

UNION VALE ZONING BOARD OF APPEALS
Minutes of the Regular Meeting

May 4, 2016

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

Member Absent: Jeff Wimmer

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. The Chairperson made a motion to have alternate Board Member John Hughes as a voting member; motion seconded by James D. Layton and approved by unanimous vote of the board members present.

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 April 6, 2016 minutes as submitted; a motion was made by James D. Layton, seconded by Dan Tuohy and approved unanimously.

CORRESPONDENCE

The clerk read a letter from Arlene Hart, dated April 23, 2016, regarding the Richwine application, in which Mrs. Hart stated she had “no issues” with Mr. Richwine’s request.

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.

Chairperson Jane Smith opened the public hearing and the clerk read the legal notice into the record. Mr. Richwine and his son were present.

Chairperson Jane Smith clarified that Mr. Richwine had not posted a sign on the property for the public hearing as required. The clerk advised that she had called the applicant and left a message for him to pick up the sign from the Town Hall, but he had not done so. Mr. Richwine stated he did not get the message; he

assumed the Town would contact him about picking up the sign or somebody would deliver the sign to him; he heard nothing, and did nothing about the sign.

Referring to the letter received from Arlene Hart, Chairperson Jane Smith asked Mr. Richwine to clarify where Mrs. Hart's property was in relation to his; Mr. Richwine explained that her property was adjacent to his on the side where he is seeking the variance.

Chairperson Jane Smith explained that the duty of the Zoning Board of Appeals is to 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 granting, and that the five factors that are considered in making the determination are set forth in the variance application. She asked Mr. Richwine to address these factors.

Mr. Richwine explained that he can put the proposed structure up without getting a variance, but wanted to construct the garage within the setback for several reasons: it would be in line with, and he would not have to extend, the existing driveway; it would allow for easier access to the rear of the property where his well and his neighbor's well are located should it be necessary for heavy equipment to get back there; it would allow for continued enjoyment of his back yard; and he was concerned that if he located the garage at the rear of his property, it might become a "magnet" for those who congregate on summer weekend nights in the neighboring cemetery.

Mr. Richwine stated he is planning to remove an existing shed in the rear of the property. Board member Ilana Nilsen asked Mr. Richwine to verify the size of the proposed garage. Mr. Richwine stated it will be either 24' or 26' wide by 40' in length. In response to inquiry from Chairperson Jane Smith, Mr. Richwine stated that no trees need to be removed in order to construct the garage where he is proposing.

Board member Ilana Nilsen asked if there would be enough room to construct the garage without having construction equipment encroach on the adjacent property. Mr. Richwine explained that it is going to be rolled off a trailer, that a foundation needs to be put in place, and that his driveway is approximately 14 wide and a backhoe can make it down his driveway. Board member James D. Layton expressed the view that construction issues were not for the ZBA; if the variance were granted and concerns arose during the construction about encroachment on neighboring property, they would be up to the Code Enforcement Officer of Town of Union Vale Building Department and any other appropriate department to resolve.

Chairperson Jane Smith called Mr. Richwine's attention to the photographs of other garages in the area that he had provided with his application. Mr. Richwine pointed to the pictures and submitted that the garage he is proposing is similar to

others in the Hamlet District. However, in response to questions from Board members about where these garages were located and whether any were within the required 15' setback, Mr. Richwine could provide no information; he did not know how close any of the pictured garages were to the respective property lines, or whether any had been constructed with a variance after current zoning laws went into effect. Board Member James Layton specifically asked whether any other garages in the area are 5' away from the property line; Mr. Richwine did not know.

Board member Ilana Nilsen expressed concern that the garage being proposed is substantially larger than those in the pictures. Board member James Layton noted that the proposed garage is going to be 5' away from the property line and this raises concerns regarding run off of rain and whether it is going to go onto the neighbor's property.

Chairperson Jane Smith verified that, as per the survey submitted, the road frontage of Mr. Richwine's property is 64 +/- feet. Noting that Mr. Richwine's lot is non-conforming (the code requires 100' road frontage), she observed that the substantial structure being proposed within the setback would increase the already existing density. Board member Dan Tuohy explained that the house was built before Zoning. Alternate Board member John Hughes agreed, but submitted that the Board has to take into consideration the current zoning code and the fact that, if granted, the variance will run with the property forever.

Board members Ilana Nilsen, John Hughes, James Layton and Jane Smith asked Mr. Richwine if he had considered or would consider reducing the dimensions or changing the orientation of the garage so that a less substantial variance would suffice. Mr. Richwine explained that he would not consider reducing the size or changing the footprint; the size of the garage was, apparently, his prime consideration, and, he said, if the requested variance were not granted, he would construct the garage of the size he wanted on a different part of the property where he did not need a variance.

Mr. Richwine explained that he wanted to construct a garage large enough to fit 4 or 5 cars across. Mr. Richwine's son came forward and added that his father is building this garage for him, he works on cars, he works in a body shop and they are going to be storing a lot of cars, they are going to be using the garage for storing cars. Mr. Richwine shared that he is going to be retiring within 5 years and this would give him something to do, saying he likes to tinker with cars.

Mr. Richwine explained that he went to all of his neighbors, and none of them has a problem with his putting up this garage. He went to George Kolb before coming to the ZBA, and while Mr. Kolb told him he could build the garage without a variance, he explained that he wants to locate the garage within the required setback because the property flows better that way, and, therefore, he followed the process for obtaining a variance: "so this is the process I'm following, and if

you come back to me and say I'm not going to give it to you, I'm ok with that, the garage is still going to go up." Mr. Richwine also noted that, according to Mr. Cole, the requested variance was not substantial. Moreover, according to Mr. Richwine, the ZBA had granted variances to other applicants that, he said, were as or more substantial than the variance he was seeking. Chairperson Jane Smith tried to explain that, without knowing the specific applications to which Mr. Richwine was referring, it was not possible to conclude that those situations were comparable to his; different setbacks are required in different districts and the unique circumstances of each application had to be evaluated by the Board.

Without further questions, Chairperson Jane Smith closed the public hearing. Upon motion of Ilana Nilsen, seconded by James Layton, the Board voted unanimously to defer decision on the application until the June 1, 2016 meeting in order to further review questions that arose from this public hearing, including, in particular, where and when other garages and/or accessory structures in the Hamlet District were constructed.

REGULAR SESSION / NEW BUSINESS

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.

Mr. Mario Merchan was present representing the owners; a letter of consent is on file for Mr. Merchan to do so.

Mr. Merchan explained that he has done work on Mr. Owusu's property in the past and is familiar with the property. Mr. Owusu would like to construct a tennis court and the placement is encroaching on the minimum 25' side yard setback, therefore a 22' foot side yard area variance is being requested, as per the Notice of Zoning Determination dated April 5, 2016 by the CEO of Town of Union Vale, George Kolb.

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 there.

Board member Ilana Nilsen asked if there is going to be a fence around the tennis court and what would the fence be made of. Mr. Merchan stated that a 10' high chain link fence around the tennis court is planned.

Mr. Merchan stated he will take more photos of the property and to show the topography of the land to stress the best place to construct this tennis court is where it is proposed.

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 **George Owusu, 242 Mennella Road, Poughquag, NY 12570:**

1. *Accepts/Denies the Application for a **22 foot side yard** Area 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, June 1, 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.*

OTHER BUSINESS

None.

NEXT MEETING

The next regular meeting of the Zoning Board of Appeals is scheduled for **WEDNESDAY, June 1, 2016 at 7:30 p.m.**

The agenda will close on **May 18, 2016 at 12: 00 NOON**. Items for consideration at the **June meeting** must be received by that date.

ADJOURNMENT

As there was no further business, a motion was made by Board Member James Layton, seconded by Board Member DanTouhy and unanimously accepted by the Board, to adjourn the meeting at 8:45 p.m.

Respectfully submitted,

Joan E. Miller

ZONING BOARD OF APPEALS CLERK