

DRAFT COPY

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

September 12, 2018

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

Member Absent: Board member John Hughes and Jeffrey Wimmer

Others present:

CALL TO ORDER / DETERMINATION OF QUORUM

Chairperson Jane Smith determined that there was a quorum to conduct business and called the meeting to order.

BUSINESS SESSION

- Review the Agenda
- Minutes

Chairperson Jane Smith made a motion to defer the August 7, 2018 Regular meeting minutes and the August 17, 2018 Special meeting minutes until the October 2, 2018 meeting, seconded by Board member Dennis Dunning; approved unanimously.

CORRESPONDENCE

Chairperson Jane Smith stated that three letters were received: two referencing the Ritter variance (from John and Loretta Ryan, dated September 4, 2018 and September 10, 2018) and one letter received September 5, 2018 from Charles Richwine referencing the Wiemer variance.

PUBLIC HEARING(S)

Robert Ritter, 29 N. Parliman Road, Lagrangeville, NY 12540, TMP # 6660-00-515845: Requesting a 363 square foot floor area variance for an addition adding on to an existing barn, that has existed over 10 years, for conversion into an “accessory detached apartment” exceeding the maximum allowable square footage addition of 100 square feet to an existing footprint in the RA3 zoning district, as per zoning determination dated July 16, 2018.

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

Chairperson Jane Smith read the letters of correspondence from John and Loretta Ryan, dated September 4, 2018 and September 10, 2018 into the record.

Chairperson Jane Smith explained that there had been some discussion between Board members as to whether this was a permitted use in the RA3 zoning district. After researching the code and finding the updated pages, it was determined that it was a permissible use in the RA3 zoning district according to the latest revision of Schedule of Bulk regulations dated 2017.

Mr. Ritter was present representing himself. Mr. Ritter briefly explained his project to the Board and the public.

Mr. Ritter addressed the concerns that were noted in Mr. Ryan's letters. He stated that he and Mr. Ryan are good neighbors and wanted to continue that relationship. Mr. Ritter further explained that his intentions for this project are for his mother to move into the accessory dwelling, for she is 81 years old and needs care that he and his wife intend to provide her.

Mr. Ritter stated that he does not intend to utilize the dwelling as an "Airbnb", but questioned if this is something that the Town should look at as a whole and not a condition that should be imposed only on him since there is nothing in the code that restricts him to rent out a room for Airbnb in his principle dwelling.

Mr. Ritter stated he is willing to provide screening to the adjoining property owned by the Ryans. Mr. Ritter stated that Mr. Ryan already has some conifer trees lining the property line, where this addition is being proposed, and Mr. Ritter thought it would be nice to plant some shorter more dense woody type of a shrub.

Chairperson Jane Smith, referencing a section of the code that states the accessory dwelling cannot be more than 35% of the habitable space of the principle dwelling unit, asked for the square footage of the principle dwelling. Mr. Ritter stated his house is just over 4,000 square feet. Chairperson Jane Smith noted that this accessory dwelling will be below 35% of that (or 1400 square feet).

With no comments from the public, Chairperson Jane Smith asked for a motion to close the public hearing. Motion by Board member Ilana Nilsen, seconded by Board member Dennis Dunning; unanimously approved.

Kristopher Schmitt, 49 Brookside Lane, Lagrangeville, and NY 12540 TMP # 6661-00-645079: Requesting an 11' 10" rear yard area variance to install an in-ground pool in the RA3 zoning district, as per zoning determination letter dated June 27, 2018.

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

Mr. Schmitt submitted a letter from a neighbor, Mr. James and Susan O'Connell in favor of the project. Chairperson Jane Smith read the letter dated 9/12/2018.

Mr. Schmitt was present representing himself. Mr. Schmitt briefly explained the project to the Board and public. Mr. Schmitt displayed four pictures of the proposed project depicting pool and landscaping.

Board member Ilana Nilsen asked if Mr. Schmitt had a copy of the subdivision map that his property is located in. Mr. Schmitt stated "no".

Mr. Schmitt stated that his property adjoins a subdivision "greenway" in the rear of his property that will never be developed. Chairperson Jane Smith asked for the number of properties in the subdivision that share this "greenway", and Mr. Schmitt answered approximately 29 homes.

Board member Ilana Nilsen asked what the boulders in the pictures are and how far are they from the property line. Mr. Schmitt stated that the boulders are landscaping rocks that are hiding a walkway and slide that are part of the pool and they are approximately five feet from the property line. Mr. Schmitt stated that there is a fence that will surround the property that is four feet high, but the property slopes upward toward the "greenway" where the fence will be, therefore the fence will be at a higher elevation and does not need to higher height.

With no further questions, Chairperson Jane Smith made the motion to close the public hearing; motion seconded by Board member Dennis Dunning and unanimously approved.

Adam Wiemer, 3406 Route 82, Verbank, NY 12585, TMP # 6663-20-876091:

Requesting a Use variance in order to legalize a mutil-family dwelling in the Hamlet District, as per zoning determination letter dated April 30, 2018.

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

Mr. Wiemer stated the he would like to correct the address for the record, it is 3406 Route 82, not 27 Verbank Club Road, Verbank, NY.

Chairperson Jane Smith read from the New York State Law the requirements for a use variance to Mr. Wiemer, which are:

- 1. That under the application regulations and restrictions imposed by this chapter the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by the 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 district or neighborhood.**
- 4. The alleged hardship has not been self-created.**

Chairperson Jane Smith asked Mr. Wiemer if he understood the New York State Law requirements for a use variance, and Mr. Wiemer replied “yes”.

Mr. Wiemer handed out to the Board members and the clerk for the record a single page with financial information that he created.

Chairperson Jane Smith asked when Mr. Wiemer purchased the house and for how much. Mr. Wiemer stated he purchased it October, 2015 for \$220,000. Chairperson Jane Smith asked if there is a mortgage on the property and what is the interest rate. Mr. Wiemer stated that the previous owner is holding a \$200,000 mortgage/note and the interest rate is 5.5%.

Mr. Wiemer stated that he has the 1999 Electric inspection certificates that show that Mr. Wade changed the electric meters over to four meters, three for the tenants and one for the landlord.

Board member Dennis Dunning asked Mr. Wiemer if the owner knew that the three family was not legal, Mr. Wiemer stated “yes”.

Board member Ilana Nilsen asked if Mr. Wiemer purchased the property without a certificate of occupancy; Mr. Wiemer stated “I didn’t know”.

Board member Ilana Nilsen asked how many other multifamily dwellings are there On the Green; Mr. Wiemer stated two or three are currently multifamily.

Chairperson Jane Smith asked what the assessment and taxes is based on, a three family or two family; Mr. Wiemer stated two family.

Chairperson Jane Smith then asked for any comments from the public.

Mr. Charles Richwine, a neighbor of Verbank, stated that he wrote a letter in support of this application, stating that this property has been a three family home for over 30 years. According to Mr. Richwine, since Mr. Wiemer purchased the property, he has been doing repairs to the property and the property is well kept. He expressed support of this application.

Ms. Sharon Slocum, On the Green, Verbank, NY, stated that she lived in the residence in 1988, and even then it was a three family and has been ever since. She stated that the building’s original owner ran a general store out of it, and lived in it, then it was converted into a three family once the store closed, though she did not recall what date

that was. Ms. Slocum stated that Mr. Wiemer is a hard worker and maintains the property much better than the previous owner.

Mr. Ritter stated that he is not a neighbor of Verbank, but does reside in Union Vale, and expressed support of this project.

With no further comments from the public, Chairperson Jane Smith made a motion to continue the public hearing until the October 2, 2018 meeting, so that the Board may confer with legal counsel regarding whether, given the length of time that this has been a three family dwelling, this is a grandfathered legal nonconforming use in the Hamlet District. Motion seconded by Board member Ilana Nilsen; approved unanimously.

PUBLIC HEARING(S) DECISION OF PUBLIC HEARING:

Robert Ritter, 29 N. Parlman Road, Lagrangeville, NY 12540, TMP # 6660-00-515845: Requesting a 363 square foot floor area variance for an addition adding on to an existing barn, that has existed over 10 years, for conversion into an “accessory detached apartment” exceeding the maximum allowable square footage addition of 100 square feet to an existing footprint in the RA3 zoning district, as per zoning determination dated July 16, 2018.

Chairperson Jane Smith read and the Board considered the following standards for interpretation and accepting/denying the area/use variance 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?*

Chairperson Jane Smith stated it is consistent with the character of the neighborhood and is not a detriment. Board member Ilana Nilsen stated that there will be no further subdivision of the land.

- 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 that it will make use of a separate dwelling rather than adding onto the principle dwelling, while the owner has stated that he and his mother would prefer to live in separate dwellings.

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

Chairperson Jane Smith stated “yes”, 363 square feet is substantial, Board member Ilana Nilsen and Board member Dennis Dunning 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 none have been identified. Board member Dennis Dunning agreed, noting it is planned for a family member not transients, Board member Ilana Nilsen agreed, stating that it would be used for an immediate family member.

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” it is self-created, Board member Dennis Dunning agreed.

Upon motion of Chairperson Jane Smith, seconded by Board member Ilana Nilsen, the Board unanimously approved the following resolution:

The Town of Union Vale Zoning Board of Appeals GRANTS the 363 square foot area variance for **Robert Ritter, 49 N. Parliman Road, Lagrangeville, NY 12540, TMP # 6660-00-515845** with the following conditions:

- 1) Applicant shall provide (and no certificate of occupancy will be granted without applicant’s having provided) a **screening natural privacy fence** landscaped privacy screen for a span of 60-75 feet **centered on the line of sight between along the property border beside the proposed addition to screen the proposed structure from the and the adjacent landowner’s home** on the southern side of the property. The **screening natural landscaped privacy screen privacy fence** shall consist of mixed and staggered plantings of **shrubs that provide increased privacy as they mature (e.g. forsythia) and conifer trees, specifically a combination of spruces or and firs**; and
- 2) The proposed detached accessory apartment shall strictly adhere to the definition of “dwelling unit” as set forth in the Town Code at 210-86; and
- 3) This variance is contingent on the grant of a Special Use permit for an accessory apartment by the Planning Board

pursuant to Town Code 210-56B(2).¹

Kristopher Schmitt, 49 Brookside Lane, Lagrangeville, and NY 12540 TMP # 6661-00-645079: Requesting an 11' 10" rear yard area variance to install an in-ground pool in the RA3 zoning district, as per zoning determination letter dated June 27, 2018.

Chairperson Jane Smith read and the Board considered the following standards for interpretation and accepting/denying the area/use variance 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 Ilana Nilsen stated "no". Chairperson Jane Smith stated "no", there is a greenway space bordering the property and there will be a fence.

- 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 the slope of the land prohibits its being put somewhere else on the property. Board member Ilana Nilsen stated that it could not be put in the front yard.

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

Chairperson Jane Smith stated "yes," though the property has an odd configuration in that the house is placed in the rear of the lot; Board members Ilana Nilsen and Dennis Dunning 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?*

¹ When the Zoning Board Appeals voted to grant the variance, there was confusion as to whether an accessory apartment within a nondwelling structure was permitted in the RA3 District, and the grant was made contingent on clarification of that issue. As amended on 8-15-2013 by L.L. No. 2-2013, ~~the~~ §210-56 B(2) of the Town Code provides that such accessory apartments are allowed by special permit in the RA3 District.

Board member Ilana Nilsen stated “no” it shouldn’t, Board member Dennis Dunning stated “no” and Chairperson Jane Smith stated land is being leveled and there are no trees involved.

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” and Board member Ilana Nilsen agreed.

The Town of Union Vale Zoning Board of Appeals GRANTS the 12 foot rear yard area variance for Kristopher Schmitt, 49 Brookside Lane, Lagrangeville, and NY 12540:

Conditions: No

Motion: Chairperson Jane Smith
Second: Board member Ilana Nilsen
All in favor: 3 Aye, 0 Nay

REGULAR SESSION / NEW BUSINESS/ OTHER BUSINESS

None.

ADJOURNMENT

As there was no further business, a motion was made by Board member Jane Smith, seconded by Board member Dennis Dunning, and unanimously accepted by the Board, to adjourn the meeting at 10:00 p.m.

The next regular meeting of the Zoning Board of Appeals is scheduled for **WEDNESDAY, October 2, 2018 at 7:30 PM.**

The agenda will close on **September 18, 2018 at 12:00 Noon.** Items for consideration at the **October** meeting must be received by that date.

Respectfully submitted,

Jean E. Miller

ZONING BOARD OF APPEALS CLERK

*Annexed documents:
Public hearing notices for Ritter, Schmitt and Wiemer – Poughkeepsie Journal*