is so close to the property line because the rear of the property slopes significantly and a lot of fill would be required to bring it up level; approximately 10 feet high of fill would be required and a lot of trees would have to be cut in order to put the tennis court in the rear.

Chairperson Jane Smith asked if any trees are going to be cut down. Mr. Merchan showed the Board pictures of the location of the tennis court and explained that no trees would be cut. The location is surrounded by trees on three sides of Mr. Owusu's property.

Board member Ilana Nilsen asked if there are going to be any lights installed. Mr. Merchan stated yes, they will be installed at the top of the 10' high fencing, they will be aimed down onto the court surface.

Alternate Board member John Hughes asked about the drainage off the concrete surface of the court and where the water will be discharged. Mr. Merchan explained that there will be four drains, two located at the middle of the court on the sides that will be connected to two drains the rear of the court, where they will

be discharged onto the rear of Mr. Owusu's property, which is sloped downward and consists of trees.

With no further questions or comments from the public, Chairperson Jane Smith made the motion to close the public hearing, seconded by James D. Layton and unanimous vote of the board members present.

DECISION

OWUSU, George, 242 Mennella Road, Poughquag, NY 12570. Request for a 22-foot side yard area variance to construct a "Tennis Court" in the R1 district.

Chairperson Jane Smith read and the Board considered the following standards for determining the application:

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 no, Board member Ilana Nilsen agreed. Chairperson Jane Smith stated one neighbor was supportive with this request and stated the improvements that Mr. Owusu has made on his property have made it "beautiful".

- 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": not only is the property sloped and, therefore, the amount of fill that would be required to level up the sloped area substantial and costly, but also, trees would need to be cut to place it in the area not requiring a variance. Board member Dan Tuohy agreed.

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

Chairperson Jane Smith stated "yes", Board member James D. Layton agreed, it is substantial in relation to the percentage asked is over 50% of the required setback.

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 Ilana Nilsen noted that if the water drainage is not discharged properly, it could run off onto adjacent properties.

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 yes; Board member James D. Layton agreed.

A Motion was made by Chairperson Jane Smith and seconded by Board member James D. Layton to adopt the following resolution:

The Town of Union Vale Zoning Board of Appeals GRANTS the 22 Foot Side yard area variance for George Owusu, 242 Mennella Road, Poughquag, NY 12570.

Conditions: Town of Union Vale CEO inspect that proper drainage discharge is implemented and adhere to Town Code “lighting” requirements on outside lighting.

5 Board members voted to adopt. Motion passed; variance granted.

REGULAR SESSION / NEW BUSINESS

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

Requesting a 2.2 acre area variance to construct an accessory apartment in the basement of a principal dwelling in the RA3 district. (Minimum lot size required is 3 acres; lot size is 1.08 acres)

Chairperson Jane Smith welcomed Mr. Courtien and his father-in-law, Dennis Catalano, the building contractor. Mr. Courtien confirmed that he is allowing Mr. Catalano to speak on his behalf on this application. The application was amended to have Mr. Courtien’s name on the cover, not Mr. Catalano’s.

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. Mr. Catalano explained that the purpose for this is so that he and his wife will be living in this apartment to help his daughter and son-in-law care for their children.

Board member James D. Layton asked how big is the addition going to be, Mr. Catalano explained the total square footage they plan on living in is 800 square feet finished area. Chairperson Jane Smith pointed to Code sections 210-56 B. Residential accessory uses (1)(a) 3&4: The proposed accessory apartment cannot exceed 35% of the total square footage of the principal dwelling or 1,000 square feet, whichever is more restrictive; and the extension of the foundation cannot exceed 150 square feet. Here, the principal dwelling is 1896 square feet, so the accessory apartment may be only 663.6 square feet. Since the proposed apartment will be 800 square feet and the proposed extension of the foundation according 280 square feet, it appears that 2 additional variances (for the total square footage of the apartment and the square footage of the addition) would be required.

Mr. Catalano stated he was not told that when he met with George Kolb, he thought he only needed a variance for the acreage.

After further discussion among the Board members, it was decided that the application ought to be amended to include the above stated two additional variances so that the applicant would not need to come back for them. Chairperson Jane Smith also asked the clerk to direct these findings to George Kolb, Zoning Administrator to include them on a Zoning determination letter.

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 Paul Courtien, – 136 Oswego Road, Pleasant Valley, NY 12569:

- 1. Provisionally Accepts the Application for a 2.2 acre area variance, subject to its amendment to include requests for additional variances regarding limits on the habitable floor area of the accessory apartment and the extension of the foundation area of the dwelling.*
- 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, July 6, 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.*

Spitzmiller, Christopher – 857 North Clove Road, Verbank, NY 12585.
Requesting a Use variance to allow a pottery business in the RD10 District.

Mr. Spitzmiller, who had been before the Board previously with an application for an area variance and request for an interpretation (see Minutes of December 2, 2015, and April 2, 2016), was present and presented the Board with additional information supporting his application. In addition to the personal letter of explanation, a survey map, an opinion letter from a real estate broker, supporting letters from neighbors, a copy of an article about his pottery business in Architectural Digest, and a proposal for work that were attached to his application, Mr. Spitzmiller provided a copy of the deed of the property, and a detailed listing showing the cost of the improvements that he has already done to the property to date, the estimated costs of turning the structure on the property to a residential dwelling, and the substantial financial losses he would expect if a use variance were not granted. The clerk received copies for the record.

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 Christopher Spitzmiller, 857 North Clove Road, Verbank, NY 12585:

1. *Accepts the Application for a Use Variance to conduct a pottery business in the RD10 District.*
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, July 6, 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.*

Mr. Spitzmiller stated that Mondays work well for him if a site visit was to take place and welcomed the Board members to visit.

Theohary, Holly – 427 Waterbury Hill Road, Lagrangeville, NY 12540.
Requesting a use variance to waive required blacktopping of a driveway that exceeds the 8% maximum grade allowed by Town Code Driveways subsection 111-8 (m), in the RA3 district.

Mrs. Theohary explained that her house burned down approximately two years ago, and now she is ready to rebuild on the same foot print foundation. When she went to the Building department to get a permit, she was told that the driveway exceeds the 8% grade, and it would need to be paved. She explained that she cannot afford to pave the driveway with blacktop, and is proposing to use Item 4 on the driveway.

Board member James D. Layton explained that the County apron needs to be paved 26' in from the County Road, and the grade needs to be 3% +/- . Mrs. Theohary explained she knows that and that will be done, but she is asking that the whole driveway not be required to be blacktopped.

Chairperson Jane Smith was not sure if this would be a use or area variance, and questioned whether it might be a Code Enforcement/Building Office requirement / issue, not a Zoning Board of Appeals concern. Chairperson Jane Smith directed the clerk to notify George Kolb, Town of Union Vale Code Enforcement/Building Officer and ask Mr. Kolb to contact Town Counsel for determination on this.

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 **Holly Theohary, 427 Waterbury Hill Road, Lagrangeville, NY 12540.**

- 1. Provisionally Accepts the Application for a variance to waive the blacktopping of a driveway that exceeds the 8% maximum grade allowed by Town Code Driveways subsection 111-8(m) subject to advice from Counsel as to type of variance.*
- 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, July 6, 2016 at 7:50 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.*

OTHER BUSINESS

None.

NEXT MEETING

The next regular meeting of the Zoning Board of Appeals is scheduled for **WEDNESDAY, July 6, 2016 at 7:30 p.m.**

The agenda will close on **June 22, 2016 at 12: 00 NOON**. Items for consideration at the **July meeting** must be received by that date.

ADJOURNMENT

As there was no further business, a motion was made by Board Member James D. Layton, seconded by Board Member Dan Tuohy 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: Poughkeepsie Journal public hearing notices for Chuck Richwine and George Owusu; Letters from Robert Dansereau, May 20, 2016; Sharon Slocum, May 6, 2016; Ron Cardinal, May 8, 2016; Leonard Totten, May 7, 2016; Arlene Hart, April 23, 2016 and May 13, 2016; Brett Bohlinger, May 20, 2016; Assessor's Records re On The Green properties.