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

August 7, 2018

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

Member Absent: Board member Jeffrey Wimmer

Others present: Mr. James Nelson, Town Of Union Vale Attorney

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

Chairperson Jane Smith noted that the Wiemer application will not be heard tonight, for the application is incomplete.

Chairperson Jane Smith asked the Board for a motion to move the Dawn Sun deliberation to be the last item on the agenda, motion by Board member Ilana Nilsen, seconded by Board member Dennis Dunning and all the Board members present

- Minutes

Chairperson Jane Smith asked for a motion to accept the Regular meeting minutes from the June 5, 2018 and July 3, 2018.

A motion was made by Board member Dennis Dunning to accept the Regular meeting minutes of the June 5, 2018 and July 3, 2018 meeting, seconded by Chairperson Jane Smith and motion passed by unanimous vote of the Board members present.

CORRESPONDENCE

Chairperson Jane Smith acknowledged three pieces of correspondence: an email from Cheryl Nelson, dated July 23, 2018 supporting the Dawn Sun application, a letter dated July 16, 2018 from George Kolb, Zoning Administrator of the Town of Union Vale referencing Dawn Sun application and a letter dated

July 31, 2018 to Adam Wiemer requesting additional information to complete his application, from Joan Miller, Zoning board clerk.

PUBLIC HEARING(S)

None.

PUBLIC HEARING(S)/ DECISION OF PUBLIC HEARING:

**Dawn Sun Corporation, Walid Ghannan, 3122 Route 82, Verbank, NY 12585
TMP# 6662-00-310831:** Proposed Fuel/Convenience Store – application has been made for the installation of gas fuel pumps and associated convenience store to be located in existing building.

The following matters will be before the Zoning Board of Appeals (Board) for public hearing, interpretation and decision:

1. With respect to Union Vale Code §210-56 E(6)(a), which provides that no gasoline station “shall be located within 200 feet of any school, church, public library, theatre, park, playground or other public gathering place designed for occupation by more than 50 people”
 - An interpretation by the Board and determination of an appeal by Applicant from the Code Official’s February 26, 2018 Determination that the 200’ separation is to be measured from all associated boundary lines and that a 200’ variance is required; and
 - A determination whether the required 200’ separation has been proposed by Applicant; and
 - If the required 200’ separation has not been proposed by Applicant, an interpretation as to whether a use or area variance is required; and
2. With respect to Union Vale Code §210-56 E(5)(a), which provides that, for a “convenience store selling gasoline in combination with a quick-stop retail food store,” the “maximum gross floor area shall be 2,000 square feet”
 - An interpretation by the Board and determination of an appeal by Applicant from the Code Official’s February 26, 2018 Determination that a variance is required from the 2000’ gross floor area requirement.

Chairperson Jane Smith first addressed the question of the gross floor area variance. Chairperson Jane Smith read the definition of “floor area, gross” in

code section 210-86, which measures the horizontal area of the “floor or floors” of a building from the exterior walls.

Chairperson Jane Smith also referenced places in the code where the term “gross floor area” is used: 210-25A(1)(b)[4],[5] esp. (d)[1] and 210-68A (1)(2) non-conforming uses.

Board member Dennis Dunning stated that the applicant spoke of limiting the floor space to the proposed convenience store square footage, which appears to be about half of the first floor interior square footage.

After further discussion, the Board members present agreed with the Code Enforcement determination letter dated February 26, 2018, stating that the measurement of the entire first floor (2640 sq. ft.) be considered thus a required 640 sq. ft. area variance would be required.

Chairperson Jane Smith moved to a discussion of whether the prohibition on locating a gasoline station/convenience store 200 feet from any “Church” or “public gathering place” is measured.

Board member Dennis Dunning stated that the applicant urges that the measurement should be from center of activity, or building, not property line, therefore a variance is not needed or a very minimal one.

Board member Ilana Nilsen stated that many places of worship have gatherings that take place outside the buildings, such as the entrance steps or grounds, which were stated by the Pastor, of the John 3:16 place of worship.

Chairperson Jane Smith mentioned that if you look at the language of the code it repeatedly references “any area of land, including structures thereon...” and in another section of the code it states “any building or land together”, therefore it is referencing the land or geographic point.

Chairperson Jane Smith brought up what absent Board member John Hughes mentioned at the previous meeting, that there has to be some measureable point to start and end when measuring and most logically, most if not all variances are measured from property line to property line. Furthermore, previous Town of Union Vale Zoning Board of Appeals Chairperson, Teresa Levitch stated “that an area variance was always measured from property line to property line”, in the years that she was Chairperson.

Chairperson Jane Smith mentioned that the Board also had to discuss if the required variance from the 200’ separation requirement is a use variance or an area variance.

After reviewing memoranda submitted by the applicant and unidentified objectant, the Board concluded that *Real Holdings v Lehigh*, 2 NY3d 297 (2004) which was decided by the New York Court of Appeals, holds that a variance from a separation requirement is “dimensional” and therefore an area variance would apply, not a use variance.

Discussion ensued regarding an objection that the applicant’s current and proposed business is a delicatessen (not a convenience store) and, therefore, it cannot sell gasoline without a use variance.

After the Board members reviewed the code for both convenience store, delicatessen and Pizzeria, they agreed that the Delicatessen and Pizzeria were permitted uses in the district and there was nothing in Union Vale Code that prohibits the operation, as here, of multiple uses on one site.

The Board also noted that the addition of a Convenience Store selling gasoline at this location is not a prohibited use.

In Summary the Board concluded:

- A 640 square foot area variance would be required;
- the 200 foot separation requirement would be measured from property line to property line and that it is dimensional, thus an area variance not use variance is required for 200 feet;
- the 200 foot separation has not been proposed by the applicant; and
- adding a convenience store to the existing uses on this parcel is not a prohibited use,

Chairperson Jane Smith and the Board members concluded that they will render their Final Decision on Appeal in writing within 10 days.

REGULAR SESSION / NEW BUSINESS

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 onto an existing barn, that has existed over 10 years, that is going to be converted into an “accessory detached apartment” exceeding the maximum allowable 100 square feet addition to an existing footprint in the RA3 zoning district, as per zoning determination dated July 16, 2018.

Chairperson Jane Smith welcomed Mr. Ritter to approach the Board. Mr. Ritter was present and representing himself. Mr. Ritter briefly explained that he met with Zoning Administrator George Kolb regarding converting an existing barn over ten years old on his property into a one bedroom detached accessory apartment for his 81 year old mother. Mr. Ritter explained that he needs a Special Use Permit from the Planning

Board. He went before the Planning Board in July and was referred to the ZBA for an area variance.

Chairperson Jane Smith asked if this property is near any adjoining Towns or County roads. Mr. Ritter answered, "No."

Board member Ilana Nilsen asked Mr. Ritter if he had any intent to subdivide further; Mr. Ritter explained that he has it in the deed that no further subdivision can happen.

Board member Ilana Nilsen asked what his intentions with the property are in, say, 15 years.

Mr. Ritter explained that his grandmother was long lived, and his mother is 81 years old and anticipates her living for approximately 10-13 more years, and he is building this one bedroom apartment to be ADA compliant for her. His 25 year plan is that he has another parcel next to his and is trying to persuade his daughter to build on, so that he and his wife can watch their grandkids and get them off the bus.

Board member Ilana Nilsen asked if there are any other structures on the property; Mr. Ritter stated a small shed but it cannot be seen by the neighbors, except during the winter months when the leaves are off the trees.

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 Robert Ritter, 49 N. Parlman Road, Lagrangeville, NY 12540:

Accepts/Denies the Application for a 363 square foot floor area variance for the expansion of an existing foot print of a pre-existing (over 10 years) detached barn converted into an accessory apartment;

- 1. Classifies the application as "Type II Action" under NYCRR Part 617.5 and as such, is precluded from environmental review under SEQRA.*
- 2. Schedules a Public Hearing on the Application for Tuesday, September 4, 2018 at 7:35 pm and directs the secretary to provide timely notice thereof.*
- 3. Advises the Applicant that all costs involved in notifying the Public shall be reimbursed to the Town of Union Vale.*
- 4. Advises the Applicant that a visit to the premises may -or- may not be scheduled.*

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 asked the applicant was present or anyone was representing him.

With no response from the public present, Chairperson Jane Smith discussed with the Board members present the completeness of the application and stated that the Board is allowed to proceed with its review, without the applicant present.

Board member Dennis Dunning pointed out that there were two different numerical values for the area variance that is being requested: the application states a request for a 12 foot area variance and George Kolb Zoning Administrator's letter dated June 27, 2018 states the need for an 11 foot 10 inch area variance.

Chairperson Jane Smith asked the clerk to verify means of measurement with the Zoning Administrator to clarify his determination.

In the meantime, Board member Jane Smith stated that they will use the numerical value of 12 feet as submitted on the application until further verification by the clerk from the Zoning Administrator is presented.

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 **Kristopher Schmitt, 49 Brookside Lane, Lagrangeville, NY 12540:**

Accepts/Denies the Application for a 12 foot rear yard area variance to install an in ground pool:

- 1. Classifies the application as “Type II Action” under NYCRR Part 617.5 and as such, is precluded from environmental review under SEQRA.*
- 2. Schedules a Public Hearing on the Application for **Tuesday, September 4, 2018 at 7:40 pm** and directs the secretary to provide timely notice thereof.*
- 3. Advises the Applicant that all costs involved in notifying the Public shall be reimbursed to the Town of Union Vale.*

4. Advises the Applicant that a visit to the premises may -or- may not be scheduled.

OTHER BUSINESS

None.

ADJOURNMENT

As there was no further business, a motion was made by Board member Jane Smith, seconded by Board member Jeff Wimmer, 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, September 4, 2018 at 7:30 PM.**

The agenda will close on **August 21, 2018 at 12:00 Noon.** Items for consideration at the **September** meeting must be received by that date.

Respectfully submitted,

Joan E. Miller

ZONING BOARD OF APPEALS CLERK