

**DRAFT COPY**

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

**April 3, 2018**

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

Member Absent: Board member Jeff Wimmer

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

**CALL TO ORDER / DETERMINATION OF QUORUM**

Chairperson Jane Smith called the meeting to order and determined there was a quorum to conduct business.

**BUSINESS SESSION**

- Review the Agenda
- Motion to accept the Regular meeting minutes from the February 6, 2018 and March 6, 2018.

A motion was made by Jane Smith to accept the February 6, 2018 and March 6, 2018 Regular meeting minutes as submitted, seconded by Board member Ilana Nilsen and unanimous vote of the Board members present.

**CORRESPONDENCE**

Memo cover letter received from George Kolb, dated 3/30/2018, attaching a Memorandum of Law received from Michael Caruso, P.C. in support of the application of Dawn Sun Corporation for area variances and interpretation of the Town of Union Vale Zoning Code.

**PUBLIC HEARING(S)**

None.

**REGULAR SESSION / OLD BUSINESS / DECISION ON PUBLIC HEARING(S)**

**Dawn Sun Corporation, Walid Ghannan, 3122 Route 82, Verbank, NY 12585:** 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 application requests that determination be made by ZBA to allow only the floor area of the “Deli” portion of the building to be used in the calculation of

“gross floor area” under §210-56E(5)(a), instead of the total area of the first floor (2640 square feet) as determined by the CEO in his letter dated 2/26/2018; the CEO determined that, because the floor area exceeded the 2000 square foot maximum, the applicant needed to apply for a 640 square feet area variance,.

Application also requested a variance for 200 feet from any “Church” or “public gathering place” as required by §210-56E(6), since, as determined by CEO in his letter dated 2/26/2018, the 200’ requirement is measured from the property line.

Chairperson Jane Smith welcomed the applicant, Walid Ghannan, his attorney, Mr. Michael Caruso, and engineer, Karol Knapp. Chairperson Smith observed that this is a complex and unique application, and offered a summary of the procedural history. She explained that, in an initial (but untimely) application, applicant sought nine different area variances for the project. After subsequent review, the CEO determined that two issues – whether the project comported with the floor area requirement of §210-56E(5)(a) and the location requirement of §210-56E(6)(a) – should be resolved first.

Chairperson Smith then pointed out that the current application requested only area variances; however, the applicant’s attorney, in his memorandum dated March 30, 2018, asserted that, as far as the floor area issue was concerned, the applicant was actually requesting the Board to first make an *interpretation* of the code (i.e., whether the gross floor area calculation should encompass the total floor area of the building or only the square footage of the existing deli); only if the Board agreed with the CEO’s interpretation would it be necessary for the applicant to apply for an area variance. It also appeared that the applicant was challenging the CEO’s interpretation of the location requirement; while the CEO measured the 200’ from the property line of the applicant’s property to the property line of the public gathering places, according to the applicant, the measurement should be from the gasoline tanks to the building on the adjacent property.

Discussion ensued both as to the kind of evidence that would be relevant to a determination whether to count only the deli space or whether the total square footage of the first floor of the building should be counted, as well as whether any variance from the 200’ location requirement would entail a use variance or an area variance. The applicant agreed to resubmit the application to clearly identify that interpretations of the code were sought, and, depending on those interpretations, variances might be requested.

Motion was made by Chairperson Jane Smith, and seconded by John Hughes, to set a public hearing on the above stated revised application for May 1, 2018 at 7:30 pm., provided the revised application was filed not less than 10 days prior to May 1. Motion approved unanimously. Applicant was advised he should be prepared to address whether the variance required from the 200’ location requirement is an area or a use variance.

**REGULAR SESSION / NEW BUSINESS**

None.

**OTHER BUSINESS**

None.

**ADJOURNMENT**

As there was no further business, a motion was made, seconded, and unanimously accepted by the Board, to adjourn the meeting at 9:00 p.m.

The next regular meeting of the Zoning Board of Appeals is scheduled for **WEDNESDAY, May 1, 2018 at 7:30 PM.**

The agenda will close on **April 17, 2018 at 12:00 Noon.** Items for consideration at the **May** meeting must be received by that date.

Respectfully submitted,

*Joan E. Miller*

ZONING BOARD OF APPEALS CLERK