

DRAFT COPY

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

March 11, 2020

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

Member Absent: John Hughes and Michael McPartland

Others present: James Nelson, Union Vale Town Attorney

CALL TO ORDER / DETERMINATION OF QUORUM

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 Union Vale Fire District addressed to NYSDOT dated 11/26/2019 and a packet from P. Scott for Verbank Deli dated 2/26/2020 received 2/28/2020 via drop box.

BUSINESS SESSION

Board member Ilana Nilsen offered one correction to the February 4, 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 Dennis Dunning; unanimously approved.

Town Attorney, James Nelson stated that the Union Vale Fire District presented an application for two variances; after meetings with Town officials about potential resolutions that could be achieved outside of the Zoning Board of Appeals and conversing with the Union Vale Fire District attorney, it was recommended that the application be adjourned.

After brief discussion between Chairperson Jane Smith and the Board members present, Chairperson Jane Smith made the motion to adjourn the Union Vale Fire District application for two variances to an undetermined date or until the ZBA hears from the Union Vale Fire District; seconded by Board member Dennis Dunning and, with unanimous vote of the Board members present, motion carried.

PUBLIC HEARINGS:

None

PUBLIC HEARINGS/DECISION ON PUBLIC HEARINGS

None

REGULAR SESSION / OLD BUSINESS

**DAWN Sun Corp.
Aka Verbank Deli
3122 Route 82
Verbank, NY 12585**

**Meeting - 2
Five variances
SEQR discussion**

Applicant applying for five area variances: a 640 square foot area beyond maximum allowed for a convenience store; a 200 foot area variance from the prohibition of gasoline stations within 200 feet of a church or other public gathering place; 9.3 foot area variance to install a canopy within the setback required 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.

Peder Scott, P.E., the applicant's Engineer, reviewed his submittal of February 26, 2020. He explained that the pumps and tanks depicted on the proposed site plan are the type utilized by the International Codes Council (ICC) for "Motor fuel-dispensing facilities and repair garages." Mr. Scott further explained how the barrier system worked, the vapor barrier migration safety protocols, refueling safety measures, and provided information on spills and the effectiveness of control technologies. He also discussed a study indicating that the blast radius from a gasoline tank explosion is 100' and pointed out that the nearby establishments are outside that radius.

Board member Ilana Nilsen asked about the apartments that are above the proposed convenience store, noting that they are within the 100' radius. Mr. Scott stated that the applicant can create a legal document for the rights of tenants.

Board member Dennis Dunning stated he commends the applicant's engineer for doing due diligence on submitting material regarding the mitigation of potential adverse effects of a gas station, but noted that, even though Mr. Dunning is a PhD, he found the material too complicated to rely on without input from experts. Board member Ilana Nilsen agreed that she is unqualified to make the determination that there was no potential for any adverse environmental impacts based on the applicant's submittals for they are too complicated.

Mr. Dunning pointed out that the submitted study on calculating the so-called safety radius presents complicated formulas based on unstated or unclear premises, and would require expertise from outside consultants in order for the Board to properly assess the material. It was his view that a positive declaration would allow, through coordinated review, input from such experts.

Chairperson Jane Smith explained that the Board was currently conducting an uncoordinated review, but if the Board determined to issue a positive declaration coordinated review would be required.

Chairperson Jane Smith asked the applicant if there had been any submittal to the Planning Board since 2017, specifically whether the latest versions of the site plan had been presented to the Planning Board? Mr. Caruso stated no, no new/updated Site plan has been submitted.

Mr. Caruso suggested that a Part III EAF be done before declaring a positive declaration or possibly declare a negative declaration with conditions imposed.

Chairperson Jane Smith asked that the Board going into executive session, motion by Ilana Nilsen, seconded by Chairperson Jane Smith, all in favor, motion carried at 9:05 pm.

Chairperson Jane Smith moved to return from executive session to regular meeting at 9:15pm, seconded by Board member Ilana Nilsen, all in favor, motion carried.

Chairperson Jane Smith stated that none of Board members present were moving to consider a negative declaration with imposed conditions. The Board then proceeded to review the Short EAF part III determination of Significance, with all agreeing that moderate to large impacts may occur as indicated in answers to questions ## 1, 2, 5, 7a, 9, 11.

After completing the Short EAF part III, Chairperson Jane Smith proposed that the Board issue a positive declaration and read aloud a draft determination of significance. As set forth in the Resolution adopted below, the Board members present unanimously adopted the following determination of significance, dated March 11, 2020:

**TOWN OF UNION VALE ZONING BOARD OF APPEALS
POSITIVE DECLARATION –
DETERMINATION OF SIGNIFICANCE**

Date: March 11, 2020

This determination is issued pursuant to 6 NYCRR Part 617, the regulations implementing Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

Background:

On October 22, 2019, the Town of Union Vale Zoning Board of Appeals received an updated application (dated October 5, 2019) and attached “Supplementary Application” from Dawn Sun Corp., 3122 Route 82, Verbank, New York 12585, for five variances in connection with a proposal to construct a gasoline station at this location. The location at issue is in the Town’s TC zoning District.

“A convenience store selling gasoline in combination with a quick-stop retail food store” is allowed in the TC District under § 210-56E(5) of the Union Vale Code, provided it meets various enumerated criteria, provisions, and standards.

The project proposed by Dawn Sun Corp. did not satisfy two §210-56E requirements: § 210-56E(5)(a) establishing that the maximum gross floor area of a convenience store selling gasoline “shall be 2000 square feet”; and § 210-56E(6)(a) providing 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.” It also did not comport with various set back requirements set forth in the town’s District Schedule of Area and Bulk Regulations.¹

On December 3, 2019, after hearing from the applicant and considering the applicant’s contention that this project qualified as a Type II action under 6 CRR-NY 617.5(c)(9), the Zoning Board of Appeals determined that the construction of a convenience store with a gasoline station within 200 feet of a public gathering place did not constitute a Type II action under 6 CRR-NY 617.5(c)(9) because it was not “consistent with local land use controls.” The Zoning Board of Appeals classified the action as unlisted under SEQR, and determined to conduct uncoordinated review pursuant to 6 CRR-NY 617.6(b)(4).

¹ In the October 5, 2019 application, Dawn Sun Corp. requested the following variances:

- a 640 square foot variance from the 2000 square foot maximum allowable gross floor area for a convenience store under § 210-56E(5)(a);
- a 200-foot variance from the provision set forth in §210-56E(6)(a) prohibiting the location of a gasoline station within 200 feet of a public gathering place;
- a 9.3-foot variance to install a canopy within the required 40 foot set back from the front property line for buildings;
- a 10-foot variance for a parking area within the required 30 foot front property line set back; and
- a 7-foot area variance for a parking area within the 15 foot side yard setback.

At the same December 3, 2019 meeting, the Board identified several substantive environmental issues to be addressed in connection with the determination of significance under 6 CRR-NY 617.7 (including the potential release of vapors, ground water and air contamination, leaks, increased risk of fires, explosions, traffic, noise and evacuation area status). The applicant addressed these issues orally at meetings on January 7, February 4, and March 11, 2020, and in written submissions dated December 3, 2019, January 6, 2020, January 7, 2020, February 4, 2020, and February 28, 2020. The written material included an amended site plan, a revised Short Form Environment Assessment Form, a letter from the applicant's lawyer setting forth the New York State Department of Environmental Conservation regulations relating to underground and above ground storage tanks (and making the point that this comprehensive regulatory oversight mitigates the risk of environmental significance), and memos from the applicant's engineer addressing, among other things, various systems that could be put in place to mitigate vapor exposure, ground water contamination, spills, fires and explosions. The Zoning Board of Appeals also requested and, on February 3, 2020, received input related to these submissions from Thomas Harvey, the Town's Engineer.

Determination:

After careful consideration of this material and the criteria for determining the significance of an action set forth in 6 CRR-NY 617.7(c), and for the reasons set forth below, the Zoning Board of Appeals has determined that the proposed action may have a significant adverse impact on the environment. The Zoning Board of Appeals, therefore, refers this matter to other involved agencies for coordinated review. In anticipation of the applicant's preparing a site and project specific Environmental Impact Statement ("EIS"), the Zoning Board of Appeals directs the applicant to prepare a draft scope for submission to the designated lead agency.

Name of Action: Dawn Sun Corp.: Application For Variances To Construct Convenience Store with Gasoline Station

SEQR Status: **Type I** []
 Unlisted []

Scoping: Yes [X] **Draft scope to be prepared by applicant.**

Description of Action:

Applicant proposes to install gasoline pumps and operate a convenience store with gasoline station on a site on the corner of Route 82 and Tompkins Road in Verbank, New York. At this site, the applicant currently operates the Verbank Deli and Pizzeria Restaurant, sells propane and maintains two rental apartments above the deli/pizzeria. In order to go forward with this project, the applicant requests the Zoning Board of Appeals to issue at least five area variances. Though the applicant will also need site plan approval and a special use permit from the Town of Union Vale Planning Board, the applicant is not actively seeking those permissions from the Planning Board. (The applicant's last submission to the Planning Board is dated April 26, 2017.)

SEQRA Status: The proposed action is an unlisted action under SEQRA. The Zoning Board of Appeals is the sole agency with approval power over the requested variances, and resolved to conduct uncoordinated review to determine significance under 6 CRR-NY 617.7. After the adoption of this Positive Declaration, there shall be coordinated review with the following Involved agencies: NYDEC; NYSDOT; Union Vale Highway Department; Union Vale Planning Department.

Project Location: The parcel on which the project is proposed is located at 3122 Route 82. The parcel is contiguous to and north of the John3:16 Christian Center, and is directly across NYS Route 82 from Camp Young Judea Sprout Lake.

Reasons Supporting This Determination: The Zoning Board of Appeals concludes that the proposed action may have one or more significant adverse impacts on the environment. The significant adverse impacts are identified below.

POTENTIAL SIGNIFICANT ADVERSE IMPACTS

1. The applicant recognized as long ago as the summer of 2018 (when calling upon the Zoning Board of Appeals to make an interpretation regarding the 200' separation requirement set forth in Union Vale Town Code § 210-56E(6)(a)), that the requirement that gasoline stations be physically separated from public gathering places requirements is generally grounded on the view that gasoline stations pose a risk to public health and safety. The applicant seeks to entirely dispense with the 200' separation requirement, which would create a "material conflict with the community's current plans or goals as officially approved or adopted," and create a "hazard to human health." See 8 CRR-NY 617.7(c)(iv), (vii).
2. Gasoline contains toxins that can cause short-term and long-term adverse health effects – especially to children. Studies show that gas stations have the potential to release these contaminants -- into the air through the release of vapors, and into the ground through leaks and spillage (from the underground tanks and at the pumps). Vapors and spillage can cause substantial adverse changes in air, soil, and water quality in the near term and over time, that can be felt both at the site and distances away. In addition to bringing increases in noise and traffic, gas stations also present substantial risks of fires and explosions, which can result in serious casualties, injuries, and property losses.
3. These dangers were discussed in numerous articles brought to the attention of the Zoning Board of Appeals. See, e.g., <https://www.scientificamerican.com/article/is-it-safe-to-live-near-gas-station/>; <https://www.environmentalpollutioncenters.org/gas-stations/>; <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>; <https://www.seeker.com/gas-stations-are-toxic-neighbors-1765175237.html>; <https://www.sciencedirect.com/science/article/pii/S1309104215304384>; <https://www.sciencedaily.com/releases/2014/10/141007103102.htm>; <https://www.cnn.com/2002/US/12/05/gas.pump.fires/index.html>
4. The potential adverse and hazardous impacts from the release of vapors, spillage, increased risk of fires, and explosions, and the cumulative impacts of each of these separate potential hazards match the criteria for determining significance as set forth in 6 CRR-NY 617.7(c)(1)(i), (vii), and (xi). The potential for accidents is heightened

on this property because of the multiple uses to which the property is subject. For example, the Applicant's Engineer mentioned that the risk of fire hazards could be lessened by making sure that, at the end of the day, the Pizzeria ovens were turned off.

5. Adding gasoline pumps to a parcel already dedicated to multiple uses increases the potential for adverse traffic impacts. These include not only increased volume and noise, but also an increased the risk of vehicular and pedestrian accidents given the proximity of the entrance and exit on Route 82 to the entrance and exit on Tompkins Rd. and, with dedicated parking in the setbacks, limited room to turn on the site. These issues warrant the input from experts at the NYSDOT and the Union Vale Highway Department.
6. The applicant's lawyer and engineer acknowledged that the risks identified by the Zoning Board were real, and offered to install what they described as "state of the art" systems to mitigate the risks. The engineer also provided technical information purportedly demonstrating that the mitigation offered was significant. However, the Zoning Board of Appeals was not able to conclude, based on the information provided, that the proffered mitigation clearly eliminated all of these issues of environmental concern, or that, if these mitigation measures were followed, this particular project would not have any potential for a significant adverse impact on the environment. To the contrary, the materials suggested that substantial risks remained despite the mitigation. Among other things, the systems did not eliminate the risks of human error, equipment failure, and poor maintenance.
7. The Zoning Board of Appeals appreciates the applicant's proposals to mitigate potential adverse environmental impacts. Nevertheless, the Zoning Board concludes that there should be an environmental impact statement to allow for public input and to afford experts the opportunity to study the project, its environmental effects and the effectiveness of the proposed mitigating measures. See *Matter of Shawgangunk Mtn. Env'tl. Ass'n v. Planning Board of the Town of Gardiner*, 157 AD2d 273 (3d Dept. 1990).

Public Scoping of the Draft EIS will occur as follows:

Scoping of the Draft EIS will be conducted. The applicant will first submit a Draft Scoping Document. Such document will then be forwarded to all Involved and Interested agencies and made available on the Town of Union Vale website, along with a “Notice of Project Scoping Session” to be published in the official Town newspaper. The Draft Scoping Document, once submitted, will also be available for public review at the Town of Union Vale Zoning and Planning Boards Office. A public Scoping Session will be scheduled to discuss the Scoping Document and additional written comments will be accepted afterwards. Following the public scoping process, the lead agency will prepare and distribute a Final Scoping Document.

For Further Information:

Contact Person: Joan Miller, Land Use Secretary
Town of Union Vale
249 Duncan Road
Lagrangeville, NY 12540
845-724-5600
pbzba@unionvale.ny.us

A Copy of This Positive Declaration Filed With:

New York State DEC Region 3 (New Paltz)
New York State DEC-Environmental Notice Bulletin
Other Involved Agencies (New York State DOT, Town of Union Vale Highway Department, and Town of Union Vale Planning Board)
The Applicant
Union Vale Supervisor Elizabeth Maas

CHAIRPERSON Jane Smith introduced the following resolution, which was seconded by BOARD MEMBER Dennis Dunning:

RESOLUTION ADOPTING A POSTIVE DECLARATION

WHEREAS, the Town Union Vale Zoning Board of Appeals received an application from Dawn Sun Corp. for five variances for a construction project at 3122 Route 82, Verbank, New York 12585;

WHEREAS, the requested variances relate to the construction of a 2640 sf convenience store/gasoline station with an overhead canopy and parking areas on a parcel located in the TC Zoning District;

WHEREAS this action will require, in addition to variances, site plan approval and a special use permit from the Union Vale Planning Board;

WHEREAS, the applicant submitted a fully executed Short Environmental Assessment Form; and

WHEREAS, the project meets the criteria for classification as an Unlisted Action pursuant to Article 8 (State Environmental Quality Review Act, SEQRA) of the New York State Environmental Conservation Law; and

WHEREAS, the Zoning Board of Appeals conducted uncoordinated SEQRA review for this project; and

WHEREAS, during the course of the Zoning Board of Appeals' review of the project, the Zoning Board of Appeals received and carefully considered all information submitted by the Applicant as well as comments submitted by the Town's Engineer, and all other information brought to the attention of the Zoning Board of Appeals at public meetings held on January 7 February 4 and March 11, 2020; and

WHEREAS, the Zoning Board of Appeals reviewed a Short Environmental Assessment Form, Part 2 – Impact Assessment for the proposed convenience store/gasoline station,

NOW THEREFORE, BE IT RESOLVED that the Chairperson is authorized to complete Part 2 of the EAF to indicate that moderate to large impacts may occur as indicated in answers to questions ## 1, 2, 5, 7a, 9, 11, and to also complete Part 3 of the EAF to indicate that an Environmental Impact Statement is required.

BE IT FURTHER RESOLVED that the Zoning Board of Appeals hereby finds that the proposed action by Dawn Sun Corp. may result in significant adverse environmental impacts; and

BE IT FURTHER RESOLVED that the Zoning Board of Appeals hereby issues and adopts the accompanying Positive Declaration pursuant to the requirements of the State Environmental Quality Review Act, 6 NYCRR 617.7, and resolves that an Environmental Impact Statement must be prepared in order to evaluate the potential for adverse impacts and available mitigation measures; and

BE IT FURTHER RESOLVED that the applicant is directed to submit a Draft Scope; and

BE IT FURTHER RESOLVED, that the Clerk is to file this Positive Declaration with the Department Environmental Conservation’s Environmental Notice Bulletin (“ENB”), and provide a copy to the Town Supervisor, the Involved agencies, and the Applicant; and

BE IT FURTHER RESOLVED that, by reason of the adoption of this Positive Declaration, this action will be the subject of a coordinated environmental review and, therefore, the Clerk is to provide copies of the application, the EAF, and project plans to all Involved agencies with notice that all materials filed in this matter will be available for inspection and review at Union Vale Town Hall.

WHEREUPON the following vote was taken:

	<u>Yea</u>	<u>Nay</u>
Chairperson Jane Smith	<u> x </u>	<u> </u>
Board Member Dennis Dunning	<u> x </u>	<u> </u>
Board Member Ilana Nilsen	<u> x </u>	<u> </u>
Board Member John Hughes	absent	
Board Member Mike McPartland	recused	

DATED: Union Vale, New York
 March 11, 2020

JOAN MILLER, Land Use Secretary
Town of Union Vale
249 Duncan Road
Lagrangeville, NY 12540
845-724-5600
pbzba@unionvale.ny.us

OTHER BUSINESS

None.

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 9:50 p.m.

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

The agenda will close on **March 24, 2020 at 12:00 Noon.** Items for consideration at the **April** meeting must be received by that date.

Respectfully submitted,

Jean E. Miller

ZONING BOARD OF APPEALS CLERK