

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

**February 4, 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 pieces of correspondences were received, one from Dutchess County Planning with respect to the 239 referral for the Town of Union Vale Fire District sign variances dated December 17, 2019, and one email from Town Engineer, Thomas Harvey, received February 4, 2020, regarding the Verbank Deli.

**BUSINESS SESSION**

Chairperson Jane Smith offered three amendments to the January 7, 2020 regular meeting draft minutes, which she noted and gave to the clerk. Motion by Board member Ilana Nilsen to accept minutes as amended, seconded by Board member Michael McPartland; unanimously approved.

Chairperson Jane Smith stated the Union Vale Fire District will be moved to the last item on the agenda.

**PUBLIC HEARINGS:**

**MOVED TO LAST ITEM ON AGENDA**

**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.

**JAMES & ERMINIO BISCEGLIA**  
**3141 N. Clove Road**  
**Verbank, NY 12585**  
**TMP # 6662-00-924685**

**MEETING -**  
**21' side yard**  
**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 made the motion to open the public hearing. Mr. Bisceglia present and made a brief presentation to the Board and public. Mr. Bisceglia explained that he is seeking a certificate of occupancy for the garage that has an accessory apartment in it, and after meeting with the Building inspector, he was informed that he needed a variance because the location of the garage is within the setback; he also is pursuing a special use permit from the Planning Board. He stated that he and his father put the apartment in approximately 10 years ago to help supplement his father's income, but they didn't realize it required a variance and permit until he tried to obtain a c/o from the Building inspector. The well is shared, but the main house on the property and the apartment, which is located in the detached garage, have separate septic systems. Mr. Bisceglia stated that he is in the process of obtaining Board of Health approval for the garage septic.

Board member Ilana Nilsen asked when was the garage built, and what was the garage used for before part of it was converted into an apartment. Mr. Bisceglia stated it was built in the 1940's originally as a firehouse, then it was utilized as a horse barn, then after the applicants purchased it, they cleaned it out and used it as a garage and accessory apartment.

Chairperson Jane Smith asked Mr. Bisceglia to address the factors that the Board considers when making its decision.

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?

Mr. Bisceglia stated:

There would be no change to the character of the neighborhood for the footprint hasn't changed, it is within the same building, and there is no expansion.

Everything is existing and they could not obtain a certificate of occupancy without variance.

The building is pre-existing; it was built before zoning setbacks were in place.

The septic will be updated and will get Board of Health approval.

The alleged difficulty was self-created; Mr. Bisceglia and his father built the apartment but did not know it needed a special use permit or variance.

Board member Ilana Nilsen asked how the apartment will be accessed. Mr. Bisceglia stated it can be accessed by the driveway, through the garage door or he will be putting another exterior door in from the outside, whatever George Kolb, Building Inspector advises is required.

With no further questions from the Board or the public, Chairperson Jane Smith made the motion to close the public hearing, seconded by Board member Ilana Nilsen; passed unanimously.

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

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

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

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 Michael McPartland stated there won't be any change; Board member Ilana Nilsen 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?*

Chairperson Jane Smith stated it is existing, and can't obtain a c/o from the Building department without a variance; Board member Michael McPartland agreed, can't have a sale of the property with accessory apartment, unless apartment is legalized.

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

Board member Jane Smith stated it is "medium", little more than half the required setback; 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 “no”; Board member Michael McPartland 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?*

Board member Dennis Dunning stated “yes” it is self-created, the applicant stated that; Chairperson Jane Smith and Board member Michael McPartland agreed.

**The Town of Union Vale Zoning Board of Appeals GRANTS** the following:

A 21 foot side yard area variance, to legalize a pre-existing garage to obtain a certificate of compliance for an existing apartment for James Bisceglia, 141 N. Clove Road, Verbank, NY 12585.

**Conditions:** None

***Motion: Chairperson Jane Smith;  
Second: Board member Ilana Nilsen***

***4 Ayes, motion carried.***

**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.

Michael McPartland recused himself from voting on this application.

Chairperson Jane Smith explained that this meeting is a continuation from the January 7, 2020 meeting regarding the State Environmental Quality Review (SEQR) process. At the January 7, 2020 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 referred to the amendments to the draft of the January 7, 2020 minutes to include hyperlinks to materials referenced during that meeting.

Additionally, the below links are being added to the record:

<https://www.sciencedaily.com/releases/2014/10/141007103102.htm>

[Small spills at gas stations could cause significant public health risks over time -- ScienceDaily](#)

A new study suggests that drops of fuel spilled at gas stations — which occur frequently with fill-ups — could cumulatively be causing long-term environmental damage to soil and groundwater in ...

[www.sciencedaily.com](http://www.sciencedaily.com)

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<https://www.cnn.com/2002/US/12/05/gas.pump.fires/index.html>

[CNN.com - Little-known dangers at gas pumps - Dec. 6, 2002](#)

Few American motorists know that static electricity around gas pumps can ignite a deadly fire.

[www.cnn.com](http://www.cnn.com)

Chairperson Jane Smith stated that she received a comment letter from the Town Engineer, Thomas Harvey; she gave a copy to Mr. Caruso, who stated that he will try to answer some of the questions, and will forward this to Mr. Scott, the Engineer for the project, to comment back to the Board. Mr. Caruso gave the Board a traffic study, which he received February 4, 2020, from Mr. Scott. Chairperson Jane Smith stated that the Board had not previously received the study and will need additional time to review it.

Town Attorney, James Nelson, noted that, at the last meeting, the applicant indicated that they were going to submit an amended EAF, which has not been submitted yet; some of the Town Engineer's comments are directed at the questions on the EAF that were going to be amended. Further discussion continued about the EAF questions, particularly with respect to the question whether the proposed action is a permitted use under the zoning regulations and whether it is consistent with the comprehensive plan; applicant & Mr. Caruso have a different point of view than the Board. Mr. Nelson concluded it may be a matter of interpretation.

Board member Ilana Nilsen asked what the hours of operation would be. Dawn Ghannan replied 5:30 am – 9 pm; it will not be a 24-hour/day operation.

Board member Dennis Dunning asked about the staff/safety measures that would be applied when a person returns inside their vehicle while fueling up; at the last meeting, the owners stated that a person would be monitoring them from inside the building, then leave the building if they were not attending the pump. Mr. Dunning expressed concern over the time lapse. Owner Dawn Ghannan explained that most gas stations have speakers at the pumps, and that the attendant inside could alert the driver, which would be a matter of seconds.

With no further comments, Chairperson Jane Smith asked for a motion for this to be continued to the March 11, 2020 meeting, and indicated that the Board anticipates a decision on the SEQR classification then after receiving an amended EAF, reviewing the traffic study, and obtaining information from the applicant concerning the life expectancy of the barrier system that will be utilized at the site; this information must be submitted by February 29, 2020. Motion to this effect by Board member Ilana Nilsen, seconded by Board member Dennis Dunning, all in favor.

## **OTHER BUSINESS**

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

**Meeting – 3**  
**Three Variances**

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Chairperson Jane Smith made the motion to go into Executive Session, seconded by Board member Dennis Dunning at 8:50pm; all in favor

Chairperson Jane Smith made the motion to exit Executive session and resume the meeting at 9:25 pm, seconded by Board member Ilana Nilsen; all in favor.

Chairperson Jane Smith stated that no one was present to represent the application/applicant at this or the last meeting, and noted that the Fire District, without obtaining any variances for size, material or illumination, had placed the sign on property across the street. Accordingly, she sought a motion resolving that the application for variances pending before the Board be deemed abandoned, and, if the Fire District wants the Board to reconsider this determination, it can submit a request, with a rationale for doing so, by February 26, 2020. Motion to this effect made by Board member Dennis Dunning, seconded by Board member Ilana Nilsen, all in favor.

## **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 9:36 p.m.

The next regular meeting of the Zoning Board of Appeals is scheduled for **Wednesday, March 11, 2020 at 7:30 PM.**

The agenda will close on **February 25, 2020 at 12:00 Noon.** Items for consideration at the **March** meeting must be received by that date.

Respectfully submitted,

*Jean E. Miller*

ZONING BOARD OF APPEALS CLERK