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

September 6, 2017

Members Present: Chairperson Jane Smith, Board member Ilana Nilsen, John Hughes, Dan Tuohy and Alternate Board member Jeffrey Wimmer

Member Absent: none

Others present: Town Attorney, Michael Liguori

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 reviewed and stated that the Agenda will stand as published.

REVIEW / APPROVAL OF MINUTES

By unanimous consent of those voting, the minutes for meetings August 2, 2017, were accepted as submitted. Board member Jeffrey Wimmer abstained since he was not in attendance at the August 2, 2017, meeting.

CORRESPONDENCE

Two letters were received regarding the Kiniry application, one dated August 16, 2017, from Kevin Durland, Chairperson of the Planning Board, and one dated September 5, 2017, from William J. Keating and Anthony Scotti, members of the Union Vale CAC. They were read into the record during the applicant's public hearing.

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

KINIRY, SCOTT - 3389 Route 82, Verbank, NY 12585. Requesting separate variances: a 9' foot front yard area variance to construct a canopy to cover gas pumps; and, upon positive referral from the Planning Board as per August 16, 2017 letter from Kevin Durland referred to above, two variances from the 25' buffer requirement set forth in Town Code section 210-37(2)(b) -- a 13' foot width area variance for 70' feet, and a 19' foot width area variance for 74 feet on the

rear property line in the Neighborhood Center District as depicted on approved Site Plan Sheet 3 of 5 (revision date 7/31/2017).

Chairperson Jane Smith made the motion to open the public hearing, seconded by John Hughes, and approved unanimously. The requested variances were addressed separately, starting with the front yard area variance.

The applicant's representative, Mr. Art Brod, Planner East, explained the intended use for the property is a convenience store/gas station; it is a special permitted use under the zoning law, one that is reviewed and issued by the Planning Board. Mr. Brod advised that on August 16, 2017, the Planning Board approved the special use permit with various conditions, including that the applicant obtain the required variances from the Zoning Board relating to the 25' buffer requirement, and address various "technical" comments of the Town Consulting Engineer and Town Consulting Planner. In addition, Mr. Brod advised that the Planning Board recommended the granting of the variances from the buffer requirement, and also granted a waiver of 3' from the 40' front yard set back for the canopy. (According to Mr. Brod, this waiver was based on the Code Enforcement Officer's interpretation of a 3' permitted overhang provision, which Mr. Liguori pointed out, is set forth in code section 210-16.) The applicant, however, determined to forego the waiver and seek the required front yard set back variance in order to insure that the variance for the canopy ran with the land in the event of a future sale of the property. This meant that, by foregoing the 3' waiver, the applicant actually needed a 12 foot, not a 9', variance.)

Chairperson Jane Smith asked whether any of the "technical comments" referenced by the Planning Board in its resolution on the special use permit related to either the canopy or the buffer variance.

Town Attorney Michael Liguori explained that they were not; the technical comments relate to the topography on the Site Plan, storm water management, and an oil water separator.

Chairperson Jane Smith asked Mr. Liguori to confirm that the Planning Board had granted the Special Use Permit.

Town Attorney Michael Liguori stated that the Planning Board adopted a conditional resolution for Site Plan/Special Use Permit approval, one condition of which was that the applicant obtain the requested variance from the Zoning Board with respect to the buffer requirement set forth in section 210-37(2)(b).

After further discussion about the authority of the Planning Board to grant the described 3' waiver for the canopy, Mr. Brod confirmed that the Kinirys have decided to keep the application for the canopy variance on the table, for the reasons stated. He explained further that the reason for the canopy location on the site plan was, first, that the existing building is located at a distance of 57 feet

from the front property line, and the canopy has to protrude into the 40 minimum front yard setback, and, second, the canopy variance request is the least amount necessary to accommodate a canopy large enough to cover customers while they are pumping gas.

Board member Jeff Wimmer clarified that what they were discussing is the top of the canopy, the protruding roof that covers the fueling stations, not the fueling stations. The fueling stations will be located further in from the fronting road.

Chairperson Jane Smith asked for the distance from the property line to edge of the canopy. Scott Kiniry stated the distance from the edge of the canopy to the property line is 28 feet, and the road is another 20 feet. Mr. Brod stated that the required setback is 40 feet, and the encroachment of the canopy is, therefore, 12 feet.

Board member Jeff Wimmer suggested that the applicant amend the application and make it a 12 foot area variance for the canopy. Board member John Hughes suggested that the Board could just consider granting a 12 foot variance since this is what was needed for the site and it is not much more than the 9 feet requested.

Chairperson Jane Smith noted that, on some of the maps that were submitted with the application, the canopy was shown as being perpendicular to the building and others it was not. She asked whether or not the canopy protruded into the set back for its entire distance.

Mr. Brod stated that the Site Plan, Sheets 1 through 5, revision date 7/31/2017, were the Site Plans that were approved by the Planning Board at the August 16, 2017 meeting.

Tanna Kiniry then displayed a full size map of the entire site showing that the canopy is perpendicular to the road. The building is not perpendicular to the road; it is a little askew.

Tanna Kiniry then addressed the five factors the Board must consider. She maintained that no undesirable change will be produced in the character of the neighborhood and there will be no detriment to the nearby properties by the granting of the Area Variance because the canopy will shield the customers from the inclement weather, it is a safety element, the canopy will not have any signage, there will be no lighting on the outside of the canopy, the lighting will be underneath and recessed, the canopy will be shingled and colored taupe to match the main building.

She asserted that the benefit sought by the applicant could not be achieved by some method, feasible for the applicant to pursue, other than an Area Variance because of the current location of the historic building. The only way for the project

to meet all the code's conditions would be for the building to be demolished, and the code states that you should preserve and conserve an historical building.

The applicant agreed that the requested front yard variance is substantial, but argued it is necessary and represented that the site plan obtained the approval of the Department of Transportation.

With respect to whether the proposed Area Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, applicant maintained it will blend in with the building, keeping with the quaint neighborhood district.

Applicant agreed it is self-created, but emphasized it is a Type II action, it is not the whole building, just part of an accessory structure.

The applicant presented the Board with some pictures of sample canopies from throughout the county, some of which will be similar to the proposed canopy, but smaller in size. Board member Ilana Nilsen noted that, of the sample canopies photographed, the two that were closest in proximity to the proposed site do not have canopies.

Board member Ilana Nilsen asked how high is the canopy and how high are the trucks that will be making deliveries? The canopy is approximately 16 feet from the ground, replied Tanna Kiniry, explaining that trucks can go underneath them easily.

Chairperson Jane Smith asked if there were any comments from the public at this time. With no comments from the public, Chairperson Jane Smith turned to the requested variances from the buffer requirement.

Art Brod, stated that the plan that was approved by the Planning Board at the August 16, 2017 meeting evolved after a series of meeting between the applicant and the Planning Board, Planning Board consultants and the Code Enforcement Officer; according to Mr. Brod, the object of all parties was to come up with a workable plan for the Site, consistent with the zoning to the extent that the zoning could be applied to an existing non-conforming site existing on record with an established building.

Chairperson Jane Smith read into the record the letter from Chairperson Kevin Durland with positive referral, dated August 16, 2017, and the letter from CAC members William Keating and Anthony Scott, dated Sept. 5, 2017, expressing their hope that the mature and stately evergreens on the property be protected and not removed.

Art Brod, explained that the proposed buffer is depicted on sheet 3 of 5, as revised 7/31/2017, the document referenced in the Planning Board letter. The

buffer starts at the Southwest property line adjacent to the Firehouse parking. According to Mr. Brod, the first 80 feet is landscaped with a berm and grassy area, and does not require a variance: buffer requirement does not require that the full 25 feet be planted, but, rather, that it be maintained as a natural buffer. The next 70 feet shows a reduction in the depth of the buffer from 25 feet to 13 feet, thus requiring a 12-foot width area variance. This is needed to allow for employee parking in the rear of the property and to provide full vehicle access around the building. The 13-foot buffer would be a planted area, with evergreen shrubs/trees throughout. The next 74 feet, there is a reduction to 6 feet, requiring a 19-foot wide area variance. This is needed due to the position of the rear part of the building and the dumpster area. This 6-foot area would be planted throughout with plants such as arborvitae.

Board member Ilana Nilsen questioned that what type of shrubs would be planted; she noted that on the drawing (sheet 3 of 5), the icons were confusing and did not match the legend. Art Brod stated that he is not used to seeing hand drawn drawings, and agreed it can be confusing.

Chairperson Jane Smith asked Mr. Brod why the first 80 feet do not need to be fully screened with plantings, and having a grass area is allowable. Mr. Art Brod stated that is the determination made by the Code Enforcement Officer in his letter dated July 19, 2017. (That letter, part of the record of the August 2, 2017 meeting of the ZBA, states that Mr. Kiniry “has proposed constructing a stone berm approx... 36” + in height and installing 8” pine trees approx.. 8’ on center from the rear left corner of the lot approx... 80” in length. Based on my experience with other sites I have worked with this should be adequate screening to the rear neighboring parcel.”)

Tanna Kiniry stated that the plantings are going to be six feet high, double staggered.

Ilana Nilsen asked what type of tree, Tanna stated pine trees, Norway spruces, and they will grow and spread.

Chairperson Jane Smith noted that, on the survey submitted with the application, there was an apparent discrepancy between planned and the allowed building coverage on the lot. (The code allows 12% coverage; the survey shows that the proposed project will have 15% coverage.) Mr. Art Brod stated that if there is a discrepancy, it will have to go back to the Code Enforcement Officer to flag it and make a determination, but maintained that it is not something that is up for consideration at/or by the Zoning Board at this time.

Board member Ilana Nilsen asked the Town Attorney, for the buffer, should the Board consider the projected canopy of the tree (for example, in 20 years, the projected growth of a six foot diameter tree planted now might be 20 feet wide). The Town Attorney stated yes, you have to consider that these trees are going to

grow; typically the applicant does not plant trees that are fully matured, so you have to give the applicant time for the trees to mature. He explained that the real question is whether what is proposed now going to be adequate to protect the neighboring residential properties from the view and parking of the site.

Kathy McMillan identified herself as the co-executor of the estate for Stella Billen, owner of land adjacent to the project. She expressed concerns regarding the grading of the property, how high the berm is going to be, where the buffer is, what is going to be directly on the property line, rock wall or trees, and is it going to be immediate screening.

The applicant replied that the berm is going to be approximately 3 feet in height, and a rock wall will be abutting to the neighbor's property. The mature trees that are there now are going to stay; some 6 foot to 8 foot evergreens will be planted in a staggered line, along with ornamental grasses planted in the grass area adjoining the berm.

Mrs. McMillan explained that there is an existing hedge row and questioned whether the owners of the property would be prevented from removing it.

The Town Attorney, Michael Liguori stated that the adjacent owners can still maintain their property to the property line; the requested variances if granted will not affect anything that the owners of other properties can do with their own property.

With no further questions or comments, Chairperson Jane Smith asked for a motion to close the public hearing, Board member Jeff Wimmer made the motion, seconded by Ilana Nilsen; by unanimous vote of the Board members, the public hearing closed.

COSTA, Nancy & Anthony – 2046 Route 55, Lagrangeville, NY 12540.

Requesting area variances for a proposed sign that is not entirely made of wooden material and would be internally illuminated in the Town Center District. Two variances (from code sections 210-26 B 2, 8) are required, as set forth in the Notice of Zoning Determination letter dated 7/18/2017 from the C.E.O of Town of Union Vale.

Chairperson Jane Smith made a motion to open the public hearing, seconded by Board member John Hughes; passed unanimously.

Chairperson Jane Smith read a letter dated September 6, 2017, from George Kolb, Town of Union Vale Code Enforcement Officer, regarding his findings from researching the building files and Joan Miller researching the past zoning minutes: neither was able to locate any variances for the existing sign at the

location. This letter was in response to a request for information regarding the existing sign made at the August 2, 2017 meeting.

Chairperson Jane Smith concluded after research of her own (including review of minutes of the ZBA meetings in which the applicant had moved only for variances relating to parking spaces) that there is no conclusive material stating that an area variance was granted for the square footage of the existing sign and/or the height of the existing sign.

Anthony Costa Jr, Evan Walsh and Robert from the GNS group were present. Mr. Walsh stated that they are replacing the sign and brought samples of the proposed finished product, in particular the aluminum that is finished in a matte paint to look like wood; they explained that the aluminum would outlast wood, with little or no maintenance.

Mr. Costa Jr., stated he is taking over the business from his father and wants to improve on the existing sign; it looks weathered and is falling apart.

Chairperson Jane Smith stated to the applicant that it appeared that the proposed sign would need additional variances than the ones being requested. After Town Attorney Michael Liguori explained that pursuant to code section 210-79-e, the Zoning Board may, in its review of an application variance, refer matters to consultants and the Planning Board for their review, Chairperson Smith explained that, instead of ruling on the requested variances, she would prefer to refer this to the Planning Board for its opinion regarding the size, height and overall appearance of the sign in relation to the building and site plan that was approved by the Planning Board 18 years ago. She explained that two additional variances would need to be applied for; the proposed sign is over the maximum square footage allowed (16 square feet), and over the height allowed (10 feet), and believed the matter should be referred back to the Zoning Administrator, George Kolb for his determination.

Board member Jeff Wimmer made a motion to refer the application to the Planning Board for comment at the September 20, 2017 meeting, seconded by Board member Dan Tuohy; passed unanimously.

Chairperson Jane Smith moved to defer the public hearing until the October 4, 2017 Zoning Board of Appeals meeting, seconded by Board member John Hughes; passed unanimously.

DECISION OF PUBLIC HEARING(S)

KINIRY, SCOTT - 3389 Route 82, Verbank, NY 12585. Requesting a 9' foot front yard area variance to construct a canopy to cover gas pumps, and upon positive referral from the Planning Board, as depicted on approved Site Plan Sheet 3 of 5 (revision date 7/31/2017), a 13' foot width area variance from the 25'

buffer requirement for 70' feet to a 19' foot width area variance from the 25' buffer requirement for 74 feet on the rear setback in the Neighborhood Center District.

CANOPY

Requesting a 12-foot front yard area variance to construct a canopy to cover proposed gas pumps

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 Dan Tuohy stated no; Board member Jeff Wimmer agreed. Chairperson Jane Smith stated no, provided that all the representations made by the applicant regarding the materials, colors, lighting, and signage are included as conditions.

- 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?***

Board member Dan Touhy stated no; Board member Jeff Wimmer agreed. Board member Ilana Nilsen stated yes, the gas pumps can still be there, without a canopy.

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

Board member Dan Tuohy stated yes; Board member Jeff Wimmer stated yes, numerically the setback, but the impact is not substantial. Board member John Hughes agreed, yes numerically it is substantial.

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 Dan Tuohy stated no; Board member Jeff Wimmer agreed. Board member Ilana Nilsen stated no, as long as the lighting that is approved follows the code and is adhered to when being built, overseen by the CEO. Chairperson Jane Smith added that she is unsure, due to the fact that there were no traffic studies done, to review, to identify any impacts on the physical or environment conditions.

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 Jeff Wimmer stated yes, but it was a gas station, so bring it back to being a gas station for the residents. Board member John Hughes stated yes, but that there is no issue, it is for the safety and wellbeing of the public that is going to pump gas. Board member Dan Tuohy stated yes, but he has no issue.

Chairperson Jane Smith offered the following resolution to **GRANT** (with conditions), a 12 foot front yard area variance to construct a canopy to cover proposed gas pumps for Scott Kiniry, 3389 Route 82, Verbank, NY 12585:

Conditions: As represented by the applicant, and as part of the approved Site Plans by the Planning Board to follow: the canopy shall match the main building in terms of color, material and texture; the canopy is to be shingled the same as the main building, and shall be painted taupe in color to match the historic main building; the canopy shall have only recessed lighting aimed downward toward the ground as depicted on approved Site Plans (approval date August 16, 2017, revision date July 31, 2017); and the canopy will have no signage.

Motion by Chairperson Jane Smith, seconded by Board member John Hughes, and approved unanimously.

BUFFER

Requesting a 13-foot width area variance from the 25-foot buffer requirement (code section 210-37 C. 2,b) for 70 feet starting 80 feet from the South west corner of the lot, and a 19-foot width area variance from the 25-foot buffer for 74 feet on the rear setback of the property adjoining a residential lot in the Neighborhood 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 Dan Touhy stated no; Board member Jeff Wimmer agreed. Chairperson Jane Smith stated yes, there could be a potential detriment to the adjacent neighbor, which the homeowner identified along the 74 feet having only a six foot buffer. Board member Ilana Nilsen stated it would create an undesirable change for the adjacent neighbor.

- 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?***

Board member Jeff Wimmer stated only if mature trees were cut, or part of the building would have to be demolished to achieve the full 25-foot buffer. Chairperson Jane Smith stated no with respect to the six foot buffer, considering it is the access point to the rear parking lot.

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

Board member Dan Tuohy stated yes, and the rest of the Board members agreed. Chairperson Jane Smith stated that for a large portion of the rear property line (more than 50% of the total length),

there would be a substantial reduction from the 25 foot buffer requirement.

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 Jeff Wimmer stated no; Board member Dan Touhy stated no. Board member Ilana Nilsen stated the neighbors disagree, it would have an impact/adverse effect on their property. Chairperson Jane Smith stated that the Plan is not clear about the plantings; the code requirement for a Buffer requires “a combination of mature canopy and understory plantings to provide immediate screenings” but does not specify the size or type of plants that should be planted and it is not clear on the plans what the applicants propose. Board member Ilana Nilsen stated that there is no clarity on the plans about the 74 feet area that is asking for a 19 foot width area variance, there is nothing shown on the plans regarding screening for the dumpster, and expressed concern that dumpsters can attract animals, emit odor and noise when being emptied.

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 Jeff Wimmer stated yes, the variance is needed, otherwise mature trees would have to be cut down and the rear corner of the building would need to be demolished. Chairperson Jane Smith stated yes, for the change of use, convenience store.

Chairperson Jane Smith offered the following resolution to **GRANT (with conditions proposed by Board Member Ilana Nilsen), a 13-foot width area variance from the 25 foot buffer requirement (code section 210-37 C. 2,b) for 70 feet and a 19 foot width area variance from the 25 foot buffer for 74 feet on the rear setback of the property adjoining a residential lot in the Neighborhood district, for Scott Kiniry, 3389 Route 82, Verbank, NY 12585.**

Conditions:

- 1) Require that ornamental grasses be planted staggered in the 12 foot width grass slope area from the rear left corner of the parcel for 80 feet;**

- 2) **Require that a mixed variety of spruce/pine trees (norway spruce and white pine) be planted staggered on the 12 foot planting bed (where 13 foot width area variance is granted), and, in addition to these coniferous trees, interplanting with a mix of deciduous trees planted for 70 feet;**
- 3) **Require that arborvitae type evergreens no less than 6' tall be planted along the 6 foot planting bed (where the 19 foot width area variance is granted) for 74 feet;**
- 4) **Require that the dumpster be surrounded (all four sides) by a 6 foot high wooden fence;**
- 5) **That all matters be as represented, as part of the approved Site Plans, specifically sheet 3 of 5, labeled Photometrics and Landscaping, revision date 7/31/2017, approval date by the Planning Board August 16, 2017 and letter dated July 19, 2017 by the Code Enforcement Officer, George Kolb to the Planning Board.**

Motion by Board member Jeff Wimmer, seconded by Board member Dan Tuohy and approved unanimously.

REGULAR SESSION/ NEW BUSINESS

None.

OTHER BUSINESS

None.

NEXT MEETING

The next regular meeting of the Zoning Board of Appeals is scheduled for **WEDNESDAY, October 4, 2017 at 7:30 p.m.**

The agenda will close on **September 20, 2017 at 12:00 NOON**. Items for consideration at the **October** meeting must be received by that date.

ADJOURNMENT

As there was no further business, a motion was made by Chairperson Jane Smith, seconded by Board Member Ilana Nilsen, and unanimously accepted by the Board, to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Jean E. Miller

ZONING BOARD OF APPEALS CLERK

Annexed documents: public hearing notice, Kiniry/Hitsman, Poughkeepsie journal

Kevin Durland, Chairperson Planning Board, letter dated August 16, 2017

George Kolb – letter dated July 19, 2017 – Kiniry

George Kolb – letter dated September 6, 2017 – Costa